Law Enforcement Digest

March 2017

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

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HONOR ROLL

744 Basic Law Enforcement Academy – October 18, 2016 through March 1, 2017

President:	Deputy Ryan Krastins, Spokane County SO
Best Overall:	Deputy Jason Tansy, Benton County SO
Best Academic:	Officer Wade Rediger, Marysville PD
Best Practical Skills:	Deputy Ryan Krastins, Spokane County SO
Patrol Partner:	Deputy Dylan Helser, Mason County SO
Tac Officer:	Paul Evers, Olympia PD
	Jenifer Eshom, Seattle PD

745 Basic Law Enforcement Academy – November 8, 2016 through March 22, 2017

President:	Officer Cory Alcantar, Colfax PD
Best Overall:	Officer Garrett Lowell, Kirkland PD
Best Academic:	Officer Bryan Poland, Edmonds PD
Best Practical Skills:	Officer Stephen Purtell, Twisp PD
Patrol Partner:	Officer Bryan Poland, Edmonds PD
Tac Officer:	Joseph Winters, King County SO
	Matthew Ludwig, Tukwila PD

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UNITED STATES SUPREME COURT

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CIVIL RIGHTS LAWSUIT: UNLAWFUL PRETRIAL DETENTION BASED ON FABRICATED EVIDENCE VIOLATES THE FOURTH AMENDMENT.
Manuel v. City of Joliet, __ U.S. __, 137 S.Ct. 911, 2017 WL 1050976 (March 21, 2017)

Elijah Manuel was a passenger in a car stopped by police officers. Manuel alleged that "one of the officers dragged [him] from the car, called him a racial slur, and kicked and punched him as he lay on the ground." The officers found a bottle of pills on Manuel. The officers field tested the pills. The field test results were negative for controlled substances.

The officers arrested and transported Manuel to a police station. At the police station, "an evidence technician tested the pills once again, and got the same (negative) result." However, "the technician lied in his report, claiming that one of the pills was found to be . . . positive for the probable presence of ecstasy." An officer wrote a report stating that, based on his training and experience, the pills were ecstasy. Based on those reports, another officer issued a criminal complaint that charged Manuel with unlawful possession of a controlled substance.

Later that day, a judge held a hearing to determine if there was sufficient probable cause to hold Manuel in custody for that crime. "The judge relied exclusively on the criminal complaint – which in turn relied exclusively on the police department's fabrications – to support a finding of probable cause." The judge then issued a pretrial detention order to keep Manuel in jail until trial.

While Manuel was held in jail, the state crime laboratory tested the seized pills and found that the pills did not contain controlled substances. After 48 days of pretrial detention, the prosecution dismissed the criminal charges and Manuel was released from jail.

Manuel filed a 42 U.S.C. § 1983 lawsuit against the city and alleged that the unlawful pretrial detention violated his Fourth Amendment rights. The trial court dismissed the lawsuit and reasoned "that pretrial detention following the start of legal process could not give rise to a Fourth

Amendment claim." The Seventh Circuit Court of Appeals agreed with the trial court. The United States Supreme Court disagreed.

The Fourth Amendment guarantees "[t]he right of the people to be secure in their persons . . . against unreasonable . . . seizures." The Supreme Court concluded that Manuel's pretrial detention, based on fabricated evidence provided to the judge, was an unreasonable seizure. The Supreme Court reasoned:

> Manuel stated a Fourth Amendment claim when he sought relief not merely for his (pre-legal-process) arrest, but also for his (post-legal-process) pretrial detention. Consider again the facts alleged in this case. Police officers initially arrested Manuel without probable cause, based solely on his possession of pills that had field tested negative for an illegal substance. So . . . Manuel could bring a claim for wrongful arrest under the Fourth Amendment. And the same is true . . . as to a claim for wrongful detention – because Manuel's subsequent weeks in custody were *also* unsupported by probable cause, and *so also* constitutionally unreasonable. No evidence of Manuel's criminality had come to light in between the roadside arrest and the County Court proceeding initiating legal process; to the contrary, yet another test of Manuel's pills had come back negative in that period. All that the judge had before him were police fabrications about the pills' content. The judge's order holding Manuel for trial therefore lacked any proper basis. And that means Manuel's ensuing pretrial detention, no less than his original arrest, violated his Fourth Amendment rights.

As a result, the Supreme Court reversed the dismissal of the lawsuit.

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NINTH CIRCUIT COURT OF APPEALS

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SEARCH AND SEIZURE: FEDERAL OFFICER RECKLESSLY DISREGARDED THE TRUTH IN HIS AFFIDAVIT FOR A SEARCH WARRANT BY OMITTING (1) COPIES OF THE ALLEGED IMAGES OF CHILD PORNOGRAPHY; (2) INFORMATION THAT CANADIAN AUTHORITIES DETERMINED THE IMAGES WERE NOT PORNOGRAPHIC UNDER CANADIAN LAW; AND (3) PORTIONS OF THE CANADIAN LAW ENFORCEMENT OFFICER'S DESCRIPTION OF THE IMAGES.

United States v. Perkins, 850 F.3d 1109, 2017 WL 957205 (March 13, 2017).

Charles Perkins (a Washington resident) stopped at the Toronto International Airport on his way back to Washington. Perkins is a registered sex offender and has "a 1987 first-degree incest conviction and a 1990 first-degree child molestation conviction." Because Perkins is a registered sex offender, a Canadian border agent searched his laptop. The agent "found two images that he believed to be child pornography." Another Canadian law enforcement officer reviewed the images and "arrested Perkins for possession of child pornography." Canadian officers seized Perkins' laptop, digital camera, and memory card.

After Perkins' arrest, a third Canadian law enforcement officer (who specialized in child exploitation investigations) sought a search warrant and examined the two images. This Canadian officer "concluded that [the two images] did not constitute child pornography under Canadian law." The Canadian officials did not pursue criminal charges against Perkins, and referred the investigation to a United States Department of Homeland Security Special Agent.

Before the Special Agent received the two images, he drafted an affidavit for a search warrant "to search all the digital devices in Perkins' home in Washington." The Special Agent based the draft affidavit on the Canadian officer's report.

The Special Agent's affidavit in support of a search warrant provided this information to the magistrate:

> The affidavit explained that Canadian officers stopped Perkins because of his prior convictions and arrested him after reviewing the images. The affidavit did not state that the charge had been dropped pursuant to [the Canadian officer's] determination that the images were not pornographic. [The affidavit did not include portions of the Canadian officer's description of the images].
> . . .
> [The affidavit] concluded that the second image . . . met the federal definition of child pornography. The warrant application did not include copies of either image.

The magistrate found probable cause and issued a search warrant. Officers executed the warrant and found "several images of child pornography on Perkins' computers." The prosecution charged Perkins "with one count of receipt of child pornography and one count of possession of child pornography." Before trial, the defense moved to suppress the evidence. The defense contended that the Special Agent "deliberately or recklessly omitted material facts from the affidavit, entitling [Perkins] to a hearing under *Franks v. Delaware*." The trial denied the motion for a *Franks* hearing. Perkins conditionally pled guilty to the criminal charges and appealed the trial court's decision. The Ninth Circuit Court of Appeals reversed the trial court and remanded the case to the trial court to conduct a *Franks* hearing.

The trial court held a *Franks* hearing and found that the Special Agent "did not intentionally or recklessly mislead the magistrate." The defense appealed to the Ninth Circuit Court of Appeals. The Ninth Circuit Court of Appeals found that the Special Agent recklessly disregarded the truth by omitting information from his affidavit in support of a search warrant, and the omitted information was material.

When an officer applies for a search warrant, the officer's "affidavit must set forth particular facts and circumstances . . . so as to allow the magistrate to make an *independent* evaluation of the matter." The officer must provide sufficient information in the affidavit "to allow [the magistrate] to determine probable cause." A magistrate's probable cause determination "cannot be a mere ratification of the bare bones conclusions of others." To this end, the "officer presenting a search warrant application has a duty to provide, in good faith, all relevant information to the magistrate."

Under *Franks v. Delaware*, "a criminal defendant has the right to challenge the veracity of statements made in support of an application for a search warrant." In a *Franks* challenge, the defendant must show by a preponderance of the evidence: (1) "that the affiant officer intentionally or recklessly made false or misleading statements or omissions in support of the warrant"; and (2) "that the false or misleading statement or omission was material, *i.e.,* necessary to finding probable cause."

First, the Ninth Circuit found that the Special Agent recklessly disregarded the truth by omitting this information from his affidavit: "(1) the fact that Canadian authorities dropped the child pornography possession charge against Perkins because the images were not pornographic; (2) important portions of [the Canadian officer's] description of [the second image]; and (3) copies of the images."

The Ninth Circuit reasoned that these omissions recklessly disregarded the truth because:

> (1) During his testimony at the *Franks* hearing, the Special Agent testified that there were no "meaningful differences" between the Canadian law and United States law criminalizing possession of child pornography.
>
> (2) While the Special Agent omitted the Canadian officer's opinions that the images were not child pornography, the Special Agent included "the opinions of Canadian official who, after viewing the images, concluded, presumably under Canadian law, that they *were* pornographic."
>
> (3) The Special Agent's affidavit "stated that Perkins was arrested after [one Canadian] officer reviewed the two images, but omitted the fact that the charge was dropped after a 15-year veteran officer, specializing in the investigation of child exploitation crimes, examined those same two images and concluded they were not pornographic."
>
> (4) The Special Agent "presented a skewed version of events and overstated the incriminating nature of the images."
>
> (5) While the Special Agent "correctly stated that Perkins was arrested based on two Canadian officers' review of the images, he failed to inform the magistrate that an expert review of those same images led to the charge being dropped."
>
> (6) The Special Agent's description of the second image "knowingly excluded relevant information contained in [the Canadian officer's] description of the [second image]." The Special Agent's description omitted the Canadian officer's "explanation that towards the bottom of the picture a small portion of [the child's] vagina can be seen and that the view of the girl's vagina makes it a minor aspect of the photo." Under the relevant federal statute addressing child pornography, "details about the placement and prominence of genitalia is highly relevant to determining whether an image is lascivious."
>
> (7) The Special Agent should have provided copies of the images to the magistrate because whether the image met the definition of child pornography (under the relevant federal law) is a subjective determination.

Based on these reasons, the Ninth Circuit found that the Special Agent recklessly disregarded the truth because he "omitted facts required to prevent technically true statements in the affidavit from being misleading."

Second, the Ninth Circuit found the omitted facts were material. A material fact is "necessary to the finding of probable cause." "Probable cause to search a location exists, if based on the totality of the circumstances, there is a fair probability that evidence of a crime may be found there."

In this case, the Ninth Circuit held that if the Special Agent included the omitted facts in his affidavit, then the "corrected warrant application would not support probable cause." The Ninth Circuit reasoned:

> (1) The Special Agent's affidavit did not explain why Perkins' twenty-year-old convictions for incest and child molestation "made it more likely that child pornography would be found on [his] home computers." The Ninth Circuit also noted that "the age of Perkins' convictions further diminishes any marginal relevance they may have had."

(2) The second image of the child (which the Special Agent contended was child pornography) "appears to be a selfie, taken by the subject of herself, who is holding the camera at an angle slightly above her head and shooting downwards." More specifically, the image was not sexually suggestive, and the child was not posed in a sexual position. As such, the Ninth Circuit held that the image did not meet the definition of "sexually explicit conduct" under the relevant federal statute.

As a result, the Ninth Circuit reversed the trial court's finding that the Special Agent did not recklessly regard the truth, and vacated Perkins' conviction.

CIVIL RIGHTS LAWSUIT: ALLEGATIONS THAT A DETECTIVE DISCOURAGED A DEFENSE WITNESS FROM TESTIFING AT A MURDER TRIAL STATED A 42 U.S.C. § 1983 CLAIM THAT THE DETECTIVE VIOLATED THE PLAINTIFF'S CONSTITUTIONAL SIXTH AMENDMENT RIGHT TO COMPLUSORY PROCESS AND DUE PROCESS RIGHT TO A FAIR TRIAL.
Soo Park v. Thompson, 851 F.3d 910, 2017 WL 971806 (March 14, 2017).

Juliana Redding was strangled to death in her home. The lead detective matched DNA from Redding's body to Kelly Soo Park. Park was charged with the murder of Redding. The defense wanted to present evidence that Redding's boyfriend, John Gilmore, had murdered Redding.

A defense investigator interviewed Melissa Ayala, Gilmore's ex-girlfriend. During the defense interview, Ayala stated:

> Gilmore had been violent toward her and had choked her on at least three occasions. . . . [T]he first of these incidents occurred after Ayala brought up Redding's death and accused Gilmore of murdering Redding. Before choking Ayala, Gilmore responded, "You want to see how she [Redding] felt?" On the second occasion, after Ayala again accused Gilmore of murdering Redding, he stated, while choking Ayala, that he was "going to show [Ayala] how [Redding] felt." Gilmore was convicted of domestic violence against Ayala.
> . . .
> Ayala said she was afraid of Gilmore, but she agreed to testify about his violent behavior and the statements he made about Redding's death.

After this interview, the defense identified Ayala as a potential defense witness. The lead detective then contacted Ayala. According to Park, the detective: (1) "told Ayala that Gilmore – who had physically abused Ayala in the past – was 'really upset' about her statements"; (2) "knowingly made false representations to Ayala about the nature of the evidence against Park"; (3) "told Ayala, 'You don't have to talk to them [defense investigators] if you don't want to . . . if they call you, you don't even need to call back . . . you're not under any obligation to do any thing"; and (4) "had called Ayala only to repair the damage the [defense investigators] had done to her relationship with Gilmore." After the detective contacted Ayala, she refused to speak with defense investigators and did not want to testify as a witness at Park's trial.

According to Park, the detective (or others at the detective's direction) contacted another police department "about filing charges against Ayala for assault and criminal threats against Gilmore based on an incident that had occurred during the previous year." Park believed that the detective (or other government officials) informed that police department "that it was important to file charges against Ayala as soon as possible because the charges would cause her to invoke the Fifth Amendment, thereby precluding her from testifying about Gilmore's statements." A few weeks before Park's murder trial, the prosecution charged Ayala with felony conspiracy, assault, and criminal threats.

At Park's murder trial, Ayala appeared under subpoena to testify. The prosecutor "informed Ayala's defense attorney that if he did not instruct Ayala to invoke her Fifth Amendment right against self-incrimination, then she would move to recuse him." Ayala refused to testify and invoked her Fifth Amendment right. The trial court judge then "precluded the presentation of any evidence relating to Park's third party culpability defense." A jury ultimately acquitted Park of all criminal charges.

Park filed a 42 U.S.C. § 1983 (Section 1983) lawsuit against the detective. In the lawsuit, Park alleged that the detective (by discouraging Ayala to testify) violated Park's Sixth Amendment Compulsory Process Clause right and Fourteenth Amendment Due Process right to a fair trial. The trial court dismissed Park's lawsuit for failure to state a claim. Park appealed to the Ninth Circuit Court of Appeals. The Ninth Circuit held that the facts alleged in Park's lawsuit stated a Section 1983 claim that the detective violated her Sixth and Fourteen Amendment rights.

The Sixth Amendment's Compulsory Process Clause "provides that '[i]n all criminal prosecutions, the accused shall enjoy the right … to have compulsory process for obtaining witnesses in his favor." The Sixth Amendment's Compulsory Process Clause is a "fundamental element of due process of law" under the Fourteenth Amendment's Due Process Clause. A law enforcement officer violates a criminal defendant's Sixth and Fourteenth Amendment rights by "effectively [driving] a witness off the stand."

"To state a claim for violation of her fair trial and compulsory process rights, Park's [complaint must allege] (1) that [the detective's] alleged conduct amounts to 'substantial government interference' with a defense witness; (2) that Thompson's conduct caused Ayala not to testify; and (3) that Ayala's testimony would have been favorable and material." The Ninth Circuit found that Park's complaint alleged sufficient facts to meet all three elements.

1. Substantial Government Interference.

First, the Ninth Circuit found that the detective's alleged actions constituted "substantial interference" with Park's witness. "It constitutes substantial misconduct for a prosecutor or a law enforcement officer to intimidate or harass the [defense] witness to discourage the witness to testify." "Although it is permissible for law enforcement to contact potential witnesses before trial for investigatory purposes, [the Ninth Circuit has] cautioned that abuses can easily result when officials elect to inform potential witnesses of their right not to speak with defense counsel."

In this case, the Ninth Circuit found that these facts (alleged in Park's complaint) stated a claim that the detective substantially interfered with Park's right to call Ayala as a witness:

> (1) The detective "told Ayala that John [Gilmore] was really upset about the whole thing because he-he feels like they just made you lose faith in him, I guess." "[I]n light of Gilmore's history of violence towards Ms. Ayala, [the detective's] statements constitute thinly veiled threats that Gilmore might retaliate against Ayala if she were to testify." As such, "it is plausible to infer that [the detective] intended to intimidate Ayala, a domestic violence victim, by informing her that Gilmore, her abuser, was 'really upset' by her potential testimony."
>
> (2) "During the phone call [between the detective and Ayala], [the detective stated] that Gilmore was certainly innocent and that Park was in fact the killer."
>
> (3) The detective "made false representations of the evidence against Park [such as incorrectly stating] that Park "left her blood DNA on the door handle."

> (4) The detective "also encouraged Ayala not to believe what [the defense team is] saying because they were going to tell every lie they can to try and get [Park] off." The detective "described the defense team as 'private investigators who are hired by [Park's] defense attorneys to try and shoot holes in – in our prosecution of their – of the bad guy' and stated that they 'bent the facts to try to, you know, make you think something else.'"

Given Park's factual allegations in her Section 1983 complaint, the Ninth Circuit reasoned:

> Taken together, the allegations regarding [the detective's] misrepresentation of the evidence against Park, coupled with [the detective's] statements about Park's guilt, Gilmore's innocence, and the defense investigators' duplicity (as well as [the detective's] statements that Gilmore was "really" upset with Ayala), can reasonably be interpreted as . . . a deliberated intent on the part of [the detective] to intimidate and otherwise attempt to persuade Ayala to refuse to testify on behalf of the defense.

2. Causation.

Second, the Ninth Circuit found that there is a "casual link" between the detective's alleged conduct and Ayala's refusal to testify. The Ninth Circuit reasoned:

> Park's defense team made a substantial effort to obtain Ayala's testimony, including serving her with a subpoena. Before [the detective's] phone call, Ayala had committed to testifying for the defense and had cooperated with defense investigators. After the phone conversation, however, Ayala refused any further contact with the defense investigators and subsequently declined to testify.

3. Materiality.

Third, the Ninth Circuit found that Ayala's testimony regarding Gilmore's actions (e.g., strangling her) and statements (e.g., "You want to see how she [Redding] felt") were material to Park's defense that Gilmore had killed Redding. Park's acquittal did not render Ayala's testimony immaterial. In a Section 1983 lawsuit, courts consider "suppressed evidence or testimony [as] material only if it affected the question whether the defendant was deprived of a fair trial." In this case, the Ninth Circuit found that Ayala's refusal to testify deprived Park of a fair trial. The Ninth Circuit reasoned that Ayala's testimony "would have been sufficient to 'cast doubt' on the government's evidence and would therefore have been material."

As a result, the Ninth Circuit reversed the trial court's order dismissing this lawsuit, and remanded the case to the trial court for further proceedings.

SEARCH AND SEIZURE: OFFICERS DID NOT HAVE REASONABLE SUSPICION TO CONDUCT *TERRY* STOP OR FRISK; AFFIDAVIT FOR SEARCH WARRANT CONTAINED SUFFICIENT FACTS TO SUPPORT PROBABLE CAUSE THAT HOUSE CONTAINED EVIDENCE OF DRUG TRAFFICKING.
United States v. Job, 851 F.3d 889, 2017 WL 971803 (March 14, 2017).

Travis Job was convicted of federal drug trafficking charges. Job appealed the trial court's denial of his motion to suppress evidence found on his person during a *Terry* frisk, and evidence found in his home during a search warrant execution. In this case, the facts are unclear because the trial court did not conduct an evidentiary hearing, and the Ninth Circuit Court of Appeals relied on

a police report of the incident. The facts stated in the Ninth Circuit opinion describe the incident leading to the *Terry* frisk as:

> From the record available, it appears that [an officer] observed: (1) Job at a location where the officers were conducting either an arrest of another person pursuant to a warrant or a search pursuant to another person's Fourth Amendment search waiver [i.e., a parolee search]; (2) Job and [another person] open the garage door as the police were arriving; (3) Job appeared surprised and nervous; and (4) Job wearing bagging clothes, "with the pockets appearing to be full of items."
>
> . . .
>
> [The officer stated in his police report] that he "felt it would be much safer for my partners and myself if I patted Job down for weapons." [The officer] handcuffed Job prior to the pat down. During the pat down, [the officer] "felt a hard tube like object with a bulbous end in [Job's] left cargo pocket." Based on his training and experience, [the officer] recognized the object as an illegal glass pipe. . . . [The officer] then placed Job under arrest for possession of narcotics and paraphernalia.

Under *Terry v. Ohio*, a law enforcement officer may briefly stop a person based on "reasonable suspicion to believe criminal activity may be afoot." "After stopping an individual based on reasonable suspicion, an officer may also conduct a limited pat down, or frisk, if he believes that the individual whose suspicious behavior he is investigating at close range is armed and presently dangerous."

In this case, the Ninth Circuit found that the officer did not have reasonable suspicion to stop and frisk Job because: (1) "the facts that Job's pants appeared to be full of items and he appeared nervous do not support the conclusion that he was engaged in criminal activity"; (2) there is no evidence "on the offense for which [the police officers were at the house to arrest another person] – for example, whether it was for a crime of violence – and whether there was reason for the officers to have been concerned that Job [and his companion] were engaged in similar activity or might pose a danger to them"; and (3) the police report does not "state that Job made any furtive movements or appeared threatening, which would be relevant to" whether the officers had reasonable suspicion. As a result, the Ninth Circuit found that the officers did not have a justification to stop and frisk Job, and the evidence found during the frisk should have been suppressed.

However, the Ninth Circuit found that the officer's affidavit (for a search warrant to search Jobs' house for evidence of drug trafficking) contained sufficient information to support probable cause. While the affidavit included information on the evidence found from the *Terry* frisk, a warrant "remains valid if, after excising the tainted evidence, the affidavit's remaining untainted evidence would provide a neutral magistrate with probable cause to issue a warrant."

In this case, the Ninth Circuit found that these facts in the affidavit supported probable cause that evidence of drug trafficking would be found in Jobs' home:

> (1) The affidavit includes references to intercepts of conversations regarding a "business deal" between [a suspected drug trafficker] and Job. [During the intercepted conversation,] Job asks . . . for a "cuatro," and then states he will "keep going somewhere else" because he has people "bugging" him. [The affiant officer] explains that Job is referring to four ounces of methamphetamine. For all of these intercepted phone calls and text messages, [the affiant officer] provides the participants, the date and time of the exchange, the phone number used, and the content of the conversations. The affidavit

> thus lays a sufficient foundation to establish probable cause that Job was involved in the distribution of drugs.
>
> (2) Because [the affiant officer's] affidavit provides sufficient facts to support the conclusion that Job was involved in the distribution of drugs, the Court may draw the reasonable inference that evidence is likely to be found where job lives.

As a result, the Ninth Circuit affirmed the trial court's denial of the motion to suppress evidence seized in Job's home pursuant to the search warrant.

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WASHINGTON STATE COURT OF APPEALS

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SEARCH AND SEIZURE: LAW ENFORCEMENT OFFICERS ARE NOT REQUIRED TO ADVISE A SUSPECTED IMPAIRED DRIVER OF THE RIGHT TO INDEPENDENT TESTING OF BLOOD DRAWN PURSUANT TO A SEARCH WARRANT.
State v. Sosa, 198 Wn. App. 176, 2017 WL 1023994 (March 16, 2017).

Early one morning, Jose Luis Sosa was driving on a highway. Sosa's car crossed the center line and collided with another vehicle. The responding officer observed that "Sosa smelled of alcohol and showed signs of impairment." Sosa admitted "that he had some beer earlier but did not provide any specifics." Mr. Sosa went to a hospital. At the hospital, a Washington State Patrol trooper interviewed Sosa. The trooper observed that Sosa exhibited signs of impairment and smelled of alcohol. Sosa did not agree to perform field sobriety tests or submit to a preliminary breath test.

The trooper obtained a search warrant for Sosa's blood. The trooper did not advise Sosa of the right to an independent blood draw. The blood drawn, pursuant to the search warrant, had a .12 BAC.

The prosecution charged Sosa with vehicular assault. On appeal, the defense argued that the trooper should have advised Sosa of the right to an independent blood alcohol test. The Court of Appeals, Division Three, disagreed.

At the time of Sosa's blood draw, Washington's implied consent law did not require a law enforcement officer to advise an arrested impaired driver of the right to an independent blood alcohol test when the blood is drawn pursuant to a search warrant. The implied consent warning statute, RCW 46.20.308(2), did not expressly require implied consent warnings for blood testing. As such, Sosa did not have a statutory right to be advised of an independent blood alcohol test.

The Court of Appeals also rejected the argument that Sosa had a constitutional right to be advised of an independent blood alcohol test. The Court reasoned:

> The fact that a defendant has a constitutional right to investigate his or her case and develop evidence does not provide an independent basis for requiring an advisement about independent testing. This is particularly true in the context of a blood draw. Unlike breath samples, blood samples are stable and can be tested and retested at different points in time. . . . The failure of law enforcement to provide a defendant on-the-scene advice about the possibility of an independent laboratory test does not strip a defendant

of the ability to perform such testing at a later date. There are no due process problems with eliminating this requirement.

As a result, the Court of Appeals affirmed Sosa's conviction for vehicular assault.

LED EDITORIAL NOTE: It is important to understand that the Court of Appeals' holding is limited to blood drawn pursuant to a search warrant. The Washington Implied Consent Statute, RCW 46.20.308(2), requires officers to read implied consent warnings before an arrested driver submits to a breath test. The failure to read implied consent warnings before a breath test will result in the suppression of the breath test at a criminal trial or an administrative licensing proceeding.

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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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