

Law Enforcement Digest



Covering cases published in November 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.

Case Menu

November was again a limited month for advance sheet cases of interest to law enforcement. We have included six cases which discuss a number of important issues well worth reviewing. Unfortunately, 3 of the 6 cases are wholly unpublished, and one is only partially published. We have again included a short disclaimer which explains the difference between published and unpublished.

Case Menu

1. *State v. Hanley*, 39216-3, Washington Court of Appeals, Division Three (Nov 27, 2024)
2. *Navarro v. King County Sheriff's Office*, 86659-1, Washington Court of Appeals, Division One (Unpublished, Nov 19, 2024)
3. *State v. Torres*, 58172-8, Washington Court of Appeals, Division Two (Unpublished, Nov 21, 2024)
4. *State v. Waye*, 58292-9, Washington Court of Appeals, Division Two (Unpublished, Nov 21, 2024)
5. *State v. Pickering*, 57671-6, Washington Court of Appeals, Division Two (Nov 21, 2024)
6. *United States v. Holmes*, 22-10266, Ninth Circuit Court of Appeals (November 13, 2024)



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.

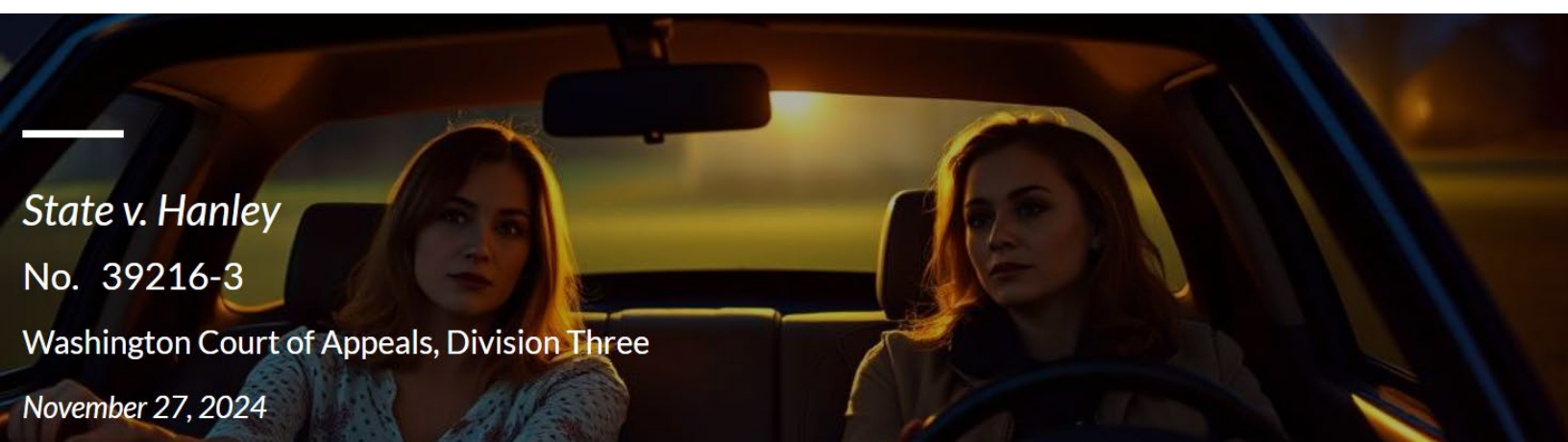
The digests do not constitute legal advice, nor does their publication create or imply an attorney client relationship with any law enforcement agency or officer or party. All law enforcement personnel, parties, and agencies must review the actual published case opinions and consult their agencies' legal 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.

QUESTIONS?

- Please contact your training officer if you want this training assigned to you.
- Visit the ACADIS portal page for status, news and **resources** for organizations, officers and training managers news, updates, and links.

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



State v. Hanley

No. 39216-3

Washington Court of Appeals, Division Three

November 27, 2024

State v. Hanley, 39216-3, Washington Court of Appeals, Division Three (November 27, 2024)

Factual Background

This case came before the court on appeal from a conviction for burglary and felony theft. The issue presented was sufficiency of the evidence for conviction as an accomplice for those two crimes. The court's discussion presented an important analysis of the distinction between accomplice liability and what is known in Washington as rendering criminal assistance. In Washington, accessory after the fact is a separate crime unto itself known as rendering criminal assistance.

The incident took place during an evening in June 2020 and involved burglary of a rural property in Stevens County. The property had been owned by a World War Two veteran and his wife. Both of them had passed away before the burglary. The wife's death was the year before the burglary incident.

The property stayed in the family but was not occupied after the wife's death. A son, who lived in California, kept tabs on the property by means of internet surveillance cameras. The system sent alerts of any activity at the property and the son was able to access the cameras remotely and thereby see and hear what was happening. Audio and video clips from the system were admitted into evidence. The clips were shortened excerpts of the original footage. The clips ranged from six to twenty-three seconds in length.

The system activated when the defendant's car arrived at the property. The video showed that the defendant was in the passenger seat and another woman identified as one Kimberly Parsley was driving. The court stated that the two women were "acquaintances" but that the trial evidence did not include much more concerning the length or nature of their relationship.

The court summarized the content of the surveillance system video clips. After Parsley and the defendant arrived in the defendant's car, Parsley got out of the car, concealed her appearance with a wig, and went to the house. She knocked on a back door and peered inside the residence. She disappeared from view but

returned to the area of the defendant's car with a green coat. She attempted to put the coat in the trunk but had trouble with the latch. She could be heard on the video asking the defendant, "How the f--- do ..." but the rest of the question was not recorded. A detective testified that he heard Parsley asking about a key or how to open the trunk. But the court stated that the video clips admitted into evidence did not include the references to a key or how to open the trunk.

At trial the admitted evidence showed that off camera Parsley had gone from the house to a nearby barn. She entered the barn and stole a family heirloom, a World War Two uniform. The uniform had been hanging on a hanger in the barn.

The son in California contacted local law enforcement about the burglary. An officer investigated but found no one at the property. Later that night the son called law enforcement a second time. This time a truck was at the property. Parsley was seated in the truck and it was driven by a male companion. They admitted that there were drugs in the truck. The officers also found the uniform jacket and surveillance video cameras in the truck along with the drugs.

Parsley was arrested along with her male companion. The officer also contacted the defendant but not until a couple of months later after analyzing the video footage. The defendant stated that she never got out of her car, that she did not approve of Parsley's actions, and that she objected to the uniform being put into her car.

Analysis of the Court

The court's analysis of accomplice versus rendering was summed up in the court's introduction. The court determined that there was insufficient evidence for accomplice liability because, "the evidence avails only as to assistance after completion of the crimes." *Hanley Slip Opinion*, p. 2. To get to that result, the court began by reviewing the two statutes. The accomplice statute is found at [RCW 9A.08.020\(opens in a new tab\)](#), and the rendering statute is at [RCW 9A.76.070.\(opens in a new tab\)](#) The court also noted that the two statutes, and the distinguishing characteristics of the two bases for liability, date to the 1970s.

Review of the accomplice statute shows that insofar as this case is concerned, the crucial issue is whether the defendant could be said to have aided Parsley in the burglary and theft with knowledge. The statutory language is that the

defendant must have, “[w]ith knowledge that it will promote or facilitate the commission of the crime” [aided or agreed to] aid such other person in planning or committing it.” *Hanley Slip Opinion*, p. 8

The court also took note of several court-created standards that apply to accomplice cases. First as to knowledge, the defendant or suspect must have had actual knowledge of the crime. *Hanley Slip Opinion*, p. 13. Second, “Mere presence with knowledge of the criminal activity does not support a finding of accomplice liability, but one aids by being present and ready to assist.” *Hanley Slip Opinion*, p. 13. Third, “A defendant is not guilty as an accomplice unless he has associated with and participated in the venture as something he wished to happen and which he sought by his acts to make succeed.” *Hanley Slip Opinion*, p.14. And finally, the court noted, “Assent to the crime, without more, also does not impose accomplice liability.” *Id.*

The foregoing standards were crucial to the court’s analysis. It reviewed several prior cases involving one or the other of those standards and concluded that this case, like those cases did not include sufficient evidence for accomplice liability.

The court noted what it perceived to be the deficiencies in the evidence, including the following:

During the prosecution of Laurel Hanley, the evidence established that Kimberly Parsley traveled to the property using Hanley’s car. Hanley sat in the passenger seat. The State presented *no evidence* that Hanley knew in advance of Parsley’s intent to steal. The State presented *no evidence* of Hanley possessing knowledge of Parsley having committed any earlier crime, let alone burglary or theft. Trial testimony failed to even establish that Hanley knew to where Parsley wished to drive the car before the two arrived at the Britschgi property. The State unearthed no conversations between Hanley and Parsley leading to the crimes. *Hanley Slip Opinion*, p.19-20. (*emphasis supplied*)

The court also determined that the defendant’s involvement was at best after the crime was committed.

Even if we concluded that the jury could draw a reasonable inference that Laurel Hanley assisted Kimberly Parsley in opening the back of the car, such inference does not aid the State. Just as James Baker had completed his forcible grabbing of the purse before his returned to Chima Robinson’s car, Parsley completed her burglary and theft before she returned to Hanley’s car. Assuming Hanley committed a crime, she committed an uncharged crime.

The court's analysis did not include discussion of the jury instructions. It is significant that the jury found the defendant guilty as an accomplice. If one were to assume the jury instructions correctly spelled out what had to be proved to find the defendant guilty as an accomplice, one might be concerned that the court merely disagreed with the jury's decision. In any event, the court did not state that the jury instructions were erroneous. Which means that the defendant, having permitted Parsley to drive her car to the scene of a burglary, then waited for her while she committed the burglary was insufficient because there was no direct admission that the defendant knew what Parsley was up to. There may have been circumstantial evidence that she knew but in the eyes of the court circumstantial evidence was not sufficient.

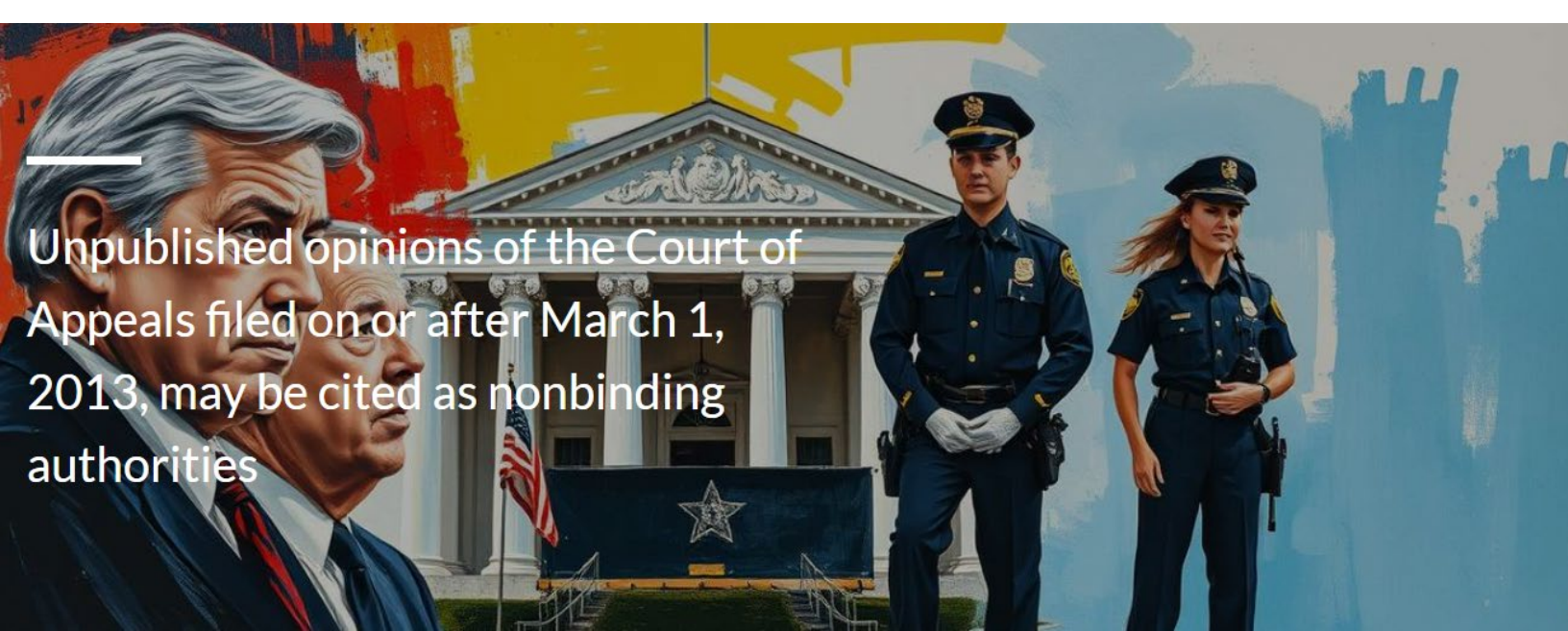
Training Takeaway

The first and most important takeaway for law enforcement is to be aware of the need to prove actual knowledge in an accomplice case. Because knowledge is a mental state, the gold standard of evidence is an admission that the suspect or defendant knew what the principal actor was up to.

In this case, the defendant expressed disagreement and distanced herself from what Parsley did. Assuming that she did not exercise her right to remain silent or to have a lawyer, the officers could have drilled into why she disagreed with what Parsley did. There are any number of other avenues of inquiry they could have pursued, including why she let Parsley use the car to drive to the burglary, why she didn't stop her from doing the burglary, and what she thought was up with Parsley putting on a disguise before committing the burglary.

A second takeaway is the charging. Since accomplice liability addresses participation before and during the crime, while rendering criminal assistance addresses participation after the crime, it is viable to charge both crimes. If the jury had both crimes before it, the court of appeals might have had a more difficult decision if the jury convicted of accomplice instead of rendering.

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



Unpublished opinions of the Court of Appeals filed on or after March 1, 2013, may be cited as nonbinding authorities

Unpublished Opinion Disclaimer

The cases following this notice are wholly unpublished. This means that they do not constitute case law and are not mandatory authority in court proceedings. A court rule provides the following concerning unpublished cases: “Unpublished opinions of the Court of Appeals have no precedential value and are not binding on any court. However, unpublished opinions of the Court of Appeals filed on or after March 1, 2013, may be cited as nonbinding authorities, if identified as such by the citing party, and may be accorded such persuasive value as the court deems appropriate.” [GR 14.1](#)

The cases are of interest to law enforcement even though they are unpublished. The courts’ resolutions of issues in particular cases under particular facts provide insight into the possible way in which issues may be decided in the future. Just as a court may not rely on unpublished cases as mandatory authority, law enforcement should also not consider such cases mandatory but should instead accord such cases such persuasive value as they deem appropriate keeping in mind that it was a panel of appellate judges who issued the unpublished opinion.

Navarro v. King County Sheriff's Office

No. 86659-1

Washington Court of Appeals, Division One

Unpublished, November 19, 2024

Navarro v. King County Sheriff's Office, 86659-1, Washington Court of Appeals, Division One (Unpublished, November 19, 2024)

Factual Background

This case came before the court on appeal from a dismissal of a civil rights lawsuit that was brought against an officer and his department. The claim in the lawsuit was that the officer had violated the plaintiff's rights under the Washington Constitution during a traffic stop. The stop did not result in a citation having been issued but the officer was sued anyway. The lawsuit was dismissed by the trial court before trial on a [CR 12\(b\)\(6\)\(opens in a new tab\)](#) motion. Such motions are brought when the defendant asserts that the complaint in the lawsuit does not state a viable tort cause of action.

The facts reported in the court's opinion are skimpy. The court reported nothing more than the fact that the stop had occurred, and that no citation was issued. Thus, it is unknown what the basis for the stop was, nor why a citation was not issued.

The procedural history of the case is also brief. The trial court simply granted the defendants' motion and dismissed the lawsuit.

Analysis of the Court

The court's analysis included that the plaintiff either explicitly or implicitly conceded that under current Washington law, the appeal should be denied. But the thrust of the appeal was that the court should overturn prior Washington caselaw and hold that claimants in Washington have a right to sue for alleged violations of the Washington Constitution. The specific provision at issue was from [Article 1, Section 7,\(opens in a new tab\)](#) which is Washington's right of privacy provision. Had the court accepted the argument from the plaintiff, law enforcement would have been exposed to new theories of liability based directly on constitutional provisions.

The court did not elect to change prior precedent. It thus held that a lawsuit based on an alleged violation of Article 1, Section 7 does not state a viable cause of action. The court’s reasoning included: “We decline Navarro’s request to recognize an implied cause of action arising from an alleged violation of our state constitution. The protections offered by the federal legal system are distinct from those offered by the legal system of our state, and we have repeatedly rejected requests to recognize the type of cause of action sought by Navarro. . . In the absence of legislative modification, our common law provides sufficient protection for his alleged injury. . . .” *Navarro Slip Opinion, p. 4*

Training Takeaway

The takeaway from this case is that civil liability directly based on alleged violations of the criminal procedure and search and seizure provisions of the Washington Constitution are not currently viable. But lest any law enforcement officer consider this a “win,” the court quoted our supreme court saying, “We feel, at this time, that Plaintiffs may obtain adequate relief under the common law and that such actions are better addressed under the common law invasion of privacy action.” *Navarro Slip Opinion, p. 3*

The *Navarro* case does not stand for the principle that law enforcement are immune from suits based on allegations that could be said to violate a constitutional provision.

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



State v. Torres

No. 58172-8

Washington Court of Appeals, Division Two

Unpublished, November 21, 2024

State v. Torres, 58172-8, Washington Court of Appeals, Division Two (Unpublished, November 21, 2024)

Factual Background

This case came before the court on appeal from a conviction for second-degree assault. The case arose from a domestic violence assault involving strangulation and a shotgun. The issues on appeal included one of interest to law enforcement. The court reviewed a consent search of the defendant's truck and seizure of the shotgun.

The incident took place in September 2022. The victim and defendant had been dating some five months since March 2022. The victim reported that the defendant habitually carried a shotgun, but the court's description of the facts and evidence did not include the reasons for him going about with such a weapon.

On the date of the incident the victim completed her last day at her job. She met the defendant for drinks. After consuming a few rounds, they went to a liquor store and bought more alcohol. At the victim's residence, she made the defendant a drink and stated that he became upset. The issue had to do with him not trusting the victim and other people. As the defendant's anger escalated, he assaulted the victim to include two separate episodes of strangulation. She did not lose consciousness but sustained minor visible injuries that were later documented in photographs.

During the second round of strangulation, the defendant employed the shotgun. He strangled the victim and put the shotgun under her chin. Fortunately, he did not pull the trigger. She was able to deescalate and persuaded him to let her use the bathroom. She was also able to dial 911 on her cell phone and concealed the phone in her bra with the line open.

The evidence at trial included the 911 recording. The court described the recording as having captured parts of the incident after the assaults were completed. While in the bathroom, the victim was able to whisper to the call taker information about the shotgun. Later the defendant left the residence and the victim reported that he had taken the shotgun with him.

Law enforcement responded to the 911 call. The defendant was stopped in his truck and arrested. An officer could see the shotgun in the truck through the windows. The officer advised the defendant of his Miranda rights and questioned him about the assault and the shotgun. The defendant claimed that the shotgun had been in the truck for the last three months. The officer then advised him of his Ferrier consent warnings(opens in a new tab). The officer testified that the defendant consented to the search and seizure of the shotgun. The actions and statements of the officer and the defendant during the questioning and advisement of rights were captured on dashcam footage. The footage included the defendant asking a question that could not be heard and the officer responding that if the defendant refused consent, the officer would apply for a search warrant.

In the trial court the defendant challenged the lawfulness of the consent search. The trial court found that he had given free and voluntary consent after an appropriate advisement of rights. Testimony at trial included that the defendant showed symptoms of intoxication but that he was functioning and followed commands and answered questions. The consent search ruling was one of the issues addressed by the court on appeal.

Analysis of the Court

On the consent search issue, the court reviewed the standards that apply to a valid consent search. The court noted that consent is one of a “few jealously and carefully drawn exceptions” to the warrant requirement under both the Fourth Amendment to the United States Constitution, and under the Washington Constitution. *Torres Slip Opinion, p. 8*. The court then reviewed the standards that apply to consent searches.

The first standard is that “For a search to be consensual and valid, ‘(1) the consent must be voluntary, (2) the person granting consent must have authority to consent, and (3) the search must not exceed the scope of the consent.’ ” *Torres Slip Opinion, p. 8*. Secondly, the factors to be considered include, “(1) whether *Miranda* warnings were given prior to obtaining consent, (2) the degree of education and intelligence of the consenting person, and (3) whether the consenting person was advised of his right not to consent. . . No one factor is dispositive.” *Id.*

The court's application of these standards was relatively straight forward. The court stated simply:

Here, Leitgeb testified he gave Otero Torres *Miranda* warnings. The dashcam recording corroborated this testimony. Leitgeb also advised Otero Torres multiple times of his right to refuse the search of his truck, limit its scope, or revoke consent for the search. Otero Torres asked a follow-up question and ultimately consented to the removal of the shotgun from his truck. There is no evidence in the record that Otero Torres was threatened or coerced into consenting. Given the totality of the circumstances, the fact that officers did not ascertain the education or intelligence of Otero Torres is not dispositive, as nothing in the record suggests Otero Torres did not understand the warnings Leitgeb gave. Therefore, substantial evidence supported the trial court's finding that Otero Torres voluntarily consented to the search and seizure of the shotgun. As such, the trial court did not err in denying his motion to suppress. *Torres Slip Opinion*, p. 8-9

Training Takeaway

A training takeaway from this unpublished case is the importance of dashcam and bodycam evidence. Although the opinion is not explicit about the circumstances of the officer's contact with the defendant, it suggests that it was just the two of them. Under such circumstances the defendant's claim that he was coerced might have been given more weight if not for the dashcam footage.

The court's statement that the officer's testimony was corroborated by the dashcam recording is an indication that courts are favorably disposed to considering the content of the recordings as gospel. One would not be surprised if in the future, some courts might begin having doubts about officer testimony if dashcam or bodycam footage were to be inexplicably or suspiciously not available.

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

State v. Waye

No. 58292-9

Washington Court of Appeals, Division Two

Unpublished, November 21, 2024



State v. Waye, 58292-9, Washington Court of Appeals, Division Two (Unpublished, November 21, 2024)

Factual Background

This case came before the court on an appeal from a conviction for unlawful possession of a firearm and possession of a short barrel shotgun. The court resolved two issues of interest to law enforcement: (1) the lawfulness of a traffic stop in the face of a challenge that the stop was pretextual, and (2) sufficiency of the evidence on the knowledge element of the two possessory crimes.

The incident arose from a traffic stop of a truck. The defendant was driving, and a female was a passenger. The arresting sergeant saw the defendant stopped in the middle of an intersection for no reason for approximately a minute. The defendant abruptly turned and drove away with the sergeant following. The sergeant did not activate his emergency equipment, but he paced the defendant at speeds up to 60 mph in a 35-mph zone. The defendant brought the truck to a stop in a driveway and the officer pulled in behind blocking him from leaving.

The sergeant recognized the defendant and knew that there was a warrant outstanding for his arrest. He also saw ammunition partially concealed in a hole in the seat. He obtained a search warrant and seized the ammunition plus a handgun matching the ammunition, and a shotgun that was behind the seat. The sergeant also found a backpack with shotgun shells and identification belonging to the defendant.

During pre-trial proceedings the defendant challenged the lawfulness of the stop and the seizure of the ammunition and two firearms. The trial court denied the challenge and the case proceeded to trial. After conviction on all charges, the defendant appealed.

Analysis of the Court

The court first noted, “Article I, section 7 of the Washington Constitution provides, ‘No person shall be disturbed in [their] private affairs, or [their] home invaded, without authority of law.’ ” *Waye Slip Opinion*, p. 8. The court then reviewed the standards that apply to traffic stops, including stops that are allegedly pretextual. The first standard is the reasonable suspicion standard which provides that a stop is lawful, “but only if based upon at least a reasonable articulable suspicion of either criminal activity or a traffic infraction, and only if reasonably limited in scope” and reasonable suspicion means “there ‘is a substantial possibility that criminal conduct has occurred or is about to occur.’ ” *Id.*

As to the reasonable suspicion standard, the court determined that the stop was not a violation. The totality of the circumstances, including the unusual or illegal stop in the intersection and the speeding were more than sufficient to justify the stop. The court also rejected the argument that specific testimony about technical aspects of pacing a vehicle to determine speed was necessary. But the court then turned to an examination of pretext.

The court first reviewed the pretext standard cases and summarized the standards that apply to such cases. “Under article I, section 7, pretextual traffic stops are unconstitutional. . . Pretext is a false reason that is used to disguise a real motive. . . An officer conducts a pretextual stop when they stop a vehicle ‘to conduct a speculative criminal investigation unrelated to the driving, and not for the purpose of enforcing the traffic code.’ ” *Waye Slip Opinion*, p. 11. The court also noted a limitation on pretext cases, namely a mixed motive stop. “A mixed-motive traffic stop is a traffic stop that is based on both legitimate and illegitimate grounds.” *Waye Slip Opinion*, p. 13

The court quoted a 2012 Washington Supreme Court case concerning the specifics of a mixed motive stop. [See *State v. Chacon Arreola*.\(opens in a new tab\)](#) That case is well worth reading in conjunction with this case.

The *Waye* court quoted *Chacon Arreola* as follows:

A mixed-motive traffic stop is a traffic stop that is based on both legitimate and illegitimate grounds. . . A mixed-motive traffic stop is not unconstitutionally pretextual “so long as investigation of either criminal activity or a traffic infraction (or multiple infractions), for which the officer has a reasonable articulable suspicion, is an **actual, conscious, and independent cause** of the traffic stop.” ... An officer’s investigation of a traffic infraction is an actual, conscious, and independent cause of

the traffic stop if the officer “actually and consciously makes an appropriate and independent determination that addressing the suspected traffic infraction . . . is **reasonably necessary in furtherance of traffic safety and the general welfare.**” ... “That remains true even if the legitimate reason for the stop is secondary and the officer is motivated primarily by a hunch or some other reason that is insufficient to justify a stop.” *Waye Slip Opinion, p. 13 (bolding supplied)*

After reviewing and articulating the standard that applies to mixed motive stops, the *Waye* court upheld the stop against the defendant’s pretext challenge. The court stated that the sergeant had made a determination that the defendant’s driving was dangerous and that the stop was consistent with the needs of public safety. Accordingly it was a lawful, mixed motive stop.

Having resolved the lawfulness of the stop, the court next turned to the sufficiency of the evidence for the knowledge element of the UPOF charges. “For *Waye* to be convicted of first degree unlawful possession of a firearm and possession of an unlawful firearm, the State had to prove that he knowingly possessed the pistol and shotgun.” *Waye Slip Opinion, p. 17*

The court held that several facts were sufficient to satisfy this requirement. The first was where the pistol was found. This was on the center transmission hump with the grip facing the driver’s seat where the defendant had been driving. The second was the recovery of ammunition near the driver that matched the pistol, and shotgun shells in a backpack (along with identification for the defendant) that matched the shotgun. The court stated that these facts were “ample” evidence of his knowing possession of each weapon.

The court also rejected the defendant’s claim that he did not know the shotgun was illegal. The court noted that the requirement is that the defendant knew the illegal characteristics of the shotgun not the law that applied to make it illegal. Because the shotgun barrel was approximately two inches short of the lawful length and showed obvious signs of having been shortened or sawed off, there was sufficient evidence that the defendant knew about its illegal characteristics.

The court upheld the defendant’s convictions in this case against the constitutional and sufficiency challenges. Its reasoning was supportive of the work of the law enforcement sergeant who conducted and wrote up the investigation.

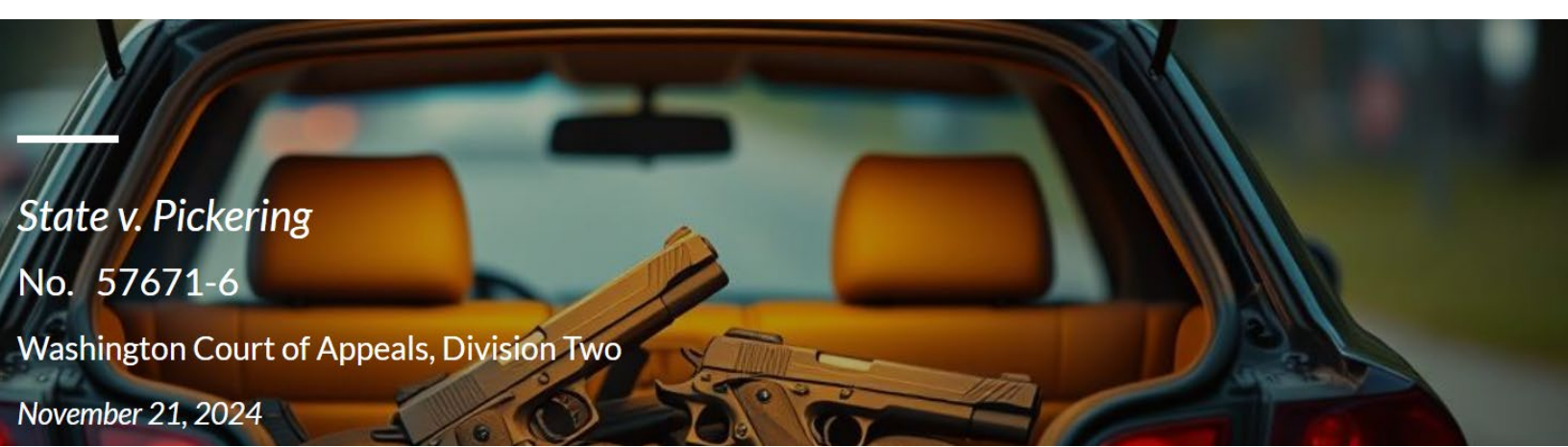
Training Takeaway

The court's application of the reasonable suspicion and pretext standards is an important takeaway for any officer who has made a traffic stop that ripened into a criminal investigation. The mixed motive pretext standard is important to bear in mind.

When writing reports, a genuine articulation of the many reasons for conducting the stop, to include the dangerousness of the driving and any observed suspicious behavior of the occupants of the vehicle, is important to include in reports and in-court testimony. It is understandable that the finding of firearms, particularly a sawed-off shotgun, can take center stage. But it must always be remembered that the lawfulness of the stop is determined by the circumstances and the officer's thought process before such evidence is found.

The sufficiency issue also provides an important takeaway. The mere fact that an item is found in a vehicle in close proximity to a suspect may not be sufficient by itself. It is worthwhile to consider that it will always be tempting for a suspect possessing contraband to simply deny knowledge no matter how preposterous it may seem at the time. In such cases, collateral facts that disprove that denial are important to gather, document, and ultimately testify about. The recovery of matching ammunition for both guns in this case went a long way toward proving guilty knowledge.

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



State v. Pickering

No. 57671-6

Washington Court of Appeals, Division Two

November 21, 2024

State v. Pickering, 57671-6, Washington Court of Appeals, Division Two (November 21, 2024)

Factual Background

This case came before the court on an appeal from convictions for possession of a stolen firearm (UPSF) and unlawful possession of a firearm second degree (UPOF). The firearms were recovered during execution of a search warrant in a burglary investigation.

The investigation included two separate burglaries in which firearms were stolen. The burglaries were reported to law enforcement and reports were taken which included detailed descriptions of the firearms that were stolen. The case was solved with information from one of the victims. On his own, one of the victims was able to recover one of the stolen firearms. The recovery resulted from a purchase of the firearm from an individual named Kevin Stoken. The friend who bought the gun also reported that Stoken had several other firearms in his vehicle when the purchase transaction occurred.

Later the same day that the purchase of the stolen firearm was reported, an officer saw Stoken and stopped him. He arrested Stoken on an outstanding warrant. The officer questioned Stoken about the stolen firearms and Stoken stated that an unnamed associate had committed one of the burglaries and also that he had sold one of the firearms to one David Pickering. David Pickering was the nephew of the defendant and resided at a residence where Stoken had gone to sell the stolen firearm. Stoken further reported that a number of other firearms were in the residence.

The investigating officer confirmed that all of the Pickering's residing at the residence had felony convictions. He then applied for a search warrant that included "Any and all firearms" as evidence of the crime of UPOF. The warrant was granted and executed. The search team found firearms from both burglaries during the search.

The defendant was one of the Pickerings residing in the residence that was searched. A particular bedroom was identified as his. He was subsequently charged with two counts of UPSF and two counts of UPOF for two firearms that were recovered from his room that had been stolen in the burglaries.

In the trial proceedings the defendant challenged the validity of the search warrant. The suppression motion was denied by the trial court. He was then convicted on a stipulated facts trial. He appealed the conviction. The primary issue on appeal was validity of the search warrant.

Analysis of the Court

The defendant's challenge to the search warrant focused on particularity. The defendant claimed that since law enforcement had specific descriptions of the stolen firearms, the warrant affidavit was insufficiently particular because it did not include all of the specifics.

Particularity in a warrant includes particularity of the evidence to be searched for. It is a constitutional requirement under both the Fifth Amendment and the Washington Constitution. In broad terms, the particularity requirement is that "a search warrant must describe 'the place to be searched, and the persons or things to be seized' with particularity", and "[o]ur state constitution requires a particular description of the items to be seized." *Pickering Slip Opinion*, p. 7. One of the reasons for the particularity requirement is that it limits the discretion of the searching officer to those items for which probable cause exists.

The precise requirement for satisfying the particularity requirement is that the evidence to be seized must be described "as specific as the circumstances and the nature of the activity under investigation permit." *Pickering Slip Opinion*, p. 8. When reviewing particularity, courts assess "whether the government was able to describe the items more particularly in light of the information available to it at the time the warrant was issued." *Id.*

As with so many legal standards, there are general requirements and exceptions. An exception noted by the court in this case concerned the crime listed in the warrant affidavit. The officer had cited Unlawful Possession of a Firearm (UPOF), but not Unlawful Possession of a Stolen Firearm (UPSF). This led the court to state that "A less particular description may suffice 'when a warrant authorizes the search for contraband or inherently illicit property.' ... Thus, if the person subjected to a search warrant has a felony conviction, the warrant authorizing law enforcement to search for any and all firearms is

sufficiently particular because any firearms the person possesses are inherently contraband.” *Pickering Slip Opinion*, p. 8

Since any firearm would have been evidence of UPOF, the general description of the firearms suspected of being in the residence was sufficient. The court held that the warrant’s description of the property to be seized met the constitutional particularity requirement. The court also discussed a prior Washington Supreme Court case, [State v. Perrone \(opens in a new tab\)](#), which was said to require law enforcement to include particular descriptors *if they were available*. The *Pickering* court however stated “*Perrone* did not require that if a more particular description of items to be seized is available, that more particular description must be used in the warrant.” *Pickering Slip Opinion*, p. 12

Training Takeaway

The most important takeaway from the discussion of particularity in this case is that the details in a search warrant affidavit matter. It is understandable that in the heat of a quick developing investigation, the focus of an officer may be on the probable cause statement rather than on other more mundane details in a warrant affidavit. But officers should never overlook the other requirements of a valid warrant, including particularity. One never knows what a defendant and his attorney will focus on during the prosecution of a case.

Particularity could have been a stumbling block in this case. If the investigating officer had not astutely included UPOF rather than UPSF as the crime being investigated, the outcome of this case might have gone quite differently. But with that having been said, if the full descriptions (meaning the make, model and serial numbers) of the stolen firearms had been included, particularity would not have been available as even a potential defense.

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**Federal cases should be reviewed by
Washington law enforcement with
caution**

Disclaimer Concerning Federal Cases

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.



United States v. Holmes
No. 22-10266

Ninth Circuit Court of Appeals

November 13, 2024

United States v. Holmes, 22-10266, Ninth Circuit Court of Appeals (November 13, 2024)

Factual Background

This case came before the court on an appeal from a federal conviction for child pornography. The issue resolved by the court was a search and seizure issue under the Fourth Amendment. It stemmed from an FBI agent having viewed child pornography images (without a warrant) that had been disseminated by the defendant via Facebook Messenger. The FBI investigation took place in Arizona as did the federal prosecution. The case does not include discussion or analysis of Washington search and seizure issues or precedent. The usual caution about reliance on federal search and seizure precedent applies to this case.

The child pornography investigation originated with a tip from the National Center for Missing and Exploited Children (NCMEC). Two separate tips were provided to the FBI and assigned to two different agents. The first tip originated with an internet service provider which discovered the images and reported them to NCMEC. NCMEC in turn reported them to the FBI and SA Rose began an investigation.

SA Rose's investigation did not get very far. She sought to obtain location and identification information from a local internet company via subpoena. Unfortunately, the company did not provide the information and Rose had not followed up with a search warrant or other investigation before the second tip was reported to the FBI.

Separately from the Rose investigation, another tip was made to NCMEC by Facebook. This tip was also submitted to the FBI and the investigation was assigned to SA Steele. This tip included more information and SA Steele's investigation went further than the Rose investigation. Facebook provided internet identification information which matched the defendant and categorized the images as child pornography. However, the categorization related to the hash value or electronic metadata attached to the image. In

providing the metadata information Facebook did not actually view the images. Instead, it relied on a report that the images had been viewed by another private entity and found to be child pornography.

SA Steele viewed the images and was able to see what they showed. This action was the focus of the eventual suppression motion. The images showed a young girl engaged in a sex act. Steele used that information along with location information to obtain a search warrant for a residence where the defendant was residing. The execution of the search warrant led to seizure of the defendant's phone, which contained the images and other electronic evidence. The defendant was present during the search warrant and also made incriminating statements.

The defendant was indicted and prosecuted in Arizona federal court. In a pretrial motion he challenged the validity of the Steele search warrant on the ground that her viewing of the images received from NCMEC was unlawful under the Fourth Amendment. The motion demanded that the evidence and statements from the search warrant be suppressed, and the case dismissed. The trial court denied the motion. The defendant pleaded guilty to one of the child pornography charges but reserved the right to appeal the suppression motion.

Analysis of the Court

The court's review of the suppression motion led it to discuss several Fourth Amendment search and seizure issues. The first stemmed from the fact that the images were provided to NCMEC and the FBI by a private company. A constitutional principle known as the private search doctrine states, "The Fourth Amendment restrains only government action; it does not apply where 'a private party 'freely ma[kes] available' certain information for the government's inspection.'" *Holmes Slip Opinion, p. 14*

Before reviewing the court's resolution of the search issue, it is important to be clear about what SA Steele was accused of doing wrong. She viewed a child pornography image that had been freely and voluntarily provided to and transmitted through an internet company, Facebook, by the defendant. Facebook freely and voluntarily transmitted the image and identifying information to NCMEC and the FBI. Yet when SA Steele viewed the image (perhaps in her office on her FBI computer), which was lawfully in the possession of the FBI, she was accused of violating the defendant's Fourth Amendment privacy rights. Such are the pitfalls of constitutional search and

seizure principles in the area of computers and internet electronic communications.

Since the tip in the Steele investigation came from a private company, the private search doctrine might seem to apply. Not so. The court noted, “Where the government intrudes into an individual’s privacy further than a private actor, the additional government intrusion is ‘tested by the degree to which [it] exceeded the scope of the private search.’ ” *Holmes Slip Opinion*, p.14. Because SA Steele had viewed the images whereas Facebook had not, her exceeding the scope of the Facebook intrusion was sufficient to prevent the private search doctrine from applying.

The next issue was an exception to the warrant requirement referred to as the good faith exception. “The good-faith exception excuses unlawful searches that are the ‘result of nonculpable, innocent police conduct.’ ... Such circumstances exist when, for example, officers reasonably rely on the issuance of a warrant that is later held invalid ... or when officers rely on law that was binding at the time of their challenged conduct but later overturned...” *Holmes Slip Opinion*, p. 13

The primary thrust of the prosecution’s appellate argument relied on the good faith exception. This was because the Steele search warrant was issued and executed several months before a Ninth Circuit decision which the court determined after the fact applied to the search in this case. [See *United States v. Wilson*\(opens in a new tab\)](#). The court in *Holmes* spent some time reviewing *Wilson* and other good faith exception cases from the United States Supreme Court and other federal circuit courts. Its review concluded that the Steele search could not rely on the good faith exception because prior good faith cases were not sufficiently settled by the courts on the private search issue. Ironically, the uncertainty in the law invalidated the law enforcement officer’s good faith.

The prosecution also submitted an argument related to the parallel Rose investigation. That issue was inevitable discovery. The argument posited that even if the Steele investigation resulted in an invalid search warrant, the Rose investigation would have independently led to a search warrant for the same evidence. “The inevitable discovery exception excuses warrantless searches where the government proves ‘by a preponderance of the evidence’ that unlawfully obtained evidence ‘would have been discovered inevitably [through] lawful means.’ ” *Holmes Slip Opinion*, p. 18

SA Rose testified at the suppression motion that she would have sought a search warrant for the same property if her investigation had not been overtaken by the Steele investigation. The court discounted this testimony in part because it was speculative as to whether the timing of the search warrant would have led to seizure of the same evidence. The child pornography images were found on the defendant's cell phone. "[I]f the illicit images had come from a desktop computer or some other less-mobile device in the residence, the analysis might be different. But where the images at issue were found on Holmes's cellphone, his presence during the search is necessary because there is no suggestion that Holmes left his cellphone at home rather than carrying it on his person." *Holmes Slip Opinion*, p. 30

The unfortunate (and by all accounts, innocent) viewing of the images by SA Steele without a warrant had a critical impact on the outcome of this child pornography and sexual abuse case. The images were discovered by private entities and forwarded to law enforcement. Under the private search doctrine, one might expect there to have been little room for argument that the viewing of the images from the private entities was unlawful. But such is the complexity of search and seizure when it comes to computers and internet communications. The prosecution was unfortunately unsuccessful under all three doctrines, private search, good faith, and inevitable discovery. Accordingly, the court reversed the child pornography conviction.

Training Takeaway

The primary takeaway from *Holmes* should be caution in the handling or opening of electronic communication evidence even when it is voluntarily turned over to law enforcement by a private entity. This case demonstrates the broad scope of Fourth Amendment privacy protection. The nature of electronic child pornography evidence is that it passes through the hands of many private companies when it is electronically disseminated. A suspect or defendant is permitted to disseminate child pornography secure in the knowledge that there are privacy protections enforceable in court proceedings.

A final note that is worth mentioning about *Holmes* is it was not a unanimous decision. The dissenting judge would have upheld the search warrant in part because they considered the facts in *Holmes* to be distinguished from the facts in the *Wilson* case.

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

November Cases & Reference

State v. Hanley, 39216-3, Washington Court of Appeals, Division Three (November 27, 2024)

- [Hanley Slip Opinion](#)
- [RCW 9A.08.020](#)
- [RCW 9A.76.070](#)

Navarro v. King County Sheriff's Office, 86659-1, Washington Court of Appeals, Division One (Unpublished, November 19, 2024)

- [Navarro Slip Opinion](#)
- [CR 12\(b\)\(6\)](#)
- [Article 1, Section 7](#)

State v. Torres, 58172-8, Washington Court of Appeals, Division Two (Unpublished, November 21, 2024)

- [Torres Slip Opinion](#)
- [State v. Ferrier](#)

State v. Waye, 58292-9, Washington Court of Appeals, Division Two (Unpublished, November 21, 2024)

- [Waye Slip Opinion](#)
- [State v. Chacon Arreola](#)

State v. Pickering, 57671-6, Washington Court of Appeals, Division Two (November 21, 2024)

- [Pickering Slip Opinion](#)
- [State v. Perrone](#)

United States v. Holmes, 22-10266, Ninth Circuit Court of Appeals (November 13, 2024)

- [Holmes Slip Opinion](#)
- [See United States v. Wilson](#)

Citation to unpublished cases

- [GR 14.1](#)

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- [Legal Update for WA Law Enforcement](#) authored by retired Assistant Attorney General, John Wasberg