Covering cases published in March 2025

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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.

LED Author: James Schacht

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 by WA Association of Prosecuting Attorneys

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

This month's cases are heavy on search and seizure. Remarkably, the courts also upheld the searches in all cases. In the eyes of the courts, the officers involved in these cases did good police work.

Officers taking this training will find a broad range of search and seizure issues. They include (1) knock and talk warrantless searches, (2) valid drug search warrants, (3) mixed motive pretext traffic stops, and from our friends on the Ninth Circuit Court of Appeals, (4) warrantless arrests. The substantive law cases include (5) animal cruelty charges, (6) a re-visit of the charging of major drug offenses, and (7) firearms restrictions under the Second Amendment. Not a bad month all in all.

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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.

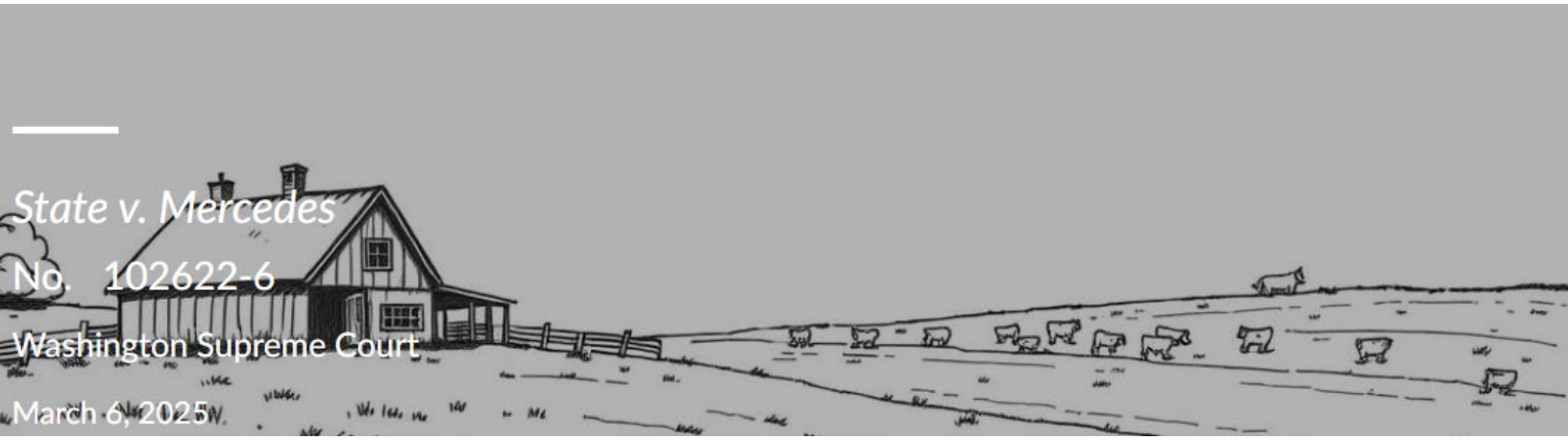
The digests do not constitute legal advice, nor does their publication create or imply an attorney client relationship with any law enforcement agency or officer or party. All law enforcement personnel, parties, and agencies must review the actual published case opinions and consult their agencies' legal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

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 may see *Id* at the end of some paragraphs in this LED. It is used to refer to the immediately preceding citation.

[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.



State v. Mercedes, No. 102622-6, Washington Supreme Court (March 6, 2025)

Factual Background

The line between a law enforcement conversation and a search can be fuzzy, as can be the line between a conversation and consent to a search. Since 1998, Washington has had specific requirements for valid consent in some cases. These cases are cases in which *Ferrier* warnings are required for "knock and talk" conversations. See State v. Ferrier, 136 Wn.2d 103(1998). This case explores when such advisements are required in the context of a case involving multiple contacts by animal control officers as a result of animal cruelty complaints.

The animal cruelty complaints were investigated in 2018. Several complaints were submitted to animal control about the defendant neglecting livestock on her property. The gist of the complaints was that the defendant was not feeding or watering the animals, and that they were emaciated and in danger of dying. Animal control investigated the complaints by going to the defendant's property.

The purpose of the visits to the property was important to the court's decision. The animal control officers went to the property to investigate the complaints. They met the defendant outside her residence in a circular driveway area. They explained the complaints and asked to see the animals. The officers and the defendant went together to the fenced pasture near the driveway and viewed the animals.

During the first visit, an officer gave the defendant information about feeding the animals and directed her to have a veterinarian examine them and develop a feeding plan. The officer informed the defendant that she would return to monitor the animals' conditions. The officer did not advise the defendant of *Ferrier* warnings, and the defendant voiced no objection to the officer's presence on her property nor to the viewing of the animals.

The officer made several other visits to the property. All involved the pasture area, and none included entry into the defendant's residence. The defendant complied with the directive concerning a veterinarian, and the officer was present for the examination. The veterinarian cared for the animals and provided a feeding plan. The officer returned multiple times to monitor the animals' conditions. On one occasion, the gate to the property was closed, but the defendant opened it and allowed the officer access.

The monitoring of the animals' health took place between January 4 and February 23, 2018. The officer sought a search warrant after their health did not improve. The search warrant included information and observations from the visits to the property. The execution of the warrant included examination of the animals by a veterinarian and seizure, because the animals were still emaciated after more than a month.

The prosecution charged the defendant with animal cruelty. During pre-trial proceedings, the defendant filed a suppression motion. Her legal argument was that the repeated visits by animal control to monitor the health of the animals required *Ferrier* warnings. Testimony of the officers at the hearing included that one of the officers characterized the initial visit to the defendant's property as a type of "knock and talk," which she described as, going to the front door to ask questions and explain a complaint.

The trial court agreed with the defendant's legal argument. It granted the motion, suppressed the evidence, and dismissed the case. That decision was reviewed by the Court of Appeals. The Court of Appeals reversed and upheld the search warrant. That decision led to this review by the Supreme Court.

Analysis of the Court

The court began with a discussion of the *Ferrier* case and cases that had applied *Ferrier.* The court characterized the legal standard in *Ferrier* as follows: "For consent to be valid when a law enforcement officer seeks consent to conduct a warrantless search of a person's home under certain circumstances, we have held that the officer must first inform the individual they have the right to refuse, limit, and revoke consent." *Mercedes Slip Opinion, p. 6.* The court also stated that the legal standard applies specifically to "knock and talk" investigations where consent to search a home is requested as part of an investigation. It noted that in *Ferrier* the investigation was of a suspected marihuana grow and was based on an informant's tip.

The court also discussed subsequent cases in which the *Ferrier* legal standard had not been enforced. In one case from 2003 the officers had gone to a home to speak with the defendant's grandson. See State v. Khounvichai, 149 Wn.2d 557 (2003). During the contact the defendant made a dash for his cocaine stash. The subsequent seizure of the cocaine was upheld because, "Relying on the language in *Ferrier*, we explained that the underlying purpose of the officers' visit was significant. Where officers are at a person's doorstep for merely investigative purposes, such as when responding to reported criminal activity, *Ferrier* warnings are not needed." *Mercedes Slip Opinion, p. 8*

The court discussed two additional prior cases and concluded that the unifying legal principle was entry into a residence for the purpose of conducting a consent search. Thus, an entry for serving an arrest warrant was upheld, whereas an entry for the purpose of seizing a computer known to have contraband material was not. See State v. Ruem, 179 Wn.2d 195(2013) and State v. Budd, 185 Wn.2d 566(2016).

Applying its refined *Ferrier* legal standard, the *Mercedes* court determined that the advisement of rights was not required. It explained its decision as follows:

> The purpose of Officer Rench's follow-up visits was to monitor Ms. Mercedes's compliance with the feeding and care recommendations given by the veterinarian to determine if further action would be needed. The purpose of Officer Wiersma's visit was to investigate another complaint, which included determining if the animals had access to food and drinking water. Because the visits were for investigative purposes and were conducted outside of the home, these circumstances do not trigger Ferrier requirements. *Mercedes Slip Opinion, p. 10*

The court also rejected another argument put forward by the defendant. This was that the court should expand *Ferrier* beyond a residence to include private property around a residence. The court did not adopt that argument. "We disagree. Our constitution establishes that the government cannot invade a home or disturb a private affair without a warrant unless an exception to the warrant requirement exists, consent being a recognized exception. What the cases discussed above hold is a consistent rejection of arguments made to expand the scope of constitutional privacy protections beyond what *Ferrier* established." *Mercedes Slip Opinion, pp. 10-11*

The decision in *Mercedes* was not unanimous. It was joined by a total of four justices. Two concurring opinions included different legal reasons for upholding the search. In one of the concurring opinions, four justices agreed

that in this case, the pasture area together with the purpose of the officer's visit was sufficient to sustain the warrant. The four justices would not, however, rule out that *Ferrier* could apply beyond entry into a residence in the future.

The second concurring opinion also agreed that *Ferrier* did not apply. That justice would have simply decided that *Ferrier* warnings were not required for the consensual viewing of the horses in a pasture because they did not involve entry into a home.

Training Takeaway

For an officer investigating a complaint or a case, certainty as to how legal standards will be applied in court would be appreciated. Regrettably, certainty is frequently not the hallmark of search and seizure cases.

This case includes four justices who concluded that the lack of entry into a residence or home was part of the reason the search was upheld. However, four justices explicitly wrote separately to emphasize that *Ferrier* might apply even where entry into a home does not occur. And the ninth justice sided with the first four but concluded that the lack of entry into a home was the deciding factor. Needless to say, this division among the justices provides little certainty.

The nearest thing to certainty in this case, and in many search and seizure cases, is that the general rule is that a warrant is required and that exceptions to the warrant requirement, such as the consent exception here, are narrowly drawn. The narrow interpretation of warrant exceptions suggests that law enforcement should be especially cautious when relying on them.

Since consent to view the livestock was requested and readily granted in this case, it is quite possible that the defendant would have allowed the officer to view the animals even if an advisement was given to her that she didn't have to consent. The officers did nothing wrong in this investigation according to the outcome of the case, but an advisement that the defendant could refuse, limit, or revoke consent might have avoided the issue altogether.

EXTERNAL LINK: View the Court Document

State v. Le, No. 58336-4, Washington Court of Appeals, Division Two (March 11, 2025)

Factual Background

The power of a valid search warrant in a criminal case is apparent in the standards that apply to appellate review of search warrants. This case involves both the general standards for valid search warrants and the argument that when it comes to marihuana, law enforcement is required to affirmatively show that the marihuana operation was not lawful and not registered with the state. The court's analysis led it to uphold the warrant and affirm the defendant's conviction.

The case arose from an investigation of four residential properties suspected of being part of a marihuana grow operation. The case began with an informant's tip but was brought into court through the investigative efforts of a drug task force. The informant's tip identified one of the properties, but the investigation showed that all four were involved in the illegal grow.

The investigators utilized both direct observation and records reviews to assemble the necessary probable cause. The court categorized the information in the warrant affidavit as including,

1. surveillance of individuals and vehicle movements at and between the four properties;
2. the detection of the odor of growing marihuana at two of the four properties;
3. abnormally high-power consumption at all four properties;
4. utility accounts registered to individual, non-owners of the residences; and
5. no reported income for the four individuals observed involved with the properties for three prior years, plus significant purchases of real estate, vehicles, and other high value goods and services by those same people.

The court also described the sources of the categorized information in the warrant affidavit. The sources included surveillance by both law enforcement officers and video pole cameras. The surveillance documented the odor of marihuana, the humming sounds consistent with grow equipment, and the comings and goings and links between the suspects and the properties. Plus, the affidavit detailed records obtained from utilities and employment security which showed extraordinary power consumption and the absence of legitimate income.

The warrant affidavit was duly submitted to a judge and a search warrant was issued for all four properties. The warrant was executed and an abundance of evidence of illegal marihuana production was found. The prosecution charged four individuals with felony possession of marihuana with intent to deliver and felony manufacture of marihuana.

The defense challenged the warrant in a pre-trial suppression motion. Among the arguments submitted to the trial court was the argument that probable cause was not established because the warrant affidavit did not state that the four properties were unlicensed and unlawful. The trial court rejected that argument and the other defense arguments and denied the suppression motion. The defendants were convicted by a jury and appealed the suppression motion issues.

Analysis of the Court

The court began with the legal standards that apply to review of search warrants. The court's description of the standards is well worth reviewing and can be found on page 11 of the slip opinion. The standards illustrate why a valid search warrant is a relatively safe and powerful law enforcement investigative tool.

The court first noted the requirements of the probable cause standards. " 'Probable cause requires more than suspicion or conjecture, but it does not require certainty.' ... An affidavit in support of a warrant application must contain 'facts and circumstances sufficient to establish a reasonable inference that the defendant is involved in criminal activity and that evidence of the crime can be found at the place to be searched.' ... The issuing judge 'is entitled to make reasonable inferences from the facts and circumstances set forth in the affidavit.' " *Le Slip Opinion, p. 11.* The lack of need for absolute proof or "certainty" and the right of the issuing judge to infer facts, means that a search warrant can be based on less than perfect or conclusive information.

The review standards also favor search warrants. First, a search warrant enjoys a "presumption of validity." *Le Slip Opinion, p.11.* "Individual facts that would not support probable cause when standing alone can support probable cause when viewed together with other facts in the search warrant affidavit." *Id.* And finally, the appellate courts review warrants in "a common sense rather than hypertechnical manner" and "resolve all doubts in favor of upholding the warrant." *Id.* Compared to the standards that apply to search warrant exception cases, these are quite favorable to the work of law enforcement.

The court in *Le* applied these standards and held that the warrant was valid as to all of the properties. It agreed that each of the categories of information standing alone could be viewed as applying to legitimate activity. But it stated, "This is precisely the type of analysis we are not permitted to conduct. As we note above, we are required to consider the affidavit in a commonsense rather than hypertechnical manner and consider the information provided in the affidavit as a whole." *Le Slip Opinion, p. 12*

Instead, the court held that "When viewing the facts contained within the affidavit in this case, even absent the odor of marijuana, it is reasonable to infer that Le and her codefendants were engaged in criminal activity and that evidence of such activity would be found at the four properties. The trial court did not err in concluding that the affidavit sufficiently established probable cause to search all four properties." *Le Slip Opinion, p. 14-15*

The court also addressed the argument that the affidavit was faulty for not including a statement that the properties were not lawfully licensed facilities according to the Washington Liquor and Cannabis Board (WSLCB). First it noted that a similar argument had been rejected by the Supreme Court in a prior medical marihuana case. Second, it noted that under the applicable licensing WAC, a residential property cannot be licensed as a marihuana facility. See WAC 314-55-015. And finally, the court noted that the number of plants that could be inferred from the warrant affidavit far exceeded the 60 that might be permitted in a lawful cooperative medical marihuana grow. In short, the need to affirmatively state that the residences were not licensed was not necessary to support probable cause.

Having reviewed the warrant affidavit under the forgiving search warrant standards, the court upheld the trial court's ruling in the suppression motion. It therefore also upheld the convictions.

Training Takeaway

The takeaways in this case are important for any officer called upon to decide whether a warrant is advisable. The forgiving standards that apply to search warrant cases are reason enough to consider applying for a warrant rather than relying on an exception to the search warrant requirement.

Another takeaway is cautionary. While the lack of information about the licensing of the properties was not fatal, it wouldn't have hurt to include such information. It is likely that the information is readily available from the WSLCB and including it would remove a possible argument in a future case.

EXTERNAL LINK: View the Court Document

State v. Olson, No. 39517-1, Washington Court of Appeals, Division Three (March 11, 2025)

Factual Background

Since 1999, Washington appellate courts have applied a pretext standard for traffic stops. See State v. Ladson, 138 Wn.2d 343(1999). Pretext cases are generally challenged under Article 1, Section 7 of the Washington Constitution. This case involves review of a vehicle stop for traffic violations followed by a search warrant for drugs and guns. The case also includes discussion of an unlawful possession of firearm charge which was challenged under the Second Amendment.

The incident took place in October 2020. A Colville police officer who had previously worked as a corrections officer was working patrol. He was positioned in a particular neighborhood where drugs were problematic. He was working traffic enforcement and "also looked for law violators and monitored traffic speed in neighborhoods where children were present." *Olson Slip Opinion, p. 3.* He saw a pickup pull away from the curb without signaling. He also noted subsequently that the front license plate was obscured and the license plate light was out. He stopped the vehicle for the infractions.

The primary contention of the defendant was that the officer knew him from jail and had a grudge against him. He therefore alleged that the officer knew him and his truck and conducted the stop on a pretext. Testimony at the trial court suppression hearing conflicted as to the defendant's allegations. The officer acknowledged knowing the defendant and that he was involved with drugs. He also acknowledged having heard that the defendant carried a gun. But he also testified about his reason for stopping the defendant's truck. He testified that, he "knew the area was "a high[-]speed area for bus stops and for kids late at night going to [the store] to get snacks and what not. People fly up and down [the] street at high rates of speed all the time, so it's also a good spot to run traffic." *Olson Slip Opinion, p. 3-4*

The defendant testified that the officer had a grudge against him and had threatened him. "While in jail, Olson claimed he got into an argument with

Davis, which ended with Davis saying that when he became a cop, he would get Olson." *Olson Slip Opinion, p. 5.* The defendant also offered testimony from a fellow inmate to corroborate his claims. That evidence was rejected by the trial court as irrelevant, and the court of appeals upheld that ruling.

In its ruling on the suppression motion, the court found that the officer had not known the defendant was driving the truck when he decided to stop the truck. The court also concluded legally that the officer had decided to pull over the truck for three traffic violations. Insofar as whether the officer could have had mixed motives for pulling over the vehicle, the court concluded that if so, the stop was nevertheless lawful as a "mixed motive" stop. *Olson Slip Opinion, p.8*

The trial court denied the suppression motion and the defendant was convicted at trial. On appeal he challenged the trial court's rejection of the stop as an unlawful pretext stop and raised several other issues as well.

Analysis of the Court

The written findings and conclusions of the trial court were of central importance to the outcome of the appeal. The Court of Appeals first reviewed them and determined which were findings of fact and which were conclusions of law. The distinction is that the findings of fact are upheld if there is "substantial evidence" to support the trial court's rulings. Whereas with conclusions of law, the appellate court reviews them *de novo*, which means it applies its own view of the law to the facts found by the trial court.

The legal standards applied by the Court of Appeals included both pretext and mixed motive standards. "When a police officer relies on some legal authorization as a 'mere pretext to dispense with the warrant when the true reason for the seizure is not exempt from the warrant requirement,' a pretext traffic stop occurs... 'When determining whether a given stop is pretextual, the court should consider the totality of the circumstances, including both the subjective intent of the officer as well as the objective reasonableness of the officer's behavior.' " *Olson Slip Opinion p. 12*

For a mixed motive stop, the court stated that such stops occur when the officer has both lawful and unlawful reasons for the stop. The court articulated the standard as requiring that the officer's lawful reasons be, "an actual, conscious, and independent cause of the traffic stop." *Olson Slip Opinion, p. 13.* The court quoted from a prior pretext case, stating that, "Thus, if a police officer makes an independent and conscious determination that a traffic stop

to address a suspected traffic infraction is reasonably necessary in furtherance of traffic safety and the general welfare, the stop is not pretextual. 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." *Id. quoting* State v. Chacon Arreola, 176 Wn.2d 284 (2012).

Under these standards, the *Olson* court upheld the lawfulness of the stop. The court held that the stop was a mixed motive stop but that it was nevertheless lawful. The reasons or motivations of the officer were categorized as facts by the trial court. That court found it to be factually true that the officer's reasons or motivations *included* lawful reasons related to traffic enforcement. It followed that the officer's independent, conscious decision to stop the vehicle for traffic reasons averted the stop from being an unlawful, wholly pretext stop.

The *Olson* court also dispensed with several other less important issues with little discussion. They included the exclusion of the defendant's proffered witness, and a challenge to the length of the stop. Those issues were likewise resolved in favor of upholding the conviction.

One issue the court dispensed with is worth mentioning separately. It was a constitutional challenge to the unlawful possession of a firearm (UPOF) charge. The defendant argued that since his underlying conviction was for a non-violent crime, the UPOF charge was unconstitutional under the Second Amendment as applied to him. The court rejected the challenge stating, "There is a long-standing historical basis and tradition for prohibiting felons from possessing firearms... the United States Supreme Court never distinguished between the rights of violent and nonviolent felons when it comes to possessing firearms." *Olson Slip Opinion, p. 18*

Training Takeaway

The most direct takeaway is the mixed motive standard in pretext stop cases. The officer's credible testimony provided evidence for the trial court to find that the officer had multiple reasons for the stop and that some of them were lawful. The decision affirming the conviction rests upon that analysis and was supported by that testimony at the suppression hearing.

There is also a more subtle takeaway to be aware of. It involves the officer's suspicions of the defendant being in the drug world and carrying a firearm. It appeared that the officer testified openly about those motives for conducting

the stop. Without saying so, the court also suggested that those reasons for the stop were unlawful. In the mixed motive analysis, they were the unlawful motives that ended up not requiring suppression of the evidence because the officer also had traffic-related, lawful motives.

No officer wants to be thought of as having unlawful motives for stopping a vehicle, even if he also has lawful motives. Only the trial judge in this case can say whether the officer's admission of unlawful motives enhanced his credibility with respect to the lawful motives. But it is certainly possible that it did. Officers called in to testify in a suppression motion should testify openly, completely, and truthfully, even about uncomfortable subjects. To do so is to fulfill their duty as officers and the end result is enhanced credibility.

EXTERNAL LINK: View the Court Document

State v. Sochirca, No. 39751-3, Washington Court of Appeals, Division Three (March 13, 2025)

Factual Background

The issue of interest to law enforcement in this case is the court's interpretation of a defense to an animal cruelty charge. Most of the opinion is concerned with another issue, namely whether the defendant should have been allowed to represent himself in court. Any officer interested in that part of the case should feel free to read the slip opinion. This summary will cover only the issue of animal cruelty.

The facts are simple. The defendant caught a neighbor's dog inside his chicken coop attacking his chickens. The dog had done so before. The defendant shot the dog in the head as many as 40 times with what the court described was a BB gun firing steel BBs. It is unclear whether the gun was a single or multiple shot gun and thus it is not clear whether the 40 BBs found in the dog's head were the result of 40 trigger pulls or fewer than that. The dog survived but was blinded and during treatment an x-ray examination showed the 40 BBs still in the dog's head.

It should also be noted that the defendant knew the dog survived the shooting and left it to die on a pile of snow. The neighbor came and retrieved the dog and took it to a vet for treatment.

The defendant was charged with animal cruelty. He waived his right to a jury trial and was convicted in a bench trial. He represented himself. His defense was that he was entitled under a statute to kill the dog because it had attacked his chickens.

Analysis of the Court

As to the animal cruelty issue, the court's analysis was short and to the point. "Sochirca argues that his actions were lawful because RCW 16.08.020 makes it lawful to kill a dog when it is seen injuring domestic animals, including chickens." *Sochirca Slip Opinion, p.12-13.*

The court responded with this: "We agree that Sochirca had a right to kill Millie when he saw her attacking his chickens. But RCW 16.08.020 does not allow one to attempt to kill an animal by a means causing undue suffering, such as shooting over 40 steel BBs into a dog's head." *Id.*

Training Takeaway

A defendant's defense at trial is not generally the concern of law enforcement. However, it is useful to be aware of RCW 16.08.020 and the court's interpretation. According to the *Sochirca* court, euthanizing an animal lawfully requires that death be inflicted without the attributes of animal cruelty.

EXTERNAL LINK: View the Court Document

State v. Hamilton, No. 87053-0, Washington Court of Appeals, Division Two (March 17, 2025)

Factual Background

The fast pace of change in Second Amendment cases is a national phenomenon. The United States Supreme Court has tinkered with Second Amendment jurisprudence significantly for several years. The most recent case was from July 2024. See United States v. Rahimi, 602 U.S. 680 (2024). This case analyzes the constitutionality of several Washington firearm rights statutes in light of current federal Second Amendment law.

The case arose from a prosecution of the defendant for vehicular homicide from a fatal vehicle collision. The defendant was convicted at trial and sentenced. He challenged a provision of his sentence related to a firearm restriction. The firearm restriction was ordered pursuant to RCW 9.94A.706. He also brought several other challenges that are of little interest to law enforcement. Those are available in the slip opinion.

As to the firearm restriction, his challenge was to the constitutionality of firearm restrictions as applied to him. His argument included that, because the vehicular homicide statute is classified as nonviolent, the Second Amendment protects against including firearm restrictions as part of his sentence. The trial court rejected the challenge, and its decision was appealed to the Court of Appeals.

Analysis of the Court

The court began with a discussion of the recent development of Second Amendment law. Its discussion noted that the test courts apply to such issues has been changed by the Supreme Court. The current test can be referenced as the "textual historical analysis" test. *Hamilton Slip Opinion, p. 11.* "First, courts must determine whether 'the Second Amendment's plain text covers an individual's conduct.'... If so, 'the Constitution presumptively protects that conduct,' and 'the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation.' " *Id.*

The court noted that the high court had applied this test in a domestic violence protection order case in *Rahimi.* The court noted that the high court had found similar regulations in the historical record, and furthermore that, "The *Rahimi* Court also reiterated *Heller's* statement that prohibitions on the possession of firearms by persons with felony convictions are 'presumptively lawful.' " *Hamilton Slip Opinion, p. 7*

Turning to the restriction in the defendant's case, the court applied the textual historical analysis test. As to the first part of the test, the court quickly agreed that the defendant was a person covered by the Second Amendment. It therefore focused on the second part of the test.

The second part involved a review of history to see if similar firearms regulations had been imposed. It noted that persons with felony convictions were thought of as posing "a danger to public order." *Hamilton Slip Opinion, p. 12.* It also noted that historically, felony convictions commonly carried a possible death sentence, which was a reflection of how serious even non-violent felony convictions were viewed in terms of the danger to public order. The court concluded, "Hamilton committed a felony offense that resulted in the death of another person. His behavior places him squarely in the category of persons deemed dangerous to the public order for the purpose of historical firearms regulation." *Hamilton Slip Opinion, p. 15*

The court concluded its review by examining cases that have applied the textual historical analysis test since *Rahimi.* It determined that none of the cases provided a reason for finding the firearm restriction in Hamilton's case unconstitutional. Accordingly, "Hamilton does not prevail on his as-applied challenge." *Hamilton Slip Opinion, p. 16*

Training Takeaway

The Second Amendment is currently a hot topic in news stories. It is well known that the U.S. Supreme Court has been issuing opinions which have changed the scope and application of the amendment. For law enforcement, an important takeaway is that Washington courts have so far not held that statutes such as RCW 9.94A.706 are unconstitutional under the current tests for the Second Amendment.

EXTERNAL LINK: View the Court Document

State v. Zimmerman, No. 39765-3, Washington Court of Appeals, Division Three (March 28, 2025)

Factual Background

In drug distribution cases, Washington has adopted various sentence enhancements. One of them is referred to as a major drug offense. This case involves the court's interpretation of the enhancement statute concerning the meaning of three or more "separate transactions."

The defendant was charged and convicted of four drug distribution offenses, two counts of delivery of a controlled substance, and two counts of possession with intent to deliver. Each count included the major drug offense enhancement. And each count also involved one transaction. The charging theory was that, taken together, the four counts satisfied the requirement of three or more separate transactions.

The issue that is of interest is the aggravating sentencing enhancement. The defendant argued that each *count* must include three or more separate transactions, rather than all of the counts together.

The defendant had prior drug criminal history from Oregon. He also challenged the inclusion of his Oregon history in his sentencing offender score, and two different sentence enhancement issues. Those parts of the opinion are of little concern to law enforcement because they deal with sentencing issues that are more the responsibility of the prosecutor. Interested officers may review those issues in the slip opinion(opens in a new tab).

Analysis of the Court

The court began by citing and discussing the statutory language of the aggravated sentencing factor. *See* RCW 9.94A.535(opens in a new tab)(3)(e)(i). It also noted that the same issue had come up in a recent prior case. See Law

Enforcement Digest (December 2024) (*State v. Haas*). In the *Haas* case, the court sided with the defendant and held that the enhancement could only be applied to a charged count that by itself included three or more transactions.

The court applied the same analysis as in its prior *Haas* case. It stated, "We recently decided the same issue posed by the multiple drug transaction aggravator in State v. Haas, 33 Wn. App. 2d 344, 561 P.3d 299 (2024). In *Haas*, we held that multiple drug transactions must be charged in the same count for the multiple transaction aggravator to apply. . . Mr. Zimmerman's drug transactions were charged in separate counts. Under our recent holding in *Haas*, the prosecutor erred by charging the aggravator for each separate count and by relying solely on the separately charged surrounding counts to establish the multiple controlled substances transactions." *Zimmerman Slip Opinion, p. 21*

Training Takeaway

The charging of sentence enhancement is ultimately the responsibility of the prosecutor. For law enforcement, the issue can arise in booking or in recommended charges for referrals to the prosecutor. This case reiterates that the key decision concerning the major drug offense sentence enhancement is whether to charge separate counts for each transaction without the enhancement, or one count plus the enhancement for all transactions. This is an issue to be aware of and discussed with drug offense screening prosecutors.

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.

United States v. Hamilton, No. 22-10161, Ninth Circuit Court of Appeals (March 24, 2025)

Factual Background

This case concerns the lawfulness under the Fourth Amendment of a stop and eventual arrest of a shooting suspect. It bears repeating here that search and seizure jurisprudence in Washington differs markedly from federal search and seizure. Our state courts have charted their own path under the Washington Constitution to such an extent that federal cases upholding the lawfulness of a particular search should not be taken as an indication that the same result would happen in a Washington State courtroom.

The shooting incident at the center of this case occurred approximately two weeks before the stop and arrest of the defendant. The shooting consisted of the defendant having confronted a girlfriend and put her in a car that he had rented. He drove away from the area where the confrontation happened and fired shots out the window at three people. This occurred in an urban neighborhood in San Francisco.

One of the investigating officers was a San Francisco Police Department sergeant. He identified the defendant from witness descriptions, the tracing of the rental

car, and video surveillance footage. The surveillance footage capped the investigation because the defendant was able to be identified from the footage. The sergeant determined that the suspect in the video resembled the defendant's mugshot. Plus, two officers with prior experience with the defendant recognized and identified him as the person in the video.

The defendant was arrested because of a chance encounter with a patrol officer. This was approximately two weeks after the shooting. The defendant immediately fled on foot in response to the officers' commands. During the confrontation, an officer told the defendant incorrectly that there was a warrant for his arrest. This false statement was a major focus of the court's analysis.

The defendant was captured and arrested. He was subsequently indicted on two offenses stemming from the arrest. He was not charged in federal court with any offense stemming from the shooting incident; instead, he was charged with possessory firearm offenses. The defendant had a gun and over $6,000 in cash on him during the arrest, which was the evidence at issue in the suppression motion.

In pretrial proceedings, the defendant challenged the lawfulness of his detention and arrest under the Fourth Amendment. He argued that the attempted detention was unlawful because the officers were intending to arrest him from the start, and they lacked probable cause for the arrest. He also argued that the manner of his arrest was unreasonable and unlawful because of how the officers challenged him during the chance encounter. The trial court rejected both challenges and denied the defendant's suppression motion. Those rulings led to the Ninth Circuits review.

Analysis of the Court

The Ninth Circuit began its review with the lawfulness of the detention. It largely skirted the probable cause issue insofar as the initial contact on the street was concerned. It determined that the initial contact, and the defendant's immediate flight on foot, meant that the officers had only *attempted* to detain him but had not actually completed the detention. "Thus, in their initial approach, the officers only attempted a seizure. They did not actually seize Hamilton. . . And where no seizure occurred during the officers' initial contact with Hamilton, the Fourth Amendment was not triggered." *Hamilton, Ninth Cir., Slip Opinion, p. 11*

The court then turned to the way the eventual capture and detention had been accomplished. The defendant argued that the false statement about an arrest warrant, and lack of probable cause, made the eventual detention unlawful. The court rejected these arguments.

As to the false statement, even if it was intentionally false, it did not cause the arrest to be unlawful. "Officers are not categorically prohibited from using deception in investigations. . . But deception may be unreasonable if it is used 'to gain access to places and things [officers] would otherwise have no legal authority to reach.' " *Hamilton, Ninth Cir., Slip Opinion, p.12.* The court concluded that under this legal standard, the officer's false statement about an arrest warrant did not cause the attempted detention to be unlawful.

The court also rejected the probable cause argument. "[T]he officers had specific evidence that connected Hamilton to an unlawful shooting less than two weeks before they tried to stop him. There was no ambiguity about the officers' identities ... and they called Hamilton by name and ordered him to stop. Hamilton's arguments about racial disparities in policing cannot overcome the circumstances at issue or 'commonsense judgments and inferences about human behavior.' ... It is reasonable to infer, given the totality of circumstances, that Hamilton ran to evade law enforcement." *Hamilton, Ninth Cir., Slip Opinion, p. 16*

The court concluded that the defendant's flight on foot, combined with the police work done by the investigating sergeant, provided sufficient evidence to support the detention and arrest. Thus, the arrest was not without probable cause. The flight itself contributed to the quantum of evidence to support the detention.

Training Takeaway

No matter how well supported, warrantless arrests invite challenges like the challenge in this case. The court's opinion includes little information concerning why the investigation did not include an arrest warrant. By all accounts, the defendant was caught on tape and identified as the shooter before the patrol officer spotted him on the street.

It is certainly possible that a priority arrest warrant could have been obtained that would have nipped in the bud the defendant's Fourth Amendment arguments. That having been said, it is also very possible that the two federal possessory offenses (that were the only charges from a serious drive-by shooting incident) meant that the prosecutors had witness trouble of some kind. If the drive-by shooting could not be charged, it follows that an arrest warrant was not an option.

EXTERNAL LINK: View the Court Document

Cases and References

State v. Mercedes, No. 102622-6, Washington Supreme Court (March 6, 2025)

- Mercedes Slip Opinion
- State v. Ferrier, 136 Wn.2d 103(1998)
- State v. Khounvichai, 149 Wn.2d 557 (2003)
- State v. Ruem, 179 Wn.2d 195(2013)
- State v. Budd, 185 Wn.2d 566(2016)

State v. Le, No. 58336-4, Washington Court of Appeals, Division Two (March 11, 2025)

- Le Slip Opinion
- WAC 314-55-015

State v. Olson, No. 39517-1, Washington Court of Appeals, Division Three (March 11, 2025)

- Olson Slip Opinion
- *State v. Ladson, 138 Wn.2d 343(1999)*

State v. Sochirca, No. 39751-3, Washington Court of Appeals, Division Three (March 13, 2025)

- Sochirca Slip Opinion
- RCW 16.08.020

State v. Hamilton, No. 87053-0, Washington Court of Appeals, Division Two (March 17, 2025)

- Hamilton Slip Opinion
- United States v. Rahimi, 602 U.S. 680 (2024)

State v. Zimmerman, No. 39765-3, Washington Court of Appeals, Division Three (March 28, 2025)

- Zimmerman Slip Opinion
- RCW 9.94A.535 (3)(e)(i)
- Law Enforcement Digest (December 2024): (State v. Haas)
- State v. Haas, 33 Wn. App. 2d 344, 561 P.3d 299 (2024)

United States v. Hamilton, No. 22-10161, Ninth Circuit Court of Appeals (March 24, 2025)

- Hamilton, Ninth Cir, Slip Opinion

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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