July 2020 LED

Covering cases published in July 2020

This is for REVIEW only. If you wish to take this course for CREDIT toward your 24 hours of in-service training , please contact your training officer. They can assign this course in Acadis.

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

LED Course Overview

STATE V. R ICKY R AY SEXTON 52401- 5- II

Facts Summary

Training Takeaway

STATE V. CAMER ON J. ELLIS 80127- 9-I

Facts Summary

Training Takeaway

LED Course Overview

OVERVIEW

Each month's *Law Enforcement Digest* covers court rulings issued by the three divisions of the Washington Courts of Appeal, the Washington State Supreme Court, the federal Ninth Circuit Court of Appeals, and the United States Supreme Court.

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

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

WA LEGAL UPDATES

The following training publications are authored by Washington State legal experts and available for additional caselaw review:

- Legal Update for WA Law Enforcement authored by retired Assistant Attorney General, John Wasberg
- Caselaw Update authored by WA Association of Prosecuting Attorneys' Senior Staff Attorney, Pam Loginsky

QUESTIONS?

If you have questions/issues relating to using the ACADIS portal please review the FAQ site: https://wscjtc.acadisonline.com/acadisviewer/login.aspx

Send Technical Questions to lms@cjtc.wa.gov or use our Support Portal

Questions about this training? Please contact the course registrar, Rebecca Winnier at rwinnier@cjtc.wa.gov

STATE V. RICKY RAY SEXTON 52401-5-II

Court of Appeals, Division Two

Filed August 2020

Police received information from a confidential informant that Ricky Ray Sexton was selling methamphetamine out of his home. Police obtained a warrant to search the home for evidence relative to the sale of methamphetamine. The warrant was issued within 72 hours of the informant being inside Sexton's home. Based on the information that Sexton was selling drugs at his home, was known to carry a firearm, he had a large dog, and that it would be dificult to surprise the occupants of the home due to the location and local topography, it was determined that the warrant would be high risk.

A SWAT team was assembled to execute the warrant and it was served 9 days after the police received the information from the informant. As the SWAT vehicle approached Sexton's home, a man on the porch of the home saw them and ran inside. An oficer yelled that the operation was compromised and several oficers rushed up to the home to breach the door. The oficer tasked with breaching the door testified at trial that he did not knock and announce his presence because "compromise" had been called.

Once inside the home, oficers located and seized digital scales, a spiral notebook with names and numbers, a handgun, bottles containing oxycodone and methylphenidate, and several bags containing methamphetamine.

Sexton was arrested and charged with possession of methamphetamine with intent to deliver, possession of methylphenidate with intent to deliver, possession of oxycodone, and unlawful possession of a firearm with firearm enhancements on both counts of possession. Sexton moved to suppress evidence seized from his home.

At the suppression hearing, there was conflicting testimony as to what was announced and when announcements were made in reference to the breach. One oficer testified that he announced over the loudspeaker of the SWAT vehicle, *"[T]his is the police, we have a warrant, get on the ground,"* and that other oficers breached the door 10 to 15 minutes later. Another oficer testified that the announcement was, *"[P]olice, search warrant, open the door,"* and the breach occurred three to five second later. Oficers also testified at the hearing in their experience methamphetamine is easily disposable and suspects often try to dispose of drugs under similar circumstances as well as about the basis for classifying the warrant as high risk and the reasons for using a SWAT team to execute the warrant.

The trial court denied the motion to suppress. Regarding the conflicted testimony, the court specifically found the oficers' testimony credible and that the oficers informed the occupants of Sexton's home "of their presence, their identity, their purpose for being there, and to demand admittance." The court further found that about 15 second passed between the beginning of the announcement and the moment the police breached the door.

The trial court concluded that the oficers' actions satisfactorily complied with the knock and announce rule. The court determined that the delay in time between the oficers' announcements and the forced entry was reasonable and did not violate the law. The court also ruled that exigent circumstances justified the oficers "expedient entry" into Sexton's home based on having been observed that resulted in the "compromise," that the warrant was issued for evidence that could easily and quickly destroyed, and that oficers had been advised that Sexton was known to carry a firearm.

Sexton was found guilty on all counts without the firearms enhancements and he appealed.

Training Takeaway

Knock and Announce

The Fourth Amendment of the US Constitution and Article I, Section 7 of the Washington Constitution both require that police comply with the knock and announce rule before entering a person's without consent. Washington has codified this requirement in RCW 10.31.040, which applies to both arrest and search warrants:

> To make an arrest in criminal actions, the oficer may break open any out or inner door, or windows of a dwelling house or other building, or any other enclosure, if, after notice of his or her ofice and purpose, he or she be refused admittance.

To comply with the statute, oficers must, prior to a nonconsensual entry, announce their identity, demand admittance, announce the purpose of their demands, and be explicitly or implicitly denied admittance. Denial of admittance may be inferred by a lack of response and police must observe a reasonable "waiting period" before they may enter without permission. Whether an oficer waited a "reasonable time" before entering a residence is a factual determination to be made by the trial court and depends on the circumstances of the case.

The trial court evaluates the reasonableness of the waiting period by considering the purposes of the rule:

1. Reduction of potential violence to both occupants and police arising from an unannounced entry,
2. Prevention of unnecessary property damage, and
3. Protection of an occupant's right to privacy

Exigent Circumstances

Courts require strict compliance with the rule unless police can show the existence of exigent circumstances or that compliance with the rule was futile because police presence was likely known. Exigent circumstances may exist where police had a "reasonable suspicion that knocking and announcing their presence, under the particular circumstances, would be dangerous or futile, or that it would inhibit the effective investigation of a crime by, for example, allowing the destruction of evidence."

In this case, the testimony from multiple officers that the loudspeaker announcements identified the officers as police and that they had a search warrant supported the trial court's finding that the officers informed the occupants of Sexton's home "of their presence, their identity, their purpose for being there, and [demanded] admittance. Further, the factual circumstances supported the reasonableness of the delay before entry and it would have served no logical purpose for the officers to delay their entry any longer where they were already broadcasting their presence and purpose of the loudspeaker.

Even if officers had not strictly complied with the knock and announce rule, exigent circumstances justified immediate entry into the house. Here, the risk assessment called for the deployment of a SWAT team based on a variety of factors that were predetermined to pose a threat to officer safety. Additionally, officers saw someone on the porch recognize them as police officers and who immediately went inside in a hurry. Further, the officers knew that Sexton was known to be armed and the evidence being sought could easily be destroyed and they could not see inside the home to know whether or not the occupants were destroying evidence or arming themselves.

Therefore, viewing the totality of the circumstances, it was reasonable for police to conclude the man on the porch had fled inside to warn the other occupants to destroy or hide evidence or to prepare to physically confront the officers. Further, in light of the risk assessment and the officers' perceived danger to their safety, it was reasonable for the officers to conclude that taking additional time to knock and announce could have endangered officer safety and inhibited the effective investigation of the crime.

Probable Cause and Staleness

A search warrant may only issue upon a determination of probable cause. Probable cause exists if the afidavit in support of the warrant sets forth facts and circumstances suficient to establish a reasonable inference that a person is probably involved in criminal activity and the evidence of the crime could be found in the place to be searched. CrR 2.3(c) provides that a warrant:

"shall command the oicer to search within a speciied period of time not to exceed 10 days."

A delay in executing the warrant my render the determination of probable cause stale. The information is not stale for the purposes of probable cause if the facts and circumstances in the afidavit support a commonsense determination that there is continuing and contemporaneous possession of the property intended to be seized. **A court evaluates staleness by looking at the totality of the circumstances, including the amount of time between the warrant's issuance and execution and the nature and scope of the suspected criminal activity and property to be seized.** Where new information arises that undermines probable cause, it is required that oficers return to the court for re-evaluation of the warrant.

In this case, the warrant was served within the 10-day time limit of CrR 2.3(c) and within the timeline stated in the warrant. Further, the location of the drug operation in a single-family home suggested that it was an ongoing operation instead of a transitory one. The informant had also told police that Sexton sold methamphetamine regularly, he owned a scale and baggies that he used for transactions, and that he had a handgun. Oficers received no new information to suggest that Sexton no longer had any drugs.

Given the informant's information and the nature of the suspected crime, it was reasonable for police to expect that Sexton's possession of the handgun, scale, packaging materials, and other possible evidence related to the sale of methamphetamine was continuance and ongoing.

STATE V. CAMERON J. ELLIS 80127-9-I

Court of Appeals, Division One

Filed July 20, 2020

Following a conviction for fourth degree domestic violence assault, the Tukwila Municipal Court (TMC) issued a five-year domestic violence no-contact order prohibiting Cameron Ellis from having contact with his girlfriend, B.S. Ellis continued to contact B.S. despite the order and by January 8, 2018, Ellis had two misdemeanor convictions for violating the TMC no-contact order. On January 28, 2018, a bystander called 911 from a Denny's restaurant and reported that *"[a] lady" just came in "freaking out,"* saying she needs a police oficer here at Denny's." The "lady," later identified by oficers as B.S., declined to talk to the 911 operator. However, during the 911 call, B.S. can be heard in the background stating, *"Somebody hit me…[a]nd he took my car,"* a black Nissan Sentra. B.S. also confirmed that "a boyfriend" hit her, but she did not identify herself or disclose the name of her boyfriend.

Within five minutes of the 911 call, a Sheriff's Deputy arrived at the Denny's. The deputy made contact with "Mr. Smith," who was exiting a black Nissan Sentra in the Denny's parking lot and talked to him for a minute or two. Smith advised that he *"found the vehicle in the road against the median"* and saw *"a female run in the Denny's."* Smith then "moved" the Nissan "back to the parking lot" for her. The deputy confirmed Smith's identity and "released him from the area. The deputy then saw a "visibly distraught" and "kind of frantic" B.S. come out of Denny's and spoke to her for five to ten minutes. B.S. confirmed ownership of the Nissan and while "speaking very quickly, very upset," described the following events:

> She had gotten in her – just unlocked her vehicle, got in her vehicle to leave the parking lot. At that point, she realized that Mr. Ellis was in the vehicle with her. She said she then told him that he couldn't be there because they had a protection order which prohibited them from contacting each other. She said at that point, he then punched her in the right side of the face. And then she jumped out of the vehicle while it was still moving, which is how it ended up in the median.

B.S. gave a detailed description of Ellis. A search of the area did not locate Ellis. Photos were taken of the Nissan and B.S.'s injuries, which were "consistent with being punched in the face."

On March 17, 2018, Terri Drake called 911 and reported that *"[t]his guy is beating on this girl in the parking lot at Crystal Manor Apartments."* Drake advised, *"His name is Cameron Ellis"* and he identified the victim as B.S. Drake told the 911 operator that Ellis beat up B.S. *"until she jumped in my car,"* and that B.S.'s car was *"unattended right now. And the door is open."* Drake stated, *"[H]e's got [B.S.'s] purse"* and *"I think he is walking behind us now"*. Drake further reported that Ellis had "a no-contact…too." The same deputy from the earlier incident responded to the 911 call and arrived at the apartment complex within six minutes. Upon his arrival, a "visibly distraught" and "very elevated" B.S. waved him down. B.S. told the deputy that she had driven to the apartments to meet her friend Drake and saw Ellis in the parking lot when she got out of the car. Ellis tried to call B.S. over to him, but instead B.S. backed away and got inside Drake's vehicle. Ellis then opened Drake's car door and B.S. kicked at Ellis "to fend him off." Ellis then tried grabbing B.S.'s purse and began punching her in the face, head, and upper body area. At that point, B.S. released her purse and Ellis walked away. As Drake drove away to get away from the situation, B.S. saw Ellis take the wallet out of her purse and throw the purse into her Nissan. B.S. provided a description of Ellis, but he was not located by deputies.

Ellis was charged with two counts of Domestic Violence Felony Violation of the TMC no-contact order and one count of second degree robbery for taking B.S.'s purse. At the trial, neither Mr. Smith or B.S. testified nor did either of the 911 operators. Ellis objected to the use of B.S. statements to the deputy through the deputy's testimony. Ellis was convicted and appealed, claiming, among other violations, that the trial court's admission of B.S.'s statements to the deputy violated his right to confrontation. The State argued that the statements were properly admitted because the statements were nontestimonial.

I Training Takeaway

Right to Confrontation

The Sixth Amendment to the United States Constitution provides that criminal defendants shall have the right to confront the witnesses against them. The confrontation clause bars admission of testimonial statements of a witness who does not appear at trial unless the witness is unavailable to testify and the defendant had a prior opportunity for cross-examination. In determining whether a statement is testimonial, courts look to the primary purpose of the statement:

> Statement are **nontestimonial** when made in the course of police interrogation under circumstances objectively indicating that the primary purpose of interrogation is to enable police assistance to meet an ongoing emergency.
>
> They are **testimonial** when the circumstances objectively indicate that there is no such ongoing emergency, and that the primary purpose of the interrogation is to establish or prove past events potentially relevant to later criminal prosecution.

Courts further recognize that **a conversation could contain both nontestimonial and testimonial statements**, which may begin with inquires to address an emergency and later become testimonial once the emergency appears to have ended or the information necessary to meet the emergency has been obtained.

The Court of Appeals found that the B.S.'s January 28th statements to the deputy were testimonial because the primary purpose of the interrogation was not to aid an ongoing emergency. The deputy questioned B.S. for approximately ten minutes and the questioning was focused on eliciting the details of what happened from B.S. A reasonable listener would not believe that the primary purpose of the deputy's questioning was to meet an ongoing emergency. B.S. had recovered her car and the scene was secure.

Deputies did not locate Ellis in the area and there was no evidence that he posed a current threat of harm, thereby contributing to an ongoing emergency. There was no indication that he possessed a weapon or had tried to return to the scene. Furthermore, B.S.'s statements were responses to the deputy's questions about what had happened and whether she needed medical attention. When viewed objectively, these questions primarily elicited statements that described events that had happed in the past and were potentially relevant to a subsequent prosecution. Lastly, although the conversation occurred in the informal setting of a Denny's parking lot, the environment was secure with the deputies present.

The Court of Appeals concluded that because B.S.'s January 28th statements were testimonial, admitting the statements through the deputy violated Ellis' Sixth Amendment right to confront witnesses. The Court further found that the error was not harmless because the evidence without the statements was not persuasive beyond a reasonable doubt that a jury would have convicted Ellis. Although the 911 call was admitted, the caller did not provide the identity of either Ellis or B.S. and the substance of the call did not contain overwhelming evidence that Ellis committed Felony Violation of a No-Contact Order.

Therefore, **the Court reversed the conviction for that violation**. The Court similarly found that B.S.'s March 17th statements were also testimonial. The Court found that B.S.'s statements were an attempt to report a past event rather than aid in an ongoing emergency. Further, Ellis had left the area and there was no indication that he posed an ongoing threat to B.S. or the public at large. B.S. was again in an informal setting, but it was a secure environment where B.S. could recount the events in response to questions about what had happened. **In the second incident, however, the Court found that the error was harmless because the jury would have reached the same result without the error.**

Specifically, the Court found that overwhelming untainted evidence support the jury's finding of guilt. That evidence included the admission of a certified copy of the TMC no-contact

order and the 911 call Drake had made requesting help just after the incident. The information in the 911 call specifically established that "Cameron Ellis" was "beating" a woman "in the parking lot at Crystal Manor Apartments," that he took her purse, and that the woman's name was "[B.S]." Drake testified at the trial and also read the statement she gave to the deputy on the night in question to the jury, which established friendship with B.S., familiarity with Ellis as B.S.'s former boyfriend, and her observations about what had happened. With that evidence, the Court of Appeals concluded beyond a reasonable doubt that any confrontation clause error related to B.S.'s March 2018 statements was harmless and that conviction was confirmed.

Knowing the difference between non-testimonial and testimonial statements will assist you as an oficer in conducting investigations.

It is important to note that having an urgent 911 call and obtaining a statement is not always going to be suficient evidence, particularly if the statement is deemed to be testimonial by the court down the line. The second charge and conviction in this case demonstrates the importance of obtaining additional and detailed evidence. The difference between the two incidents came down to the identity of the parties, which likely could have been rectified with a formal statement from B.S. or from Mr. Smith with his testimony, including the identification of Ellis.