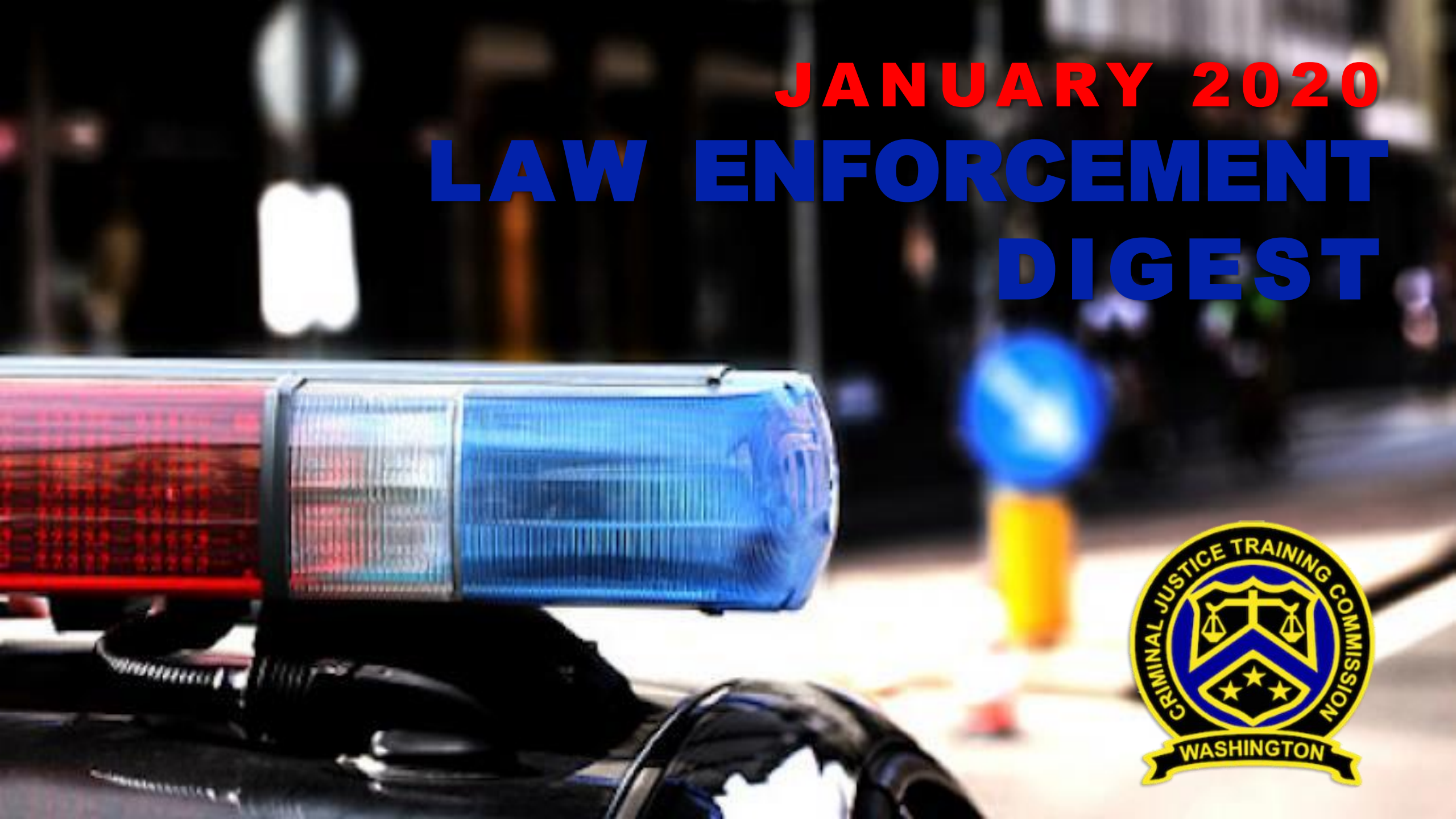


JANUARY 2020

LAW ENFORCEMENT DIGEST

CRIMINAL JUSTICE TRAINING COMMISSION

WASHINGTON

LAW ENFORCEMENT ONLINE TRAINING DIGEST

Welcome to the January 2020 **Law Enforcement Digest Online Training**! This LED covers select court rulings issued in the months of December and January from the Washington State Supreme Court, the Washington Courts of Appeal, the United States Supreme Court, and the Ninth Circuit Court of Appeals. The cases are briefly summarized, with emphasis placed on how the rulings may affect Washington law enforcement officers or influence future investigations and charges.

Each cited case includes a hyperlinked title for those who wish to read the court's full opinion, as well as references to select RCWs. Links to additional Washington State prosecutor and law enforcement case law reviews and references are also included.

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

CRIMINAL JUSTICE TRAINING COMMISSION
WASHINGTON

LAW ENFORCEMENT ONLINE TRAINING DIGEST

January 2020 EDITION

Covering select case opinions issued in December 2019 & January 2020

1. **PRIVACY ACT; ONE-PARTY CONSENT RECORDING ORDER; HOMICIDE**
2. **WARRANTLESS COURTHOUSE SCREENING; SEARCH AND SEIZURE; SPECIAL NEEDS EXCEPTION**
3. **SEARCH AND SEIZURE; SEARCH WARRANT; MARIJUANA**
4. **USE OF FORCE; RESISTING ARREST; QUALIFIED IMMUNITY**
5. **ADDITIONAL RESOURCE LINKS: Legal Update for Law Enforcement (WASPC, John Wasberg) & Prosecutor Caselaw Update (WAPA, Pam Loginsky)**

CRIMINAL JUSTICE TRAINING COMMISSION
WASHINGTON

1 PRIVACY ACT; ONE-PARTY CONSENT RECORDING ORDER; HOMICIDE

State v. J.K.T.

No. 78413-7-I (Dec. 30, 2019)
Court of Appeals, Division I

FACTS:

A juvenile suspect, J.K.T., was convicted of multiple counts of murder along with his two older brothers for the 2016 shooting in the Seattle homeless encampment known as "The Jungle." On the night in questions, five males wearing masks and dark clothing, two of whom had guns, entered The Jungle. They confronted a group of residents of the encampment, ultimately shooting five and killing two people.

J.K.T.'s uncle contacted Seattle Police the following day to say that J.K.T.'s older brother, James, had called him and admitted to participating in the shooting because he needed money. The uncle also reported seeing James with a .45 caliber handgun just days before the shooting. He believed James would be willing to discuss the shootings with him in person.

1 PRIVACY ACT; ONE-PARTY CONSENT RECORDING ORDER; HOMICIDE

State v. J.K.T.

No. 78413-7-I (Dec. 30, 2019)
Court of Appeals, Division I

FACTS, Cont.:

Detectives prepared an application for a judicial authorization for a one-party consent recording to capture James talking about the shooting with his uncle. The application stated that the family was known to be "staying near/under 4th Ave South and Edgar Martinez Way in Seattle," and that the recordings were expected to occur "somewhere in or around Seattle in one of the many homeless camps in the area. Because James, his brothers and their families are homeless and move around, it is impossible to predict where the conversations may take place. Investigators do believe they will remain in the area, and within King County." The order was signed by a judge based on probable cause to believe that James had committed murder in the 2nd degree and assault in the 1st degree.

The next day, the uncle and his friend were wired and dropped off near the 4th Ave South encampment where the uncle had arranged to meet James. J.K.T. and the third brother were present at the meeting. Conversations with and between all of the parties were recorded by the wire from which statements led officers to believe that all three brothers had actively participated in the shooting.

1 PRIVACY ACT; ONE-PARTY CONSENT RECORDING ORDER; HOMICIDE

State v. J.K.T.

No. 78413-7-I (Dec. 30, 2019)
Court of Appeals, Division I

FACTS, Cont.:

J.K.T. was charged with felony murder in the 1st degree predicated on robbery and assault. He moved to suppress the one-party consent recording alleging it violated Washington's Privacy Act. The trial court denied the motion, and also denied J.K.T.'s motion to exclude his brothers' statements from the recording. During his bench trial, J.K.T. tried to admit hearsay evidence that two other individuals had claimed responsibility for the shooting. That evidence was held insufficiently reliable and not admitted. J.K.T. was found guilty in juvenile court of two counts of murder in the first degree and three counts of assault in the 1st degree. J.K.T. now appeals his convictions on the claim that the trial court erred in admitting the one-party consent recording of J.K.T. and his brothers discussing the shooting, and by excluding the hearsay statements he sought to admit about the possibility of others claiming responsibility for the crime. This discussion focuses on the one-party consent recording order because that is most relevant to officers.

1 PRIVACY ACT; ONE-PARTY CONSENT RECORDING ORDER; HOMICIDE

State v. J.K.T.

No. 78413-7-I (Dec. 30, 2019)
Court of Appeals, Division I

TRAINING TAKEAWAY - Washington State Privacy Act, RCW 9.73.030:

Washington's Privacy Act generally prohibits the admission of recorded conversations or communications without the consent of all parties to the conversation.

Law Enforcement may apply for a judicial order exempting them from all-party consent when:

(1) The officer is a party to the communication, or one of the parties to the communication has given prior consent to the recording,
(2) Authorization is obtained prior to the making or intercepting of the recording,
(3) The recording is limited to a 'reasonable and specified period of time," and
(4) There is probable cause that the non-consenting party has committed, is committing, or is about to commit a felony.

Any recording or interception of a communication or conversation incident to a lawfully recorded or intercepted communication or conversation pursuant to this subsection shall be lawful and may be divulged. RCW 9.73.090(2)

1 PRIVACY ACT; ONE-PARTY CONSENT RECORDING ORDER; HOMICIDE

State v. J.K.T.

No. 78413-7-I (Dec. 30, 2019)
Court of Appeals, Division I

TRAINING TAKEAWAY - Requirements for a One-Party Consent Application:

RCW 9.73.130 requires that an application for an order authorizing a one-party consent recording include:

a. The identity of the particular person to be recorded;
b. Details of the offense;
c. Type of communication to be recorded and showing of probable cause to believe such communication will occur where it will be recorded;
d. Character and location of the wire communication facilities involved or the particular place where oral communication is to be recorded;
e. Period of time as to when the recording will occur and when it should be terminated,
f. Showing that other normal investigative procedures have been tried and failed, or reasonably appear unlikely to success or to be too dangerous;
g. Any facts relating to prior applications or recordings and any additional testimony or documentary evidence as required by the reviewing judge.

1 PRIVACY ACT; ONE-PARTY CONSENT RECORDING ORDER; HOMICIDE

State v. J.K.T.
No. 78413-7-I (Dec. 30, 2019)
Court of Appeals, Division I

TRAINING TAKEAWAY - Probable Cause as to J.K.T.:

If there is sufficient probable cause to authorize a one-party consent recording as to one party of a conversation, the lawfully recorded or intercepted communication "shall be lawful and may be divulged" without the need for an independent basis of probable cause as to the incidental recording of another party.

- The standard for probable cause in these cases is not as strict as for constitutional probable cause determinations.

While the order specifically authorized the recording of J.K.T.'s older brother, the court found that the plain language of the statute allows that if the one-party consent authorization was supported by probable cause as to the brother, the subsequent recording is lawful without a separate showing of PC as to others incidentally recorded.

- The communications made by J.K.T. on the recording were therefore lawful and properly admitted in the trial against him.

1 PRIVACY ACT; ONE-PARTY CONSENT RECORDING ORDER; HOMICIDE

State v. J.K.T.

No. 78413-7-I (Dec. 30, 2019)
Court of Appeals, Division I

Training Takeaway – Location for the Recording NOT Legally Required:

An application or order to authorize a one-party consent recording under the Washington State Privacy Act is not required to provide a specific location or address where the recording is authorized to occur.

There is no requirement that an order authorizing a one-party consent recording name the place where recording is authorized, but it also cannot permit "unfettered discretion to record." RCW 9.73.130(3)(d)

- An application and order that provides the cross streets and a description of the character and location ("somewhere in or around Seattle in one of the many homeless camps in the area," within King County) of the place where the recording is expected to occur is sufficiently informative under the Privacy Act.
- The recording also took place within a block and a half of the cross streets stated in the application.

1 PRIVACY ACT; ONE-PARTY CONSENT RECORDING ORDER; HOMICIDE

State v. J.K.T.

No. 78413-7-I (Dec. 30, 2019)
Court of Appeals, Division I

Training Takeaway – Location for the Recording NOT Legally Required:

Prior Washington caselaw guides the assessment of the sufficiency of the location description for a one-party consent recording order:

- An application that includes the location of the place where the recording actually occurs SATISFIES the location requirement regardless of whether it included the locations of other places the police may have anticipated recording. (State v. Knight, 1989)

- An application that provides only that the recording may occur in "any 'unknown location' within any one of nine different counties" is INSUFFICIENT. (State v. Porter, 1999)

1 PRIVACY ACT; ONE-PARTY CONSENT RECORDING ORDER; HOMICIDE

State v. J.K.T.
No. 78413-7-I (Dec. 30, 2019)
Court of Appeals, Division I

PRACTICE POINTER – Electronic Surveillance and Digital Evidence Manual:

The Washington State Privacy Act is one of the most restrictive in the country. The **2017 Electronic Surveillance and Digital Evidence Manual** published by the King County Prosecutor's Office provides investigators with a wealth of guidance for navigating this complicated legal area.

As always, officers should consult with their agency's legal advisors and prosecutors to ensure proper procedures are being followed, and to review any questions that arise during an investigation.

2 WARRANTLESS COURTHOUSE SCREENING; SEARCH AND SEIZURE; SPECIAL NEEDS EXCEPTION

State v. Griffith
No. 35848-8-III (Dec. 31, 2019)
Court of Appeals, Division III

FACTS:

The defendant went to the courthouse to make a payment to the court clerk. In order to enter the secure portion of the building, all members of the public must undergo a routine security screening to ensure they are not bringing weapons into the building. Entrants are asked to remove their coats, empty their pockets, and walk through a metal detector. Bags and items removed from pockets are separately screened. The search is overseen by courthouse security officers, who rely on County deputies for backup if issues arise.

The defendant removed his heavy coat and emptied his pockets at the request of the courthouse security guard. In a pat down search of the coat, the security officer located a baggie later determined to contain methamphetamine. The trial court records and testimony aren't entirely clear as to the sequence of events with regard to whether the security officer first felt a hard object (the defendant's cell phone) and located the baggie when he was removing the phone, or whether he had already removed the phone when he felt and removed the soft object (the bag of drugs).

After locating the drugs, the security officer requested a deputy to respond. The defendant was placed under arrest for Possession of a Controlled Substance. He moved to suppress the drugs as the fruit of an unlawful search, but the motion was denied by the trial court. He now appeals.

2 WARRANTLESS COURTHOUSE SCREENING; SEARCH AND SEIZURE; SPECIAL NEEDS EXCEPTION

State v. Griffith
No. 35848-8-III (Dec. 31, 2019)
Court of Appeals, Division III

TRAINING TAKEAWAY – 4TH AMENDMENT SPECIAL NEEDS EXCEPTION:

The Special Needs Exception to the federal 4th Amendment warrant requirement permits a suspicionless, warrantless entry-area search at government buildings and airports so long as:

(1) The search was conducted as part of a legitimate administrative search;

(2) The searcher's actions are confined to the scope of the permissible administrative search; and

(3) There was no impermissible motive or pretext for the search.

See, US v. Bulacan (9th Circuit, 1998)

2 WARRANTLESS COURTHOUSE SCREENING; SEARCH AND SEIZURE; SPECIAL NEEDS EXCEPTION

State v. Griffith
No. 35848-8-III (Dec. 31, 2019)
Court of Appeals, Division III

TRAINING TAKEAWAY – Area-Entry Search is Administrative in Nature:

An area-entry search at a courthouse is an administrative search under the 4th Amendment, and the 4th Amendment special needs exception applies.

Courthouse security searches are "minimally invasive" and serve an important purpose in protecting the safety of those who work in or depend on the criminal justice system and preventing violence that would weaken the rule of law.

- *While the permissibility of suspicionless, warrantless entry-area search has long been settled federal law, until now, the issue has not been considered under Art. 1, §7 of the Washington Constitution.*

2 WARRANTLESS COURTHOUSE SCREENING; SEARCH AND SEIZURE; SPECIAL NEEDS EXCEPTION

State v. Griffith
No. 35848-8-III (Dec. 31, 2019)
Court of Appeals, Division III

TRAINING TAKEAWAY – Scope of Courthouse Screening Search:

Courthouse entry-area searches are not investigative in nature, and must be narrowly tailored to achieve their goal of safety.

An item in plain view whose incriminating nature is immediately apparent may be seized, and may be used in a criminal prosecution.

- A courthouse screener may pat down a person's coat for weapons, but can't remove a soft item (i.e. an item distinguishable from a weapon) from the pocket.
- However, if the soft item is unintentionally removed at the same time as the searching officer is removing a hard object (i.e. an item that may be reasonably believed to be a weapon), and the unintentionally removed item can be identified as contraband meeting the requirements of plain view, then the item may be admissible as evidence against its owner.

2 WARRANTLESS COURTHOUSE SCREENING; SEARCH AND SEIZURE; SPECIAL NEEDS EXCEPTION

State v. Griffith
No. 35848-8-III (Dec. 31, 2019)
Court of Appeals, Division III

TRAINING TAKEAWAY – Scope of Courthouse Screening Search:

In reviewing whether the scope of the administrative entry-area search was valid, the court will look at whether the particular search was consistent with the screening policy in effect at the time.

- The policy in effect at the time of this search was that security officers would ask those entering the secured area to take off their coats and then feel the pockets and remove for further examination anything that feels "rigid or hard" because that may be a weapon.
- Without suspicion that an item may be a weapon, the policy did not permit the courthouse security officer to remove a soft item from the pocket of the coat.

2 WARRANTLESS COURTHOUSE SCREENING; SEARCH AND SEIZURE; SPECIAL NEEDS EXCEPTION

State v. Griffith
No. 35848-8-III (Dec. 31, 2019)
Court of Appeals, Division III

The testimony at the trial level differed in key ways about the order of events:

- The courthouse security officer testified that he reached inside the defendant's coat pocket because he felt a hard object that turned out to be a cell phone. (If true, is consistent with existing search policy).
- The police officers who responded to the security officer's call for backup testified that the security officer told them the defendant had already removed his cell phone from his coat before handing it over. (If true, is NOT consistent with existing search policy).

2 WARRANTLESS COURTHOUSE SCREENING; SEARCH AND SEIZURE; SPECIAL NEEDS EXCEPTION

State v. Griffith
No. 35848-8-III (Dec. 31, 2019)
Court of Appeals, Division III

Because the testimony and record from the trial court is unclear on the order of events in this case, the appeals court ruling clarifies the permissible legal scope of a suspicionless, warrantless courthouse entry-area search under Washington law, and now sends the case back to the trial court for additional fact-finding to clear up the order of events.

- It seems likely that because prior Washington caselaw has declined to recognize the federal "special needs" exception for entry-area searches, and this ruling seems to leave open the possibility of recognizing such an exception, this issue will ultimately get further review by the WA Supreme Court.

2 WARRANTLESS COURTHOUSE SCREENING; SEARCH AND SEIZURE; SPECIAL NEEDS EXCEPTION

State v. Griffith
No. 35848-8-III (Dec. 31, 2019)
Court of Appeals, Division III

PRACTICE POINTER:

Agencies involved in responding to the courthouse or involved in administering courthouse security should work with their legal advisors and local prosecutors in drafting clearly defined procedures and policies for all entry-area searches.

- Once those policies and procedures are in place, they will only be effective if they're followed. Agencies should provide consistent guidance and adequate training to all employees involved in administering courthouse security and searches.

If you are an officer responding to a request for service from a courthouse security officer, make sure you are clear about the details and sequence of events that led to your involvement before you take steps in a criminal investigation or arrest.

3 SEARCH AND SEIZURE; SEARCH WARRANT; MARIJUANA GROW

Blight v. City of Manteca
No. 17-17334 (Dec. 11, 2019)
Ninth Circuit Court of Appeals

FACTS:

An informant provided information to the Manteca (CA) Police Department that a man was operating an illegal marijuana grow on his 4 acre rural property. The informant had previously provided reliable information about marijuana grows to the officers, and was not being paid for providing information aside from leniency agreements that would reduce his own charges from felony to misdemeanor based on cooperation with law enforcement. The informant had over 10 years of personal knowledge of the man and his marijuana operation, and provided extensive details about the enterprise and the property on which it was located.

3 SEARCH AND SEIZURE; SEARCH WARRANT; MARIJUANA GROW

Blight v. City of Manteca
No. 17-17334 (Dec. 11, 2019)
Ninth Circuit Court of Appeals

FACTS, Cont.:

The informant accompanied officers to the property and identified the defendant, and using an aerial image of the property, identified the various buildings and relevant locations on the property, and noted that the man lived with his family in the main house, and that the person who assisted him in running the marijuana grow lived in the mobile home on the property. There is a dispute as to whether the informant told officers that the elderly woman and her husband also lived on the property. For this appeal, the facts are taken in the light most favorable to the woman, so it is assumed that the informant did tell officers of that fact.

The detective applied for a warrant to search the man's property. The application included a Google Map aerial view of the property consistent with the informant's statement that there were two mobile homes – one in which the man lived with his family, and the other in which the man who helped him run the marijuana grow lived. The premises searched were described as, "two modular homes, chicken coops, a small barn, and various outbuildings." A California Superior Court judge signed the warrant, and the detective gained authorization to use SWAT officers to assist with its execution due to the size of the property, its extensive fortification and fencing, and the suspected presence of dogs and firearms.

3 SEARCH AND SEIZURE; SEARCH WARRANT; MARIJUANA GROW

Blight v. City of Manteca
No. 17-17334 (Dec. 11, 2019)
Ninth Circuit Court of Appeals

FACTS, Cont.:

SWAT officers used armored vehicles to breach the property's locked gate at 7 o'clock in the morning, and used the PA system to order the occupants to exit the residences. The grow operation employee was the first to exit the main mobile home with his two children. He was immediately placed under arrest. His wife arrived to the property shortly after and informed officers that an elderly woman was inside the second mobile home. Officers again made announcements over the PA system and at the front door of the mobile home order the woman to exit. After 6 minutes of no response, SWAT officers breached the door with a ram.

The woman initially retreated to a back room and then after three minutes, exited the home. Officers told her that if she didn't get into the police car she would be handcuffed. She then got into the police car and was driving away from the house to the street for the duration of the search. The woman was never physically searched or handcuffed. Records indicate the entire detention lasted between 20 and 30 minutes, although the woman recalls it being closer to an hour.

3 SEARCH AND SEIZURE; SEARCH WARRANT; MARIJUANA GROW

Blight v. City of Manteca
No. 17-17334 (Dec. 11, 2019)
Ninth Circuit Court of Appeals

FACTS, Cont.:

Officers seized 23 pounds of marijuana, 8 marijuana plants, 134 pounds of processed marijuana, 251 grams of loose marijuana shake, 78 grams of marijuana buds, scales, currency, and 27 rounds of ammunition from various parts of the property during the execution of the search warrant. No evidence or contraband was recovered from the mobile home.

It later became known that the elderly woman and her husband (the grow owner's mother and step-father) had lived in and owned the mobile home for 17 years. The home had its own assigned address, but shared a parcel address with the main house and property, which was owned by the son/grow owner who lived in the main house with his immediate family from 1996 to 2012. In 2012, his grow employee moved to the main home with his wife and two children.

The elderly woman filed a §1983 claim against the City of Manteca and individually named Manteca PD detectives and sergeants alleging Fourth Amendment violations. The district court granted summary judgment for the defendants. The elderly woman now appeals the grant of summary judgment which dismissed her claims.

3

SEARCH AND SEIZURE; SEARCH WARRANT; MARIJUANA GROW

Blight v. City of Manteca
No. 17-17334 (Dec. 11, 2019)
Ninth Circuit Court of Appeals

TRAINING TAKEAWAY – Breadth of Search Warrant:

A search warrant isn't overbroad where it permits the search of a mobile home on the same parcel as the main home of the named suspect where the suspect exercises general control over the entire property, and an informant has provided reliable information to support the probability that evidence and contraband will be found in the residences on the property.

The totality of this information established probable cause to issue a warrant authorizing a search of the entire property, including the mobile home.

3 SEARCH AND SEIZURE; SEARCH WARRANT; MARIJUANA GROW

Blight v. City of Manteca
No. 17-17334 (Dec. 11, 2019)
Ninth Circuit Court of Appeals

TRAINING TAKEAWAY – Multiple Residences on a Lot:

Separate warrants aren't needed to search multiple residences on a property where the evidence supports that the suspect has control over the entire property.

A warrant is valid when it authorizes the search of a street address with several dwellings if (1) the defendants are in control of the whole premises, (2) the dwellings are occupied in common, or (3) the entire property is suspect.

- The search of an entire ranch isn't overbroad even though there were multiple dwellings on the property because the entire property was under the suspect's control. US v. Alexander (9th Circuit, 1985).

However, when a structure contains two residences or two residences share a lot, there must be probable cause to search each. US v. Whitten (9th Circuit, 1983)

- With a single structure split into multiple residences, or two residences sharing a lot but not a common owner or connected residents, there isn't the same reasonable conclusion that the residences are under shared control.

3 SEARCH AND SEIZURE; SEARCH WARRANT; MARIJUANA GROW

Blight v. City of Manteca
No. 17-17334 (Dec. 11, 2019)
Ninth Circuit Court of Appeals

TRAINING TAKEAWAY – Suspect Control Over the Premises to be Searched:

Ample evidence supported the conclusion that the suspect was in control of the entire property, and therefore probable cause existed to search the entire property and all buildings.

- The informant told the detectives that the suspect owned the entire property and that the grow employee lived in the mobile home in order to help him with the drug operation;
- Property records indicate that the suspect owned the entire parcel of land;
- The entire property was enclosed by a single fence;
- There was a concrete walkway connecting the two homes.

3

SEARCH AND SEIZURE; SEARCH WARRANT; MARIJUANA GROW

Blight v. City of Manteca
No. 17-17334 (Dec. 11, 2019)
Ninth Circuit Court of Appeals

TRAINING TAKEAWAY – Entire Premises are Suspect:

The search of the second mobile home was also justified by the substantial evidence indicating that the entire property was suspect for being involved in the illegal marijuana grow where the informant told police that the marijuana was grown outside and then processed in the buildings on the property, and the detective's training and experience supported this same belief.

3

SEARCH AND SEIZURE; SEARCH WARRANT; MARIJUANA GROW

Blight v. City of Manteca
No. 17-17334 (Dec. 11, 2019)
Ninth Circuit Court of Appeals

TRAINING TAKEAWAY – Continued Search of Motor Home:

The officers were entitled to search the mobile home even after they were put on notice that the elderly parents lived in the mobile home, the grow employee lived in the main house, and the suspect/elderly woman's son no longer lived on the property because probable cause to search the mobile home wasn't reliant on the grow employee living there, or who was found in the mobile home.

- PC to search the mobile home was based on the suspect's common control of the ENTIRE property, not on his physical presence or even current residence.

3

SEARCH AND SEIZURE; SEARCH WARRANT; MARIJUANA GROW

Blight v. City of Manteca
No. 17-17334 (Dec. 11, 2019)
Ninth Circuit Court of Appeals

TRAINING TAKEAWAY – Duration and Reasonableness of Seizure:

The duration of the search was not unreasonable where the officers had a warrant to search the mobile home, and the elderly resident was detained in a reasonable manner for less than one hour.

Officers have categorical authority to detain a person for the duration of a search where a warrant exists to search the residence and an occupant is inside the residence when the search begins. Franklin v. Foxworth (9th Circuit, 1994)

- The detention of the suspect's elderly mother was not unreasonable because the officers had probable cause to search the mobile home pursuant to the search warrant.
- The length of the detention (between 20 minutes, but not less than an hour) was reasonable.
- The method of detention (not handcuffed, asked to get into a police car and driven to sit by the street away from the mobile home as it was being searched) was reasonable, and age is not a "per se" excuse from an otherwise lawful, reasonable detention.

3

SEARCH AND SEIZURE; SEARCH WARRANT; MARIJUANA GROW

Blight v. City of Manteca
No. 17-17334 (Dec. 11, 2019)
Ninth Circuit Court of Appeals

TRAINING TAKEAWAY – Duration and Reasonableness of Seizure:

The duration of the search was not unreasonable where the officers had a warrant to search the mobile home, and the elderly resident was detained in a reasonable manner for less than one hour.

Officers have categorical authority to detain a person for the duration of a search where a warrant exists to search the residence and an occupant is inside the residence when the search begins. Franklin v. Foxworth (9th Circuit, 1994)

- The detention of the suspect's elderly mother was not unreasonable because the officers had probable cause to search the mobile home pursuant to the search warrant.
- The length of the detention (between 20 minutes, but not less than an hour) was reasonable.
- The method of detention (not handcuffed, asked to get into a police car and driven to sit by the street away from the mobile home as it was being searched) was reasonable, and age is not a "per se" excuse from an otherwise lawful, reasonable detention.

4 USE OF FORCE; RESISTING ARREST

Tuuamalemalo v. Greene
No. 18-15665 (Dec. 24, 2019)
Ninth Circuit Court of Appeals

FACTS:

The plaintiff was involved in a disturbance at a Las Vegas hotel's nightclub. Officers were called to the location by employees who were concerned that there may be a bar fight. The plaintiff approached one of the officers who was talking to the plaintiff's friend and was told by the officer to "shut the 'F' up." The incident escalated and security footage showed the plaintiff's group of friends and officers shoving one another. As the plaintiff and his group of companions was led into an adjoining hallway outside of the club, the plaintiff was knocked down. He was helped back up by officers and his friends, and led by a friend on either side toward the exit of the hotel.

A group of officers followed the man and his friends as they walked toward the exit. A sergeant pushed through the group and grabbed the back of the man's shirt. The video shows the man turning around and the sergeant then punching the man on the left side of his face. Five officers then took the man to the ground. Officer Greene, the defendant in this case, then administered a lateral vascular neck restraint, rendering the man unconscious. It took several attempts to revive him.

4 USE OF FORCE; RESISTING ARREST

Tuuamalemalo v. Greene
No. 18-15665 (Dec. 24, 2019)
Ninth Circuit Court of Appeals

FACTS, Cont.:

While not made entirely clear in this opinion, it appears the man had engaged in additional aggressive behavior toward the officers, which possibly formed the basis for the sergeant's contact. However, when the facts are taken in the light most favorable to the plaintiff as required by law, the man was not resisting at the time the LVNR was administered.

Arrestee brought a §1983 claim against the officers alleging excessive force. The district court granted the other officers summary judgment on those claims. Summary judgment was not granted as to the officer who used LVNR during the encounter. That officer (Greene) appeals the denial of his motion for summary judgment.

4 USE OF FORCE; RESISTING ARREST

Tuuamalemalo v. Greene
No. 18-15665 (Dec. 24, 2019)
Ninth Circuit Court of Appeals

TRAINING TAKEAWAY – QUALIFIED IMMUNITY:

Summary judgment based on qualified immunity under §1983 requires the court determine whether:

(1) Taken in the light most favorable to the party asserting the injury, the facts alleged show the officer's conduct violated a constitutional right, and

(2) If a constitutional right was violated, was the right clearly established in light of the specific context of the case at the time of the incident. Scott v. Harris (2007)

- The officer doesn't dispute that his use of a 'chokehold' violated the 4th Amendment. The only question is whether his actions violated a clearly established right in light of the specific context of the case.

4 USE OF FORCE; RESISTING ARREST

Tuuamalemalo v. Greene
No. 18-15665 (Dec. 24, 2019)
Ninth Circuit Court of Appeals

TRAINING TAKEAWAY – Use of "Chokehold" on Non-resisting Person:

The court holds that the 9th Circuit decision in Barnard v. Theobald (2013) clearly establishes that the use of a "chokehold" (or more appropriately, "LVNR") on a non-resisting person violates the 4th Amendment prohibition on the excessive use of force.

An officer is not entitled to qualified immunity in the §1983 excessive force claim brought by a man who was not resisting arrest and was fully restrained and pinned to the ground by five officers at the time LVRN was used because the officer's actions violated a clearly defined constitutional right.

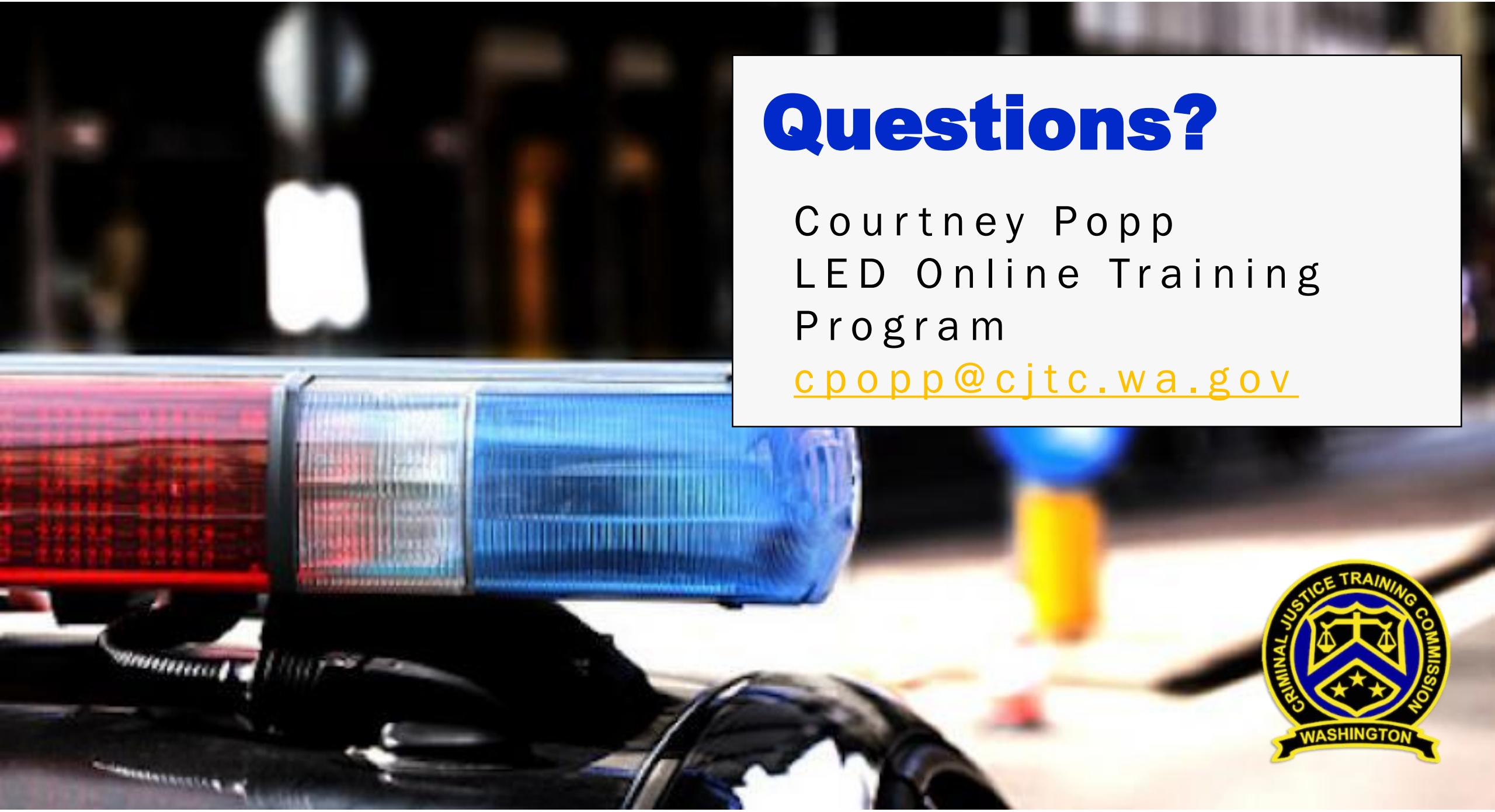
FURTHER READING

For further cases of interest to law enforcement, please see the comprehensive monthly Legal Update for Law Enforcement prepared by Attorney John Wasberg (former longtime editor of the original LED), which is published on the WASPC Law Enforcement Resources webpage:

http://www.waspc.org/legal-update-for-washington-law-enforcement

The Washington Prosecutor's Association publishes a comprehensive weekly summary of a wide range of caselaw geared toward the interests of Washington State Prosecutors. This resource is authored by WAPA Staff Attorney Pam Loginsky.

http://70.89.120.146/wapa/CaseLaw.html



Questions?

Courtney Popp
LED Online Training Program
cpopp@cjtc.wa.gov