



Law Enforcement Digest



Covering cases published in August 2025

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Cases in the Law Enforcement Digest are briefly summarized, with a focus on how the rulings may impact Washington law enforcement officers or shape future investigations and charges. Each cited case features a hyperlinked title for those interested in reading the court's full opinion. Additionally, links to key Washington State prosecutor and law enforcement case law reviews and references are provided.

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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](#) 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

Summary of this Month's Cases

The cases from August make for some good reading. The two most important would probably be the *Parker* case from the Washington Court of Appeals and the *Cheairs* case from the Ninth Circuit. *Parker* is concerned with the attenuation doctrine, which is an exception to the exclusionary rule. *Cheairs* is an examination of the use of force by an officer facing off with a mixed mass of protesters and violent rioters during the 2020 Seattle East Precinct affair. Both cases will be of interest for very different reasons.

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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. Thompson
No. 103338-9
Washington Supreme Court
August 28, 2025

State v. Thompson, No. 103338-9, Washington Supreme Court (August 28, 2025)

Factual Background

This case will be of some interest to homicide and sexual assault investigators and others who encounter issues of medical records privacy. It is not unusual for a defendant to intrude upon a victim’s privacy in the name of presenting his defense. Generally, such issues are in the hands of prosecutors. But **this case involves the right of a homicide victim’s representative to intervene in court proceedings** and thereby appear alongside the prosecutors.

The case was a domestic violence murder. The victim and defendant had an intimate relationship. In 2013, the defendant was convicted of a strangulation assault of the victim and was sentenced to prison. He got out of prison and shortly after getting out was arrested. During the arrest, the victim’s body was found in the trunk of a car he was driving.

The medical records issue came up because the defendant decided he wanted to pursue a natural causes defense. The medical examiner conducted an autopsy. His findings were that the victim had died of strangulation. Despite the victim having been found in the defendant’s trunk, he claimed that the cause of death might have been natural causes. On that basis he desired the victim’s medical records.

When the defendant demanded the medical records, the deceased victim’s mother intervened in the trial court proceedings. She opposed the violation of her daughter’s medical records privacy rights. The trial court ruled in her favor.

The defendant was convicted at trial. He appealed his conviction and raised the issue of the medical records in the appellate proceedings. Again, the victim’s mother intervened. The appellate court held first that she could intervene, and second that the motions for the records were properly denied. The intervention ruling by the Court of Appeals was challenged in the Supreme Court, and the opinion in this case is the result of that challenge.

Analysis of the Court

The issue before the Supreme Court was quite narrow. Does an appellate court have discretion to allow intervention of the kind that was allowed in this case? That issue was decided in favor of the appellate courts having such discretion. “Instead, the Court of Appeals has the discretion under RAP 7.3 to allow intervention if it believes that intervention is necessary or appropriate to secure the fair and orderly review of the case.” *Thompson Slip Opinion*, p.13

While deciding the narrow issue of appellate intervention, the court discussed the broader issue of intervention in criminal cases in general. It reviewed prior cases arising from intervention of news media in high profile cases. The court noted that intervention had been allowed under those and other appropriate circumstances. One additional circumstance was sealing of a criminal case court record. The court noted in that case that, “There, we expressly modified our decision in [a prior case] by holding that a third party may intervene, after trial is complete, to review a trial court’s decision to seal documents.” *Thompson Slip Opinion*, p. 9

The court considered and rejected several defense arguments. One from the defendant was that he faced two prosecutors rather than one because of the intervention. The court rejected that notion because the only issue was the victim’s medical records, not all the other issues that came up in the case.

The court also considered and rejected an argument by several dissenting justices. That argument was that the mother should have been required to file a separate civil action rather than intervene in the criminal case. That argument was also rejected because regardless of what procedure was pursued by the mother, result would have been the same. “The dissent fails to explain the functional difference to Mr. Thompson if Ms. Gates had brought a civil action that quashed any subpoenas issued by the court in the criminal action.” *Thompson Slip Opinion*, p. 11

The decision in this case was not unanimous. It was a five-to-four decision. Nevertheless, it stands for the proposition (for the time being) that a victim may intervene in a criminal case to protect a privacy interest. That proposition may not be permanent nor apply to all privacy disputes, but it is a right of a victim in a criminal case that is worth noting.

Training Takeaway

It is common for detectives and investigators to have a great deal of contact with crime victims. For most victims, it is their first trip into the thicket of criminal investigation and prosecution. This case is important because a victim is entitled to pursue their own, individual representation for protecting their own individual privacy interests. Under some circumstances they may be successful in obtaining permission to intervene in criminal case court proceedings.

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



State v. Parker

No. 88034-9

Washington Court of Appeals

August 11, 2025

State v. Parker, No. 88034-9, Washington Court of Appeals, Division One (August 11, 2025)

Factual Background

Most of law enforcement will be aware of the exclusionary rule. Broadly speaking, the rule provides that evidence acquired because of a violation of a constitutional right, and any evidence that can be said to be “fruit of the poisonous tree,” may be suppressed and not admitted into evidence at trial. It is a rule concerning the remedy for a violation of a constitutional right in a criminal case.

This case concerns an exception to the exclusionary rule. The legal standard involved is referred to as the attenuation doctrine. In broad terms the doctrine provides that when the police and prosecution can show that the affected evidence was acquired under intervening circumstances that separate it from the constitutional right violation, the evidence may be admitted at trial.

The factual background for the case was a terrible abduction, rape, and robbery of a seventeen year old girl. She was attacked by a stranger. The details of the crime were not included in the court’s opinion because the case had been the result of an earlier appeal. However, according to the court’s brief discussion of the facts, the attack was the result of a drug rip. The court stated that the defendant admitted as much to his girlfriend: “At the second trial, the court admitted [the defendant’s former girlfriend,] D.B.’s testimony (read from the transcript of the first trial) that she saw Parker on the night of the incident, and he told her that ‘he hit a lick,’ which she described as ‘like a robbery.’ Parker told D.B. that ‘he got some girl for some weed,’ and used a knife to do it. D.B. testified that Parker was wearing a black jacket that night and washed it approximately three times between that night and the day he was arrested.” *Parker Slip Opinion, p.3*

The testimony from the girlfriend was the result of dedicated police work. The investigating detectives considered the defendant to be a suspect based on the victim’s account of the attack. They did not know where to find him, but they had a cell phone number. They obtained a pen register trap and trace and geolocate warrant for the phone. With the trap and trace they narrowed their search to an area but not to a specific location.

In order to contact the defendant, they used another technology to pinpoint his location. They did not seek a second warrant or an amendment of the trap and trace warrant. The pinpoint location was instead obtained from a “cell site simulator (CSS).” The device led the investigators to a particular residence. They detained the defendant and the girlfriend in a vehicle as they left the residence. The detention in turn led to a detective getting statements from the girlfriend about the defendant’s actions and admissions on the night of the attack.

The defendant was charged and tried for rape, kidnapping, and robbery. The procedural history that led to this appeal was lengthy and convoluted. It included a prior direct appeal and a prior personal restraint petition. Those proceedings led to the convictions from the first trial being overturned.

The case was remanded to the trial court for a new trial. The use of the CSS device came to light before the second trial. This meant that the attenuation issue was litigated in the trial court before the second trial. The re-trial judge ruled that the evidence need not be suppressed. That ruling was appealed but it was also impacted by an intervening separate Supreme Court decision on the same issue. [cf. State v. Mayfield, 192 Wn.2d 871 \(2019\)\(opens in a new tab\)](#). The appellate court therefore remanded the case back to the trial court for a further hearing on the attenuation doctrine considering the Supreme Court’s decision in *Mayfield*.

The court included a fairly detailed description of the testimony from the remand hearing. The testimony of the detectives included that the girlfriend D.B. was semi-cooperative to begin with but became more cooperative as the investigation continued. The girlfriend’s reasons for better cooperation included her suspicions that the defendant sexually assaulted her children. Also she began getting threatening phone calls from his family and friends. The court stated, “Detective Quilio characterized her contact with D.B. as ‘coming from [D.B.]. She was the one insisting and pursuing that contact from that initial meeting on the 6th of January through the forensic interview.’ ” *Parker Slip Opinion, p.6*

At the conclusion of the remand hearing, the trial court ruled (again) that the statements and testimony from the girlfriend met the requirements of the attenuation doctrine. “The trial court concluded that D.B.’s ‘own independent free will severed the causal chain between police use of the CSS prior to Parker’s arrest and the information she later provided to police of her own volition.’ The trial court denied Parker’s motion to suppress D.B.’s testimony.” *Parker Slip Opinion, pp. 6-7*

Analysis of the Court

The requirements of the attenuation doctrine are not easily met. The appellate courts of our state are not shy about enforcing federal and state constitutional violations through the exclusionary rule. Nevertheless, the doctrine was applied as an exception in this case. The evidence was held to have been properly admitted and the defendant’s conviction was affirmed.

The court began with review of the trial court's findings as compared to the testimony at the attenuation hearing. The court held that the trial court's findings were consistent with that testimony. That holding highlights the importance of suppression hearing testimony.

The finding from the trial court was that the girlfriend was a witness not only to the defendant's involvement in the rape and abduction case, but also to his involvement in a sexual assault against her own children. Thus, her contact with the detectives was related to two crimes, not just the one in which the CSS device was used.

The investigation of two crimes simultaneously supported the trial court's decision to apply the attenuation doctrine. But that circumstance was also supported by the detectives' testimony in which they carefully parsed which case they were investigating at what time. Furthermore, their reports from the two investigations confirmed the sequence in which the two cases were investigated.

The court stated, "The challenge to these findings focuses on whether the intervening discussions broached solely the topic of D.B.'s concerns for her daughter to the exclusion of the [rape case] against A.W. While Detective Quilio did not state in so many words that the intervening conversations never strayed from the one topic to the other, it is nevertheless a reasonable inference from Detective Quilio's statements that that was substantially the case." *Parker Slip Opinion*, p.10

After reviewing the remand hearing testimony, the court turned to the legal standards for the attenuation doctrine. The court stated that, "The attenuation doctrine operates as an exception to the exclusionary rule. Washington has long recognized that [the Washington Constitution] 'is more protective of individual privacy than the Fourth Amendment to the United States Constitution.' To come within Washington's attenuation doctrine, the State must prove 'that intervening circumstances gave rise to a superseding cause that genuinely severed the causal connection between official misconduct and the discovery of evidence.'" *Parker Slip Opinion*, p. 11

The court discussed the *Mayfield* case (which was the reason for the remand hearing). The court noted that in *Mayfield* the defendant was unlawfully detained but that he also freely and voluntarily consented to be searched. The illegal drugs for which he was prosecuted were found because of the search. The *Mayfield* court held that the defendant's consent was not enough to support the attenuation doctrine because, "giving consent to search during an unlawful seizure is 'very different from independently volunteering to be searched,' and Mayfield 'had no time to reflect on his options and was not free to leave.'" *Parker Slip Opinion*, p. 12

The court noted that the attenuation doctrine had been applied when the subject evidence was discovered "because of a new event" such as "an independent act of free will." *Parker Slip Opinion*, p.12. The court discussed several other prior cases involving witness testimony as fruit of the poisonous tree.

But it concluded that “the case law has distinguished evidence gained from a voluntary disclosure by the witness, including by the defendant, that is remote in impetus from police misconduct” *Parker Slip Opinion*, p. 16

The court applied the attenuation doctrine in this case because the detectives’ pursuit of the child abuse investigation was demonstrably separate from the rape investigation. It was separate in its investigative objective because it involved a separate victim. It was also separate in time because the girlfriend became cooperative over a period of time, and for reasons that had nothing to do with the illegal use of the CSS. Her cooperation was prompted by the victimization of her children and harassment and intimidation by the defendant’s family and friends. Under these circumstances the attenuation doctrine could be applied to salvage the evidence and testimony that were connected to an unlawful investigative procedure.

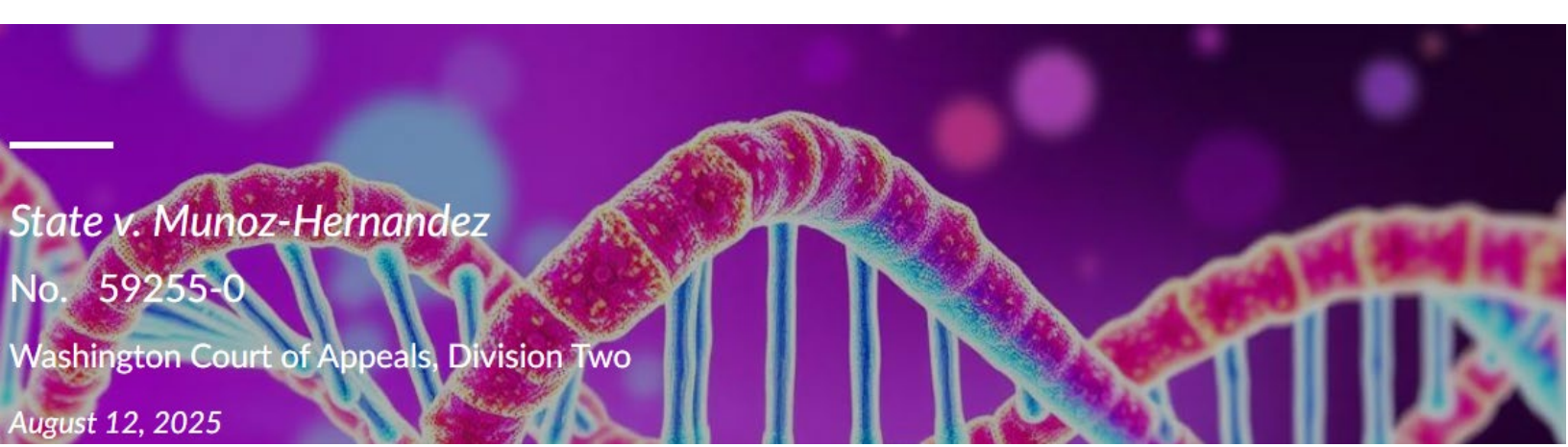
Training Takeaway

The court was complimentary of the detectives’ testimony at the remand hearing. The detectives’ parsing of the two investigations by time, target, and purpose, made it possible for the court to hold that the girlfriend’s testimony was adequately separated from the illegal stop and detention.

The direct takeaway from this case is thus the importance of individually documenting each investigation even when they overlap. Although the rape investigation and the sex abuse investigations were conducted at the same time, the remand hearing testimony allowed the courts to admit the evidence despite the undisclosed use of the CSS device.

There is also a secondary takeaway. The non-disclosure of the CSS device and the failure to get a supplemental warrant provided the defendant with an issue that could have led to suppression of the girlfriend’s testimony. This case, like so many involving search and seizure, highlights the importance of always keeping in mind a primary search and seizure legal standard: exceptions to the warrant requirement are jealously guarded by the courts and warrants should be the default means of pursuing an investigation.

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



State v. Munoz-Hernandez

No. 59255-0

Washington Court of Appeals, Division Two

August 12, 2025

State v. Munoz-Hernandez, No. 59255-0, WA Court of Appeals, Division Two (Aug 12, 2025)

Factual Background

The consequences of a statute like the possession of controlled substance (UPCS) statute being held unconstitutional are far reaching. The *Blake* decision is and will be a fertile source of issues in criminal cases for some time to come. Fortunately, the collateral consequences of the decision have been limited and this case is another example of the limits of *Blake*-related legal challenges.

The case was a cold case, first degree rape. It went unsolved from 2006 until 2023. In 2023, Chehalis sex offense investigators were provided a match between the defendant's DNA sample and the rape. The match was discovered by the Washington State Patrol (WSP) crime lab in its monitoring of the Combined DNA Index System, which is commonly referred to as CODIS.

The defendant's DNA profile was included in the CODIS database as a result of a 2018 conviction for UPCS. In 2018 when the conviction was entered, the UPCS statute was in effect and had not been held to be unconstitutional. Therefore, the collateral consequence that the defendant had to provide a DNA sample, was in full force and effect. That remained the case until 2021.

In 2021, three years after the conviction was entered, the UPCS statute was declared unconstitutional in *Blake*. As a result of *Blake*, the prosecutors obtained an order vacating and dismissing the UPCS conviction and directing the WSP criminal history section to "immediately update their records to reflect vacation of the charge(s)...." *Munoz-Hernandez Slip Opinion*, pp. 2-3

The order vacating and dismissing the UPCS conviction did not direct that the defendant's DNA profile be expunged from the CODIS database. Thus, in 2023 the profile was in the system. It provided powerful evidence of his commission of the 2006 rape. Moreover, after the defendant was charged, the prosecution obtained an updated sample via a court order, and that sample was also a match to the 2006 rape.

The defendant was charged with the rape. He brought a motion to suppress the DNA evidence. His claim referenced his right of privacy under both the Federal Fourth Amendment and under Washington's constitutional privacy provision, article 1, §7. In his motion in the trial court, and

on appeal, he argued that the *Blake* decision rendered the collection and matching of his DNA sample an unlawful invasion of his privacy rights.

Analysis of the Court

The court analyzed three separate legal bases offered by the defendant in support of his privacy intrusion claim. The first was based on article 1, §7, which states simply, “No person shall be disturbed in his private affairs, or his home invaded, without authority of law.” *Munoz-Hernandez Slip Opinion*, p. 5. Alleged violations of that provision are analyzed using a two-part test.

The first part of the two-part test is directed at whether the governmental action in fact constitutes an invasion of the defendant’s private affairs. In that regard, the court noted that, “Arrestees, prisoners, and convicted felons enjoy lesser privacy rights than that of an ordinary, law-abiding individual.” *Munoz-Hernandez Slip Opinion*, p. 6. And the court also noted that, “This applies to the collection of DNA samples from convicted felons under [RCW 43.43.754](#)(opens in a new tab).” *Id.*

The court then also described the legal standards that apply to the second part of the test. The second part addresses whether the government action was taken under authority of law. “Next, *if* a valid privacy interest has been disturbed, courts determine whether the ‘authority of law’ justifies the disturbance... For instance, this may be in the form of a valid warrant.” *Munoz-Hernandez Slip Opinion*, p. 7

The court’s application of the two part test to the defendant’s challenge rejected the defendant’s claims under both parts of the test. The court first pointed out that there was no violation of any right in the 2018 collection of the defendant’s DNA profile. That was accomplished pursuant to a statute which authorized and required the collection of DNA samples. [See RCW 43.43.754](#)(opens in a new tab). The court quoted the applicable section of the statute which provides that a DNA profile “*is not invalidated if it is determined that the sample was obtained or placed in the database by mistake, or if the conviction . . . that resulted in the collection of the biological sample was subsequently vacated or otherwise altered in any future proceeding*” *Munoz-Hernandez Slip Opinion*, p. 10 (the italics are the court’s).

In light of the specific provision in RCW 43.43.754 dealing with a vacated conviction, the court held that the statute provided the necessary authority of law required by the constitution. It then went on to reject several other alternative arguments.

One such argument was whether the *Blake* decision and the vacation of the defendant’s UPCS conviction invalidated the authority of law. The court noted that a recent Supreme Court decision had held otherwise. “However, ‘the effect of a determination of constitutionality must be taken with qualifications.

The actual existence of a statute, prior to such a determination, is an operative fact and may have consequences which cannot justly be ignored. The past cannot always be erased by a new judicial declaration.’ ” *Munoz-Hernandez Slip Opinion*, p.11

Since UPCS was a valid crime in 2018 when the defendant was convicted, the collateral consequence of DNA collection was also valid. The court held that the DNA collection statute was not invalidated by *Blake* or any other decision of the Supreme Court and thus was a legal authority for including the defendant’s DNA profile in CODIS.

The defendant’s last argument was based on due process. He claimed that the state should have provided him notice that his conviction was vacated and dismissed. If he had notice, he claimed he could have taken legal action to remove his profile from CODIS.

The court rejected the due process challenge. The court weighed the arguments for and against the challenge and held, “Munoz-Hernandez generally has a right to privacy in his DNA profile. But between the low risk of erroneous deprivation, the State’s limited use of DNA data, and the State’s overall interest in its database, we hold that the State did not violate procedural due process by not locating and notifying Munoz-Hernandez of his vacated conviction or that he had a right to expunge his DNA profile, or by not immediately expunging his DNA profile from the database.” *Munoz-Hernandez Slip Opinion*, p. 17

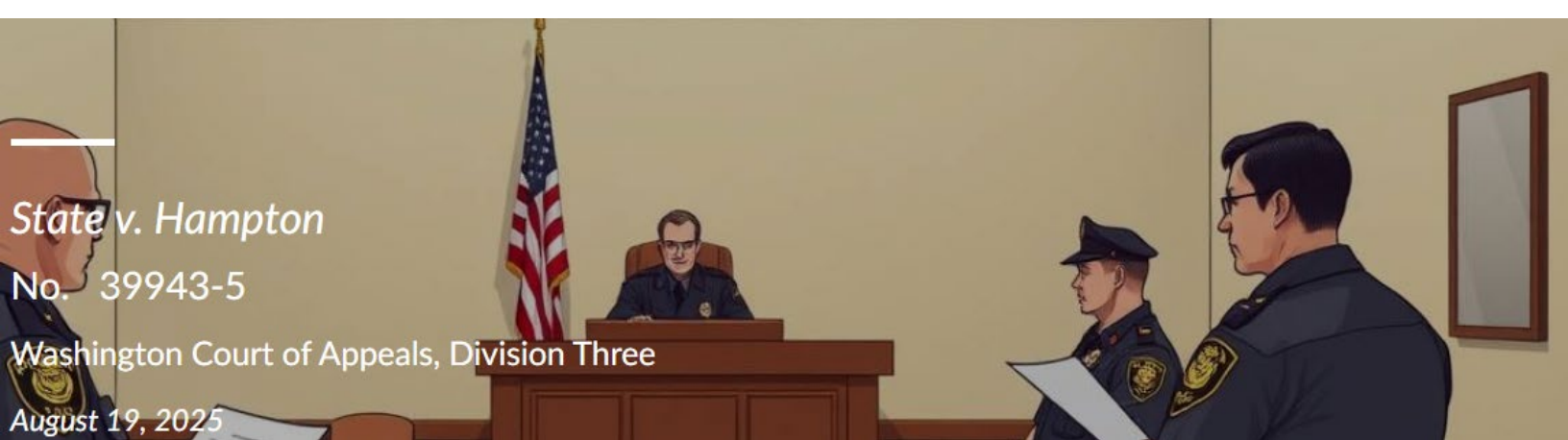
The court also reviewed a challenge to the competency of the defendant’s lawyer. The gist of that challenge was that his lawyer did not make the correct legal arguments and thus was constitutionally deficient. Because the court held that the defendant’s substantive challenges were not valid, it also ruled that his lawyer was not ineffective. Interested officers may review the details of that analysis in the slip opinion.

Training Takeaway

Although there are no guarantees for the future, for now, the CODIS database appears to be lawfully available to solve cold cases such as this, even where a CODIS sample is the result of a UPCS conviction. However, prudence suggests that cases built on a DNA profile from a UPCS conviction should be carefully examined to see if viable investigation alternatives might exist. There is, after all, the Supreme Court to be taken into account.

It is notable that an alternative avenue for investigation was pursued in this case, although it did not factor in the court’s decision. The prosecution obtained a court order for a new DNA sample after the defendant was charged. That sample, as well as the 2018 CODIS sample, was identified as belonging to the defendant. That fact highlights that investigations can and should continue, even when powerful evidence, such as a DNA match, is already in hand. In a close case, or a case where evidence may be suppressed, it is good practice to pursue every avenue of investigation, even if it may seem redundant at first glance.

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



State v. Hampton, No. 39943-5, Washington Court of Appeals, Division Three (Aug 19, 2025)

Factual Background

Search warrants should be the default means of investigation according to both the Fourth Amendment and the Washington Constitution. However, they are not failsafe. **This case is about overbreadth in a warrant.** Unfortunately, the defendant's rape convictions were overturned after the court found fault with the warrant.

The case began in December 2019 as a stolen vehicle and stolen property trafficking investigation. The initial lead was from an informant's tip. The first tip led the detectives to a second cooperative tipster. The second tipster implicated the defendant in a stolen vehicle trafficking enterprise. After getting the information from the second tipster, the detectives went to the defendant's residence for further investigation.

The investigation included an interview of the defendant. The detectives confronted him about a stolen pickup truck on site. The defendant claimed it had been a purchase and produced a bill of sale to substantiate that claim. The defendant couldn't leave well enough alone and asked the detectives to check whether a motorcycle was stolen. It was. The detectives also ran across a third stolen vehicle which induced the defendant to give permission to do a records check on *all* of the vehicles on his property.

Two more stolen vehicles were identified from the records checks. This led the detectives to seek a warrant for evidence of possession of stolen property and trafficking in stolen property. The original warrant was supplemented with a second warrant when, during the original search, officers saw controlled substances and paraphernalia.

The search under the two warrants turned up a briefcase. The searchers opened the briefcase and saw that it contained paperwork, a notary stamp, and electronic storage devices. This discovery led to the application for a third search warrant. This warrant application included a request to search the electronic storage devices.

It was in the storage devices that the detectives found evidence of a rape. The evidence consisted of images of the defendant raping an unconscious woman. The woman was a former girlfriend of the defendant, who when contacted about the images, stated that they were non-consensual and made while she was unconscious. The properties data associated with the

images indicated that they were made and last accessed more than six years before the stolen property incident.

The defendant was charged with multiple counts of second-degree rape and one count of voyeurism. He brought a suppression motion challenging the search warrants and the manner in which they were executed. His contention was that the search warrants were overbroad, that they lacked particularity, and that they allowed searches for evidence of crimes for which there was no probable cause.

The trial court denied the suppression motion. It did not find that the warrants were overbroad, nor that the detectives had exceeded the scope of the warrants by accessing the rape images. After the suppression motion the case proceeded to trial. The defendant was convicted and appealed the rulings from the suppression motion.

Analysis of the Court

The Court of Appeals began with the validity of the search warrants. It referenced and quoted both the Fourth Amendment and the Washington Constitution's privacy provision, article 1, §7. From there it referenced legal standards derived from both constitutional provisions.

The legal standards that apply to overly broad search warrants are intended to protect important individual rights. They are collected under the broad heading of specificity. "Specificity consists of two components: particularity and breadth... Particularity demands that the warrant clearly state what is sought... Breadth requires the scope of the warrant be limited by the probable cause on which the warrant is based." *Hampton Slip Opinion, pp. 13-14*

The court noted the specificity requirements are there to protect individual privacy. "The particularity requirement provides important protection against governmental invasion of privacy because the demand renders general searches impossible and prevents the seizure of one thing under a warrant describing another." *Hampton Slip Opinion, p. 13*. The court also noted that, "The particularity requirement also ensures judicial oversight of the scope of a law enforcement search such that the executing officer lacks unlimited discretion when executing the warrant... The warrant must be based on probable cause of criminal activity and must limit the scope of the search to the probable cause determination." *Id.*

With the specificity legal standards in mind, the court reviewed the warrant and the manner in which it was executed. The warrant began with the crimes for which there was probable cause. The crimes were possession and trafficking in stolen property and drugs. The crimes did not include rape or voyeurism or any other sex offense. This was the first defect in the warrant when it came to the images of rape saved on the storage devices.

There were other defects. The next defect reviewed by the court was from the command of the search in the warrant. “The warrant first commanded law enforcement to search: All contents of the briefcase to include flash drives, vehicle titles, paperwork, stamps, and all contents that show possession of and trafficking in stolen property.” *Hamilton Slip Opinion*, p. 17. The court pointed out that the use of the word “and” converted the search command into an unlimited search of “all contents of the briefcase” without limitation. This meant that the limitation after the word “and” was insufficient to limit the search to the crimes of “possession of and trafficking in stolen property.”

The broad scope of the search command in the warrant was supported by another paragraph in the warrant. The warrant directed that the officers seize from the briefcase, “Any data that may be kept on any of the seized digital devices in any format to include but not limited to intact files, deleted files, deleted file fragments or remnants related to the purchase, possession, receipt and distribution of controlled substances and or stolen property.” This provision also indicated that the search was not limited by the property crimes that were under investigation.

The last defect concerned the date of the files contained on the storage devices. The images were from six years or more before the stolen property investigation. The court stated, “We recognize that one scanning an electronic storage device generally first sees an index of files stored on the device. The list of files will disclose the date the user opened the file or the last date of modification of the file. Sometimes the index describes the file.” *Hamilton Slip Opinion*, p.16. With this understanding of computer metadata in mind, the court summarized the problem with the date of the listed crimes versus the date of the sexual assault images: the images were remote in time from the crimes for which probable cause was found.

The court concluded its review of the case by determining that the state could not re-try the defendant without the images. Accordingly, suppression of the evidence led to the convictions being reversed and dismissed.

Training Takeaway

The primary takeaway from this case is the need for officers to carefully consider the scope of the warrant. This is especially true when they come across evidence of other crimes or contraband during a search. The court found no fault in the officers obtaining the third warrant for drugs when they came across drugs during the lawful search of the defendant’s residence. But that deference did not extend to the finding of sexual assault images on the storage devices from the briefcase that were remote in time compared to the crimes that were being investigated.

It is speculation to consider what law enforcement could have done differently. For one thing, the court’s understanding of how the data on a storage device may be accessed may not be the last word. Computer forensic review of storage devices, cell phones, and similar devices is more sophisticated than the description provided by the court that was derived from the

testimony at the suppression motion. It is possible that a computer forensics technician might have been able to lawfully note the presence of the images and then apply for a fourth warrant that could have supported the seizure.

And finally, because data storage devices are all but permanent repositories for digital evidence, there should be no reason to hurry an investigation. Consultation with prosecutors or other agencies as to options for completing the investigation involving unexpected evidence or digital contraband should always be considered.

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

precinct. This was at approximately 7:17 pm. Less than half an hour later, by 7:43 pm, the protesters and rioters had formed a skirmish line and were advancing on the police line in defiance of multiple orders to stand down and disperse. This was happening under a declaration of a civil emergency by the mayor.

By midnight, the protesters and rioters were gaining the upper hand. The court noted that their tactics included dismantling the protective fencing and using it as weapons, threatening to “burn down the precincts,” and actually “shining lasers into SPD officers’ eyes.” *Cheairs Slip Opinion*, p. 8. “Some protesters were holding plywood shields with ‘nails in them concealed by paint,’ and, at about the same time, the video record shows protesters throwing bottles, rocks, and fireworks at the police line.” *Id.*

Until just after midnight, the police were not authorized to use less lethal munitions. The authorization for less lethal munitions came at approximately 12:04 am. But at that time, the ratcheting up of the police use of force was ineffectual. The court stated, “After SPD began deploying less lethal munitions, the video record and witness statements show that the crowd alternated between retreating in response to tear gas and blast balls, and moving forward to reengage with the police line. At 12:05 a.m., the record shows that the police had created space between the protesters and the police line, but by 12:11 a.m., the Operations Center log indicates the crowd was surrounding the officers on three sides.” *Cheairs Slip Opinion*, p. 8.

The civil rights plaintiff was not a protester or rioter. He was said to have been at dinner on Capitol Hill and decided to “see and film what was happening at the front.” *Cheairs Slip Opinion*, p. 9. He went to the precinct and was positioned on a sidewalk by 12:14 am. This would have been in violation of the disperse orders. An officer threw several blast balls and one of them bounced and injured the plaintiff’s groin when it went off. The court described blast balls as follows: “The purpose of the Rubber Ball Blast grenade is to minimize the risks to all parties through temporary distraction or disorientation of potentially violent or dangerous subjects... The manufacturer further explains that the device is designed and intended to serve as an ‘irritant, distraction and/or disorientation device for crowd management.’ ” *Cheairs Slip Opinion*, p.15. It was intended to be thrown by hand, not fired as a projectile, and it was recommended to usually be thrown underhand like a bowling ball.

The plaintiff filed suit in federal court claiming First and Fourth Amendment violations by the department and its officers. The defending department and officers filed a summary judgment motion in which they asserted that there could be no Fourth Amendment violation because the plaintiff was not being seized, and there was no evidence that he was retaliated against for exercising a First Amendment right. The trial court granted the motion, which led to this appeal.

Analysis of the Court

The court began its analysis with the issue that caused the trial court to grant the summary judgment. That was whether the plaintiff was “seized” within the meaning of the Fourth Amendment. For purposes of use of force cases, a person is seized “when the officer by means of physical force or show of authority terminates or restrains his freedom of movement through means intentionally applied,” and being seized “requires the use of force with intent to restrain.” *Cheairs Slip Opinion*, p. 12

The court considered the Seattle incident in light of another George Floyd protest case from California. [See *Sanderlin v. Dwyer*, 116 F.4th 905\(9th Cir. 2024\)\(opens in a new tab\)](#). The *Sanderlin* case involved the use of a different less lethal munition, a 40 mm foam baton. It was significant that the foam baton was intended to incapacitate whereas the blast ball was not: “[W]e concluded that firing a foam baton round at the plaintiff’s groin constituted a seizure because the record showed that the 40 mm foam baton launcher used in that case was ‘chiefly designed, intended, and used for the purpose of incapacitating its target.’ ” *Cheairs Slip Opinion*, p. 14

The court contrasted the foam baton with a blast ball. The blast ball was not fired at high velocity and not intended to incapacitate. This supported the court’s analysis that the throwing of the blast ball may have been intended to disperse rather than restrain or incapacitate the plaintiff.

The analysis was further supported by how the blast ball was deployed by the officer. The evidence showed that it was thrown into the no man’s land between the police line and the protester/rioter line. This meant it was even less likely to incapacitate. The foam baton by contrast was fired at the protester and did incapacitate by hitting him in the groin.

After contrasting the foam baton from *Sanderlin* with the blast ball from this case, the court still held against the police defendants. It held that the issue of seizure was a question that should have been left for trial because, “a reasonable jury could also reach the contrary conclusion because the blast ball that injured Cheairs is capable of inflicting very serious injury—if not by design, then if used in the way we have described. Thrown overhead, as it was here, a blast ball presents a greater risk of injury if it detonates at head level, and Officer Anderson threw the device in the direction of the crowd.” *Cheairs Slip Opinion*, p. 18

The court next considered whether the use of force was unreasonable, which is also required for a civil rights, use of force claim. Reasonableness requires the courts to “balance the nature and quality of the intrusion on the individual’s Fourth Amendment interests against the importance of the governmental interests alleged to justify the intrusion ... to determine whether the government’s use of force was excessive.” *Cheairs Slip Opinion*, p. 19

On the reasonableness issue the police defendants did better. The court held that the use of force was reasonable. The court explained: “On the record before us, we conclude that it was reasonable for the police to perceive that the protesters at the front of the crowd, near whom

Cheairs stood, objectively posed an immediate threat to the safety of officers, citizens, and property. Therefore, having considered the totality of the circumstances, we conclude that the force Officer Anderson employed was not excessive.” *Cheairs Slip Opinion*, p. 22

Having resolved the Fourth Amendment claim in favor of the police defendants, the court next considered the First Amendment claim. That claim was that the use of force unlawfully interfered with the plaintiff’s exercise of a First Amendment right. The legal standard applied by the court is the following: “To establish a First Amendment retaliation claim, Cheairs must show that: (1) he was ‘engaged in a constitutionally protected activity;’ (2) the SPD officer’s actions ‘would chill a person of ordinary firmness from continuing to engage in the protected activity;’ and (3) ‘the protected activity was a substantial or motivating factor.’ ” *Cheairs Slip Opinion*, p. 25-26

The part of the legal standard that caused the court to hold against the plaintiff and in favor of the police defendants was the substantial or motivating factor element. “Cheairs fails to present a triable issue with respect to the third element of his retaliation claim. Cheairs testified in his deposition that he had no reason to believe that Officer Anderson intended to hit him with a blast ball as he stood filming the protest. And in response to the summary judgment motion, he offered no evidence that Officer Anderson was aware that Cheairs was filming the protest, much less that Officer Anderson sought to retaliate against him for exercising his First Amendment rights.” *Cheairs Slip Opinion*, p. 26

Training Takeaway

It is important for officers and their departments to carefully consider use of force policies during protest and riot incidents. Department training and legal advisors should be consulted concerning the blast ball at issue in this case, and similar less than lethal crowd control measures.

This case carries its own cautionary message in that regard. After this incident, in the days during which the East Precinct was occupied and several people were murdered there, a federal judge issued a temporary restraining order which “enjoined SPD ‘from employing chemical irritants or projectiles of any kind against persons peacefully engaging in protests or demonstrations.” *Cheairs Slip Opinion*, p. 22.

The most direct takeaway from this case is the holding concerning the reasonableness of the use of force. The court engaged in considerable discussion of the first issue related to Fourth Amendment seizure, but it upheld the summary judgement ruling on the basis of the reasonableness of the use of force. That holding is confined to the specific facts and circumstances in this case and does not constitute an endorsement generally on the use of the blast ball device. Plus, as always, the state law claims that may attend this particular use of force lawsuit are not addressed by the Ninth Circuit’s decision.

A secondary takeaway is the resolution of the First Amendment claim. For an officer or department to be liable for a retaliation claim, there must be evidence that a viable First Amendment right was a substantial or motivating factor in the use of force.

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

United States v. Hunt, No. 23-2342, Ninth Circuit Court of Appeals, (August 27, 2025)

Factual Background

This case considers the federal abandonment doctrine in light of a cell phone dropped and left behind by a drug dealer. It should be noted that Washington has a similar doctrine. Interested officers may get background information about the Washington version of the doctrine from the Washington Association of Prosecuting Attorneys search and seizure manual. [See *Confessions, Search, Seizure, and Arrest: A Guide for Police and Prosecutors*, §IV. A. 1.](#)[\(opens in a new tab\)](#)

This case began with a shooting. The defendant was shot by an unknown gunman as he and a girlfriend were walking through an apartment parking lot. The defendant fled and was taken to a hospital for medical treatment by the girlfriend and a friend of hers. During the shooting or shortly afterward, the defendant dropped a black cell phone and left it behind.

The police investigated. They processed the scene and recovered the black cell phone. They also contacted the defendant at the hospital for a statement. The defendant declined to cooperate. However, the detectives seized a white cell phone that he had with him at the hospital along with other personal belongings. They gave the uncooperative shooting victim a receipt for the seized evidence.

The black cell phone remained in police custody as evidence for a number of years. No one asked for it. The phone became important subsequently during an overdose death investigation. The police used a geolocation warrant to find the black cell phone after a suspect gave them the phone number for the phone and stated that it belonged to the drug dealer related to the overdose death.

The overdose death investigation led to several warrants being issued for various locations related to the death. In one of the locations, the police encountered the defendant and, to no one's surprise, drug distribution evidence. They also searched the black cell phone and recovered additional drug distribution evidence.

The defendant was indicted on federal drug charges. During the pretrial proceedings in federal court, he brought a suppression motion that included evidence recovered from the black cell phone. The trial judge ruled that the defendant had abandoned the black cell phone and therefore did not have standing to challenge the recovery of evidence from it. That decision was reviewed by the Ninth Circuit as part of the defendant's appeal of his drug distribution convictions.

Analysis of the Court

The court reviewed several issues in addition to the abandonment issue. Those can be reviewed by any interested officers in the slip opinion. As to the abandonment issue, the Ninth Circuit reversed the trial court's ruling as to abandonment but upheld it as to the lawfulness of the search of the cell phone.

For abandonment to apply there must be a showing that there was a voluntary abandonment of the subject property. "The abandonment doctrine holds that a person forfeits a reasonable expectation of privacy by voluntarily abandoning property." *Hunt Slip Opinion*, p. 14. The court lost no time in holding that the trial court erred by concluding that the defendant had voluntarily abandoned the black cell phone. He had dropped it while being shot and fled the scene of the shooting in considerable pain, leaving the phone behind. Therefore, there was good reason to believe he did not voluntarily abandon the cell phone.

The abandonment doctrine did not apply but that did not mean the eventual search of the phone under a search warrant was unlawful. The primary issue with the search warrant was whether the delay of years until it became important in the death investigation caused the search to be unlawful. The court stated, "To remain reasonable, a seizure must last 'no longer than reasonably necessary for the police, acting with diligence, to obtain the warrant' to search the property." *Hunt Slip Opinion*, p.18. The court then stated that the privacy interests of the defendant were to be balanced against the importance of the governmental interests alleged to justify the intrusion.

The balancing came out in the prosecution's favor. The court deemed the defendant's interest in the phone to have been minimal as is evidenced by his never having asked for it to be returned. Furthermore, the police had good reason to seize the phone in the first place as part of the shooting investigation. And holding the phone for safekeeping when there was no way to identify the owner without intruding into the data on the phone was reasonable. "[The p]olice had a legitimate law enforcement reason to retain the iPhone after its initial collection simply because it represented lost property with no identified owner to whom the police could return it. Multiple state supreme court cases note that the police often retain lost or mislaid property in secure locations until the authorities can identify the owner."

Training Takeaway

The abandonment doctrine requires evidence of an intent to voluntarily give up all claims to the property. In the case of a modern cell phone, officers should consider that there should be evidence of an intent to also give up all claims voluntarily to the data on the cell phone. Where the circumstances are suggestive of an unintentional losing of the phone or of a temporary loss of possession, the abandonment doctrine is unlikely to be applied.

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

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Cases & References

State v. Thompson, No. 103338-9, Washington Supreme Court (August 28, 2025)

- [Thompson Slip Opinion](#)

State v. Parker, No. 88034-9, Washington Court of Appeals, Division One (August 11, 2025)

- [Parker Slip Opinion](#)
- [cf. State v. Mayfield, 192 Wn.2d 871 \(2019\)](#)

State v. Munoz-Hernandez, No. 59255-0, Washington Court of Appeals, Division Two (August 12, 2025)

- [Munoz-Hernandez Slip Opinion](#)
- [RCW 43.43.754](#)

State v. Hampton, No. 39943-5, Washington Court of Appeals, Division Three (August 19, 2025)

- [Hampton Slip Opinion](#)

Cheairs v. City of Seattle, No. 24-3164, Ninth Circuit Court of Appeals (August 1, 2025)

- [Cheairs Slip Opinion](#)
- [Sanderlin v. Dwyer, 116 F.4th 905\(9th Cir. 2024\)](#)

United States v. Hunt, No. 23-2342, Ninth Circuit Court of Appeals, (August 27, 2025)

- [Hunt Slip Opinion](#)
- [Confessions, Search, Seizure, and Arrest: A Guide for Police and Prosecutors, §IV. A. 1.](#)

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

Case Review

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

WA Legal Updates

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

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