Law Enforcement Digest

July 2015

Law enforcement officers: Thank you for your service, protection and sacrifice.

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HONOR ROLL

712th Basic Law Enforcement Academy – December 30, 2014 through May 7, 2015

Best Overall:	Nicholas P. Haughian, Edmonds Police Department
Best Academic:	Travis M. Taylor, Everett Police Department
Patrol Partner Award:	David A. Yeager, Castle Rock Police Department
Tac Officer:	Mark Best, Tacoma Police Department
	Joseph Winters, King County Sheriff's Office

714th Basic Law Enforcement Academy – January 21, 2015 - May 28, 2015

Best Overall:	Shane W. Stevie, Yakima Police Department
Best Academic:	Shane W. Stevie, Yakima Police Department
Patrol Partner Award:	Shane W. Stevie, Yakima Police Department
Tac Officer:	Russ Hicks, Fife Police Department
	Karim Boukabou, Washington State Patrol

715th Basic Law Enforcement Academy – February 4, 2015 - June 11, 2015

Best Overall:	Garick G. Mattson, Seattle Police Department
Best Academic:	Garick G. Mattson, Seattle Police Department
Patrol Partner Award:	Matthew L. Rausch, Kent Police Department
Tac Officer:	Jenifer Eshom, Seattle Police Department
	Steve Grossfeld, Seattle Police Department

716th Basic Law Enforcement Academy – February 24, 2015 - June 30, 2015

Best Overall:	Jared D. Paulsen, Kennewick Police Department
Best Academic:	Jared D. Paulsen, Kennewick Police Department
Patrol Partner Award:	Zachary D. Johnson, Kennewick Police Department
Tac Officer:	Shelly Hamel, Renton Police Department
	Sabrina Kessler, Redmond Police Department

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BRIEF NOTES FROM THE NINTH CIRCUIT COURT OF APPEALS

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GOOGLE EARTH SATELLITE IMAGE AND DIGITAL TACK LABELED WITH GPS COORDINATES ARE NOT HEARSAY U.S. v. Lizarraga-Tirado, 789 F.3d 1107 (June 18, 2015).

The defendant was arrested and charged with illegal reentry under federal law. The arrest took place near the border between the United States and Mexico. The defendant claimed that he did not enter the United States and, because it was a dark night in a remote location, the Border Patrol agents accidentally arrested him in Mexico.

However, the Border Patrol agents "contemporaneously recorded the coordinates of defendant's arrest using a . . . GPS device." The prosecution presented a Google Earth satellite image with "tacks" for the GPS coordinates of the arrest location. The defendant challenged the Google Earth map with the tacks indicating the arrest location as inadmissible hearsay. The Ninth Circuit Court of Appeals disagreed.

The first issue was whether the Google Earth map is inadmissible hearsay. In general, "out-of-court statements to prove the truth of the matters asserted" are hearsay and inadmissible. The Court analogized the Google Map to a photograph. Photographs are not hearsay evidence because they do not make any assertion. Likewise, Google Earth "images are produced by high-resolution imaging satellites, and though the cameras are more powerful, the result is the same: a snapshot of the world as it existed when the satellite passed overhead." As such, Google Earth maps are not hearsay.

The second issue was whether the "tack and coordinates" notated on the Google Earth map are hearsay. If the "tack and coordinates" had been noted by hand, then they would be hearsay. In this case, however, the computer program automatically and accurately labeled the GPS coordinates on the Google Earth map. The automatic labeling is not a hearsay statement. As such, the tack and coordinates are not hearsay.

The Court noted that whether the Google Map program was "reliable and correctly calibrated" could raise authentication issues in other cases. However, the defendant did not raise that issue in this case.

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BRIEF NOTES FROM THE WASHINGTON STATE SUPREME COURT

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DURING THE DETENTION OF HIS SISTER, A JUVENILE YELLING PROFANITIES AT POLICE OFFICERS AND REFUSING TO GO INTO HIS HOME AND CLOSE THE FRONT DOOR DOES NOT CONSTITUTE OBSTRUCTION State v. E.J.J., __ Wn.2d __, __ P.3d __, 2015 WL 3915760 (June 25, 2015).

Police officers responded to a call involving an intoxicated and unmanageable girl. When the officers arrived at the home, they took the girl out of the house and attempted to calm her down 10 to 15 feet away from the front door.

E.J.J., the girl's brother, thought he saw an officer reach for a nightstick. E.J.J. stood on the porch and told the officers not to use the nightstick. The officers advised E.J.J. to leave because they were in the middle of an investigation. E.J.J. then stood in the doorway. "The officers directed E.J.J. multiple times to close the solid wood door and to withdraw further into the home, but E.J.J. refused, stating that he wanted to supervise the scene from the doorway (10 to 15 away from the other officers and [his sister]) to make sure that [his sister] was not harmed."

Several times, an officer closed the front door, but E.J.J. reopened it. E.J.J. began "yelling profanities and calling the officers abusive names." The "officer warned E.J.J. that he could be arrested for obstruction." E.J.J. did not comply with the officer's instruction to go into the house and keep the door closed. He was then arrested for obstruction. The Washington State Supreme Court found that this conduct did not constitute the crime of obstruction.

Under RCW 9A.76.020(1), "[a] person is guilty of obstructing a law enforcement officer if the person willfully hinders, delays, or obstructs any law enforcement officer in the discharge of his or her official powers or duties." The Washington State Supreme Court has "consistently required conduct to establish obstruction of an officer." "In other words, a conviction for obstruction may not be based solely on an individual's speech because the speech itself is constitutionally protected."

In this case, the Court reasoned that E.J.J.'s conduct did not constitute the crime of obstruction. First, "E.J.J. did not physically interfere with or touch either the police or his sister." Second, "E.J.J. did not make any threatening movements toward the officers at any time." Third, "E.J.J.'s mere presence at the scene cannot constitute conduct [because he] had every right to stand on his own property, provided he did not physically interfere with police." Fourth, "nothing in the record establishes any connection between E.J.J.'s speech or presence and anything that specifically resulted from it."

The Court rejected the argument "that E.J.J. obstructed police when he became irate, hurled abuses on the officers, and refused to close the solid wood door to his home [because] this exchange is so intertwined with E.J.J.'s protected speech that we find insufficient evidence of E.J.J.'s conduct to support" a conviction for obstruction.

Ultimately, the Court held "[w]here individuals exercise their constitutional rights to criticize how the police are handling a situation, they cannot be concerned about risking a criminal conviction for obstruction [because] [s]uch a conviction is not permitted under the First Amendment."

MULTIPLE 911 CALLERS REPORTING A MAN WITH A GUN IN A PARK DID NOT PROVIDE SUFFICENT INFORMATION TO JUSTIFY *TERRY* STOP OF A VEHICLE
State v. Z.U.E., __ Wn.2d __, __ P.3d __, 2015 WL 4366427 (July 16, 2015).

Police dispatch received multiple 911 calls reporting a bald, shirtless man carrying a gun in a park and entering a two-door white or gray car with approximately eight other people. One 911 caller, identified as Dawn, reported that she saw a seventeen year old girl give a gun to the shirtless man. "Dawn provided the dispatch with a detailed description of the girl's appearance and clothing, but she did not reveal why she believed the girl to be 17 years old."

When the officers arrived at the park, "they did observe two females a block away, one of whom matched the description provided by Dawn." The officers did not approach this female, but continued to search for the shirtless man. Another witness told the officers "that she observed a large scale fight, with multiple subjects running around the park, and that the subjects left in three to four different cars."

The officers continued to look for the shirtless man and drove to the location where the 911 callers reported the two-door, white or gray car heading. At that location, the officers did not find the two-door car. Instead, the officers saw "the same two females seen earlier entering the backseat of a four-door gray car, which was idling in a nearby parking lot." The officers observed that none of the passengers "matched the description of the bald, shirtless man."

The officers approached the car because "[b]ased on the numerous 911 calls related to them by the dispatch center, the officers believed they were investigating a minor in possession of a firearm and a gang-related assault with a deadly weapon." "[T]he primary reason for stopping this particular car was the fact that one of the passengers matched the description of the female identified by the 911 caller Dawn." Given the situation, the officers conducted a felony stop of

the vehicle and ordered the passengers out of the vehicle. One of the passengers, Z.U.E., was later searched incident to arrest, and the search located marijuana on his person.

Z.U.E. was charged with unlawful possession of a controlled substance and obstruction of a law enforcement officer. Z.U.E. argued that the officers did not have reasonable suspicion to stop the vehicle and order him to exit the vehicle. The Washington State Supreme Court agreed.

An officer may conduct a *Terry* stop based on "reasonable suspicion that the detained person was, or was about to be, involved in a crime." "The reasonable suspicion standard . . . requires that the suspicion be grounded in specific and articulable facts." The Washington state constitution Article I, Section 7 "generally requires a stronger showing by the State" than the Fourth Amendment. To support reasonable suspicion of a crime, "the facts must connect the particular person to the particular crime that the officer seeks to investigate."

"When an officer bases his or her suspicion on an informant's tip, [there must be] some indicia of reliability under the totality of the circumstances." This means "that there either be (1) circumstances establishing the informant's reliability or (2) some corroborative observation, usually by the officers, that shows either (a) the presence of criminal activity or (b) that the informer's information was obtained in a reliable fashion." When an officer corroborates an informant's tip, the officer's "observations do not need to be of particularly blatant criminal activity, but they must corroborate more than just innocuous facts, such as an individual's appearance or clothing."

In this case, the officers did not have reasonable suspicion: (1) that the car may have been connected to the shirtless man in a gang-related assault; or (2) that the vehicle was connected to a minor in possession of a firearm (i.e., Dawn, the 911 caller, stating that she saw a 17-year-old girl give the gun to the shirtless man).

First, "[e]ven assuming that the 911 calls were sufficiently reliable, only two facts potentially linked the subject to the car: (1) the car was located near [an intersection], where a 911 caller indicated that the shirtless man's car was headed, and (2) one of the car's female passengers reportedly interacted with the shirtless man several minutes earlier." However, the officers' observations did not match these facts. Rather, "the car did not match the description of the two-door car reportedly carrying the shirtless man, it did not contain either individuals, and neither of the male passengers matched the description of a shirtless, bald man." As such, the officers did not have reasonable suspicion that the car was connected to the bald, shirtless man carrying a gun through the park.

Second, the officers did not have reasonable suspicion that the car was connected to a minor in possession of a firearm based on the female passenger matching the 911 caller's description of the 17-year old girl who handed the firearm to the bald, shirtless man. The Supreme Court noted that the 911 caller's veracity and reliability were not in question - "the relayed call was made by a citizen eyewitness, it was made contemporaneous to the unfolding of the events, it came through an emergency 911 line rather than the police business line, and the caller provided her name and contact information."

However, "because the caller did not offer any factual basis in support of [the] allegation [that a 17-year old girl (i.e., a minor) possessed a firearm], the officers could not ascertain how the caller knew the girl was 17 rather than, say, 18 years old." Specifically, "[t]he officers knew nothing about [the 911 caller] (aside from her contact information), [the caller's] relationship with the female, or why [the caller] suspect that the girl had committed a crime in the first place." Consequently, "the 911 caller's assertion cannot create a sustainable basis for a *Terry* stop."

Additionally, the officers were unable to corroborate the 911 caller's tip. "The officers themselves did not observe the female passenger with a gun, nor could they reasonably confirm the female's age prior to the stop." Since "the officers never contacted any of the 911 witnesses, they were unable to establish whether the tips were obtained in a reliable matter." The officer's corroboration of the female's appearance was "an innocuous fact" and "insufficient" to establish reasonable suspicion of a minor in possession of a firearm.

The Supreme Court also rejected the argument that exigent circumstances supported stopping the vehicle. "First, the officers had no reason to suspect that the female suspect posed any kind of threat to the public because, as the dispatch center advised earlier, she reportedly disarmed herself by handing off the gun." Second, "the female passenger's brief interaction with the shirtless man [did not implicate] the entire car in ongoing serious criminal activity and violence [because that] inference is too tenuous to justify an immediate seizure of the vehicle and its passengers."

Since the officers did not have reasonable suspicion to stop the car and order the passengers out of the car, "the officers' subsequent seizure of Z.U.E. was therefore unlawful, and any evidence obtained as a result of that seizure should have been suppressed at trial."

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BRIEF NOTES FROM THE WASHINGTON STATE COURT OF APPEALS

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IN SECOND DEGREE ASSAULT BY STRANGULATION STATUTE, "OBSTRUCTION" MEANS "TO HINDER OR BLOCK TO SOME DEGREE" State v. Rodriguez, __ Wn. App. __, __ P.3d __, 2015 WL 3463351 (June 1, 2015).

The defendant and the victim had "dated intermittently for 15 years." The victim "would occasionally allow [the defendant] to reside in her home." After a night of consuming multiple alcoholic beverages, the defendant went to the victim's home.

The victim let the defendant into her home and he "grabbed her by the throat with one hand and squeezed." At trial, the victim testified that she could "not really" breathe when the defendant squeezed her neck. The defendant released her neck and then "put his hands around her throat again, causing her difficulty breathing." "The choking episodes left permanent scars on [the victim's] neck that she displayed to the jury."

The State charged the defendant "with assault in the second degree-domestic violence. "The State alleged that [the defendant] assaulted [the victim] by strangulation." The defendant was convicted.

On appeal, the defendant challenged the sufficiency of the evidence to support the conviction by arguing that his conduct did not meet the definition of "obstructing" in the assault by strangulation statute.

Under RCW 9A.36.021(1)(g), "[a] person is guilty of assault in the second degree If he or she . . … [a]ssaults another by strangulation." RCW 9A.04.110(26) defines strangulation as "to compress a person's neck, thereby obstructing the person's blood flow or ability to breathe, or

doing so with the intent to obstruct the person's blood flow or ability to breath." These statutes do not define the term "obstruct."

In this case, the Court of Appeals, Division One, adopted this definition for obstruct: "To hinder or block to some degree." "That is, the statute applies equally to complete and partial obstructions of either a victim's ability to breathe or to experience blood flow."

Under this definition, "it is clear that sufficient evidence was presented at trial to support the jury's finding that [the defendant] obstructed [the victim's] breathing when he choked her." Specifically, the evidence showed: (1) the defendant "more than once grabbed [the victim] by the throat and squeezed her neck; (2) the defendant's "action caused [the victim] difficulty breathing at the time and for minutes afterward; and (3) the defendant's action "left permanent scars on [the victim's] neck." As such, the Court of Appeals affirmed the defendant's conviction for assault by strangulation.

AFTER A DEFENDANT INVOKES THE RIGHT TO REMAIN SILENT, THERE IS NO BRIGHT-LINE RULE FOR WHEN OFFICERS MUST FULLY READVISE A DEFENDANT OF THE *MIRANDA* RIGHT TO REMAIN SILENT; BUT, BEST PRACTICE IS TO READVISE THE DEFENDANT OF *MIRANDA* RIGHTS BEFORE REINITIATING AN INTERROGATION
State v. Elkins, __ Wn. App. __, __ P.3d __, 2015 WL 3759299 (June 16, 2015).

Defendant is arrested in Yakima County on suspicion of murdering his girlfriend. The suspected murder occurred in Grays Harbor County.

Yakima County deputies read the defendant his *Miranda* rights at 3:30 p.m. The defendant did not make a statement and deputies ceased questioning.

Later that evening, Grays Harbor County detectives arrive to question the defendant. The Yakima County deputies informed the detectives that they read the defendant his *Miranda* rights, and the defendant declined to speak with the deputies.

At 8:30 p.m., the detectives met with the defendant. The detectives did not readvise the defendant of his right to remain silent. But, the detectives asked the defendant "if he had been advised of [his *Miranda*] rights, if he remembered them, and if he understood those rights were still in effect." The defendant "confirmed that he recalled being advised of his *Miranda* rights and that he understood those rights were still in effect." The defendant then "agreed to talk to the deputies." During this interview, the defendant made incriminating statements.

The next day, one of the detectives transported the defendant from Yakima County to Grays Harbor County. The detective and the defendant engaged in small talk during the long drive. "Towards the end of the drive, [the defendant] told [the detective] that he wanted to talk about what had happened[.]" The detective advised the defendant "to wait until they arrived at the sheriff's office and they could properly advise him of his *Miranda* rights." When they arrived at the sheriff's office, the defendant was readvised of his *Miranda* rights and then gave incriminating statements.

The defendant was convicted of second degree felony murder. On appeal, the defendant argued that his statements to the Grays Harbor detectives should have been suppressed based on *Miranda* violations. The Court of Appeals, Division Two, disagreed.

The Court of Appeals noted "that fully readvising a suspect of his *Miranda* rights is clearly the best practice when resuming questioning of a suspect who has asserted his right to silence."

However, "there is no bright-line rule that law enforcement officers must always fully readvise a defendant of his or her *Miranda* rights and that whether a defendant's rights have been scrupulously honored must be determined on a case-by-case basis."

Officers must cease questioning when a person invokes the right to remain silent. "Law enforcement officers may, however, resume questioning under certain circumstances even if the defendant has asserted his right to silence." When officers obtain a confession after the defendant invokes *Miranda* rights, a court will evaluate whether the defendant's right to remain silent "was scrupulously honored."

"Further questioning [by officers] of a suspect is allowed provided the following conditions exist: (1) the right to cut off questioning was scrupulously honored; (2) the police engaged in no further words or action amounting to interrogation before obtaining a waiver or assuring the presence of an attorney; (3) the police engaged in no tactics which tend to coerce the suspect; and (4) *the subsequent waiver was knowing and voluntary*." A court will also consider "whether there was a significant passage of time before the law enforcement officers attempted to reinitiate interrogation because the passage of time weighs in favor of finding that a defendant's rights have been scrupulously honored."

In this case, the Grays Harbor detectives did not violate the defendant's *Miranda* rights by taking his statements after he invoked the right to remain silent to the Yakima County deputies. The defendant's *Miranda* rights were not violated when the detectives interviewed him in Yakima County because:

> (1) the Yakima deputies ceased questioning [the defendant] immediately when he asserted his right to silence, (2) no law enforcement officer attempted to interrogate [the defendant] for a significant period of time, five hours, before his subsequent contact with the Grays Harbor [detectives], (3) no law enforcement officer engaged in any coercive tactics, and (4) the Grays Harbor county deputies did not interrogate [the defendant] until after they confirmed that he had been read his rights, that he recalled those rights, and that he understood those rights were still in effect.

Likewise, the defendant's *Miranda* rights were not violated by the detective engaging in small talk with him on the drive back to Grays Harbor. "Once a defendant has asserted his right to counsel, a waiver of the right to counsel is valid only if police scrupulously honored that request, the defendant initiated further relevant conversation, and the defendant's waiver was knowing and voluntary." During the drive back from Yakima County, the defendant "was the one who changed the direction of the conversation from a casual conversation to one focused on the crime[.]" Moreover, the detective "testified that it was *not* his intent to persuade [the defendant] to say anything incriminating or to encourage him to give a statement by engaging in small talk." As such, the defendant's subsequent incriminating statements at the Grays Harbor Sheriff's Office were not obtained in violation of his *Miranda* rights.

AFTER SUSPECT HAD BEEN ARRESTED, OFFICER LACKED REASONABLE SUSPICION THAT SUSPECT'S COMPANION PRESENTED A DANGER TO OFFICERS TO JUSTIFY CONTINUED DETENTION AND SEARCH OF COMPANION
State v. Flores, __ Wn. App. __, 351 P.3d 189 (publication ordered June 25, 2015).

After receiving an anonymous tip that Giovanni Powell had "held a gun to somebody's head," "police dispatch sent all available patrol officers" to that address. The first officers on the scene saw Powell and his companion, Cody Flores. The officers ordered these men to stop walking,

put their hands on their heads, face away from the officers and kneel on the sidewalk. The men complied with these orders. The officers arrested Powell without incident.

Another officer arrived on the scene and "assumed control over [Flores], who remained kneeling on the street corner with his hands up, facing away from the officers." This officer "instructed Flores to keep his hands where [the officer] could see them and to walk backward to the sound of his voice." Flores complied with these orders.

The officer then "asked Flores about the location of the gun, and Flores responded that he carried the firearm in his pants under his jacket." The officer removed the gun from Flores. Review of Flores' criminal history showed that he had a felony conviction and could not legally possess a firearm. The State charged Flores with unlawful possession of a firearm.

The defendant moved to suppress the officer's discovery of the firearm by arguing that there was no reasonable suspicion to detain him. Both the trial court and the Court of Appeals, Division Three, agreed.

Law enforcement officers "must articulate an 'objective rationale'" based on officer or public safety concerns to seize an arrestee's companion. However, "[a] generalized concern for officer safety has never justified a full search of a nonarrested person."

In this case, after the officers had Powell in custody, "the officers' objective rational for seizing Flores evaporated, and the officers could no longer lawfully detain and search Flores because . . . they lacked a reasonable suspicion that Flores had committed, or was about to commit, a crime, or was a danger to the officers."

In reaching this conclusion, the Court of Appeals noted these facts: (1) "Flores exhibited no threatening or aggressive behavior toward the officers"; (2) Flores "immediately complied with [the officer's] every command; (3) the officer who assumed control of Flores "testified that Flores was in a position of disadvantage by the time he arrived, kneeling on the ground with his hands behind his head, facing away from the officers;" and (4) "[t]he anonymous tip made no mention of Flores, nor did any of the responding officers have reason to believe Flores had dangerous propensities."

For these reasons, the Court of Appeals affirmed the trial court's suppression of the firearm and the dismissal of charges.

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The Law Enforcement Digest (LED) is edited by Assistant Attorney General Shelley Williams of the Washington Attorney General's Office. Questions and comments regarding the content of the LED are welcome and should be directed to Ms. Williams at ShelleyW1@atg.wa.gov. LED editorial commentary and analysis of statutes and court decisions express the thinking of the editor and do not necessarily reflect the views of the Office of the Attorney General or the CJTC. The LED is published as a research source only. The LED does not purport to furnish legal advice. LEDs from January 1992 forward are available via a link on the CJTC Home Page [https://fortress.wa.gov/cjtc/www/led/ledpage.html]

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