LAW ENFORCEMENT DIGEST
March 2022

COVERING CASES PUBLISHED IN MARCH 2022

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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 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.

TOPIC INDEX

CASES

1. State v. Elwell, No. 99546-0 (March 3, 2022)
2. State v. Barnett, No. 83434-7-I (March 28, 2022)
3. In the Matter of the Detention of L.N., 55500-0-II (March 29, 2022 (publish date))
4. In the Matter of the Personal Restraint of Reyes, No. 52449-0-II (March 15, 2022)

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]

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State v. Elwell
No. 99546-0
SUPREME COURT OF THE STATE OF WASHINGTON
March 3, 2022

Facts Summary

TOPIC: OPEN VIEW DOCTRINE & WARRANTLESS SEARCHES

On March 7, 2018, the manager of a Seattle apartment complex discovered that an arcade style Pac-Man machine was missing from the apartment game room. The apartment manager reviewed surveillance footage which showed a person entering the apartment at around 4 a.m. and leaving at around 5:30 a.m. with the Pac-Man machine, a cardboard box, and a dolly. The apartment manager did not recognize the person on the surveillance footage but did recognize the cardboard box and the dolly as belonging to the apartment complex. The apartment manager called the police and reported the burglary.

At around 1 p.m., the police responded to the burglary report and spoke with the apartment manager. The police also watched the surveillance footage. While the police did not have any suspects, they were on the lookout because they believed the person who stole the Pac-Man machine could still be in the area.

At approximately 2:20 p.m., while driving near the apartment complex, the officers saw Elwell on the sidewalk and stopped to talk to him. The officers "immediately" recognized Elwell from the security footage based on his face and clothing. Elwell was also wheeling around an item that was roughly the same size as the Pac-Man machine, but the item was covered by an opaque red blanket.

One of the officers asked Elwell, *"There wouldn't happen to be a Pac-Man machine in there…?"* To which Elwell replied, *"I don't think so,"* and, *"I found it in the garbage."* The officer then explained to Elwell that he matched the exact description of someone that burglarized a building and took a Pac-Man machine. The officer again asked Elwell to *"show us what's underneath there."* Elwell stated, *"everything I get is out of the garbage,"* and stepped back slightly from the object.

One of the officers then reached out and unwrapped the blanket and a plastic bag to reveal a Pac-Man machine on a dolly. The machine was later identified as the missing Pac-Man machine by the apartment manager. It was undisputed that Elwell did not give the officers consent to a search.

Elwell was charged with one count of residential burglary. Before trial, Elwell informed the court that he would like to bring a motion to suppress the evidence of the Pac-Man machine on the theory that the police conducted an unlawful search when they removed the blanket and ripped off the plastic wrapping that was covering the Pac-Man machine. The trial court allowed Elwell to bring his motion and agreed to decide the motion to suppress after the State presented its evidence.

During trial, one officer testified that he, "did not feel that a warrant was required" to search because Elwell "exactly matched the person" from the surveillance footage and had with him an item that was the exact same size as the one that was stolen. During questions related to the motion to suppress, defense counsel elicited testimony from the officer that they could not remember if they could see the dolly under the blanket, that Elwell never expressly gave permission to look under the red covering, and that the officers could have secured the object while they obtained a warrant.

The parties argued the motion to suppress after the State rested and the jury was excused. Defense counsel argued that by covering the item and "keeping it from public view," Elwell had exerted control over the object and brought it within the scope of his right to privacy. Defense counsel also noted that the officers did not obtain a warrant, did not have Elwell's consent to search, and there were no exigent circumstances. The State argued that Elwell and the object were immediately recognizable from the surveillance footage and therefore had no right to privacy in the object being rolled down the street because its nature was so apparent.

The trial court agreed with the State and denied the motion to suppress. The jury returned and both sides made their closing arguments. Elwell was convicted.

Elwell appealed his conviction claiming it was reversible error for the trial court to deny his motion to suppress. Resolution of the issue hinged on whether the open view doctrine

applied to the evidence of the Pac-Man machine. The trial court held that it did, and the Court of Appeals agreed. The Court of Appeals affirmed Elwell's conviction. Elwell then filed a petition for review with the Washington State Supreme Court which was granted. The Washington State Supreme Court agreed that it was an error for the trial court to deny Elwell's motion to suppress but held that the error was harmless and upheld the conviction.

Training Takeaway

While Article 1, Section 7 of Washington State's Constitution is generally more protective than the Fourth Amendment of the U.S. Constitution, there are still **several exceptions to the warrant requirement. Among them are the often-confused open view and plain view doctrines.**

"Under the open view doctrine, if an officer detects something using one or more of their senses, while lawfully present at the vantage point where those senses are used, no search has occurred… [and the] officer has the same license to intrude as a reasonably respectful citizen." This is because "generally one does not have a privacy interest in what is voluntarily exposed to the public."

The **open view doctrine applies to an officer viewing an item from a non-constitutionally protected area**, like a sidewalk or from within their patrol vehicle. Conversely, **the plain view doctrine applies to an officer viewing an item from a constitutionally protected area after a lawful intrusion, like inside someone's home after being invited in. Both the open view doctrine and plain view doctrine allow the police to conduct a warrantless seizure if it is "immediately apparent" that the object seized "is associated with a crime."**

> **NOTE: While the test is similar, often courts will apply a stricter scrutiny within a protected area (triggering "plain view") than in a public or open space (triggering "open view").**

Here, the Washington State Supreme Court agreed with the Court of Appeals that the open view doctrine may apply because the officer observed the blanket covered object on a public street.

The Court applied the following test. In order to seize an object under the open view doctrine,

1. **the object must be in view**, meaning an officer must be able to detect the object without manipulating it, solely by using one or more of their senses;
2. **the evidentiary value of the object must be "immediately apparent**," meaning that when considering the surrounding circumstances, the police can reasonably conclude that the subject evidence (object) is associated with a crime (certainty is not necessary); and
3. **the identity of the object must be unambiguous**, meaning that the police are aware of the evidentiary value of the object (like a pile of credit cards on the table of a suspected identity thief).

In this case, the court reasoned that the Pac-Man machine was not literally an exposed object because it was covered by the red blanket. Additionally, the object's identity was not "unambiguous" because the police had to manipulate it by removing the blanket and the plastic to reveal the Pac-Man machine. **Even though it was highly likely that the object was the Pac-Man machine, the object visible to police was a large rectangular box which could have been anything or nothing.**

The court also noted that the officer requested consent to remove the covering multiple times before doing so without Elwell's permission. The court said, "these were not the actions of a 'reasonably respectful citizen'" who is merely observing something "voluntarily exposed to the public." **Removing the blanket and plastic wrapping was a search.**

Even though the court found the removal of the blanket and plastic to reveal the Pac-Man machine was an unlawful search, the court held that the trial court's error in denying Elwell's motion to suppress was harmless.

The court applied the "overwhelming untainted evidence test," which considers the untainted evidence admitted at trial to determine if it is so overwhelming that it necessarily leads to a finding of guilt. It noted that even without learning about the Pac-Man machine, the jury could have considered the high-quality security footage that showed Elwell committing the charged crime. The jury could also have watched the officer's body camera footage which

showed Elwell wearing the same clothes wheeling a large object less than a mile from the location of the burglary. Therefore, since any reasonable trier of fact would have reached the same result despite the error, the error was harmless. The Court upheld the lower court's conviction.

EXTERNAL LINK: View the Court Document

Facts Summary

TOPIC: SENTENCING FIREARM ENHANCEMENT & STATUTORY INTERPRETATION

On April 5, 2019, Eric Barnett assaulted Dylan Hjelm with a stolen .22 caliber revolver. At the time of the assault, Barnett had a prior serious felony conviction. Barnett was charged with second-degree assault with a firearm enhancement, possession of a stolen firearm, and first-degree unlawful possession of a firearm. A jury found Barnett guilty on all charges.

The trial court sentenced Barnett to 57 months for the second-degree assault offense and 43 months for each of the two firearms offenses. The court ordered Barnett to serve the second-degree assault sentence concurrently with the firearms offenses but ordered that the firearms sentences and the 36-month firearm enhancement be served consecutively for a total period of confinement of 122 months. Barnett appealed the duration of his sentence.

Barnett argued that the trial court made an error when it ordered Barnett to serve firearm enhancement consecutively to the firearm possession offenses. Specifically, Barnett argued that RCW 9.94A.533(3) and RCW 9.94A.533(3)(f) were in conflict. The Court of Appeals disagreed.

To resolve Barnett's arguments, the court engaged in **statutory interpretation. If the legislative intent of the statute is unambiguous, the court ends their analysis by applying the statute.** In Barnett's case, the court examined RCW 9.94A.533(3) and found it to be unambiguous. The relevant parts of RCW 9.94A.533(3) read:

> (3) The following additional times shall be added to the standard sentence range for felony crimes committed after July 23, 1995, if the offender or an accomplice was armed with a firearm as defined in RCW 9.41.010 and the offender is being sentenced for one of the crimes listed in this subsection as eligible for any firearm enhancements based on the classification of the completed felony crime. If the offender is being sentenced for more

than one offense, the firearm enhancement or enhancements must be added to the total period of confinement for all offenses, regardless of which underlying offense is subject to a firearm enhancement.... :

....

(b) Three years for any felony defined under any law as a class B felony or with a statutory maximum sentence of ten years, or both, and not covered under (f) of this subsection;

....

(e) Notwithstanding any other provision of law, all firearm enhancements under this section are mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions, including other firearm or deadly weapon enhancements, for all offenses sentenced under this chapter....

(f) The firearm enhancements in this section shall apply to all felony crimes except the following: Possession of a machine gun or bump-fire stock, possessing a stolen firearm, drive-by shooting, theft of a firearm, unlawful possession of a firearm in the first and second degree, and use of a machine gun or bump-fire stock in a felony ...

(Emphasis added.)

Barnett claimed that RCW 9.94A.533(3)(f) was evidence that the legislature did not intend a firearm offense sentence to run consecutively with any firearm enhancement. The court rejected this argument because accepting it would require it to add words to the statute. The court noted that the plain language of RCW 9.94A.533(3) specifies that if any firearm enhancement is imposed for an eligible offense, it must be added "to the total period of confinement for all offenses." The statute does not say that the firearm enhancement must be added to the total period of confinement for "all eligible offenses."

The court noted that their analysis was consistent with RCW 9.94A.533(3)(e), which states that firearms enhancements "shall run consecutively to all other sentencing provisions." The legislature did not state that firearms enhancements shall run consecutively to all other sentencing provisions "other than firearms offenses."

The court affirmed Barnett's 122-month sentence.

Training Takeaway

Essentially, Barnett was arguing that the crimes excepted from a firearms enhancement found in RCW 9.94A.533(3)(f) were all firearm offenses, and that must mean that the legislature did not intend for any firearm enhancement to run consecutively to a sentence for a firearm offense. But the court disagreed. It said that the legislature was making a list of crimes excepted from the firearms enhancement. **If an offense is not listed, it is not excepted from the firearms enhancement and the enhancement must be added to the total sentence imposed.**

The court was following a well-established **rule of legal construction that states that when something is included in a rule, all other things must be excluded**. For example, a sign at a hotel that reads, "No Dogs Allowed," would be interpreted to mean cats would be allowed.

This case illustrates how the firearm sentencing process works. If a person is charged with multiple felonies, those sentences might run concurrently – or at the same time. However, if the person was armed with a firearm when they committed those felonies, the court must add the sentence for the firearm enhancement to the total sentence for all other offenses. For class A felonies the added time is five years, for class B felonies the added time is three years, and 18 months for any class C felonies.

EXTERNAL LINK: View the Court Document

In the Matter of the Detention of L.N.

No. 55500-0-II

Court of Appeals of Washington, Division II

March 29, 2022 (publish date)

Facts Summary

TOPIC: CHARGE OF ASSAULT 3RD DEGREE FOR ASSAULT OF NURSE

On June 30, 2020, the State of Washington filed a petition for 180 days of involuntary treatment. In the petition, the State alleged that L.N. was gravely disabled, that criminal charges against L.N. were dismissed based on a finding of incompetence, that L.N. committed acts constituting a felony, and that L.N. presented a substantial likelihood of repeating similar acts.

During the hearing on the State's petition, Jane Davis testified that on November 30, 2019, she was a registered nurse working in the Adult Psychology Unit of Auburn Medical Center. Davis testified that while she was talking to another patient, L.N. attacked her by striking her head multiple times until she lost consciousness.

A psychologist at Western State Hospital. Dr. Mallory McBride, also testified at the hearing. Dr. McBride testified that L.N. was diagnosed with schizoaffective disorder and that L.N. was gravely disabled. It was Dr. McBride's opinion that L.N. was likely to commit similar acts as their assault of Davis, and L.N. had several assaultive incidents after their admission to Western State Hospital.

The Superior Court found that L.N. had felony charges dismissed because they were found incompetent. The court also found that L.N. committed acts constituting third degree assault when they assaulted Jane Davis, a registered nurse. The Superior Court found that L.N. presented a substantial likelihood of repeating similar acts due to a behavioral health disorder. Finally, the Superior Court found that L.N. was gravely disabled.

L.N. was ordered to 180 days of involuntary treatment. L.N. filed a motion to reconsider arguing that the State did not prove Davis was a registered nurse. The superior court found that Davis's testimony that she was a registered nurse was credible and denied L.N.'s motion.

L.N. appealed to Division II of the Court of Appeals.

On appeal, L.N. argued that the court erred in finding that L.N. committed acts constituting a felony. L.N. based their arguments, in part, on the fact that the State did not enter into the record an admissible copy of Jane Davis's nursing license necessary to justify a conviction based upon Assault 3rd degree. The Court rejected L.N.'s argument.

Training Takeaway

Under RCW 9A.36.031(1)(i), **a person commits third degree assault if they assault a nurse who was performing their nursing duties at the time of the assault.** A nurse is a person licensed under chapter 18.79 RCW. Under RCW 18.79.030(1), it is unlawful to practice as a registered nurse without being licensed under chapter 18.79 RCW.

The court of appeals noted that Jane Davis testified that she was a registered nurse and that she was working when L.N. assaulted her. The court also observed that the superior court found Davis's testimony credible, which made it highly probable that Davis was a registered nurse. The court noted that Davis could not be a registered nurse if she was not licensed under 18.79 RCW. **The court found that Davis's testimony was sufficient evidence to establish that she was working as a nurse when L.N. assaulted her.**

The Court of Appeals found that because there was sufficient evidence establishing that Jane Davis was working as a registered nurse at the time L.N. assaulted her, there was sufficient evidence to find that L.N. committed acts constituting a felony (third degree assault).

There was really only one issue here, whether L.N. committed a third-degree assault. If he did, then all the elements necessary to impose 180 days involuntary treatment would be met. For there to be a third-degree assault, the state had to show that L.N. assaulted a nurse while they performed their duties. Jane Davis testified that she was a nurse and the court accepted that testimony. Davis also testified that she was working as a nurse when she was assaulted by L.N. The court opined that it did not need to see a copy of Davis's nursing certificate. Her testimony was sufficient evidence to establish that Davis was a nurse.

Many law enforcement officers are familiar with the provision under RCW 9A.36.031(1)(g) that it is a class C felony to assault a law enforcement officer or other employee of a law

enforcement agency who was performing their official duties at the time of the assault. But many other professions are covered. In this case a nurse was assaulted while she was performing her duties. Under RCW 9A.36.031(1)(i) L.N. was charged with third-degree assault. The other classes of individuals covered by RCW 9A.36.031(1)* include:

1. Transit operators or drivers, immediate supervisors of operators or drivers, mechanics, or security officers, whether public or private.

2. School bus drivers, their immediate supervisors, mechanics, or security officers, employed by a school district or private companies under contract to provide transportation services by a school district.

3. Firefighters or any other employee of a fire department, county fire marshal's office, county fire prevention bureau, or fire protection district.

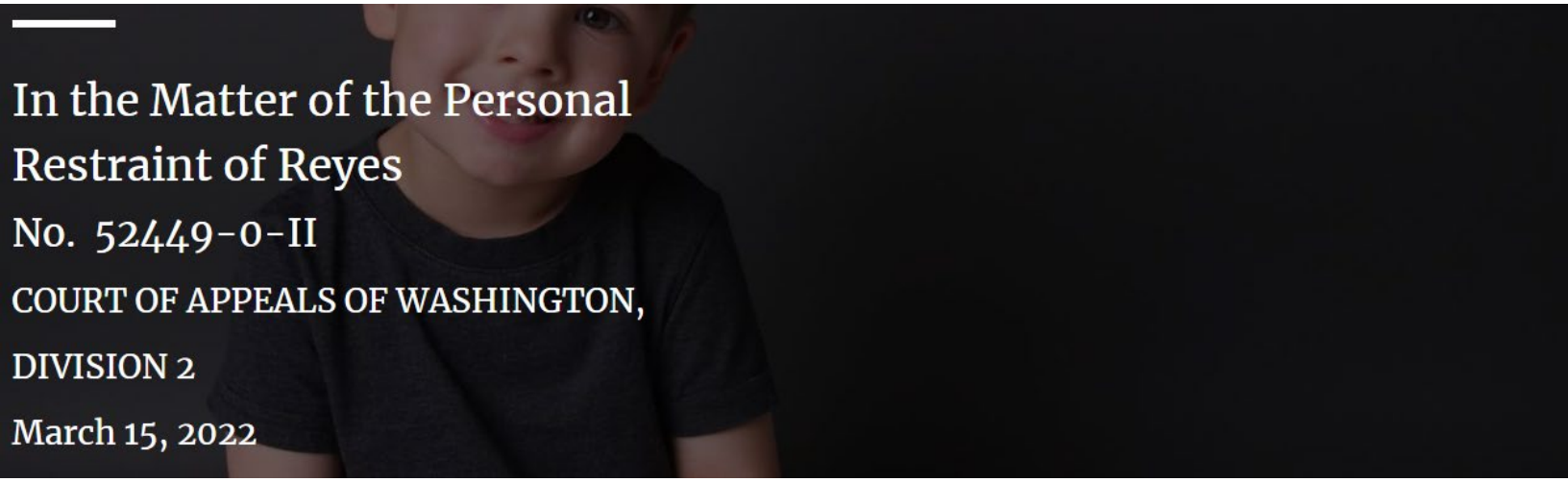
4. Judicial officers, court related employees (like bailiffs, court reporters, judicial assistants, court managers, court managers' employees, etc.), county clerks, or county clerk's employees.

5. Anyone who is located in a courtroom, jury room, judges, chamber, or any waiting area or corridor immediately adjacent to a courtroom, jury room, or judge's chamber (this provision only applies if the premises are being used for judicial purposes and if signage was posted in compliance with RCW 2.28.200 at the time of the assault).

Importantly, for this statute to apply, the covered person must have been performing their official duties at the time of the assault.

**Custodial assaults, or assaults on corrections employees that do not amount to assault 1 or assault 2, are also class C felonies and are covered by RCW 9A.36.100.*

EXTERNAL LINK: View the Court Document



Facts Summary

TOPIC: HOMICIDE BY ABUSE – SHAKEN BABY SYNDROME EVIDENCE

In late 2004, Reyes began dating Laura Kostelecky, the mother of one-year old Hayden Kostelecky. Soon after, Reyes and his two sons, ages two and five years old, moved in with the Kosteleckys.

One evening in February of 2006, Hayden collapsed and became unresponsive. Reyes told the police that he was washing dishes while the three boys were "fighting and carrying on." Hayden came out of the bedroom complaining that his head hurt. Reyes reported that he was annoyed by the noise and picked up Hayden by the waist, "holding him so tight that Reyes's fingers almost touched." Then, Hayden had muscle spasms and went limp. Reyes reported that he attempted to revive Hayden by splashing water on his face and bumped his head on the sink. Reyes called 911 and Hayden was taken to Mary Bridge Children's Hospital.

At Mary Bridge, Hayden presented with two subdural hematomas, which is bleeding under a membrane that surrounds the brain. One of the hematomas was fresh and one was slightly older. Hayden also presented with cerebral edema, which is swelling of the brain. Hayden underwent surgery to relieve the pressure from the hematomas and cerebral edema, but his condition did not improve. Hayden was declared brain dead and taken off life support the following morning.

During Hayden's autopsy, doctors found bilateral retinal hemorrhaging, fresh bruising deep in Hayden's scalp, old bruises, and a recently broken rib. Additionally, lacerations were found on Hayden's spleen, stomach, intestines, colon, liver, and pancreas. These injuries occurred days before Hayden's death.

The State charged Reyes with homicide by abuse and second-degree murder.

The Trial

The State contended that Hayden's severe brain injuries had to have been caused by significant force. The State relied on medical expert testimony that "you never have bilateral retinal hemorrhaging as a result of an accident." The State characterized medical expert testimony as stating that the bruise on Hayden's scalp and fall from the height of a bunk bed could not cause the severe brain injury Hayden sustained, and that the injury was caused by shaking. The state emphasized Hayden's other injuries including the rib fracture and bruising on his thighs, as well as the injuries that were in the process of healing when he died (sprained ankle, broken elbow, bruising on his back and legs, bruising on his groin, a tread mark on his abdomen, and his internal injuries).

The defense presented testimony from Hayden's mother and Reyes's own family and friends that Reyes treated Hayden the same way he treated his own children and never physically disciplined him.

At closing, the defense focused on negating the extreme indifference and pattern of abuse elements to homicide by abuse. The defense conceded that Hayden probably died from a single, short incident of violent shaking driven by a moment of frustration that was followed by a moment of remorse. The defense then asked the jury to return a verdict of manslaughter, instead.

Reyes was convicted by a jury of homicide by abuse and second-degree murder.

The Appeal

On direct appeal, Reyes's conviction and sentence were affirmed. The court noted that, "the evidence was overwhelming that Reyes caused Hayden's death," and, "Reyes offered no other credible explanation for Hayden's fatal injuries."

Reyes filed a Personal Restraint petition (PRP) in September of 2018. Reyes submitted declarations from a forensic pathologist and a biomechanical engineer in support of his PRP. The curriculum vitae of the forensic pathologist indicated that they had been giving presentations challenging the diagnosis of shaken baby syndrome since the early 2000's. The forensic pathologist asserted that the testimony of the State's medical experts and resulting arguments in support were scientifically inaccurate and unsound. The forensic pathologist added that a diagnosis of abuse from shaking cannot be made on the basis of presence of the

elements of the triad of symptoms associated with shaken baby syndrome – subdural hematoma, cerebral edema, and retinal hemorrhage. They asserted that Hayden's injuries could have occurred up to 72 hours before he was taken to the hospital.

The biomechanical engineer's letter referenced multiple case studies dating back to the 1980's showing how short falls could produce fatal head injuries in children. They added that the current state of science is that it cannot be stated with confidence that shaking can or cannot cause the injuries associated with shaken baby syndrome.

Reyes argued that this information constituted newly discovered evidence regarding the diagnosis of shaken baby syndrome or abusive head trauma, and that it merited a new trial or at least resentencing. Reyes argued that experts now had different views than they had at the time of his trial.

The State responded by producing a declaration from their own expert, a Dr. Elizabeth Woods, stating that Reyes's expert's opinions were not widely accepted by the child abuse medical community. Dr. Woods listed Hayden's injuries as support for her assertion that he was a victim of non-accidental trauma over time. Dr. Woods also asserted that Reyes's expert's statements were in direct contradiction to the positions of at least eight major medical organizations.

The Reference Hearing

After submitting Dr. Woods declaration to the court, Dr. Woods' credibility was called into question by the local media. After consideration of Reyes's evidence and the State's response, the Court of Appeals remanded to determine if there had been a paradigm shift in the medical community's understanding of the natural, accidental, and non-accidental causes of cerebral edema, subdural hematoma, and/or retinal hemorrhages since Reyes's trial in 2007, and whether there had been a paradigm shift related to recognized shaken baby syndrome symptoms or diagnosis since Reyes's trial in 2007.

The trial court entered extensive findings after the reference hearing, declaring: "The evidence here is that there has not been a paradigm shift since 2007 with respect to shaken baby syndrome, the medical community's acceptance of shaking as a mechanism of injury, the symptoms associated with shaking, the causes of those symptoms, or the diagnosis of injury by shaking. The trial court found that since 2007 there had not been a major shift in the medical community's understanding of the natural causes of cerebral edema, subdural

hemorrhage, and retinal hemorrhage, short falls as an accidental cause of brain injury and death, accidental causes of retinal hemorrhages, or the validity of shaking as a mechanism of injury," or regarding the diagnosis of shaken baby syndrome or shaking as a nonaccidental source of retinal hemorrhaging.

In evaluating Reyes's personal restraint petition, the court of appeals examined the findings of the trial court's reference hearing. The Court of Appeals noted that it would not grant a new trial for newly discovered evidence unless the petitioner demonstrates the evidence was discovered after the trial, could not have been discovered before trial by the exercise of due diligence, will probably change the result of the trial, is material, and is not merely cumulative or impeaching.

The Court of Appeals noted that the reference hearing established that there was controversy in the medical community in the early 2000s that continues today regarding the degree to which short falls, blunt force trauma, and shaking cause similar symptoms. The court concluded that Reyes presented no new evidence that could not have been discovered prior to trial with the exercise of due diligence, that he had not shown that his purported new evidence would have probably changed the outcome, and his PRP was time barred.

The Court of Appeals denied Reyes's request for a new trial or resentencing.

Training Takeaway

Homicide by Abuse

Under RCW 9A.32.055(1) A person is guilty of homicide by abuse if, under circumstances manifesting an extreme indifference to human life, the person causes the death of a child or person under sixteen years of age, a developmentally disabled person, or a dependent adult, and the person has previously engaged in a pattern or practice of assault or torture of said child, person under sixteen years of age, developmentally disabled person, or dependent person.

The State was able to establish that Reyes had committed homicide by abuse by detailing the injuries Hayden sustained after Reyes came into his life, as well as by showing that Hayden's death was the result of a violent shaking incident where Reyes gripped Hayden tightly around the abdomen and shook him out of frustration.

Also, while expert witnesses have and continue to disagree about alternate and natural causes of injuries that may present as shaken baby syndrome, they do not constitute a "paradigm shift" that would warrant a change in the diagnosis of shaken baby. Medical findings of subdural hematoma, cerebral edema, and retinal hemorrhages provide relevant and admissible evidence of abusive shaking.

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