

Law Enforcement Digest



Covering cases published in August 2024

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Cases in the Law Enforcement Digest are briefly summarized, with emphasis placed on how the rulings may affect Washington law enforcement officers or influence future investigations and charges. Each cited case includes a hyperlinked title for those who wish to read the court's full opinion. Links have also been provided to key Washington State prosecutor and law enforcement case law reviews and references.

The materials contained in the LED Online Training are for training purposes. All officers should continue to consult with their department legal advisor for guidance and policy as it relates to their particular agency.

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Each month's Law Enforcement Digest covers court rulings issued by some or all of the following courts:

- **Washington Courts of Appeals.** The Washington Court of Appeals is the intermediate level appellate court for the state of Washington. The court is divided into three divisions. Division I is based in Seattle, Division II is based in Tacoma, and Division III is based in Spokane.
- **Washington State Supreme Court.** The Washington Supreme Court is the highest court in the judiciary of the U.S. state of Washington. The court is composed of a chief justice and eight justices. Members of the court are elected to six-year terms.
- **Federal Ninth Circuit Court of Appeals.** Headquartered in San Francisco, California, the United States Court of Appeals for the Ninth Circuit (in case citations, 9th Cir.) is a federal court of appeals that has appellate jurisdiction over the district courts in the western states, including Washington, Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, and Oregon.
- **United States Supreme Court:** The Supreme Court of the United States is the highest court in the federal judiciary of the United States of America.

WASHINGTON LEGAL UPDATES

The following training publications are authored by Washington State legal experts and available for additional caselaw review:

- [Legal Update for WA Law Enforcement](#) authored by retired Assistant Attorney General, John Wasberg
- **Caselaw Update** - WA Association of Prosecuting Attorneys [[2018-2021](#)] | [[2022-2023](#)] [[2024](#)]

Case Review

The [Washington State Judicial Opinions](#) website provides free public access to the precedential, published appellate decisions from the Washington State Supreme Court and Court of Appeals.

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General Disclaimer: The case digests presented here are owned by the Washington State Criminal Justice Training Commission. They are created from published slip opinions^[1] and are general and may not apply to specific issues in specific cases or investigations. They are published as a research and training resource for law enforcement officers, investigators, detectives, supervisors, agencies, and other interested law enforcement-related parties.

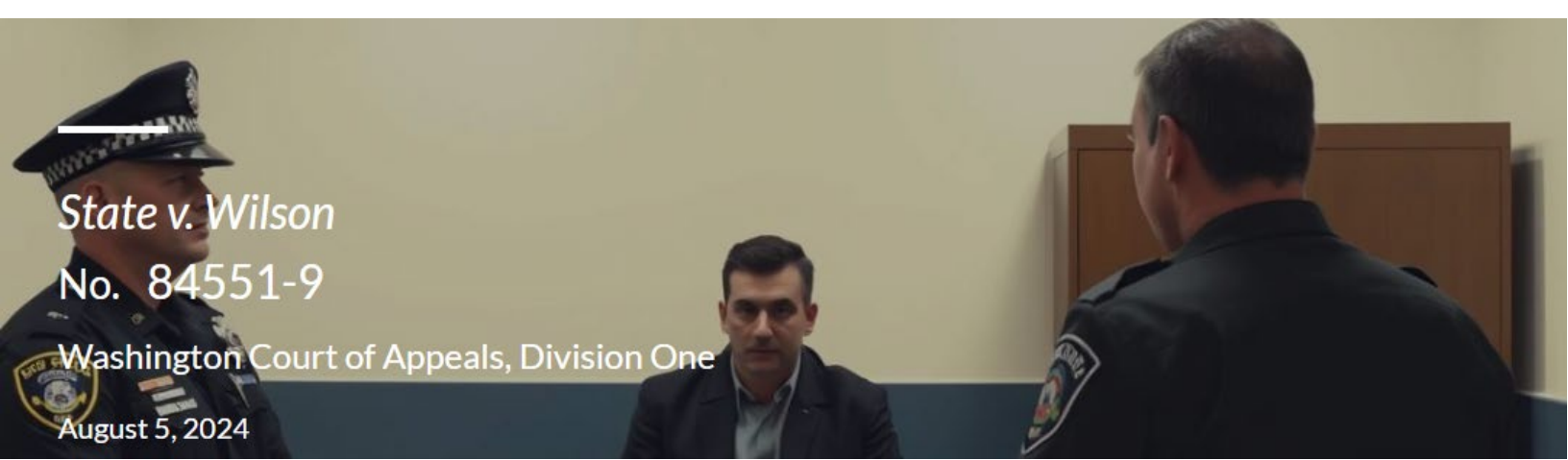
The digests do not constitute legal advice, nor does their publication create or imply an attorney client relationship with any law enforcement agency or officer or party. All law enforcement personnel, parties, and agencies must review the actual published case opinions and consult their agencies' legal advisors, union counsel, and local prosecutors for specific guidance on the application of the opinions to specific issues in specific cases or investigations.

[1] Slip opinions are frequently revised after initial publication and after the creation of these case digests. In any specific case or investigation, it is necessary to review the final version of the opinion published by the Washington State Judicial Opinions website.

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- Visit the ACADIS portal page for status, news and **resources** for organizations, officers and training managers news, updates, and links.

Note: You may see *Id* used in this LED. It is used to refer to the immediately preceding citation.



State v. Wilson, 84551-9, Washington Court of Appeals, Division One (August 5, 2024)

Factual Background

This case came before the court on an appeal from a murder conviction. The primary issue raised in the appeal was whether the defendant's *Miranda* rights had been violated by detectives during a custodial interrogation. The court determined that the violation had occurred, that the statements made during the interrogation should not have been admitted into evidence at the trial, and that the conviction had to be reversed. This case and the cases discussed in the court's analysis are important reading for any officer or detective who engages in questioning a suspect.

The murder was committed in June 2019. The defendant was the victim's father. They resided together in an apartment along with the victim's husband and child. Tensions were high between the defendant and his daughter. And on June 10, 2019, the defendant called his ex-wife and said that he was going to kill his daughter.

The ex-wife did not take the threat seriously. But this time it was serious. The defendant called his ex-wife again and this time stated that he had killed the daughter. During the conversation he said he would call 911. He did so. In the 911 call he admitted killing the daughter. The 911 call was about six minutes long and was admitted into evidence at the trial. Likewise, evidence from the phone calls to the ex-wife were also admitted into evidence.

Law enforcement responded to the 911 call and detained the defendant at the scene. The victim was found in the apartment and the murder weapon was also found. A patrol officer advised the defendant of his *Miranda* rights and questioned him at the scene. The questioning was captured on body cam footage and the footage was introduced into evidence at trial. During the questioning the defendant admitted having killed the victim and told the officer where the gun would be found. He said that the killing had been precipitated by an argument regarding installation of a baby gate.

The defendant was arrested and transported. He was questioned by detectives on video. The questioning began at 5:43 p.m. and the incident took place on a Friday evening in King County. During the questioning the detectives advised the defendant of his *Miranda* rights. In connection with the advisement of rights an exchange took place which was the focus of the appeal.

The court quoted extensively from the transcript from the detectives' interrogation. The details of the communications with the defendant are worth reviewing and are set forth here as they appear in the court's opinion:

DETECTIVE EDWARDS: All right. So no questions. A little bit of calmness here which is good. So like I told you, . . . I met you at the scene and this is Detective Jared. What we're here to do is just try to get everybody's input of what happened. Because, we know we weren't there, that sort of thing. But before we do that, I know that you were spoken to at the scene by Officer Sagiao. And you were already given your *Miranda* rights; right?

MR. WILSON: Correct.

DETECTIVE EDWARDS: Okay. Do you remember understanding those rights?

MR. WILSON: Yes.

DETECTIVE EDWARDS: Okay. . . . [Y]ou're gonna have to hear them again, because I'm going to read them to you again, just to make sure you understand them. I'm going to read them slow. If you have any questions, just let me know, okay, Wendell? And you're okay if I call you—

MR. WILSON: Why (cross talk) [1]—that's my name. Wendell is my name.

DETECTIVE EDWARDS: Yeah. Do you want me to call you Mr. Wilson or Wendell

MR. WILSON: Whichever you're comfortable with.

DETECTIVE EDWARDS: Okay. Okay. Go ahead.

MR. WILSON: **Um . . . I know I can't afford a lawyer.**

DETECTIVE EDWARDS: Okay.

MR. WILSON: So I'm going to have to ask for legal representation, not out of resistance or—or—anything

DETECTIVE EDWARDS: Mm-hmm.

MR. WILSON: But, to get my—I just don't know where—where you stop. Once you start answering questions—

DETECTIVE EDWARDS: Understandable.

MR. WILSON: —then a lawyer becomes real—rather—I mean—

DETECTIVE EDWARDS: Well, yeah.

MR. WILSON: It doesn't, help, is what I'm trying to say. How long would it take me to get a lawyer for?

DETECTIVE EDWARDS: Well, you won't have one tonight—

MR. WILSON: Now that's for sure.

DETECTIVE EDWARDS: Yeah, but will you have one. I mean, you're guaranteed one, right?

MR. WILSON: By the law.

DETECTIVE EDWARDS: Oh, of course. The law will guarantee—guarantee you one. Whether you can afford one or not—and that's part of the rights that I—I read to you.

MR. WILSON: Right.

DETECTIVE EDWARDS: So—I tell you what, let me go ahead and read them to refresh your memory. And then, . . . if you decide, then we'll decide what to do after that. Okay?

MR. WILSON: Yeah.

DETECTIVE EDWARDS: Just so—at least I can say I've read them to you.

R. WILSON: Right.

DETECTIVE EDWARDS: Because I know, it was very hectic at the scene and I know it's very loud and everything going on. All right. So Wendell, at this time you have the right to remain silent. Anything you say can be used against you in a court of law. You have the right at this time to talk

to a lawyer and have him present with you while you are being questioned. If you cannot afford to hire a lawyer, one will be appointed to represent you before any questioning, if you wish. You can decide at any time to exercise these rights and not answer any questions or make any statements. So, do you understand each of these rights I've explained to you?

MR. WILSON: Yes, I do.

DETECTIVE EDWARDS: **Okay. And then having these rights in mind, do you wish to talk to me now and give me your side of the story about what happened?**

MR. WILSON: (Pause.) Yes.

DETECTIVE EDWARDS: **You would like to talk to me now? Okay. Because—I mean, my job is to get both side—**

MR. WILSON: I'm dead meat anyways.

DETECTIVE EDWARDS: I'm not going to say that.

MR. WILSON: Well, I'm saying it, so.

DETECTIVE EDWARDS: Well, I mean that's—all my job is, is to put everything together—to then show somebody.

MR. WILSON: Right.

DETECTIVE JARED: We just want to get your side.

DETECTIVE EDWARDS: So you're willing to talk to us now?

MR. WILSON: Yeah.

DETECTIVE EDWARDS: Okay. All right. So can you tell me. . . kind of start the day. How did your day start there? What happened?

Wilson Slip Opinion, pp. 4-6 (emphasis added)

The questioning by detectives lasted more than an hour. After the defendant completed his statement, he remained in the interview room with the video running. During that time another officer entered the room, and the defendant inquired about when he would get a lawyer.

The defendant's statement included claims that became part of his defense at trial. The claims included having taken hydrocodone and statements about his intent or purpose with the gun. At trial his defense introduced a mental defense and claimed that he lacked the capacity to premeditate or form intent. His expert testified that he had not had the capacity to form the requisite mental states due to PTSD. A prosecution expert rebutted the claims and relied on the goal directed actions the defendant took during the incident and afterward.

Admissibility of the defendant's statements to the ex-wife, the 911 operator, the patrol officer, and the detectives was ruled upon by the trial court. The trial court ruled that all of the statements were admissible. As to the discussion about a lawyer in the detectives' interview, the trial court ruled that the defendant had made an equivocal reference to a lawyer, which required clarification.

Analysis of the Court

The *Wilson* court reviewed the admission of the detectives' questioning of the defendant. It began by articulating the constitutional standards that apply to issues arising from custodial interrogations. During its analysis it revisited past cases that were closely analogous to this case.

The custodial interrogation standards included those that apply to an equivocal (or ambiguous) invocation of a *Miranda* right. "Whether an invocation of *Miranda* rights is unambiguous is 'a bright-line inquiry' and is an 'objective' one. . . . An invocation of *Miranda* rights 'must be sufficiently clear 'that a reasonable police officer in the circumstances would understand the statement to be [an invocation of *Miranda* rights].' . . . The question is whether, '[a]s a matter of law,' it was reasonable for the detectives to conclude that the right to counsel was not invoked." *Wilson Slip Opinion*, p. 9-10 (citations to prior cases omitted).

In addition to the issue of whether an exercise of rights was equivocal, the court also articulated the standard that applies when rights are *unequivocally* invoked. " '[I]f a suspect requests counsel at any time during the interview, he is not subject to further questioning until a lawyer has been made available or the suspect himself re initiates conversation.' ... But the suspect must articulate his desire to have counsel present sufficiently clearly that a reasonable police officer in the circumstances would understand the statement to be a request for counsel. ...

Invoking *Miranda* requires the expression of an objective intent to do so." *Wilson Slip Opinion*, p. 10-11.

The court also articulated the standard that applies to evaluating the context of an exercise of *Miranda* rights. “Where nothing about the request for counsel or the circumstances leading up to the request would render it ambiguous, all questioning must cease. ... Once a sufficiently clear invocation is made, ‘an accused’s postrequest responses to further interrogation may not be used to cast retrospective doubt on the clarity of the initial request itself.’ ” *Wilson Slip Opinion*, p.11-12.

After articulating the applicable standards, the court applied them to the questioning by the detectives. The court held that the words used by the defendant were an unequivocal, unambiguous invocation of the defendant’s right to have a lawyer present during questioning. The court rejected the prosecution’s argument on appeal that the vocalizations by the defendant were an inquiry. It instead considered them to be the same as statements that were at issue in a prior *Miranda* opinion, *State v. Pierce*^[1].

The *Wilson* court quoted the crucial statement, in *Pierce* for the sake of comparison. The statement in *Pierce* was: “Pierce’s full statement was, ‘If you’re . . . trying to say I’m doing [sic] it I need a lawyer. I’m gonna need a lawyer because it wasn’t me.’ ” *Wilson Slip Opinion*, p. 13. This statement was held to be unambiguous, and the equivalent of the statements quoted above from *Wilson* during the detectives’ questioning.

The *Wilson* court also considered whether the defendant’s statements should be considered an inquiry about process. The court rejected that possibility saying, “Wilson’s statement is analogous to the unequivocal invocation ‘*I have to get me a good lawyer, man. Can I make a phone call?*’ Wilson builds to a question, including through the questioning body language noted by the trial court, but in doing so makes an unambiguous statement of having to ask for counsel.” *Wilson Slip Opinion*, p. 15.

The *Wilson* court rejected all of the prosecution’s arguments on appeal. Accordingly, it held that the statements about a lawyer were an unequivocal, unambiguous request for a lawyer and that questioning should have ceased. Because the statements were equivocal and unambiguous there was no cause for clarifying whether the defendant was invoking his rights.

^[1]Free access to Washington State judicial opinions can be obtained through the Washington State Judicial Opinions Public Access Web site here: [Free Washington Case Law Access](#)

To access the *Pierce* case, or any other Washington judicial opinion, type the citation in the search box. For *Pierce*, an officer would type in “133 Wn.App.199”.

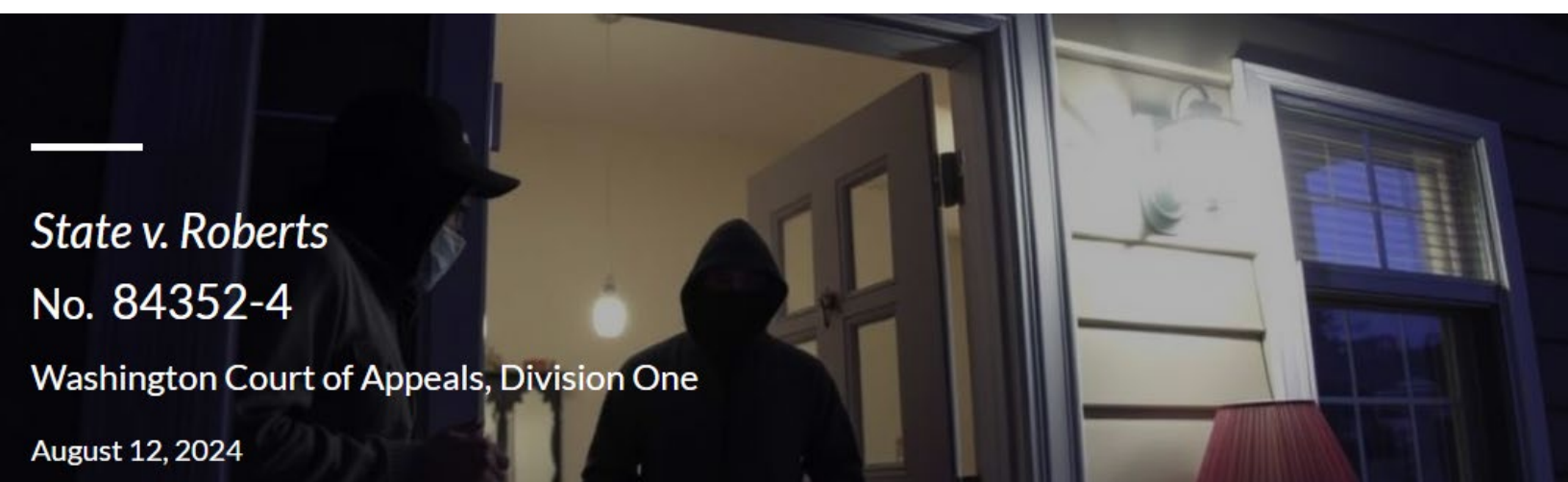
Training Takeaway

The concepts of equivocal/unequivocal, or ambiguous/unambiguous can be viewed as imposing a black or white filter on human communication, which is rarely black and white. Officers and detectives who encounter a suspect who articulates something about either a lawyer or silence must necessarily use judgment to determine what to do next during questioning. This case is an example of how words that could be deemed an inquiry about process or deliberation about whether to stop the questioning, can be viewed as bright-line, black and white exercises of constitutional rights.

A second takeaway can be drawn from the quoted transcript. It is important to note that before the detectives questioned the defendant, he had previously been given an advisement of rights and had made incriminating statements. In the interview room he verbalized questions or statements about a lawyer before the second advisement of rights on the video. After that advisement he was asked the general question about waiving his rights. He was not asked specifically whether he wanted to proceed without a lawyer. Had the detectives specifically asked whether he wanted to talk without a lawyer, his intent in bringing up a lawyer might have been better clarified.

It is important to note that according to the court's analysis, even if the detectives had clarified his request for a lawyer after the *Miranda*, there is good reason to believe the outcome would have been the same. After all, the court considered the defendant's verbalizations about a lawyer before *Miranda* to have been unequivocal and unambiguous. In the court's view the interview should have ceased after the defendant said what he said.

[EXTERNAL LINK: View the Court Document](#)



State v. Roberts

No. 84352-4

Washington Court of Appeals, Division One

August 12, 2024

State v. Roberts, 84352-4, Washington Court of Appeals, Division One (August 12, 2024)

Factual Background

This case came before the court on an appeal from a conviction for first degree felony murder predicated on burglary. The incident was a home invasion robbery in which a gunfight broke out between the murder victim and the intruder or intruders. The court addressed two issues of interest to law enforcement. Whether there was sufficient evidence for felony murder, and whether the prosecution improperly appealed to racial prejudice in certain testimony about drug dealing and Hispanic gangs.

The felony murder issue arose because the case was largely based on circumstantial evidence. Although the girlfriend survived the incident, she was behind a closed door at all times during the home invasion and thus could not identify the intruder or intruders and could only describe *hearing* more than one person on the other side of the door.

The girlfriend's testimony was supported by forensic evidence. This included blood stains from the intruder or intruders. The blood stain matched the defendant thus giving rise to an inference that he was an intruder. Another blood stain found in an impounded vehicle that was associated with another suspect also matched the defendant. In addition, property, namely a gun case, taken during the home invasion was found in the vehicle.

Several other aspects of the evidence impacted the sufficiency issue. During the police investigation rap video evidence was recovered which was produced by the defendant and which included reference to facts that occurred during the home invasion. The video included the defendant's image from a Washington's Most Wanted bulletin and had the appearance of boasting about the home invasion. That video plus some written rap lyrics of a similar character were introduced into evidence at trial.

Lastly, the defendant's defense impacted both issues. The defendant acknowledged having been in the residence during the home invasion. But he claimed that he was a drug customer and happened to be there when other suspects were committing the crime. He claimed that he fled after having been confronted by the actual robbers.

The trial court heard the case as a bench trial. In regard to the defendant's testimony about having been an innocent drug customer, it found no credibility in that portion of the defendant's testimony. Accordingly, it found the defendant guilty of felony murder as an accomplice.

Analysis of the Court

The court began with the sufficiency issue. It spent considerable time on conflicting appellate standards that have been applied to sufficiency of the evidence claims by Washington and federal appellate courts. It did not resolve the conflict but instead found that there was sufficient evidence no matter what standard was applied. *Roberts Slip Opinion, p.13*

The felony murder and accomplice statutes permit a defendant to be convicted of murder without having been the one who pulled the trigger or otherwise caused or inflicted death. The phrase used in the felony murder statute is "he or she, or another participant, causes the death of a person other than one of the participants..." See [RCW 9A.32.030](#). This provision of the first-degree murder statute led the Roberts court to say, "Therefore, 'though one participant in a predicate felony, alone, commits a homicide during the commission of, or flight from, such felony, the other participant in the predicate felony has, by definition, committed felony murder.'" *Roberts Slip Opinion, p.14*

Under the felony murder provision, the sufficiency of the evidence claim turned on whether there was sufficient evidence that there was more than one intruder. This was largely because the surviving witness could not see how many intruders were in the residence. The court found no difficulty rejecting the defense arguments. It started with the surviving witness's testimony.

The girlfriend did not waiver from having heard more than one intruder. She said as much during the police investigation and during her testimony in court. While she may not have been able to see through the door, she could hear what was happening on the other side and testified to her direct perception of what she heard.

The girlfriend's testimony was bolstered by the forensic evidence. The blood stain and the defendant's DNA result was important in two ways. First, it showed that he was not alone because the DNA was found both in the residence and in a vehicle associated with another suspect. Second, it contradicted his testimony in his own defense that he was a hapless drug buyer who interrupted a burglary in progress by others.

The court summed up the entirety of the evidence this way: "Bolanos' testimony that there were multiple individuals inside the house and that the entire incident occurred in two minutes, along with the DNA evidence implicating Roberts and his concession that he was in the basement along with another person, leads to a reasonable inference that Roberts was involved in the burglary." *Roberts Slip Opinion, p. 16*. In short, there was sufficient evidence under either of two competing appellate standards to sustain the conviction.

The *Roberts* court also reviewed the admissibility of the rap video and rap lyrics. This issue was reviewed under two distinct evidence rules. The first was relevance. " 'Relevant evidence' is defined as 'evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.' ... 'Even minimally relevant evidence is admissible.' ... However, relevant 'evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice.' " *Roberts Slip Opinion, p. 25*

The second part of the review was to the witness who testified about the content of the rap video and lyrics. The lead detective was offered as an expert witness based on experience and training in deciphering street lingo included in the evidence. "Expert testimony is admissible if the witness is qualified as an expert and the testimony is helpful to the finder of fact." *Roberts Slip Opinion, p.25*

The *Roberts* court upheld admission of the evidence against both challenges. It found that the rap video and lyrics were relevant and admissible because they contained references to important details that occurred during the home invasion. Plus, the trial court specifically found the defendant's testimony about having been present only as a drug buyer not to be credible. The evidence served also undercut that claim from the defense. And finally, the court also found that the detective's credentials were sufficient and that his interpretation of the street lingo was "helpful to the trier of fact."

A final challenge to the rap video and lyrics involved a claim that the prosecution improperly appealed to racial prejudice, bias, or stereotypes by introducing and arguing the evidence. The court reviewed the probative value of the evidence in light of entire record of the trial and stated, “Overall, these factors all weigh against Roberts’ claim of race-based prosecutorial misconduct. As no objective observer could view the prosecutor’s questions and comments, within the context of the trial as a whole, as an appeal to the judge’s potential prejudice, bias, or stereotypes, the prosecutor did not commit race-based misconduct.” *Roberts Slip Opinion*, p. 34

Training Takeaway

The primary takeaway for law enforcement from this case arises from the sufficiency challenge. It may seem obvious that proof is required that more than one person participated in a felony murder where the defendant is charged and tried as an accomplice. However, this case is a good example of how the primary issues during the investigation can change when it comes time for the defense to present a case at trial.

The *Roberts* opinion does not disclose whether the defendant made statements to law enforcement when he was arrested. Under such circumstances, the claim that the defendant was a hapless drug buyer appears to have been an attempt to account for as much of the evidence as possible while still maintaining the defendant’s innocence. A byproduct of that circumstance is that the more than one participant issue took on a larger role at trial than it appeared to have had during the investigation. Fortunately, the details of the surviving witness’s statements included references to multiple intruders, and that testimony was supported by the forensic DNA evidence.

A secondary takeaway is the importance of monitoring social media sources. The defendant’s posting of rap lyrics about a murder is a case in point. Law enforcement is frequently the unintended beneficiary of foolish suspects who can’t help but boast about their exploits.

[EXTERNAL LINK: View the Court Document](#)

An illustration of a man with a mustache and a woman with blonde hair sitting in the front seats of a car. The man is on the left, looking towards the woman on the right. The scene is set at night, with a house and trees visible through the car windows.

State v. Lee

No. 57922-7

Washington Court of Appeals, Division Two

August 13, 2024

State v. Lee, 57922-7, Washington Court of Appeals, Division Two (August 13, 2024)

Factual Background

This case came before the court on an appeal from a conviction for two counts of second-degree assault. The court reviewed a number of assignments of error related to the trial proceedings which are unlikely to be of any interest to law enforcement. Those issues will not be described here, but are available to read in the court's slip opinion. The issue of interest to law enforcement is a double jeopardy issue arising from two counts of second-degree assault from one incident.

The incident occurred in 2022. The victim was a woman who was staying with the defendant and the defendant's wife. There was tension between the defendant and the victim which culminated in a pistol whipping and shots fired incident during a ride home from a casino.

The defendant was the driver. He and the victim were at the casino together for a period of time, but he left. When he came back, an argument started about the defendant having left the victim at the casino. During the drive to the defendant's residence, the argument escalated. It climaxed while the two of them were still in the truck. The defendant beat the victim in the head with the gun.

The victim fled the truck after the beating. Subsequently the defendant also exited the truck and fired shots in the direction of the victim. Fortunately, the victim did not sustain any gunshot wounds. The defendant's wife came out of the residence after the first shots were fired.

The defendant provided a videotaped interview to law enforcement. His account of the incident included that the victim had taken him to a drug house, stolen his wallet, insulted him, and that he used the gun only to scare her off his property. He denied physically assaulting her.

In light of the pistol whipping with the gun and the firing of shots, the prosecution charged two counts of second-degree assault. The first was under the statutory alternative involving reckless infliction of substantial bodily harm. The second was for assault with a deadly weapon.

Analysis of the Court

The double jeopardy issue was premised on the defendant having been charged, tried, convicted, and sentenced, for two felony assaults from a single incident. The court began by discussing the double jeopardy standards that apply in such cases. The constitutional right of double jeopardy protects “a defendant from ‘multiple punishments for the same offense, imposed at a single criminal proceeding.’ ” *Lee Slip Opinion, p. 17*. Stated another way, double jeopardy protects a defendant “from ‘being convicted twice under the same statute for committing just one unit of the crime.’ ” *Lee Slip Opinion, p. 17*

The issue of whether a single incident can be charged as one, or more than one, offense involved analysis of what course of conduct was applied to each count. To assist in the analysis of such issues the courts utilize a five factor test. Namely, “ ‘To determine if multiple assaultive acts are part of the same course of conduct,’ we look at five factors: the ‘length of time over which the assaultive acts took place,’ whether ‘the assaultive acts took place in the same location,’ the defendant’s intent when they committed the different assaultive acts, whether ‘any intervening acts or events’ took place, and whether the defendant had an opportunity to reconsider their actions.” *Lee Slip Opinion, p. 18*

After discussing the double jeopardy standards, the court applied them to the facts from the pistol whipping and shooting incident. The court determined that double jeopardy was not violated. It found the defendant’s intent to have differed between the pistol whipping and the shooting.

The court stated:

Yet a defendant’s intent or motivation bears significantly on the question of whether multiple assaultive acts constituted one course of conduct. Lee argues that his overarching motivation was getting Groff to leave the property where he lived. While this explanation is consistent with Lee’s decision to scare Groff by shooting at her, it is inconsistent with his decision to beat her before chasing her off of the property with gunfire. Lee did not hasten Groff’s departure by severely beating her in the head with the gun inside the truck and kicking and hitting her on the

ground. The more logical explanation is that the beating was motivated by Lee's anger toward Groff for things she had done that evening: insulting him, smoking heroin near him, and trying to steal his wallet. *Lee Slip Opinion, p. 20.*

The court acknowledged that some of the factors weighed against the prosecutor on the double jeopardy issue. But it determined that weighing all of the factors, the charging of two counts of assault from this single incident did not violate the constitution. The court upheld the convictions and sentences for the two counts of assault, including the two firearm sentence enhancements.

Training Takeaway

The final decision about what charges to bring lies with the prosecutor. For law enforcement, however, there will always be decisions related to what charges to refer and what charges to include at booking. It is worthwhile to be aware that a single incident involving multiple assaultive acts - particularly where there is a break in the action, or an intervention followed by more assaultive behavior - can justify multiple counts from what appears at first glance to be a single incident or episode.

[EXTERNAL LINK: View the Court Document](#)



State v. Wasuge

No. 85286-8

Washington Court of Appeals, Division One

August 12, 2024

State v. Wasuge, 85286-8, Washington Court of Appeals, Division One (August 12, 2024)

Factual Background

This case came before the court on an appeal from a felony DUI (driving under the influence) conviction. The opinion is only partially published, but the published portion includes discussion of DUI evidence and charging that will be of interest.

The defendant was contacted by law enforcement after he was found behind the wheel of a vehicle, intoxicated, asleep, and with the transmission in gear. The officers investigated him for DUI and the court noted that the defendant performed poorly on the Field Sobriety Tests (FSTs) and generally “appeared dazed and confused.” *Wasuge Slip Opinion, p. 3*

The defendant was arrested and transported to a hospital for a blood draw. The result of the blood draw, which was taken more than two hours after the contact at the scene, was .076 BAC.

The defendant was charged with felony DUI. At trial the prosecution elected to try him under the “affected by” DUI alternative rather than the *per se* .08 BAC alternative. The prosecution called a State Toxicologist expert. There were several aspects of the expert’s testimony that were objected to and that became the subject of the appeal.

The expert was asked to testify about general absorption and burn off rates for alcohol. This testimony was objected to because it was not related to the defendant specifically nor to an individual with his physical characteristics. The expert was also asked about the *per se* .08 BAC limit in Washington and about recommendations for a lower BAC limit, which is advocated for by the American Medical Association. This testimony was also objected to.

The jury found the defendant guilty, not of DUI but of physical control. The defendant was sentenced and appealed. The issues in the published part of the court's opinion concerned the admission of the expert's testimony.

Analysis of the Court

It is important to note that thanks to good police work the errors related to the admission of the expert testimony did not result in the conviction being overturned.

The court's complimentary description of the police work and testimony is as follows:

Given the overwhelming evidence that Wasuge was under the influence of or affected by intoxicating liquor, we are unable to conclude, as required to grant relief, that within reasonable probabilities, had the error not occurred, the outcome of the trial would have been materially affected. Police found Wasuge asleep behind the wheel of a vehicle sitting in the lane of travel with the engine idling and the gearshift in drive. Farley testified that he believed Wasuge was intoxicated because he smelled the "strong, obvious odor" of alcohol on Wasuge's breath and observed that Wasuge's balance was unsteady, his speech was slurred, and his eyes were glassy, bloodshot, and watery.

Robinson also testified that he could smell alcohol on Wasuge's breath and that he believed Wasuge was intoxicated. Wasuge performed poorly on the FSTs, which Dougher testified are a reliable indicator of alcohol consumption. Lastly, Wasuge admitted to drinking multiple beers before driving the vehicle, and he had a BAC of .076 percent about two hours after he was first discovered behind the wheel of his vehicle. ... Because Wasuge has not shown that within reasonable probabilities, had the error not occurred, the outcome of the trial would have been materially affected, he is not entitled to a new trial on this basis. *Wasuge Slip Opinion*, p. 12-13

It is also worth noting that the court considered that the case could have been brought under the *per se* .08 BAC alternative. A process known as retrograde extrapolation is available to show that a BAC slightly below the limit was the result of burn-off. "The State, as noted previously, did not seek to convict Wasuge under the "*per se*" prong of [RCW 46.61.502\(1\)\(a\)](#) or [RCW 46.61.504\(1\)\(a\)](#). Nor did it present a retrograde extrapolation, which might have been used to show that Wasuge's BAC was .08 percent or higher while he was driving or in actual physical control of the motor vehicle." *Wasuge Slip Opinion*, p. 10

Although the court did not overturn the conviction, it did find that the expert testimony was improperly admitted. As to the general absorption and burn-off rate testimony, the court stated, “Because the State presented no evidence of the burn-off rate for someone of Wasuge’s weight, [A prior case] further supports our conclusion that Dougher’s testimony about general burn-off rates was irrelevant and speculative.” *Wasuge Slip Opinion*, p.9. Also, as to the evidence of the AMA’s recommended below .05 BAC limit, the court stated, “The State’s dogged reliance on this evidence—relating to a statutory limit that does not apply here—runs counter to the principle that a prosecutor seeking to secure a conviction “may land ‘hard blows,’ but it may not land ‘low ones.’ ” ” *Wasuge Slip Opinion*, p.12

Training Takeaway

Most law enforcement officers and detectives will be aware that the affected by alternative is available in close BAC cases. This case also illustrates that the BAC limit applies to the time period when the suspect is driving or in control of the vehicle, not later, perhaps as many as several hours later during the blood draw, when the suspect’s metabolism has had a chance to burn off some of the alcohol in the suspect’s system. But even in those cases, most prosecutors should be aware, and would welcome a discussion of the advisability of introducing retrograde extrapolation to prove the BAC limit at the time of driving.

[EXTERNAL LINK: View the Court Document](#)



State v. Bonaparte

No. 57855-7

Washington Court of Appeals, Division Two

August 27, 2024

State v. Bonaparte, 57855-7, Washington Court of Appeals, Division Two (August 27, 24)

Factual Background

This case came before the court on an appeal from a conviction for Unlawful Possession of a Firearm First Degree (“UPOF”). In the published part of the court’s opinion, the court reviewed a constitutional challenge to Washington’s UPOF statute in light of recent Second Amendment cases that have been decided by the U.S. Supreme Court. The court rejected the challenge and let the conviction of the defendant in this case stand.

The defendant was charged with UPOF after a handgun was found in his belongings by staff at a hotel. The defendant and a female companion had been trespassed from the hotel. They left behind a number of items of personal property including a blue suitcase. The hotel followed its procedure in such situations and stored and inventoried the property. During the inventory the hotel found a handgun in the blue suitcase.

Ironically, the defendant requested standby law enforcement assistance when he went to the hotel to retrieve his property. The hotel notified LE of the finding of the gun and arranged for an officer to arrive early and deal with the gun. The officer took possession of the gun from the hotel and then contacted the defendant to let him know that they were ready for the pickup.

In communications with the defendant, the officer asked about the gun. The defendant denied knowledge of it. He also asked about the suitcase. “Bonaparte replied that the suitcase was his and that it had ‘been with [him] everywhere.’ ” *Bonaparte Slip Opinion, p.3*. The defendant was subsequently charged after further investigation.

Analysis of the Court

The court began with review of recent Second Amendment jurisprudence from

the U.S. Supreme Court, federal circuit courts of appeals, and Washington Courts. Interested readers may review several cases that involve similar issues in the May 2024 issue of these digests. See [May 2024 LED](#). See also [District of Columbia v. Heller](#), p.570, and [United States v. Rahimi](#).

The U.S. Supreme Court articulated the scope of the Second Amendment right in the *Heller* case. “In *District of Columbia v. Heller*, the United States Supreme Court held that the Second Amendment confers ‘an individual right to keep and bear arms.’ *Heller* addressed a District of Columbia prohibition on handguns in the home. ... The Court clarified that the individual right to keep and bear arms is not unlimited.” *Bonaparte Slip Opinion*, p. 5

The court in *Bonaparte* held the recent Second Amendment decisions were consistent with Washington cases and did not invalidate Washington’s UPOF law.

Courts presume statutes are constitutional and the challenger bears the burden of proving otherwise.

* * * *

In *Ross*, the court held that [RCW 9.41.040\(1\)](#) is facially constitutional. 28 Wn. App. 2d at 651. *Ross* also held that “consistent with *Heller*, *McDonald*, and [*New York State Rifle*], the Second Amendment does not bar the state from prohibiting the possession of firearms by felons. *Bonaparte Slip Opinion*, p. 8 / See, [State v. Ross](#)

The court completed its review of the constitutionality of Washington’s UPOF statute by considering whether it was unconstitutional as applied specifically to *Bonaparte*. It held that it was not. “As the unlawful possession of a firearm statute, RCW 9.41.040(1)(a), does not burden a law-abiding citizen’s right to keep and bear arms and *Bonaparte* is a convicted felon, the ‘historical tradition’ framework articulated in *New York State Rifle* is not applicable to his challenge. Therefore, we hold that *Bonaparte*’s claim fails.” *Bonaparte Slip Opinion*, p. 13

Training Takeaway

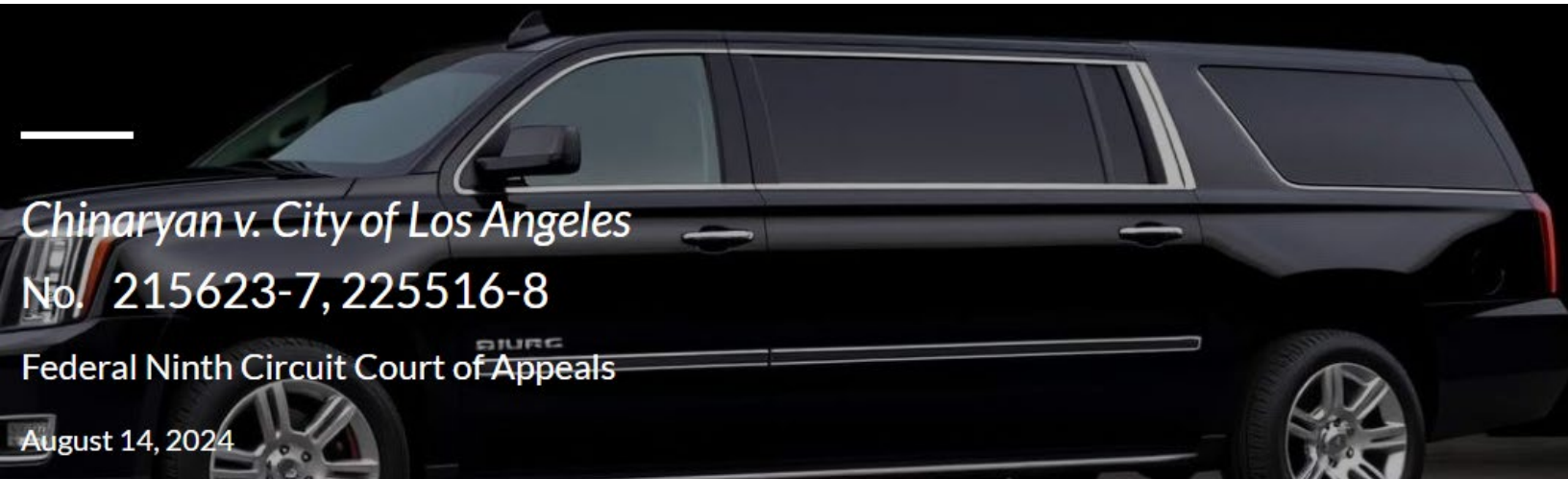
With the publication and media coverage of recent Second Amendment cases, it would not be surprising if law enforcement were to encounter claims that the UPOF charge is unconstitutional. This case and *Ross* dispel that notion in many instances.

As always with questions of constitutionality, department legal advisors and prosecutors are always available to answer specific questions about the viability of unlawful possession of firearms charges in specific fact patterns.

[EXTERNAL LINK: View the Court Document](#)

Federal cases should be reviewed by Washington law enforcement with caution. There are many issues of interest to Washington law enforcement, to include criminal procedure, search and seizure, application of evidence rules, and uses of force, and other constitutional issues, that are decided differently by Washington courts compared to their federal counterparts.

All law enforcement personnel, parties, and agencies must review the actual published case opinions in these cases and consult their agencies' legal advisors, union counsel, and local prosecutors for specific guidance on whether the application of federal cases should be applied to specific issues in specific cases or investigations.



Chinaryan v. City of Los Angeles, 215623-7, 225516-8, Ninth Circuit (August 14, 2024)

Factual Background

This case came before the court on an appeal from a California civil rights action based on excessive force during an investigatory stop. In the trial court the individual officers were successful in a summary judgment motion. The trial court ruled that they were entitled to qualified immunity. Following the summary judgment, the plaintiff went to trial against the municipality defendants. The jury found in favor of the defendants. The Ninth Circuit therefore reviewed both the ruling on the summary judgment and the defense verdict after trial.

The portion of the Ninth Circuit opinion related to qualified immunity is the analysis of greatest interest to law enforcement officers. It will be described here. For those interested in the discussion of the trial verdict, it can be reviewed in the slip opinion.

The excessive force lawsuit was based on a high-risk felony stop by officers investigating a stolen vehicle. A stolen vehicle was reported and a LoJack ping

showed it to be in a particular area of the city. Patrol officers were therefore on the lookout for the vehicle.

A vehicle matching the stolen vehicle was spotted a day later in the area of the ping. It was being driven lawfully but the officers ran the plate and were informed by the Department of Licensing (DOL) that the plate matched the stolen vehicle. The officers elected to initiate a high-risk vehicle stop. This stop included directing the occupants to exit the vehicle, lie prone on the roadway, and the officers covered them with their weapons in a low ready position. The court noted that before the stop, the officers suspected the vehicle was stolen but did not have any information indicating that the occupants were armed or otherwise dangerous.

The occupants were not armed or dangerous. The plaintiff driver was a mother who was driving her daughter and a friend home from a Father's Day celebration. In the resulting investigation, the officers learned that the plate on the stopped vehicle was one digit off from the plate of the stolen vehicle and that the DOL had mistakenly confirmed the stopped vehicle as the stolen vehicle. The coincidence of the nearly identical plates for the two vehicles was discovered approximately nine minutes after the plaintiff was commanded to lie prone on the roadway and the stop lasted approximately 24 minutes total.

The civil rights lawsuit against the officers alleged a Fourth Amendment violation for excessive force in conducting the stolen vehicle stop and detention. The trial court had ruled in favor of the officers.

Analysis of the Court

The Ninth Circuit panel began by articulating the legal standards that apply to qualified immunity defenses. The court noted that it considers three factors: "In assessing 'whether this degree of intrusion was justified by the governmental interests at stake,' we typically consider: (1) 'the severity of the crime at issue'; (2) whether the suspects pose 'an immediate threat to the safety of the officers or others'; and (3) whether the suspects are 'actively resisting arrest or attempting to evade arrest by flight.'" *Chinaryan Slip Opinion, p. 14*

In its analysis of the three factors, the court considered a stolen vehicle not to be a crime posing a threat to "anyone." The court stated, "Although vehicle theft is an 'arguably severe' crime ... the officers had no articulable basis to suspect that plaintiffs posed a threat to anyone beyond the generic threat that a suspected vehicle thief poses" and further, that "The officers had no

information that plaintiffs were ‘currently armed’ or that ‘a crime that may involve violence [was] about to occur.’ ” *Chinaryan Slip Opinion*, pp. 14-15

Based on its review of the incident, the court concluded that there was sufficient evidence of an unlawful, excessive use of force. However, that finding by itself required more. The court next addressed whether the incident involved a right that had been clearly established.

The court discussed the clearly established standard, which also applies to civil rights claims based on alleged excessive force. “For a right to be ‘clearly established,’ existing ‘precedent must have placed the statutory or constitutional question beyond debate,’ such that ‘every’ reasonable official, not just ‘a’ reasonable official, would have understood that he was violating a clearly established right.” *Chinaryan Slip Opinion*, p. 16

Analysis of the clearly established standard thus involved review of “existing precedent.” The question before the court was whether there have been prior appellate decisions in cases that were close enough factually so as to put any (or all) LE officers or officials on notice that the force was excessive. As to that question, the Ninth Circuit concluded that two cases in particular were sufficiently similar to provide the required notice.

The prior cases involved high risk stops of suspected stolen vehicles. The court reviewed the facts in those cases and found nothing to distinguish them from this case. It therefore held that the clearly established standard had been satisfied. Since there was evidence and precedent to satisfy both the excessive force standard and the clearly established standard, the court held that summary judgment based on qualified immunity should not have been granted.

Training Takeaway

The court’s decision on excessive force focused largely on the absence of any fact showing a threat or danger other than the vehicle appeared to be stolen. The court rejected the notion that circumstances such as tinted windows obscuring a clear view of the vehicle’s interior were sufficient. It also voiced sympathy for the plaintiffs’ fearfulness at being detained via a high-risk vehicle stop when they had done nothing wrong. It was unfortunate and to the plaintiffs’ litigation benefit, that a coincidental mistake about a single digit led to an innocent motorist and her passengers being commanded to lie prone out on a roadway and detained at gunpoint.

The training takeaway specific to this case is the excessive force liability risk in stolen vehicle, high risk vehicle stops. In the eyes of the Ninth Circuit, the procedure should not be used where there is no reason to expect a threat or danger or potential violence other than the fact of a stolen vehicle. Plus, there is no way of knowing what a Washington state court, applying Washington civil rights law, might do with such a case either.

[EXTERNAL LINK: View the Court Document](#)



Williams v. City of Sparks

No. 23-15465

Federal Ninth Circuit Court of Appeals

August 9, 2024

Williams v. City of Sparks, 23-15465, Ninth Circuit (August 9, 2024)

Factual Background

This case came before the court on an appeal from summary judgement in a federal civil rights lawsuit based on excessive force. The trial court denied the summary judgement motion by the law enforcement officers. They appealed that ruling pretrial to the Ninth Circuit. The Ninth Circuit held for the officers and determined that deadly force was reasonably used to end the risk posed by the suspect. As with all federal court decisions, there is no way to know whether a Washington Court applying Washington civil rights or criminal law would come to the same decision.

The incident began when officers were dispatched to a convenience store. The call included that the suspect had stolen alcohol and had vandalized a vehicle. The suspect was still on the scene when the officers arrived. One of the officers pulled in behind the suspect's truck and activated his emergency equipment. The suspect responded by fleeing in the truck.

The pursuit was lengthy and dangerous. The suspect's driving, which occurred at around 12:10 am, included reaching speeds of 70 mph, going through multiple red lights, driving the wrong way on a freeway, and driving on blown out tires. The suspect was boxed in at one time but escaped by driving through a fence. The officers were able to PIT (pursuit intervention maneuver) the suspect's truck and pinned him with patrol cars.

The stop of the suspect did not end the incident. With his truck pinned, the suspect continued to attempt to escape. His engine could be heard racing on video. The court concluded that he was trying to escape even when the officers' fired shots.

The shots were fired by multiple officers into the truck. This ended the pursuit. The suspect was injured but not killed. He got out of the truck after the shooting stopped and was treated at hospital.

Analysis of the Court

The officers' summary judgment motion was based on two defenses. The first was that the use of deadly force was reasonable and lawful, and the second was that they were entitled to qualified immunity. The Ninth Circuit panel decided the case on the first defense.

The court began its analysis with the standards that apply to civil claims of excessive force. A use of deadly force to restrain a suspect potentially implicates the Fourth Amendment. Such a use of force is subject to a reasonableness requirement. The court stated: "The Supreme Court's decision in *Graham* identified several factors to consider when evaluating the strength of the government's interest in the force used: (1) "the severity of the crime at issue," (2) "whether the suspect poses an immediate threat to the safety of the officers or others," and (3) "whether [the suspect] is actively resisting arrest or attempting to evade arrest by flight." *Id.* at 396. "The most important *Graham* factor is whether the suspect posed an immediate threat to anyone's safety." *Williams Slip Opinion*, p. 10-11

In its application of the facts to the reasonableness standard, the court noted that the trial court had concluded that the suspect had established that there was a material issue of fact because he claimed he had given up. The Ninth Circuit disagreed. Its review of the video evidence showed that the suspect was attempting to accelerate even though his truck was pinned by three patrol cars.

Having discounted the suspect's claim of having given up, the court turned to the reasonableness of the use of deadly force. It stated, "It is reasonable that an officer, without the benefit of hindsight, might fear that Williams's truck would gain traction at any moment, maneuver out of the PIN, and accelerate forward into traffic. Based on the engine revving and the tires spinning, Williams appeared 'intent on resuming his flight' and would have 'once again pose[d] a deadly threat for others on the road.'" *Williams Slip Opinion*, p. 14-15 (footnote omitted). The court also found that the facts in this case mirrored facts in a prior U.S. Supreme Court case, which influenced its review. See [Plumhoff v. Rickard](#), p. 765

The court's decision on the reasonableness issue led it to reverse the trial court's decision. Thus, the officers were entitled to summary judgment because they had not used excessive force. That decision also carried over to the municipal defendants. The City was also entitled to summary judgment because the officers were found not to have used excessive force and thus the claims against the city were also not viable.

Training Takeaway

The decision in *Williams* did not include discussion of state law or department policy related to pursuits. The favorable outcome for the officers should not be considered a green light for similar uses of deadly force in Washington. In Washington, officers must be knowledgeable about both department policy and state law concerning pursuits and consult with legal advisors and prosecutors concerning specific questions.

A second takeaway is derived from the court's analysis of the Fourth Amendment reasonableness requirement. The court did not need to reach the question of qualified immunity because it found that the officers' use of deadly force was justified and reasonable.

As with the analysis of the reasonableness requirement, there is no way of knowing whether a Washington Court applying Washington excessive force law or criminal law would apply qualified immunity. Caution should attend any application of the analysis in this case to specific issues in a Washington case.

[EXTERNAL LINK: View the Court Document](#)

Cases & Reference

1. State v. Wilson, 84551-9, Washington Court of Appeals, Division One (August 5, 2024)
 - [Slip Opinion](#)
2. State v. Roberts, 84352-4, Washington Court of Appeals, Division One (August 12, 2024)
 - [Slip Opinion](#)
 - [RCW 9A.32.030](#)
3. State v. Lee, 57922-7, Washington Court of Appeals, Division Two (August 13, 2024)
 - [Slip Opinion](#)
4. State v. Wasuge, 85286-8, Washington Court of Appeals, Division One (August 12, 2024)
 - [Slip Opinion](#)
 - [RCW 46.61.502\(1\)\(a\)](#)
 - [RCW 46.61.504\(1\)\(a\)](#)
5. State v. Bonaparte, 57855-7, Washington Court of Appeals, Division Two (August 27, 2024)
 - [Slip Opinion](#)
 - [May 2024 LED](#)
 - [District of Columbia v. Heller](#), p.570
 - [United States v. Rahimi](#)
 - [RCW 9.41.040\(1\)](#)
 - [State v. Ross](#)
6. Chinaryan v. City of Los Angeles, 215623-7, 225516-8, Ninth Circuit (August 14, 2024)
 - [Slip Opinion](#)
7. Williams v. City of Sparks, 23-15465, Ninth Circuit (August 9, 2024)
 - [Slip Opinion](#)
 - [Plumhoff v. Rickard](#)

Case Review

The [Washington State Judicial Opinions](#) website provides free public access to the precedential, published appellate decisions from the Washington State Supreme Court and Court of Appeals.

WA Legal Updates

For further reading, the following training publications are authored by Washington State legal experts and available for additional caselaw review:

- [Legal Update for WA Law Enforcement](#) authored by retired Assistant Attorney General, John Wasberg
- **Caselaw Update** by WA Association of Prosecuting Attorneys [[2018-2021](#)] | [[2022-2023](#)] [[2024](#)]