Law Enforcement Digest

June 2017

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

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HONOR ROLL

751 Basic Law Enforcement Academy – March 14, 2017 through July 19, 2017

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UNITED STATES SUPREME COURT

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***BRADY*: WITHHELD EXCULPATORY AND IMPEACHMENT EVIDENCE WAS NOT MATERIAL BECAUSE IT IS NOT REASONABLY PROBABLE THAT THE WITHHELD EVIDENCE COULD HAVE LED TO A NOT GUILTY VERDICT.**
Turner v. United States, 137 S. Ct. 1885, 198 L.Ed.2d 443 (June 22, 2017).

FACTS (portions excerpted from the opinion):

On October 1, 1984, at around 4:30 p.m., Cathleen Fuller left her home to go shopping. At approximately 6:00 p.m., William Freeman found Ms. Fuller's body. She had been robbed, severely beaten, and sodomized with an object that caused extensive internal injuries.

In 1985, seven defendants were tried for the kidnapping, armed robbery, and murder of Fuller. The prosecution's key evidence was the testimony of Calvin Alston and Harry Bennett. Both Alston and Bennett confessed to participating in the crime, and agreed to testify in exchange for leniency. Their testimony was similar. Alston and Bennett testified that a group attacked Fuller to rob her. Several men (including the defendants) punched Fuller and kicked her when she fell to the ground. The men dragged Fuller into a garage, tore off her clothes, and sodomized her with a foot-long pipe.

Other witnesses corroborated Alston and Bennet's testimony, including that Fuller was attacked by a group. Two witnesses, Carrie Eleby and Linda Jacobs, testified that they "heard screams coming from where a gang of boys was beating somebody near the garage in the alley." Another 14-year-old witness, Maurice Thomas, testified that he saw the attack and ran home to his aunt. Thomas' aunt told him "not to tell anyone what he saw."

At trial, the seven defendants presented "a not me, maybe them" theory that they were not part of the group that attacked Fuller. The defendants impeached witnesses who had identified the defendants at the scene. For example, some of the defendants presented evidence that Eleby and Jacob had used PCP the day of the murder.

A jury found the defendants guilty. After the convictions were final, the defense learned that the prosecution failed to disclose favorable evidence to the defense. The favorable evidence included:

(1) *The identity of James McMillan.* The identity of James McMillian who was seen in the alley, with a bulge under his coat, shortly after Freeman discovered Fuller's body in the alley garage. After Fuller's murder, and before the defendants' trial, McMillian was arrested for beating and robbing two women in the neighborhood. Seven years after the defendants' trial, McMillan had robbed, sodomized, and murdered a young woman in an alley.

(2) *The interview with Willie Lichie*. An undisclosed interview between the prosecutor and Willie Luchie. Luchie told the prosecutor that he "heard several groans" and "remembers the doors to the garage being closed" when he walked through the alley between 5:30 and 5:45 p.m.

(3) *The interviews with Ammie Davis*. An undisclosed interview between the prosecutor, police officer, and Ammie Davis. Davis had been arrested for disorderly conduct a few weeks after the murder. Davis first said that she had seen James Blue beat Fuller to death in the alley. Davis then said that "she only saw Blue grab Fuller and push her into the alley." Shortly before the defendants' trial, Blue murdered Davis in an unrelated drug dispute.

(4) *Impeachment of Kaye Porter and Carrie Eleby*. Kaye Porter accompanied Eleby during an initial interview with homicide detectives. Porter agreed with Eleby that she had also heard Alston state that he was involved in robbing Fuller. An undisclosed prosecutorial note states that in a later interview with detectives, Porter stated that she did not actually recall hearing Alston's statement and just went along with what Eleby said. The note also states that Eleby likewise admitted that she had lied about Porter being present during Alston's statement and had asked Porter to support her.

(5) *Impeachment of Carrie Eleby*. A prosecutor's undisclosed note revealed that Eleby said she had been high on PCP during a January 9, 2985, meeting with investigators.

(6) *Impeachment of Linda Jacobs*. An undisclosed note of an interview with Linda Jacobs said that the detective had "questioned her hard," and that she had "vacillated" about what she saw. The prosecutor recalled that the detective "kept raising his voice" and was "smacking his hand on the desk" during the interview.

(7) *Impeachment of Maurice Thomas*. An undisclosed note of an interview with Maurice Thomas' aunt stated that she "does not recall Maurice ever telling her anything such as this."

PROCEDURAL HISTORY:

Based on this undisclosed evidence, the defendants moved to have their convictions vacated. The trial court denied the motion, and the District of Columbia Court of Appeals affirmed. The defendants sought review by the United States Supreme Court. The Supreme Court agreed with the trial court and Court of Appeals that the undisclosed evidence was not material under *Brady*.

ISSUE: Whether the undisclosed favorable evidence was material for *Brady* purposes.

ANALYSIS: (portions excerpted from the opinion):

To establish a *Brady* violation, a defendant must show that: (1) evidence was favorable to the defendant because it is exculpatory or impeachment; (2) the prosecutor suppressed the evidence by not disclosing it to the defense; and (3) the evidence is material. In this case, the prosecutor agreed that the undisclosed evidence was favorable to the defense, and the prosecutors had suppressed the evidence by not providing it to defense counsel.

Under *Brady*, evidence is material when there is a reasonable probability that, had the evidence been disclosed, the result of the proceeding would have been different. In this case, the defense claimed that the undisclosed evidence would have: (1) allowed the defense to present a theory that the group attack did not occur at all – and that it was actually McMillan, alone or with an accomplice, who murdered Fuller; and (2) the investigator's failure to follow-up on Davis' statement that Blue murdered Fuller, plus the other impeachment evidence, suggested that an incomplete investigation had ended up accusing the wrong persons. The Supreme Court disagreed.

The Supreme Court found that there is not a reasonable probability that the withheld evidence would have changed the outcome of the defendants' trial. The Supreme Court reasoned:

(1) McMillan's guilt (or that of any other single or near single perpetrator) is inconsistent with the defendants' guilt only if there was no group attack. But a group attack was the very cornerstone of the prosecution's case. The witnesses may have differed on minor details, but virtually every witness to the crime itself agreed as to a main theme: that Fuller was killed by a large group of perpetrators.

(2) The problem with the defendants' theory is that they would have had to persuade the jury that both Alston and Bennett falsely confessed to being active participants in a group attack that never occurred; that another witness falsely implicated himself in that group attack and, through coordinated effort or coincidence, gave a highly similar account of how it occurred; that Thomas, a disinterested witness who recognized the defendants when he happened upon the attack and heard one of the defendants refer to it later that night, wholly fabricated his story; that both Eleby and Jacobs likewise testified to witnessing a group attack that did not occur; and that another witness in fact did not see defendants and others, as a group, identify Fuller as a target and leave the park to rob her.

(3) The impeachment evidence was largely cumulative of impeachment evidence used at trial.

RESULT: The Supreme Court affirmed the trial court's denial of the motion to vacate the convictions.

LED EDITORIAL NOTE: In this case, the prosecution acknowledged that the undisclosed evidence was favorable to the defendants, and should have been disclosed to the defense before trial. Additionally, the Supreme Court noted that they "do not suggest that impeachment evidence is immaterial with respect to a witness who has already been impeached with other evidence." Law enforcement officers should disclose all exculpatory and impeachment evidence to the prosecutor to disclose to the defense. As always,

officers are encouraged to discuss these issues with their agency's legal advisor and local prosecutor.

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NINTH CIRCUIT COURT OF APPEALS

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SEARCH AND SEIZURE: OFFICER'S STOP OF A TRUCK UNDER A REGULATORY ADMINISTRATIVE SEARCH WAS PRETEXTUAL AND VIOLATED THE FOURTH AMENDMENT.
United States v. Orozco, 858 F.3d 1204 (June 1, 2017).

FACTS: (portions excerpted from the opinion):

Nevada law authorizes state troopers to stop commercial vehicles for limited inspections without reasonable suspicion of a violation. The purpose of this law is to ensure the safe operation of commercial vehicles. A Nevada state trooper received information that a commercial vehicle may have been transporting drugs. The state trooper stopped the commercial vehicle based on his authority to inspect commercial vehicles, without reasonable suspicion, for safety purposes. During the inspection, a canine officer arrived with a drug-sniffing dog. The dog alerted on the commercial vehicle. The commercial vehicle's driver, Victor Orozco, consented to a search of the vehicle. During the search, the officers found methamphetamine and heroin.

PROCEDURAL HISTORY:

The prosecution charged Orozco with controlled substances violations. Before trial, the defense moved to suppress the evidence and argued that the trooper's stop (based on his authority to conduct administrative inspections without reasonable suspicion) was a pretext for a criminal investigation. The trial court denied the motion. The defense appealed to the Ninth Circuit Court of Appeals. The Ninth Circuit disagreed with the trial court.

ISSUE: Whether an officer's regulatory administrative inspection, conducted solely for criminal investigation purposes, is unreasonably pretextual and violates the Fourth Amendment.

ANALYSIS: (portions excerpted from the opinion):

Under the Fourth Amendment, seizures must be reasonable. An officer stopping a vehicle is a seizure. The seizure must be based on a search warrant or an exception to the warrant requirement. Administrative searches based on regulations to ensure safe operation of commercial vehicles is an exception to the warrant requirement. However, an officer may not conduct an administrative stop solely as a pretext to investigate a crime. In that situation, the administrative stop is "unreasonably pretextual" and violates the Fourth Amendment.

In order to prove that a stop is unreasonably pretextual, a defendant must show that the stop would not have occurred in the absence of an impermissible reason. In this case, the Ninth Circuit found that the trooper's administrative stop was unreasonably pretextual. The Court reasoned:

(1) After receiving a tip about about the location of Orozco's truck, an officer immediately contracted the trooper to advise him of the vehicle and location. After this conversation, the troopers drove out to the location to "be on the lookout for" Orozco's truck. Thus, but for the tip, the officers would not even have been in position to stop the truck.

(2) The trooper testified that using administrative inspections as a pretext to investigate criminal activity was "common knowledge."

(3) The seizure would not have taken place were it not for the fact that the officers intended to search for evidence of criminal activity.

RESULT: The Ninth Circuit found that the stop violated the Fourth Amendment, and reversed the trial court's denial of the motion to suppress evidence found during the stop.

CIVIL RIGHTS LAWSUIT: OFFICERS DID NOT USE EXCESSIVE FORCE IN RELEASING A POLICE DOG INTO AN OFFICE BUILDING, LATE AT NIGHT, IN RESPONSE A BURGLARY CALL WHEN THE OFFICERS GAVE WARNINGS THAT THE DOG MAY BITE.
Lowry v. City of San Diego, 858 F.3d 1248 (June 6, 2016).

FACTS (excerpted from the opinion):

When a burglar alarm in a commercial building was triggered shortly before 11:00 p.m. on a Thursday night, San Diego Police Department officers responded. Accompanied by a police service dog, Bak, the officers inspected the building and found a door to a darkened office suite propped open. Unable to see inside the suite, one of the police officers warned: "This is the San Diego Police Department! Come out now or I'm sending in a police dog! You may be bitten!" No one responded. The officers suspected that a burglary might be in progress and that the perpetrator was still inside the suite. After he repeated the warning and again received no response, one of the officers released Bak from her leash and followed closely behind her as they scanned each room. As he entered one of the rooms, the officer noticed a person laying down on a couch. Bak leaped onto the couch. Within seconds, the officer called Bak off, and the dog returned to the officer's side. The person on the couch was Plaintiff Sara Lowry. She had returned to the office after a night out drinking with her friends, and had accidentally triggered the alarm before falling asleep on the couch. During their encounter, Bak bit Lowry's lip.

PROCEDURAL HISTORY:

Lowry sued the City of San Diego under 42 U.S.C. § 1983 (Section 1983). She claimed that the officers used unreasonable force by releasing Bak into the office building and violated her Fourth Amendment rights. The district court granted the City's motion for summary judgment. A three-judge panel of the Ninth Circuit Court of Appeals reversed the trial court. The Ninth Circuit then reheard the case en banc, and found that the officers did not use unreasonable force.

ISSUE: Whether an officer releasing a police dog into an empty office building, when responding to a burglary alarm and shouting warnings, is unreasonable force that violates the Fourth Amendment.

ANALYSIS: (portions excerpted from the opinion):

An unreasonable use of force violates the Fourth Amendment. Courts consider these factors in judging the objective reasonableness of a particular use of force: (1) the severity of the intrusion on the individual's Fourth Amendment rights by evaluating the type and amount of force inflicted; (2) the government's interest in the use of force; and (3) the balance between the gravity of the intrusion on the individual and the government's need for that intrusion.

In this case, the Ninth Circuit found that the officers releasing Bak was a reasonable use of force because:

(1) The use of force was moderate. The canine officer closely followed Bak and called her off very quickly after the initial contact with Lowry. In part because of the canine officer's close proximity to Bak, the encounter between Lowry and Bak was so brief that the canine officer did not even know if contact had occurred. Thus, the risk of harm posed by this particular use of force, and the actual harm caused, was moderate.

(2) A court evaluates the government's interest in a use of force with the *Graham* factors: (i) the severity of the crime at issue; (ii) whether the suspect posed an immediate threat to the safety of the officers or others, and (iii) whether the suspect was actively resisting arrest or attempting to evade arrest by flight. In this case, the Ninth Circuit found:

(i) Burglary is a severe crime with the inherent risk of violence. Because the building's burglar alarm had been triggered late at night, the door to the office suite had been left ajar, and no one responded to the officer's warnings that Bak may bite, the officers reasonably concluded that a burglary might be in progress.

(ii) A reasonable officer could have concluded that if there was someone committing a burgarly in the building, that person might be armed and could pose an immediate threat to the safety of the officers. The officers knew that they had been dispatched to respond to a burglar alarm, and that no one responded to their warnings. Moreover, when confronted with signs of a burglary, investigating officers are entitled to protect their own safety.

(iii) The factor examining whether a suspect was actively resisting, or attempting to evade arrest by flight, does not weigh either way because nobody responded to the warnings shouted by the officer.

(iv) The officer also repeatedly shouted warnings before entering the office suite with Bak. Although Lowry did not hear the warnings, the officers did not know and had no reason to know that someone would be in a nonresidential building late at night and sleeping so deeply that she would be unable to hear a warning or to be awakened by the officers' calls.

(v) Officers are not required to use the least intrusive degree of force possible. If Bak had been on the leash, the canine officer would have been required to expose himself to what the officers reasonably suspected was a burglar, lurking in a dark office, possibly armed.

(3) The force used was not severe, and the officers had a compelling interest in protecting themselves against foreseeable danger in an uncertain situation, which they reasonably suspected to be an ongoing burglary.

RESULT: The Ninth Circuit found that the officers did not use unreasonable force and affirmed the district court's order granting the City's summary judgment motion.

SEARCH AND SEIZURE: OFFICER UNREASONABLY PROLONGED TRAFFIC STOP BY DETAINING MOTORIST FOR NEARLY 30 MINUTES AFTER COMPLETING THE TRAFFIC INFRACTION INVESTIGATION, AND THIS UNREASONABLE FIRST TRAFFIC STOP TAINTED EVIDENCE OBTAINED DURING A SECOND TRAFFIC STOP.
United States v. Gorman, 859 F.3d 706 (June 12, 2017).

FACTS: (portions excerpted from the opinion):

Straughn Gorman drove a motorhome on Interstate 80. Gorman attempted to pass a semi-truck by driving in the left lane, but was unable to do so. An officer stopped Gorman for a "left lane violation," i.e., driving too slow in the left lane and backing up traffic in that lane. During the stop, the officer became suspicious of Gorman's story that he was traveling to California to visit his girlfriend.

The officer returned to his patrol car and requested a drug dog, a driver's check, and a criminal history check on Gorman. The routine driver's and criminal history checks showed that Gorman had no prior arrests and no warrants. The officer then requested a non-routine check from a multi-jurisdictional bureau. That check showed that the Drug Enforcement Agency had a "hit" on Gorman for a transfer of $11,000 in 2006, and he had entered or left the United States four times.

Twenty minutes after stopping Gorman, the officer returned to the motorhome and informed Gorman that he was not issuing a citation. But, the officer did not tell Gorman that he was free to leave. The officer prolonged the stop by asking Gorman more questions unrelated to the left lane violation. The officer asked Gorman if had anything illegal or if he was carrying cash. Gorman said he had $2,000. The officer asked for consent to search the motorhome, and Gorman said no. The officer then let Gorman go. Almost 30 minutes had passed since the initial stop.

The officer then contacted communications, and reported that Gorman was heading westbound. The officer informed communications that the next officer would need a narcotics canine, because "the only way to get in this vehicle would be with probable cause."

A second officer located and followed the motorhome. The second officer observed the motorhome's tire cross the fog line three times. The second officer stopped the motorhome. The second officer asked Gorman for his license and registration. The second officer then asked dispatch to conduct a routine records check of outstanding warrants and criminal history. At the time, dispatch was dealing with a medical emergency, and there was a delay in running the routine records check.

Before the routine records check was completed, a canine officer arrived on the scene and released a narcotics dog. The dog alerted on the motorhome. The second officer obtained a search warrant and found $167,070 in cash in the motorhome.

PROCEDURAL HISTORY:

Gorman was not charged with a crime. The federal government initiated a forfeiture proceeding on the $167,070 in cash found in the motorhome. At the forfeiture hearing, Gorman argued that both stops violated his Fourth Amendment rights, and the money should not be forfeited. The district court agreed and ordered the money returned to Gorman. The government appealed to the Ninth Circuit Court of Appeals. The Ninth Circuit agreed with the district court.

ISSUE: Whether an unreasonably prolonged traffic stop, which violates the Fourth Amendment, taints evidence found during a second traffic stop.

ANAYLSIS: (portions excerpted from the opinion):

A traffic stop is a seizure. Under the Fourth Amendment, officers must have a warrant or an exception to the warrant requirement to seize a person. A *Terry* stop (based on reasonable suspicion of a traffic violation) is an exception to the warrant requirement. However, an officer may not unreasonably prolong a *Terry* stop. Traffic stops can last only as long as is reasonably necessary to carry out the mission of the stop, unless police have an independent reason to detain the motorist longer. The mission of a stop includes determining whether to issue a traffic ticket and checking the driver's license, determining whether there are outstanding warrants against the driver, and inspecting the automobile's registration and proof of insurance.

Police may conduct unrelated investigations within the time reasonably required to complete the traffic stop's mission. But an officer may not prolong the roadside stop to conduct an unrelated investigation unless the officer has independent reasonable suspicion justifying the prolongation. Examples of unrelated investigations include non-routine record checks and dog sniffs.

In this case, the government conceded that the officer unreasonably prolonged the first stop by detaining Gorman for almost 30 minutes after completing the routine traffic infraction investigation. Specifically, the officer performed non-routine investigative inquiries and questioned Gorman about matters unrelated to the traffic infraction. As such, the officer's investigation fell beyond the scope of the stop's mission.

The government argued that the second traffic stop did not violate the Fourth Amendment, and evidence of the currency found during the search (authorized by a search warrant) is admissible. The Ninth Circuit disagreed. The Ninth Circuit found that the illegality of the first detention tainted the evidence found during the second stop. The Court reasoned:

(1) Evidence derivative of a Fourth Amendment violation, the "fruit of the poisonous tree," is ordinarily "tainted" by the prior "illegality" and is inadmissible.

(2) In this case, there is an indisputable "causal connection" between Gorman's concededly unlawful detention and the dog sniff and its fruits. The detention unquestionably served as the impetus for the chain of events leading to the discovery of the currency. It is clear, moreover, that the officer's suspicions from the first stop significantly directed the second officer's actions in making the second stop and conducting the sniff and search. The close connection between the constitutional violation (the first detention) and the seizure of the currency is apparent.

RESULT: The Ninth Circuit found that the evidence found during the second stop was the "fruit of the poisonous" tree from the first stop, and should be suppressed.

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WASHINGTON STATE SUPREME COURT

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***BRADY*: PROSECUTOR WAS NOT REQUIRED TO DISCLOSE DETECTIVE'S PERSONNEL FILE TO THE DEFENSE BASED ON A BROAD, UNSUPPORTED CLAIM THAT THE PERSONNEL FILE MIGHT CONTAIN IMPEACHMENT EVIDENCE.**
In the Matter of Lui, 188 Wn.2d 525, 397 P.3d 90 (June 22, 2017).

FACTS: (portions excerpted from the opinion):

In 2001, Sione Lui and his fiancée, Elaina Boussiacos, moved into a home in Woodinville, Washington. A month later, Boussiacos was found dead in the trunk of her car. The case was cold until 2006 (due to new DNA testing). In 2007, Lui was charged with Boussiacos murder.

In 2005, the *Seattle Post-Intelligencer* published an article about internal investigations of a detective (who also investigated the Lui case). The article reported that the detective had numerous internal investigations including making sexual advances toward a minor in 1986, tampering with a breathalyzer test in exchange for a date with a young woman in 1986, for striking and cursing at a hit-and-run suspect in 1988, for videotaping gang members assaulting other gang members rather than intervening to stop the assault in 1992, and for using his authority as an officer to intimidate and threaten his girlfriend's estranged husband in 2004.

A jury convicted Lui of second degree murder.

PROCEDURAL HISTORY:

Lui filed a personal restraint petition and made several claims, including a *Brady* claim that the prosecutor should have disclosed a detective's personnel file to the defense attorney. The Court of Appeals denied the petition. Lui sought review by the Washington State Supreme Court. The Supreme Court agreed with the Court of Appeals.

ANALYSIS: (portions excerpted from the opinion):

To establish a *Brady* violation, a defendant must show that: (1) evidence was favorable to the defendant because it is exculpatory or impeachment; (2) the prosecutor suppressed the evidence by not disclosing it to the defense; and (3) the evidence is material. In this case, the Supreme Court found that there was no evidence of a *Brady* violation, because the defense did not show that there was any material exculpatory or impeachment evidence in the detective's personnel file.

RESULT: The Supreme Court affirmed the Court of Appeals denial of the personal restraint petition.

LED EDITORIAL NOTE: In this case, the Supreme Court noted that "the availability of records through a public records request does not alleviate or excuse the government of its affirmative duty to learn of and disclose any exculpatory or impeachment evidence known to the prosecution or others working on its behalf." Law enforcement agencies should notify prosecutors when officers are subject to disciplinary investigations that may constitute *Brady* material (e.g., truthfulness). As always, officers are encouraged to discuss these issues with their agency legal advisors.

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WASHINGTON STATE COURT OF APPEALS

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SEARCH AND SEIZURE: OFFICER HAD REASONABLE SUSPICION TO STOP A DRIVER WHO DROVE THE FRONT TWO WHEELS OF HER VEHICLE OVER THE FOG LINE FOR APPROXIMATELY 200 FEET FOR A VIOLATION OF RCW 46.61.670.
State v. Kocher, 199 Wn. App. 336, 400 P.3d 328 (June 26, 2017).

FACTS: (portions excerpted from the opinion):

An officer observed a vehicle with two wheels crossing the fog line for approximately 200 feet. The officer stopped the vehicle for a traffic infraction. Christi Kocher was the vehicle's driver. The officer developed probable cause that Kocher was impaired and arrested her for driving under the influence.

PROCEDURAL HISTORY: (portions excerpted from the opinion):

The State charged Kocher with driving under the influence. Before trial, the defense moved to suppress the evidence found during the stop, and argued that the officer lacked reasonable suspicion that Kocher violated RCW 46.61.140. The prosecution argued that the officer had reasonable suspicion that Kocher violated RCW 46.61.670. The trial court agreed with the defense and suppressed the evidence gathered during the stop. The prosecution appealed to the Superior Court. The Superior Court reversed the trial court. The defense appealed to the Washington State Court of Appeals. The Court of Appeals agreed with the Superior Court that the officer had reasonable suspicion that Kocher violated RCW 46.61.670.

ISSUE: Whether a vehicle's tires crossing the fog line for approximately 200 feet provides reasonable suspicion that the driver violated RCW 46.61.670.

ANALYSIS: (portions excerpted from the opinion):

Under the Washington state constitution, article I, section 7, a traffic stop is a seizure. An officer must have a warrant or an exception to the warrant requirement to stop a vehicle. A *Terry* stop based on reasonable suspicion of a traffic violation is an exception to the warrant requirement.

The statute at issue is RCW 41.61.670. That statute provides, in relevant part:

> It shall be unlawful to operate or drive any vehicle . . . over or along any pavement . . .on a public highway with ***one wheel or all of the wheel off the roadway*** thereof, except . . . for the purpose of stopping off such roadway, or having stooped thereat, for proceeding back onto the pavement.

The Court of Appeals found that the officer had reasonable suspicion that Kocher (driving two wheels of her car over the fog line for approximately 200 feet) violated this statute. The Court reasoned:

(1) Under the plain language of this statute, it is a traffic infraction, except in certain situations not relevant here, to drive a vehicle, on a public highway with one wheel or all of the wheels off the roadway.

(2) Based on the straightforward application of this statute to the undisputed facts of this case, the officer had reasonable suspicion to believe that Kocher committed a traffic infraction. The warrantless stop was lawful.

RESULT: The Court of Appeals found that the stop was based on reasonable suspicion of a traffic violation, and reversed the trial court's order granting the suppression motion.

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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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