

## May 2020 LAW ENFORCEMENT DIGEST



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The materials contained in this course are for training purposes. All officers should consult their department legal advisor for guidance and policy as it relates to their particular agency.

### ***CONTENT SUMMARY***

## COURSE INFORMATION

This course covers select court rulings issued by the three divisions of the Washington Courts of Appeal, the Washington State Supreme Court, the federal Ninth Circuit Court of Appeals, and the United States Supreme Court.

The cases are briefly summarized, with emphasis placed on how the rulings may affect Washington law enforcement officers or influence future investigations and charges.

Covering Cases Published in May 2020

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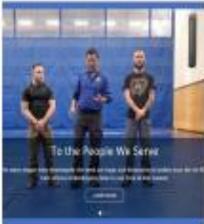
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## **CASE MENU**



# **LAW ENFORCEMENT DIGEST**

## **MAY 2020 TOPIC INDEX**

				
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<b>THEFT OF A MOTOR VEHICLE; MOTOR VEHICLE DEFINED</b>	<b>SEARCH &amp; SEIZURE; LICENSE PLATE DATABASE; SEARCH WARRANT</b>	<b>POSSESSION OF A STOLEN VEHICLE; KNOWLEDGE</b>	<b>CODE ENFORCEMENT; SEARCH AND SEIZURE; ADMINISTRATIVE SEARCH</b>	<b>DEFENSIVE TACTICS TRAINING VIDEO</b>

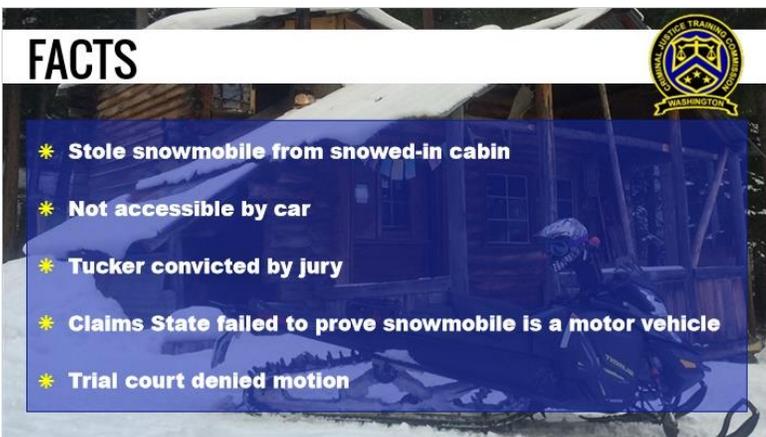
## 2. STATE V. TUCKER

### 2.1 THEFT OF A MOTOR VEHICLE; MOTOR VEHICLE DEFINED



State versus J.K.T.; Court of Appeals, Division 1

Tucker and her co-defendant were convicted of Theft of a Motor Vehicle for their roles in stealing a snowmobile from a cabin that was inaccessible by car due to snow. Tucker was convicted in a jury trial (her co-defendant's case was resolved prior to trial). She argued that the conviction was in error because the State had failed to prove that a snowmobile was a motor vehicle. The trial court judge denied the motion, finding that a snowmobile is a vehicle, and unlike a lawn mower, must be licensed.



**FACTS**

- \* Stole snowmobile from snowed-in cabin
- \* Not accessible by car
- \* Tucker convicted by jury
- \* Claims State failed to prove snowmobile is a motor vehicle
- \* Trial court denied motion

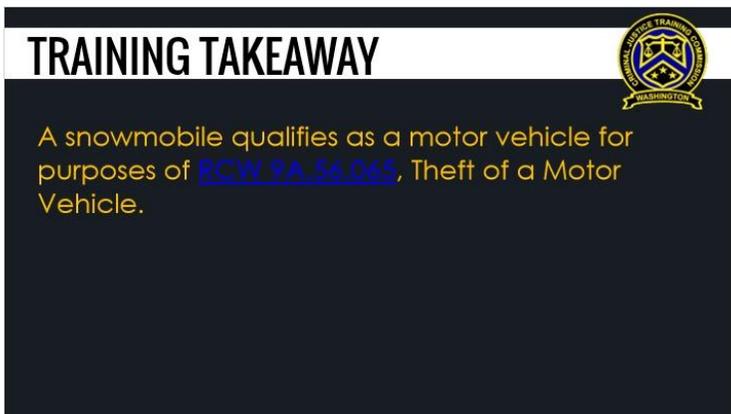
- Stole snowmobile from snowed-in cabin
- Not accessible by car
- Tucker convicted by jury
- Claims State failed to prove snowmobile is a motor vehicle
- Trial court denied motion

Tucker appealed her conviction to the Court of Appeals, who reversed. The Court of Appeals disagreed with the trial court judge's ruling that a snowmobile was sufficiently different from a riding lawn mower. Citing the Washington State Supreme Court's split 2017 decision in State v. Barnes, which held that a riding lawn mower was not a motor vehicle for purposes of the Theft of a Motor Vehicle statute, the Court of Appeals reversed Tucker's conviction of TMV for stealing a snowmobile.

The issue of whether a snowmobile is a motor vehicle for purposes of the Theft of a Motor Vehicle statute is now before the WA Supreme Court for review.

- Appealed to Court of Appeals
- Court of Appeals held snowmobile same as a riding lawn mower
- Court of Appeals reversed conviction
- Issue of whether snowmobile is a motor vehicle for purposes of Theft of a Motor Vehicle statute now before WA Supreme Court

## 2.4 TRAINING TAKEAWAY



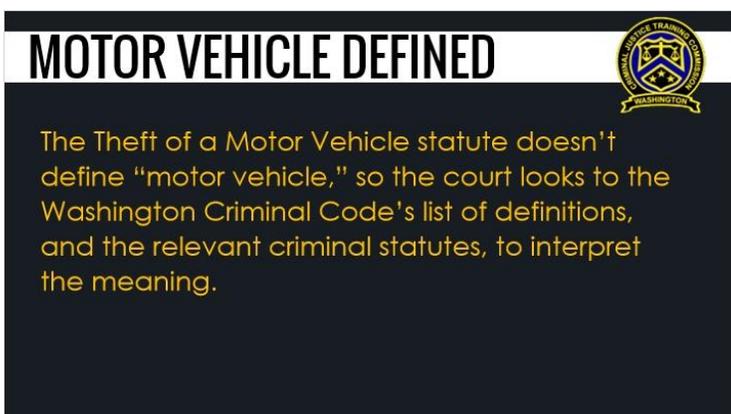
**TRAINING TAKEAWAY**

A snowmobile qualifies as a motor vehicle for purposes of [RCW 9A.56.065](#), Theft of a Motor Vehicle.



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## 2.5 MOTOR VEHICLE DEFINED



**MOTOR VEHICLE DEFINED**

The Theft of a Motor Vehicle statute doesn't define "motor vehicle," so the court looks to the Washington Criminal Code's list of definitions, and the relevant criminal statutes, to interpret the meaning.



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## 2.6 MOTOR VEHICLE DEFINED

**MOTOR VEHICLE DEFINED** 

The Code defines "vehicle" as "'a motor vehicle' as defined in the vehicle and traffic laws, any aircraft, or any vessel equipped for propulsion by mechanical means or by sail."

The traffic laws define whether something is a "motor vehicle" according to its (1) mechanics, RCW 46.04.320, and (2) function, RCW 46.04.670.

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## 2.7 MOTOR VEHICLE DEFINED

**MOTOR VEHICLE DEFINED** 

**Mechanics:**  
"A vehicle that is self-propelled or a vehicle that is propelled by electric power obtained from overhead trolley wires but not operated upon by rails."

**Function:**  
"A device capable of being moved upon a public highway and in, upon, or by which any person or property is or may be transported or drawn upon a public highway." RCW 46.04.670

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## 2.8 MOTOR VEHICLE DEFINED

**MOTOR VEHICLE DEFINED**



To determine whether a device is a “motor vehicle” as required by the Theft of a Motor Vehicle statute, the court must ask whether it is: (1) self-propelled and (2) capable of moving and transporting people or property, (3) on a public highway.

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## 2.9 SNOWMOBILES

**SNOWMOBILES**



Under the two-part test of mechanics and function, a snowmobile is a motor vehicle because it is clearly self-propelled (a common sense observation and as stated in the actual language of [RCW 46.04.546](#) ), and is obviously capable of transporting people and/or property.

The only remaining question is whether it is capable of doing so on a public highway.

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The only remaining question is whether it is capable of doing so on a public highway.

## 2.10 SNOWMOBILES

### SNOWMOBILES



**The Snowmobile Act, [RCW 46.10.470](#), specifically sets out the circumstances that permit people to operate a snowmobile on a public roadway or highway:**

- Roadway or highway entirely covered by snow or ice and closed by government to motor vehicles for winter months;
- Government gives notice that roadway is open to snowmobiles or ATV use;
- During an emergency when snow causes a roadway or highway to be impassible by car; or
- When traveling along a designated snowmobile trail.

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## 2.11 SNOWMOBILES

### RIDING LAWN MOWERS AND GOLF CARTS



**Snowmobiles are different than riding lawn mowers and golf carts.**

**Riding lawn mowers**, considered in [State v. Barnes](#), are not primarily used for the purpose of transporting people on public highways - their primary purpose is to mow grass.

**Golf carts** are distinguishable because, unlike snowmobiles, the statutes defining motor vehicle specifically EXEMPT golf carts from being considered motor vehicles.

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## 3. US V. YANG

### 3.1 SEARCH AND SEIZURE; LICENSE PLATE DATABASE; WARRANT



State versus J.K.T.; Court of Appeals, Division 1

### 3.2 FACTS

In April 2016, the defendant was observed on surveillance cameras driving a rented GMC Yukon and stealing mail out of mail collection boxes at the Summerlin Post Office in Las Vegas. The Postal Inspector contacted the car rental agency and was informed that the rental car was 6 days overdue. The rental agency had attempted to repossess the Yukon by activating its GPS and remotely disabling the vehicle. They were unsuccessful because the GPS unit had apparently been disabled by a third party and was no longer functioning.

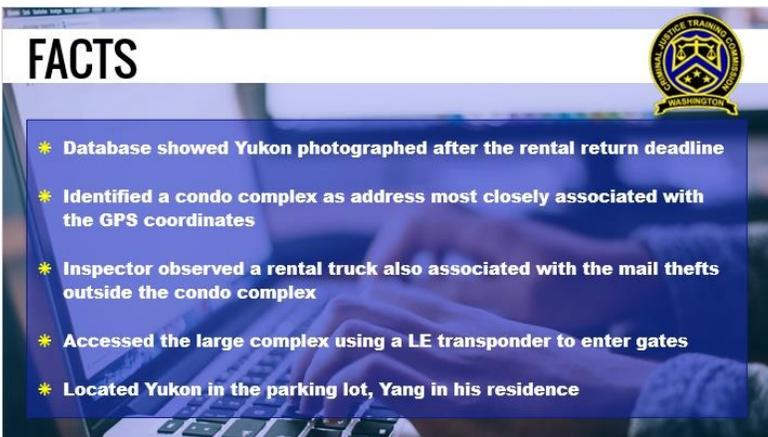
In an attempt to locate the vehicle, the Postal Inspector submitted a query to the largest license plate location database in the country, operated by a private company called Vigilant Solutions. This was done without a search warrant.



- Surveillance cameras captured rental car involved in mail theft
- Rented to Yang, Yukon was 6 days overdue
- Rental agency attempted to repossess using GPS and remotely disabling GPS unit had apparently been disabled
- Postal inspector used license plate location database to query the Yukon's plate to determine the vehicle's location

The database revealed that the Yukon had been photographed after the deadline to return it to the rental company, and identified a condo complex as the address most closely associated with the GPS coordinates captured at the time the photo of the Yukon's plate was taken. The inspector observed a Budget rental truck associated with the mail thefts outside the condo complex. He accessed the sprawling, gated condo complex with his law enforcement transponder, located the Yukon in the parking lot, and Mr. Yang at his residence. The inspector later testified that he would not have been able to locate the Yukon in the parking lot without accessing the private, gated area of the complex.

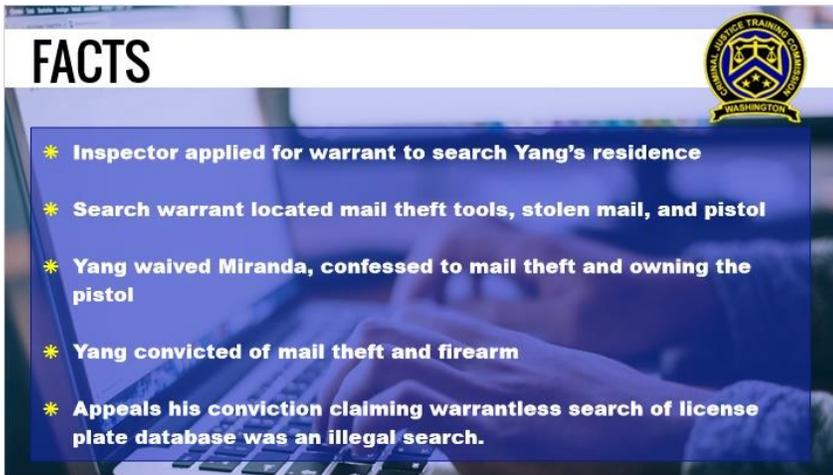
### 3.4 FACTS



- Database showed Yukon photographed after the rental return deadline
- Identified a condo complex as address most closely associated with the GPS coordinates
- Inspector observed a rental truck also associated with the mail thefts outside the condo complex
- Accessed the large complex using a LE transponder to enter gates
- Located Yukon in the parking lot, Yang in his residence

After further investigation and surveillance, the Inspector obtained a warrant to search Yang's residence where he found devices known to be used to steal mail out of mailboxes, numerous pieces of stolen mail, and a pistol. After waiving his Miranda rights, Yang confessed to stealing the mail and owning the firearm.

Yang challenges his conviction claiming that the inspector's warrantless search of the database was an illegal search, and all resulting evidence was obtained in violation of his 4th Amendment rights and should have been suppressed.



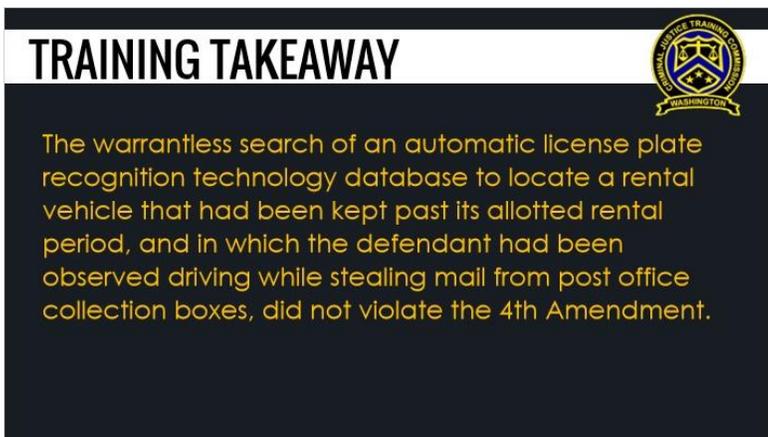
**FACTS**

- \* Inspector applied for warrant to search Yang's residence
- \* Search warrant located mail theft tools, stolen mail, and pistol
- \* Yang waived Miranda, confessed to mail theft and owning the pistol
- \* Yang convicted of mail theft and firearm
- \* Appeals his conviction claiming warrantless search of license plate database was an illegal search.

The slide features a blue background with a faint image of a person's hands typing on a laptop. In the top right corner, there is a circular logo for the Washington State Criminal Justice Training Commission, which includes a scale of justice and the text 'WASHINGTON STATE CRIMINAL JUSTICE TRAINING COMMISSION'.

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### 3.5 TRAINING TAKEAWAY



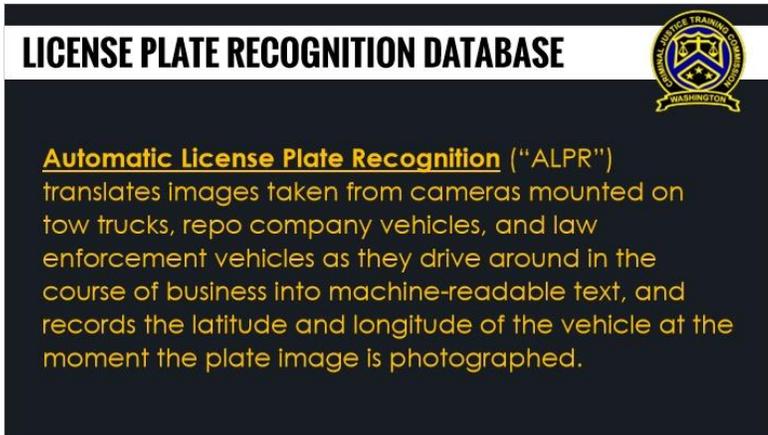
**TRAINING TAKEAWAY**

The warrantless search of an automatic license plate recognition technology database to locate a rental vehicle that had been kept past its allotted rental period, and in which the defendant had been observed driving while stealing mail from post office collection boxes, did not violate the 4th Amendment.

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### 3.6 AUTOMATIC LICENSE PLATE RECOGNITION DATABASE

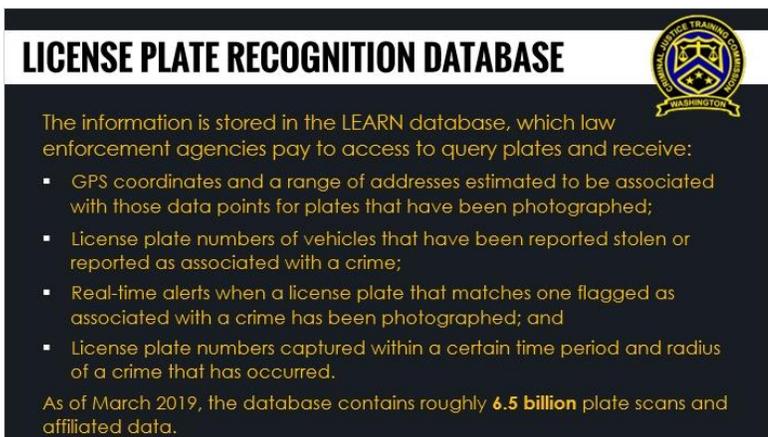


**LICENSE PLATE RECOGNITION DATABASE**

**Automatic License Plate Recognition** ("ALPR") translates images taken from cameras mounted on tow trucks, repo company vehicles, and law enforcement vehicles as they drive around in the course of business into machine-readable text, and records the latitude and longitude of the vehicle at the moment the plate image is photographed.

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### 3.7 AUTOMATIC LICENSE PLATE RECOGNITION DATABASE



**LICENSE PLATE RECOGNITION DATABASE**

The information is stored in the LEARN database, which law enforcement agencies pay to access to query plates and receive:

- GPS coordinates and a range of addresses estimated to be associated with those data points for plates that have been photographed;
- License plate numbers of vehicles that have been reported stolen or reported as associated with a crime;
- Real-time alerts when a license plate that matches one flagged as associated with a crime has been photographed; and
- License plate numbers captured within a certain time period and radius of a crime that has occurred.

As of March 2019, the database contains roughly **6.5 billion** plate scans and affiliated data.

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### 3.8 PRIVACY RIGHTS, OVERDUE RENTAL CAR

## PRIVACY RIGHTS - OVERDUE RENTAL CAR



**The court held that the driver had no reasonable expectation of privacy in the Yukon, but their justifications were split:**

- Two of the three judges held that a person no longer has a reasonable expectation of privacy in a rental vehicle after he fails to return it as required by the rental contract when the rental company has no policy permitting renters to keep vehicles beyond the designated rental period by simply charging them for any additional use.
- The third judge agreed that the driver had no reasonable expectation of privacy in the Yukon, but based his opinion on the fact that the search of the database didn't reveal the "whole of the defendant's physical movements."

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### 3.9 PRIVACY RIGHT

## 4TH AMENDMENT - PRIVACY



To determine whether an individual has a 4th Amendment privacy interest, the court asks two questions:

1. Has the individual, by his conduct, exhibited an actual expectation of privacy? Has he shown that he sought to preserve something as private?
2. Is the individual's expectation of privacy one that society is prepared to recognize as reasonable?

The burden of proof is on the defendant to demonstrate that he satisfies these elements. [Bond v. US](#). (2000)

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### 3.10 PRIVACY RIGHT



#### 4TH AMENDMENT - PRIVACY

**The mere expiration of a rental period alone doesn't automatically end a lessee's expectation of privacy in a hotel room or rental vehicle.**

A lessee may retain a reasonable expectation of privacy in a rental car where the rental company has an existing policy allowing customers to simply extend their lease and be charged for the additional time, and where the rental company made no attempt to retrieve the vehicle after the lease expiration date.

[US v. Henderson \(2000\)](#)

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### 3.11 TOTALITY OF THE FACTS



#### TOTALITY OF THE FACTS

Unlike the Henderson case, the **totality of the facts** of this case convinced the court that Yang did not have a reasonable expectation of privacy in the historical location data for the Yukon because when the inspector ran the search through the LEARN database:

- Rental agreement expired by 8 days;
- Rental company tried to repossess via GPS and remote disabling;
- No company policy to permit customers to keep cars longer and just be charged the additional days;
- Rental contract stated that a stolen vehicle report would be filed for any vehicles not returned by the contract due date, and
- Yang was put on notice that the rental company was attempting to repossess their property when they activated the Yukon's GPS system to disable the vehicle.

Unlike the Henderson case, the **totality of the facts** of this case convinced the court that Yang did not have a reasonable expectation of privacy in the historical location data for the Yukon because when the inspector ran the search through the LEARN database:

- The rental agreement for the Yukon was already 8 days past expiration;
- The rental agency had already attempted to repossess the vehicle by activating the GPS unit and attempting to remotely disable the vehicle;
- The rental agency had no policy which would simply charge a customer for additional rental fees if they didn't return a car on time; and
- The rental contract stated that a stolen vehicle report would be filed for any vehicles not returned by the contract due date, and
- Yang was put on notice that the rental company was attempting to repossess their property when they activated the Yukon's GPS system to disable the vehicle.

### 3.12 PRIVACY RIGHT

**PRACTICE POINTER**



Note that this case was decided under the federal constitution 4th Amendment. The Washington State Constitution provides stronger privacy protections to individuals under Article 1, §7.

**License plate data** has traditionally been viewed as less protected than other individual data because license plates appear in plain view on the outside of our vehicles, and vehicle records are known to be kept by the state for government use, thus creating a reasonable assumption that law enforcement could also access the information.

[State v. Harlow \(1997\)](#)

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[State v. Harlow \(1997\)](#)

### 3.13 PRIVACY RIGHT

#### PRACTICE POINTER



The most conservative practice would be to follow your department protocol in accessing the ALPR database, and then use any information collected as a basis to support a search warrant application.

Be sure to consult with your legal advisor for agency and jurisdiction-specific guidance in this area.

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## 4. STATE V JONES

### 4.1 POSSESSION STOLEN VEHICLE; KNOWLEDGE



State versus J.K.T.; Court of Appeals, Division 1

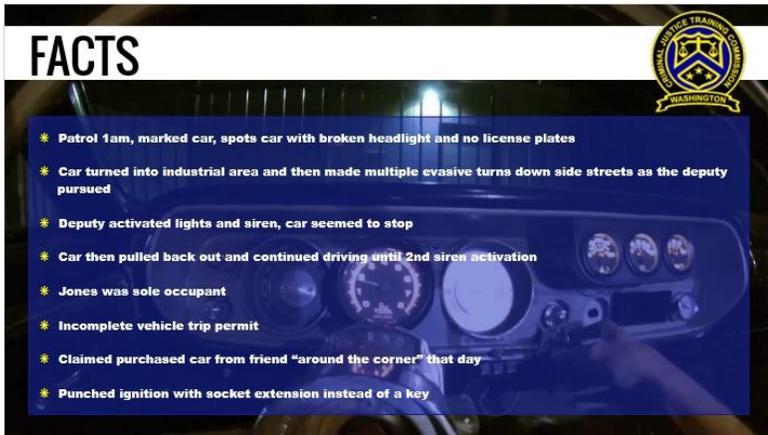
### 4.2 FACTS

The facts of this case are extensive and complicated. This summary highlights those facts that are most relevant to key legal issues.

While patrolling in a marked car at 1am, a deputy observed a white Chevrolet El Camino with a broken headlight and no license plate turn into an industrial area. The car quickly executed multiple evasive turns down several side streets as the deputy pursued. The deputy activated his lights and siren, and the El Camino appeared to be pulling to the shoulder to stop, but then instead pulled back to the street and continued driving evasively. The car finally stopped after the deputy used his siren for a second time.

The deputy approached the car's front passenger side and observed a 3-day trip permit attached to the back window. The driver, Mr. Jones, was the sole occupant of the vehicle. The deputy noted the trip permit was incomplete, lacking the required vehicle information and listing "Jhon Doe" spelled J-H-O-N as the operator.

Jones was asked to exit the vehicle. His fidgety demeanor led the deputy to place Jones in handcuffs. Jones claimed he purchased the car from a friend “around the corner” earlier that day. He had no bill of sale or other documents indicating his ownership. The car’s ignition had been removed and the car was being operated with a socket extension rather than a key.



- Patrol 1am, marked car, spots car with broken headlight and no license plates
- Car turned into industrial area and then made multiple evasive turns down side streets as the deputy pursued
- Deputy activated lights and siren, car seemed to stop
- Car then pulled back out and continued driving until 2nd siren activation
- Jones was sole occupant
- Incomplete vehicle trip permit
- Claimed purchased car from friend “around the corner” that day
- Punched ignition with socket extension instead of a key
- Charged with Possession of a Stolen Vehicle
- Owner testified about his ownership history of the El Camino
- Didn’t have title, had sold car by time of trial, but had info including name of the person on the original title
- Jones admitted to possessing the vehicle
- Moved to dismiss claiming state failed to prove Troyer was the true owner of the El Camino
- Jones presented witness to testified that he was a tow truck operator who junked vehicles
- Witness claimed the car was junk or abandoned when he took possession and then sold to Jones

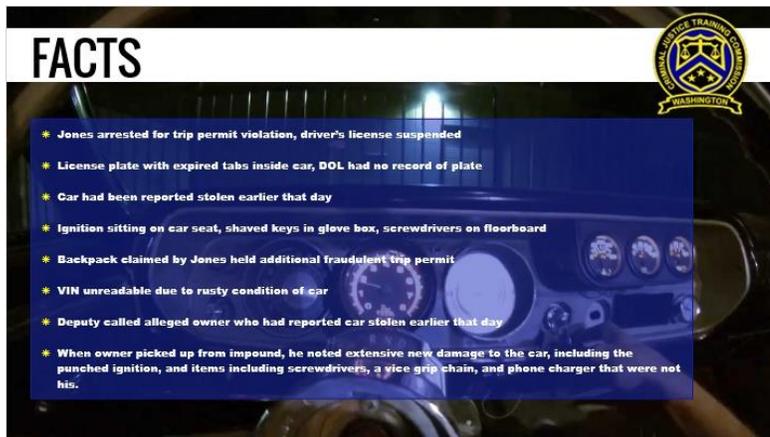
#### **4.3 FACTS**

Jones was placed under arrest for the trip permit violation. The deputy again looked inside the car and saw a license plate on the floorboard that had tabs from 2000. Dispatch was unable to find any DOL record regarding the plate number. Records indicated that there was a valid stolen vehicle report on the El Camino filed earlier that day, and Jones was also driving on a suspended driver’s license.

The vehicle's ignition was on the seat of the car, there was a set of shaved keys in the glove box, and two screwdrivers were on the floor. A backpack, claimed by Jones, contained two additional trip permits, one with the same misspelled name "Jhon Doe" and license plate number as the one currently displayed. The deputy was unable to read the VIN due to the rusty and faded condition of the car.

The deputy contacted Michael Troyer, who had reported the car stolen and last seen two days prior. *[NOTE: The court's opinion contains a complicated history of the car's ownership which has been omitted from this summary.]*

When Troyer retrieved the El Camino from the impound lot the car didn't start, the shifting column was disconnected, the steering column had been disassembled, the ignition switch was broken, a headlight was broken, the license plate had been removed and placed inside the car, the exhaust pipe was flattened, and a new battery had been installed. Inside the car were screwdrivers, a vice grip chain, and a phone charger that were not his. Troyer stated that he'd given no one, aside from his friend Bud, permission to drive the car, and that there was only one set of keys.)



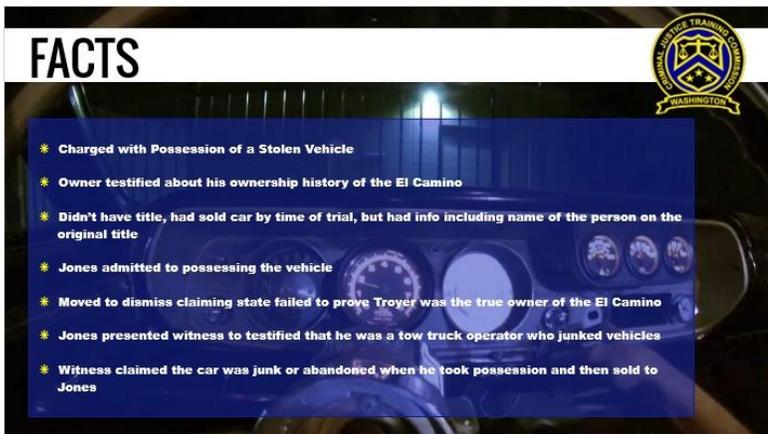
- Jones arrested for trip permit violation, driver's license suspended
- License plate with expired tabs inside car, DOL had no record of plate
- Car had been reported stolen earlier that day
- Ignition sitting on car seat, shaved keys in glove box, screwdrivers on floorboard
- Backpack claimed by Jones held additional fraudulent trip permit
- VIN unreadable due to rusty condition of car
- Deputy called alleged owner who had reported car stolen earlier that day
- When owner picked up from impound, he noted extensive new damage to the car, including the punched ignition, and items including screwdrivers, a vice grip chain, and phone charger that were not his.
- Charged with Possession of a Stolen Vehicle
- Owner testified about his ownership history of the El Camino

- Didn't have title, had sold car by time of trial, but had info including name of the person on the original title
- Jones admitted to possessing the vehicle
- Moved to dismiss claiming state failed to prove Troyer was the true owner of the El Camino
- Jones presented witness to testified that he was a tow truck operator who junked vehicles
- Witness claimed the car was junk or abandoned when he took possession and then sold to Jones

#### 4.4 FACTS

Jones was charged with Possession of a Stolen Vehicle. At trial, Troyer testified about his ownership of the El Camino and the condition of the car before and after its theft. He had by that time sold the car, and did not have its certificate of title. He was able to provide information including the name of the person on the title.

Jones moved to dismiss the charge claiming that the state had failed to prove that Troyer was the owner or rightful possessor of the car, and therefore did not prove the required elements for Possession of a Stolen Vehicle. At trial, Jones presented a witness who testified that he was a tow truck operator who junked vehicles, and that the car was junk or abandoned when he took possession of it and then sold it to Jones.



- Charged with Possession of a Stolen Vehicle
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- Jones admitted to possessing the vehicle
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- Jones presented witness to testified that he was a tow truck operator who junked vehicles
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#### 4.5 TRAINING TAKEAWAY

**TRAINING TAKEAWAY**



There was sufficient evidence to support that a suspect had actual knowledge that the vehicle he was driving was stolen where he possessed falsified trip permits, the actual license plate had been removed and was inside the car, the car had a punched ignition and was being operated with a socket extension, there were shaved keys inside the glove box, the suspect couldn't provide any documentation to support his ownership, and the State presented evidence from the car's owner who had reported the vehicle stolen that day.

There was sufficient evidence to support that a suspect had actual knowledge that the vehicle he was driving was stolen where he possessed falsified trip permits, the actual license plate had been removed and was inside the car, the car had a punched ignition and was being operated with a socket extension, there were shaved keys inside the glove box, the suspect couldn't provide any documentation to support his ownership, and the State presented evidence from the car's owner who had reported the vehicle stolen that day.

#### 4.6 TRAINING TAKEAWAY

**TRAINING TAKEAWAY**



In order to prove that the defendant was guilty of possessing the stolen vehicle, the State had to prove that he had actual knowledge that the vehicle was stolen at the time he possessed the El Camino.

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## 4.7 POSSESSION OF A STOLEN VEHICLE

### POSSESSION OF A STOLEN VEHICLE



A person is guilty of Possession of a Stolen Motor Vehicle if they knowingly receive, retain, possess, conceal, or dispose of a stolen motor vehicle knowing that it has been stolen and to withhold or appropriate the same to the use of any person other than the true owner or person entitled thereto. [RCW 9A.56.068](#) and [9A.56.140\(1\)](#).

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## 4.8 POSSESSION OF A STOLEN VEHICLE

### POSSESSION OF A STOLEN VEHICLE



Jones concedes that he was in possession of the El Camino, but argues that the State didn't provide sufficient evidence to show that someone other than him was the car's true owner or rightful possessor.

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## 4.9 POSSESSION OF A STOLEN VEHICLE

**POSSESSION OF A STOLEN VEHICLE** 

The State must prove beyond a reasonable doubt that the accused knew the vehicle to be stolen - mere possession isn't enough.

The State must prove beyond a reasonable doubt that the accused knew the vehicle to be stolen - mere possession isn't enough.

## 4.10 KNOWING - LEGAL STANDARD

**KNOWING - LEGAL STANDARD** 

**Possession of a Stolen Motor Vehicle requires that the suspect have ACTUAL knowledge that the car is stolen.**

Jones' conviction was reversed based on the prosecutor's misstatement of the law in closing argument about what burden of knowledge they were required to prove, which incorrectly implied that the jury could find Jones guilty if they believed based on the circumstances that he "should have known" the car was stolen.

**Possession of a Stolen Motor Vehicle requires that the suspect have ACTUAL knowledge that the car is stolen.**

The court reversed Jones' conviction based on the prosecutor's misstatement of the law in closing argument about what burden of knowledge they were required to prove, which incorrectly implied that the jury could find Jones guilty if they believed based on the circumstances that he "should have known" the car was stolen.

#### 4.11 PROOF OF OWNERSHIP

**PROOF OF OWNERSHIP**



The evidence was sufficient for the jury to find that someone other than the defendant owned or had superior rights to possess the El Camino.

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#### 4.12 PROOF OF OWNERSHIP

**PROOF OF OWNERSHIP**



Even without producing a bill of sale or ownership documentation, and despite the car not being registered in his name with DOL, the cumulative evidence presented provided the jury with reason to find the original owner's testimony credible:

- He named the friend from whom he purchased the El Camino
- He was able to describe the condition of the car before and after he retrieved it from the impound lot after the theft
- He knew the name of the individual listed on the vehicle's title - making it a reasonable assumption that he possessed the title before trading the car

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#### 4.13 POSSESSION CORROBORATION

**MORE THAN MERE POSSESSION**

Possession of Recently Stolen Property

Slight Corroborating Evidence of Incriminating Circumstances

Sufficient Evidence to Sustain Conviction for Possession of Stolen Property

Possession of Recently Stolen Property + Slight Corroborating Evidence of Incriminating Circumstances is Sufficient Evidence to Sustain a Conviction for Possession of Stolen Property

#### 4.14 CORROBORATING EVIDENCE

**CORROBORATING EVIDENCE**

Corroborating evidence may include:

- False or improbable explanation of possession.
- Secrecy or denial of the possession.
- Presence of the accused near the scene of the crime.
- Use of a fake name.
- Flight from the police.

[State v. Porter](#), [State v. Q.D.](#), [State v. Hudson](#)

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- Secrecy or denial of the possession.
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## 4.15 CORROBORATING EVIDENCE

### CORROBORATING EVIDENCE



**The evidence corroborating that the defendant knew the vehicle he possessed was stolen was sufficient to prove the knowledge element of Possession of a Stolen Motor Vehicle.**

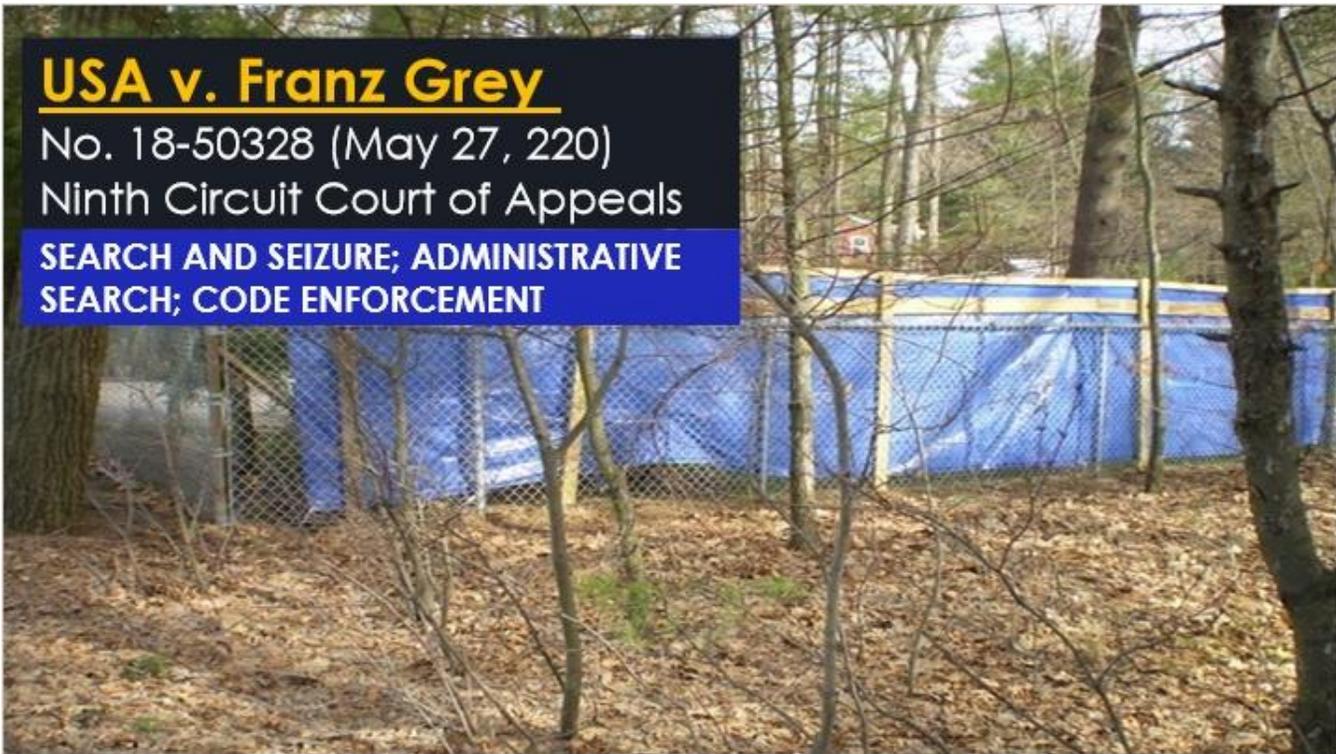
- Engaged in evasive driving when he first encountered the deputy
- Possessed two incomplete and fraudulent trip permits
- Was using a socket extension to drive a car with a punched ignition
- Had the vehicle's license plate on the seat of the car (when it had been previously affixed to the outside as required by law)
- Gave an implausible story about where/how he acquired the car

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## 5. STATE V. GREY

### 5.1 ADMINISTRATIVE SEARCH; SEARCH AND SEIZURE; WARRANT



State versus J.K.T.; Court of Appeals, Division 1

### 5.2 FACTS

The city of Lancaster, CA began a code enforcement investigation in 2017 against a resident. Over a period of several months, code enforcement officers collected information from neighbors and through contacts and observations made at the resident's property. After a code enforcement officer issued multiple citations to the resident, Franz Grey, he engaged in a continuous phone call and fax campaign to the City Clerk's office.

Fearing for their safety, code enforcement enlisted the help of two long-time Los Angeles Sheriff's Department deputies who were running a private consulting firm providing municipal code compliance services. They contacted Grey at the home. Following that interaction, it was determined by various city employees that they needed to do an inspection at the home to ensure it was safe.

## Facts ALL (Slide Layer)



- 2018 neighbor contacted LA Sheriff's Department with complaint
- Possible firing of gun, drug use, surveillance cameras, tarps, flood lights
- Suspected Grey operating unlicensed auto repair business on site
- LASD deputy interviewed neighbors and visited the property
- Learned Grey was a convicted felon
- Suspected Grey of Unlawful Possession of a Firearm
- Filed report but lacked PC for an arrest or to search the home

### 5.3 FACTS

In the middle of the ongoing code enforcement investigation, one of Grey's neighbors contacted the LA Sheriff's Department Community Appreciation Program with complaints. The neighbor alleged that Grey had previously unlawfully fired a gun into the air, engaged in strange behavior and methamphetamine use, had put up extensive tarping around his property, mounted surveillance cameras and flood lights, and was possibly operating an unlawful auto repair business on site.

The investigating deputy interviewed other neighbors, and visited the property. He also learned that Grey was a convicted felon, raising a suspicion that Grey was committing the crime of unlawful possession of a firearm. Although the deputy filed a report, his sergeant testified at trial that they lacked probable cause to either arrest Grey or search his home at that time.

### 5.4 FACTS

LASD was aware that the city was going to do a code enforcement inspection. The deputy and LASD took no further action. The deputy in charge of the criminal investigation was also put in charge of assisting the city with execution of the inspection warrant. The sergeant intended to interview Grey about the LASD criminal investigation during the execution of the civil inspection

warrant. He ordered LASD deputies to arrest Grey. Although typical policy was to have at least one LASD deputy accompany the city during such inspections, nine armed deputies assisted with the inspection warrant at Grey's residence.



- Lancaster contracted with the LA Sheriff's Department for service
- Code Enforcement contracted with consulting firm run by two part-time LASD deputies
- When the criminal investigation began, LASD already knew of the city's code enforcement action
- Deputy took no action on the criminal investigation
- Same deputy assigned to assist city with code inspection warrant
- Sergeant intended to interview Grey about criminal investigation
- 9 armed deputies assisted in admin warrant

Grey was arrested and questioned before the housing inspection search occurred. The deputies spent 20 minutes conducting the search, including opening and going through desk drawers and personal items, and photographing incriminating evidence including firearms, ammunition, and suspected methamphetamine in plain view in the house.

LASD used the information to apply for a criminal search warrant, which was then executed. Grey was charged with multiple firearms crimes. He filed a motion to suppress the evidence gained from the search warrant, claiming it was granted based on information gathered during an unlawful administrative search. The trial court granted Grey's motion, and the county has filed an appeal of their ruling.

# FACTS



- \* Grey arrested and questioned before inspection search occurred
- \* Deputies spent 15-20 minutes conducting search
- \* Included opening desk drawers and going through personal items
- \* Deputies photographed incriminating evidence including firearms, ammo, and suspected methamphetamine while in the house
- \* LASD used that info to file for a criminal search warrant
- \* Grey moved to suppress the evidence on his Firearms charges

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- Grey moved to suppress the evidence on his Firearms charges

## 5.6 TRAINING TAKEAWAY

# TRAINING TAKEAWAY



Where law enforcement officers are asked to assist in the execution of an administrative warrant authorizing the inspection of a private residence, the search violates the Fourth Amendment when their primary purpose in executing the warrant is to gather evidence in support of a criminal investigation rather than to assist the code inspectors.

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## 5.7 TRAINING TAKEAWAY

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An administrative inspection may not be used as pretext to conduct a criminal search, arrest, and investigation.

The evidence collected pursuant to a subsequent criminal search warrant that was obtained as a result of the initial unlawful search is inadmissible “fruit of the poisonous tree.”

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The evidence collected pursuant to a subsequent criminal search warrant that was obtained as a result of the initial unlawful search is inadmissible “fruit of the poisonous tree.”

## 5.8 4TH AMENDMENT AND ADMINISTRATIVE SEARCHES

### 4TH AMENDMENT & ADMINISTRATIVE SEARCHES



The 4th Amendment generally prohibits searching a home without a valid search warrant supported by a fair probability that contraband or evidence of a crime will be found in a particular place, or a valid exception to the warrant requirement.

[Illinois v. Gates \(1993\)](#)

The Administrative Search Exception permits government actors to conduct a search or seizure in execution of an administrative warrant authorizing an inspection of residential premises to ensure compliance with a housing code.

[Ashcroft v. al-Kidd \(2011\)](#)

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The Administrative Search Exception permits government actors to conduct a search or seizure in execution of an administrative warrant authorizing an inspection of residential premises to ensure compliance with a housing code.

[Ashcroft v. al-Kidd \(2011\)](#)

## 5.9 ADMINISTRATIVE SEARCH EXCEPTION

### ADMINISTRATIVE SEARCH EXCEPTION



**An administrative search must still be reasonable in its scope and manner of execution.**

Participation in an administrative warrant does not give freedom to the searching officers to snoop to their hearts' content without regard to the scope of their actions.

[US v. McCarty](#) (2011)

An administrative search must still be *reasonable* in its scope and manner of execution.

Participation in an administrative warrant does not give freedom to the searching officers to snoop to their hearts' content without regard to the scope of their actions

## 5.10 ADMINISTRATIVE SEARCH EXCEPTION

### ADMINISTRATIVE SEARCH - INTENT



**Prior WA Rulings on Administrative Searches:**

- **Suspicionless vehicle checkpoint search** unreasonable because the primary intent was drug interdiction, not border protection or impaired driving prevention.
- **Fire inspectors** may enter a home to conduct a search following a fire if the primary purpose is to determine the cause of the fire, but they must get a criminal search warrant if the primary intent is to gather evidence of criminal activity.

**Prior WA Rulings on administrative searches have held that:**

§ A **Suspicionless vehicle checkpoint search** was unreasonable because the primary intent was drug interdiction, not border protection or impaired driving prevention.

§ **Fire inspectors** may enter a home to conduct a search following a fire if the primary purpose is to determine the cause of the fire, but they must get a criminal search warrant if the primary intent is to gather evidence of criminal activity.

## 5.11 PRIMARY PURPOSE

**PRIMARY PURPOSE**



If the "primary purpose" in executing the administrative warrant is to make a criminal arrest rather than assist the inspectors, the search violates the 4th Amendment.

[Alexander v. San Francisco \(1994\)](#)

If the "primary purpose" in executing the administrative warrant is to make a criminal arrest rather than assist the inspectors, the search violates the 4th Amendment.

## 5.12 PRIMARY PURPOSE

**PRIMARY PURPOSE**



The primary purpose test looks to the OBJECT of the search to determine the type of warrant required.

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## 5.13 PRIMARY PURPOSE



If the object sought is administrative or code-enforcement information, then it properly falls within the scope of an administrative warrant.

If the object sought is evidence of criminal activity, then a criminal search warrant is required.

## 5.14 PRIVATE RESIDENCES

**PRIVATE RESIDENCES**

Our private residences are subject to the highest level of privacy as the intrusion directly contradicts the 4th Amendment's proclamation that the right of the people to be secure in their houses shall not be violated.

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## 5.15 PRIVATE RESIDENCES

**PRIVATE RESIDENCES**



**The 4th Amendment seeks to protect the right to retreat into ones own home and be free from unreasonable governmental intrusion.**

- The sheriff department's argument that the sweep of Grey's home would have occurred *regardless of their motive* to search for evidence of criminal activity doesn't succeed because the reasonableness of the search is determined by assessing the degree to which it intrudes upon an individual's privacy.

### **The 4th Amendment seeks to protect the right to retreat into ones own home and be free from unreasonable governmental intrusion.**

The sheriff department's argument that the sweep of Grey's home would have occurred regardless of their motive to search for evidence of criminal activity doesn't succeed because the reasonableness of the search is determined by assessing the degree to which it intrudes upon an individual's privacy.

## 5.16 PRIVATE RESIDENCES

**PRIVATE RESIDENCES**



**Both the scope and the manner of execution of a search must be reasonable.**

Both the scope and the manner of execution of a search must be reasonable.

## 5.17 IMPERMISSIBLE MOTIVE

**IMPERMISSIBLE MOTIVE** 

The presence of a criminal investigatory motivation for the search doesn't automatically invalidate an administrative search as pretextual, nor does a mixed motive where one is valid and one is invalid/impermissible.

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## 5.18 IMPERMISSIBLE MOTIVE

**IMPERMISSIBLE MOTIVE** 

When a search has dual motives, the court will look to

1. How much discretion resides with the searching officers, and
2. Whether the improper motive impacted the intrusiveness of the search.

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2. How much discretion resides with the searching officers, and
3. Whether the improper motive impacted the intrusiveness of the search.

## 5.19 IMPERMISSIBLE MOTIVE

**IMPERMISSIBLE MOTIVE**



If the officers have little discretion in how or what to search, then their true motivation becomes less important because the police conduct would be the same either way.

Example: they are acting based on department policy that requires they conduct an inventory search

If the officers have little discretion in how or what to search (ex - based on department policy to conduct an inventory search), then their true motivation becomes less important because the police conduct would be the same either way.

## 5.20 INVESTIGATORY MOTIVE

**INVESTIGATORY MOTIVE**



Where officers have discretion of whether to search, and to what scope, the presence of an improper motive may distort the scope or manner of execution, and make the search unreasonable.

Where officers have discretion of whether to search, and to what scope, the presence of an improper motive may distort the scope or manner of execution.

## 5.21 INVESTIGATORY MOTIVE

### INVESTIGATORY MOTIVE



The court found that the sheriff's department criminal investigatory motive to determine whether Grey was in unlawful possession of firearms and possible controlled substances clearly **increased the intrusion** into Grey's privacy interests.

Without that criminal investigatory motive, Grey wouldn't have been arrested before the search even began, nor would 9 armed deputies have been involved.

The court found that sheriff's department criminal investigatory motive to determine whether Grey was in unlawful possession of firearms and possible controlled substances clearly **increased the intrusion** into Grey's privacy interests.

Without that criminal investigatory motive, Grey wouldn't have been arrested before the search even began, nor would 9 armed deputies have been involved.

## 5.22 PROTECTIVE SWEEP

### PROTECTIVE SWEEPS



A **protective sweep** is a "quick and limited search of premises, incident to an arrest and conducted to protect the safety of officers and others" that is "narrowly confined to a cursory visual inspection of those places in which a person might be hiding."

[Maryland v. Buie](#) (1990)

A **protective sweep** is a "quick and limited search of premises, incident to an arrest and conducted to protect the safety of officers and others" and is "narrowly confined to a cursory visual inspection of those places in which a person might be hiding."

## 5.23 PROTECTIVE SWEEP



### NOT A PROTECTIVE SWEEP

- Here deputies exceeded the scope of a reasonable protective sweep because the search lasted at least 15-20 minutes and occurred after deputies arrested and questioned the suspect.
- The Sheriff Department's driving motivation behind the search of Grey's residence was criminal investigation, not merely to assist the code enforcement officers in safely conducting their inspection.
- The scope of the sweep was clearly influenced by the desire to gather criminal evidence against Grey when their ongoing investigation hadn't yet produced sufficient evidence on which they could base a criminal search warrant.

- Here deputies exceeded the scope of a reasonable protective sweep because the search lasted at least 15-20 minutes and occurred after deputies arrested and questioned the suspect.
- The Sheriff Department's driving motivation behind the search of Grey's residence was criminal investigation, not merely to assist the code enforcement officers in safely conducting their inspection.
- The scope of the sweep was clearly influenced by the desire to gather criminal evidence against Grey when their ongoing investigation hadn't yet produced sufficient evidence on which they could base a criminal search warrant.

## 5.24 EXCLUSIONARY RULE



### EXCLUSIONARY RULE

Evidence seized during an impermissible administrative search is unconstitutional and inadmissible under the [Exclusionary Rule](#).

Evidence seized during an impermissible administrative search is unconstitutional and inadmissible under the Exclusionary Rule.

## 5.25 EXCLUSIONARY RULE

### EXCLUSIONARY RULE



- The initial search of Grey's home was unreasonable in scope and tainted in motive, and evidence obtained in the search is inadmissible under the Exclusionary Rule.
- Because that inadmissible evidence formed the basis for the sheriff's department's criminal search warrant application, all evidence they later obtained while serving the criminal warrant is also inadmissible.

- The initial search of Grey's home was unreasonable in scope and tainted in motive, and evidence obtained in the search is inadmissible under the Exclusionary Rule.
- Because that inadmissible evidence formed the basis for LASD's criminal search warrant application, all evidence they later obtained while serving the criminal warrant is also inadmissible.

## 5.26 PRACTICE POINTER

### PRACTICE POINTER



Nothing in this case is questioning a city's entitlement to the assistance of a local law enforcement agency in executing an administrative warrant in order to ensure the safety of its personnel and prevent interference with the inspection.

Law enforcement may take reasonable actions as needed to ensure the safe and interference-free execution of an administrative warrant in a manner consistent with the warrant's administrative purpose.

Nothing in this case is questioning a city's entitlement to the assistance of a local law enforcement agency in executing an administrative warrant to ensure the safety of its personnel and prevent interference with the inspection.

Law enforcement may take reasonable actions as needed to ensure the safe and interference-free execution of an administrative warrant in a manner consistent with the warrant's administrative purpose.

## 6. DT - GROUND CONTROL

### 6.1 VIDEO TRAINING: DT



### 6.2 DT GROUND CONTROL

**GROUND CONTROL  
KNEE CONTROL DRILL**



The following brief training video was released by CJTC in response to the death of George Floyd in Minneapolis police custody. It is intended to reinforce Washington State law enforcement training standards with regard to proper knee control technique, and to provide transparency to the public about current CJTC training practices.

The video is also available on the CJTC website: [To the People We Serve](https://cjtc.wa.gov/to-the-people-we-serve)

The video is available on the WSCJTC website:

<https://cjtc.wa.gov/to-the-people-we-serve-in-the-state-of-washington>