

# LAW ENFORCEMENT DIGEST October 2020



**Covering cases published in October 2020. This information 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.**

## **Covering cases published in October 2020**

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.

### **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.

### **Washington 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?**

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- Questions about this training? Please contact the course registrar, Rebecca Winnier at [rwinnier@cjtc.wa.gov](mailto:rwinnier@cjtc.wa.gov)

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# State v. Edward Jon Gunn

No. 37070-4-III

Court of Appeals, Division Three

Filed October 8, 2020

## [State v. Edward Jon Gunn No. 37070-4-III](#)

### Facts Summary

Officers arrested Amy Trujillo and during a search of her purse incident to arrest, one of the officers discovered needles, a container with heroin residue, and a digital scale with heroin residue. Before going to the jail, Ms. Trujillo offered information regarding an individual selling drugs in the area, identifying that she had bought drugs from Edward Gunn in the past and had earlier arranged to buy \$200 worth of methamphetamine from him that night. The officer had worked with Ms. Trujillo in the past and had apprehended two subjects with felony warrants based on her information.

The officer asked Ms. Trujillo to call Gunn and she did so in the back of the officer's patrol car with her phone on speaker. Ms. Trujillo made arrangements to buy a "ball" of methamphetamine for \$200 and to meet at Gunn's house to make the purchase. The officer could hear a man's voice over the speaker state that he had drugs with him in his car and the man additionally provided his current location. Based on what the officer had heard and his knowledge of Ms. Trujillo's previously provided tips that had led to the apprehension of wanted persons, the officer believed that her tip that Gunn would sell her methamphetamine was reliable.

Ms. Trujillo provided additional information about Gunn such as where he lived, what type and color of vehicle that Gunn drove, and that he was often accompanied by a person who was armed. The address Ms. Trujillo provided for Gunn was consistent with information in law enforcement's database. Gunn's criminal history further showed a recent criminal conviction for delivery of a controlled substance. Officers waited near Gunn's home for him to arrive at his residence and Ms. Trujillo was present with the officer who had received the information from her about Gunn.

About 30 to 45 minutes after the phone conversation Ms. Trujillo had with Gunn, a vehicle matching the description of his vehicle turned down the street where Gunn lived. Ms. Trujillo identified the vehicle as Gunn's vehicle and another officer stopped the vehicle. Gunn was alone in the vehicle and he was detained. Law enforcement read Gunn his *Miranda* rights and he agreed to speak to officers. Gunn admitted to the original investigating officer that he had five grams of methamphetamine in his vehicle and that he was going to sell the drugs to friends in the area. The officer recovered two small "baggies" from Gunn's vehicle and Gunn admitted that the white substance in the baggies was methamphetamine.

Gunn was charged with Possession of a Controlled Substance with Intent to Deliver. Before trial, Gunn moved to suppress the methamphetamine recovered from his vehicle, arguing that officers did not have articulable suspicion to stop his vehicle because Ms. Trujillo's information was unreliable. The trial court found that Ms.

Trujillo demonstrated more than sufficient indicia of reliability and that the *Terry* stop was therefore based on reasonable, articulable suspicion, and denied Gunn's motion to suppress the methamphetamine. At trial, Gunn was found guilty by a jury of the lesser included offense of Possession of a Controlled Substance and he appealed.

## Training Takeaway

As a general rule, warrantless searches and seizures are per se unreasonable, in violation of the Fourth Amendment to the United States Constitution and Article I, Section 7 of the Washington State Constitution. There are, however, a few "jealously and carefully drawn exceptions" to the warrant requirement and the State carries the burden of proving that the seizure falls within one of the exceptions by clear and convincing evidence. A *Terry* investigatory stop is one exception to the warrant requirement.

To conduct a *Terry* stop, an officer must have reasonable suspicion of criminal activity based on specific and articulable facts known to the officer at the inception of the stop. The court examines the totality of the circumstances known to the officer, including the officer's training and experience, the location of the stop, the conduct of the person detained, the purpose of the stop, and the amount of physical intrusion on the suspect's liberty. If a *Terry* stop is based on information provided by an informant, the court must consider whether the informant's tip possesses "sufficient 'indicia of reliability.'" When determining whether sufficient indicia of reliability exists, courts will primarily consider whether 1) the informant is reliable, 2) the information was obtained in a reliable fashion, and 3) the officers can corroborate any details of the informant's tip.

Ms. Trujillo's information was found to be reliable. Ms. Trujillo offered the information in order to avoid being booked into jail and to receive favor from the prosecutor, which required her to be truthful in order to receive the deal. Ms. Trujillo further gave the information in conjunction with statements against her own penal interest, which favors truthfulness and reliability under case law. The officer additionally had used information provided by Ms. Trujillo in the past that had assisted in the execution of two felony arrest warrants.

The officer also obtained the information in a reliable fashion. Although the officer did not know Gunn's voice, he heard a man's voice confirm that he would sell \$200 of methamphetamine to Ms. Trujillo at his house. Because Ms. Trujillo had proved herself reliable in the past, the officer could reasonably assume that Ms. Trujillo had called Gunn and that he was the man she was speaking with. Additionally, Ms. Trujillo knew that the officer could later compare the number she called with Gunn's actual phone number and that if the numbers hadn't matched, she would not have received favorable consideration in a plea deal, which enhanced the reliability that the call she made was to Gunn.

The officer was able to corroborate details of Ms. Trujillo's tip. The officer heard the details of the arrangement, including where he was coming from and that the exchange would occur at his house. Ms. Trujillo stated that she had purchased drugs from Gunn in the past and was able to describe where Gunn lived and the car that he drove. The information that Gunn had a recent conviction for delivery of a controlled substance, that Gunn was associated with the address Ms. Trujillo provided, and that his vehicle was driving toward his residence near the anticipated time that he would have arrived from his prior location, all corroborated Ms. Trujillo's tip.

The Court concluded that the trial court had not erred in concluding that Ms. Trujillo’s tip contained sufficient indicia of reliability and that law enforcement had a reasonable, articulable suspicion to stop Gunn. Gunn’s conviction was affirmed.



## [State v. Lisa Jean Hurde No. 52879-7-II](#)

### Facts Summary

Hurde was an inmate at the Clallam County Corrections Facility. Corrections deputies received information that Hurde may have drugs on her person and decided to search Hurde for controlled substances. Hurde was retrieved from her cell and was asked if she had anything that she wasn’t supposed to have. Hurde responded, “Like a pencil?” The deputy clarified he was inquiring about drugs and Hurde denied having any drugs on her person. Hurde was then informed that she would be strip searched by a female deputy and that it would be better for her if she gave it to them. Hurde stated that she had already been strip searched. Hurde was told that she was going to be searched again regardless.

At that time, Hurde stated that she had something on her. Hurde was taken to a private area for the search and was instructed to remove her garments and to hand them to the female deputy as she removed them. Hurde was advised that each piece of clothing would then be searched. Hurde then removed a small blue container from her bra and handed it to the deputy. Hurde stated that she didn’t know what to do with it when she brought it in. Hurde further stated that she had not been using, but that she had given it to the girls in the tank and they were the ones who were using it.

Hurde was charged with possession of methamphetamine with intent to deliver and possession of a controlled substance by a prisoner. Hurde pled guilty to the possession of a controlled substance by a prisoner and challenged the first charge, arguing that her statements were not made knowingly, intelligently, and voluntarily. Hurde testified at a CrR 3.5 hearing that the deputy had not asked her any questions and was just telling her what was going to happen. The court found that, although *Miranda* rights were not read to Hurde by any of the deputies, the statements made to the deputy were spontaneous, unprompted and not in response to any questions from law enforcement.

The court concluded that Hurde’s statements were made knowingly, intelligently, and voluntarily, and that they were not the product of coercion, threats, or promises. Hurde was found guilty by the court following the hearing. Hurde appealed, contending that the trial court should have suppressed her statements to the deputy regarding giving methamphetamine to other inmates because the statements were the product of custodial interrogation made before she was read her *Miranda* rights.

## Training Takeaway

*Miranda* warnings must be given when a suspect endures 1) custodial 2) interrogation 3) by an agent of the State. When these conditions are present, but *Miranda* warnings are not given, we presume that the suspect's self-incriminating statements are involuntary and that the statements must be suppressed. *Miranda* does not apply to statements that are made outside the context of a custodial interrogation. A custodial interrogation includes express questioning and any actions or words on the part of the police that are reasonably likely to elicit an incriminating response from the suspect. A suspect's voluntary, spontaneous, and unsolicited statements are not the product of custodial interrogation.

An inmate's constitutional rights are limited due to the need to protect institutional goals and policies. These limitations include strip searches of inmates if there is a reasonable suspicion that it is necessary to discover weapons or drugs concealed on the inmate. Here, deputies were in the process of conducting a lawful search of Hurde based on a reasonable suspicion that she may have drugs concealed on her person while inside a correctional facility. While Hurde was asked if she had any drugs, none of the officers ever questioned Hurde about whether she was distributing controlled substances.

Once in the private area, the deputy explained how the search was going to go and Hurde then handed the container containing methamphetamine to the deputy. Hurde blurted out that she hadn't used the drugs, but that she had given the container to the girls in the tank. The deputy with her did not ask Hurde any questions to illicit that response and furthermore did not use any force, threats, or intimidation to obtain the statements from Hurde.

The Court of Appeals found that substantial evidence supported the trial court's findings that Hurde's statements were spontaneous, unprompted, and not in response to any questions from law enforcement. Such statements are not the product of custodial interrogation and, therefore, *Miranda* warnings were not required.



State v. Yasir M. Majeed

No. 36591-3-III

Court of Appeals, Division III

Filed October 27, 2020

## [State v. Yasir M. Majeed No. 36591-3-III](#)

### Facts Summary

In July of 2017, officers from the Washington State Patrol Missing and Exploited Children's Task Force posted an advertisement in the Casual Encounters section of Craigslist. Adopting the persona of a 13-year old runaway, officers posted an ad titled "young looking for older daddy-w4m" with the following content:

I am young looking for older daddy to take care of this young baby girl. Be real. Be nice, your pic gets mine. let's get lit! I have a daddy fetish and love to take showers, very clean. let's talk. DDF.

“w4m” means woman looking for a man, “DDF” means disease and drug free, and “let’s get lit” means that the person wants to get high or drink.

Yasir Majeed responded by e-mail stating, “Tell me more about you. I’m interested 35 yo clean, nice educated and like to spoil you if we click.”

The officer posing as the teen replied with the following message:

I am in need of a daddy. I ran away a while ago cause my mom is a bitch. Just hanging out with friends for right now. But just want to have some fun and forget about things. If you want to have some fun with me, tell me how and let’s chat. I am getting a lot of responses, so get me your phone number and we can talk. I’m 13 but I am all woman and fine AF.

A photo of a female trooper, who was in her mid-twenties, was included in the email that was made to look younger through the use of a filter. The officer and Majeed emailed back and forth, making plans to meet up on the weekend and they began communicating via text thereafter. Once on text, Majeed requested a “sexy pic” and stated, “I want u in my arms and to have you...” Another picture was provided using the same female trooper as the fictitious 13-year old girl.

Majeed and the officer continued to communicate with the conversation turning to Majeed asking what he should bring when they planned to meet on the weekend. Majeed stated that he wanted to hang out for 30 minutes and the officer told Majeed he should bring \$100 and condoms. Majeed asked the fictitious child how old she was again to which the officer replied that she was 13. Majeed then inquired how “tight” she was, and the officer stated, “I dunno? I’ve only done this once before.” Later Majeed messaged, “I want u, and will give u 100” and the two agreed to meet up at a local car wash near the apartment where the fictitious teen said she was staying. Majeed described himself and his vehicle.

Officers positioned themselves near the car wash and the identified apartment complex. Majeed arrived at the carwash and then drove through the apartment complex parking lot before exiting onto the street. Officers stopped Majeed’s silver truck on the road and arrested him. Majeed had condoms on his person and \$100 in his pocket. Officers texted Majeed’s cellphone to verify that the number being used by the fictitious teen appeared on his phone to link Majeed to the earlier sexual communications. His phone was verified.

Among other charges, Majeed was charged with commercial sexual abuse of a minor which stated at the time of charging in relative part:

(1) A person is guilty of commercial sexual abuse of a minor if:

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(b) He or she pays or agrees to pay a fee to a minor or a third person pursuant to an understanding that in return therefore such a minor will engage in sexual conduct with him or her. \*

Majeed was found guilty of commercial sexual abuse of a minor and communication of a minor for immoral purpose and he appealed. Majeed argued that the evidence presented only showed that he offered payment for contact with an invented minor and that the statute addresses an actual minor rather than a law enforcement officer acting as a 13-year old minor.

\* Current law has removed the terminology referring to payment or the agreement to pay a fee and now states when a person provides anything of value.

## Training Takeaway

The court looked to definitions of “minor” and “person” found in the criminal statutes, comparing the commercial sex abuse statute to another statute, and related decisions outside of Washington. “Minor” is defined as “any *person* under eighteen years of age” and a “person” is defined as “any *natural person* and, where relevant, a corporation, joint stock association, or an unincorporated association.” (emphasis added).

Under case law, a “natural person” excludes imaginary, artificial, or fictitious persons. While the court agreed with the State’s condemnation of sexual relations by an adult with a minor as a vile act and that the State has a compelling interest to preclude the sexual abuse of a minor, the court found, based on the legislative definition of a “minor,” that a minor must be an existent human being.

The court found that the State failed to present evidence that the person identifying herself to be a 13-year-old girl was a genuine minor. Rather, the undisputed evidence was that the identified child was a fictitious being. Therefore, the State did not present evidence that Majeed offered to pay for sex with a minor within the confines of RCW 9.68A.100 and reversed the conviction.



## [State v. Daniel Ludwig Keen](#)

### Facts Summary

KJM and her roommate left the Hub Tavern in Centralia at approximately 2 a.m. on July 4, 2009 with two males who had approached them and asked for a ride. KJM did not know the two men and was reportedly very intoxicated. KJM drove the four of them in her vehicle from the Tavern to a Chevron station where they purchased some food. KJM decided not to drive any further because she was feeling too intoxicated. KJM got into the backseat of the car with one of the men and passed out. KJM could not remember which man had been in the backseat with her. KJM did recall that the man in the backseat with her had put his fingers inside her vagina when they arrived at her and her roommate’s house in Chehalis. KJM reportedly passed out again.

KJM then recalled being inside the house on a futon and that one of the two men who had been wearing a black hat and white shirt was trying to put his penis in her mouth. KJM reportedly passed out again. When KJM woke up around noon, no one else was in the house and her cell phone and keys were missing. KJM reported that her bottom hurt and that she knew something had happened because she felt fluid coming out of her bottom. Another friend drove KJM to the hospital and a sexual assault examination, including DNA swabs, was conducted. KJM reported to the police department that she had been sexually assaulted and an officer responded, taking a report of the above-cited facts.

Officers also interviewed KJM's roommate who advised that she did not know the two men who had come home with them. KJM's roommate reported that she had seen one of the men grope KJM and she believed that his name was Kyle. KJM's roommate reported that KJM was very drunk on the way home from the Chevron and had been vomiting and then passing out in the backseat of the car. When they arrived at the house, KJM's roommate reported that she was unable to wake KJM to get her inside. KJM's roommate left KJM in the car and went into the house with Kyle. KJM's roommate stated that she slept in her bed with Kyle and that KJM had come into the house around 5:00 a.m. to sleep on the sofa. KJM's roommate stated that Kyle was still in bed with her the next morning, but that he had left while she was in the shower.

Officers obtained security video from the Chevron, which showed the two men with KJM and her roommate on the night of the incident. One man was wearing a baseball hat and white t-shirt and the other had a mohawk haircut. The video also showed that a female store clerk had gone out to KJM's vehicle with KJM's roommate and had spoken with KJM. The man with the mohawk was visible inside the vehicle with KJM. In the video, KJM, the roommate, and the clerk entered the store and were followed by the man with a mohawk. No formal statements were obtained by the police from anyone at the Chevron.

Later in the month of July, Daniel Keen, who was identified as the man in the video with the mohawk, came into the police station on an unrelated matter. Keen was interviewed. Keen stated that he had gone to the Hub with his friend, Kyle Teagle, and that the two of them had gone home with KJM and her roommate. Keen stated that he had "messed around" with KJM, but he did not recall having sex with her. Keen admitted to penetrating her but stated that everything they had done was consensual. Keen stated that he called a friend to pick him up and he left the house when KJM started vomiting and had passed out. Keen declined to provide a voluntary DNA sample.

Kyle was interviewed over the phone as he was out of state at the time. Kyle advised officers that he had gone into the house with the roommate while Keen stayed in the vehicle with KJM. Kyle stated that Keen had eventually texted him and had said he left. Kyle denied touching either the roommate or KJM in a sexual way and denied having sex with either of the women. Kyle reported that he did not know if Keen had sex with either of the women or how long Keen had been in the vehicle with KJM. Kyle did report that KJM was quite drunk and had been sleeping on the way to the house. Kyle agreed to provide a DNA sample, but officers eventually lost contact with him before a DNA sample could be obtained.

The results from the sexual assault examination showed the presence of semen. DNA testing excluded KJM's boyfriend as a source, making both Keen and Kyle the prime suspects in the investigation. No warrants were obtained for DNA samples and no further avenues were pursued in the case. The last involvement in the case was in March of 2010 when officers discovered that Kyle was residing in Hawaii. No further action was taken, and the case became inactive until July of 2017. In late August of 2017, officers contacted Kyle, who was then living in Wyoming. Kyle voluntarily provided a DNA sample at that time, which did not match the male DNA from KJM's sexual assault examination.

Officers then obtained a warrant for Keen's DNA and results came back in late November of 2017 as a match. KJM was contacted and she confirmed that she still wanted the case prosecuted. The State did not charge Keen at the time and charges were not filed until November of 2018. Trial was scheduled for March 4, 2019 with a time for trial deadline of March 18, 2019. Keen moved to dismiss the charge against him in February of 2019, sighting preaccusatorial delay in violation of his due process rights and for governmental mismanagement under CrR 8.3(b). Keen specifically argued that the delays in charging him prejudiced his ability to conduct a meaningful investigation in his own defense.



Keen presented testimony from his private investigator who testified at the motion hearing about his inability to locate or contact witnesses who were either in contact with Keen or present with him on the night in question. The private investigator also testified about his inability to contact the roommate, Kyle, or KJM and his inability to contact any employees or patrons who would have been present at the tavern on the night of the incident. The investigator testified that he was unable to locate the clerk from the Chevron, any neighbors of KJM and her roommate who may have seen the persons involved that night, or the nurse who conducted the sexual assault examination. Furthermore, the investigator was unable to contact the detective who spoke with KJM in the initial investigation because that officer had since died.

The lead detective testified that the delay in the investigation was neither strategic nor intentional. Rather the case has been set aside when officers were unable to obtain a DNA sample from Kyle, who was then the primary suspect. The detective acknowledged that he should have sought a warrant to obtain Keen's DNA in 2009 when Keen refused to give a voluntary sample. The trial court granted Keen's motion, dismissing the rape charge against him with prejudice for both preaccusatorial delay in violation of due process and governmental mismanagement under CrR 8.3(b). The State appealed.

## Training Takeaway

### Preaccusatorial Delay

A court will dismiss a prosecution for preaccusatorial delay if the State's intentional or negligent delay violates a defendant's due process rights. A three-pronged test is used to determine whether preaccusatorial delay violated a defendant's due process rights:

- (1) The defendant must show that he or she was actually prejudiced by the delay;
- (2) If the defendant shows actual prejudice, the court must determine the reasons for the delay; and
- (3) The court must weigh the reasons for the delay and the prejudice to determine whether fundamental conceptions of justice would be violated by allowing the prosecution.

Greater prejudice must be shown if the government conduct is negligent rather than intentional.

Based on the cumulative effect of the loss of evidence from the unavailability of witnesses and the delay in obtaining DNA evidence to move the investigation forward in timely manner, the court of appeals concluded that the first prong of the due process analysis was satisfied. As to the second prong, the trial court had found that the state and law enforcement had offered no reason for the significant preaccusatorial delay and that the delay was clearly negligent, which was not challenged on appeal. In determining the third prong, the core question was whether the action by the government violated fundamental concepts of justice.

As there was no reason given for the delay and the fact that there was prejudice, the trial court determined that the balancing test fell squarely in favor of the defendant and that fundamental concepts of justice would not be met if the case were allowed to proceed. As a result of the missing evidence, the court of appeals agreed that Keen's due process rights would have been violated if the prosecution had been allowed to go forward.

### Governmental Misconduct under CrR 8.3(b)

CrR 8.3(b) provides a trial court with authority to dismiss a criminal prosecution based on governmental misconduct:

The court, in the furtherance of justice, after notice and hearing, may dismiss any criminal prosecution due to arbitrary action or governmental misconduct when there has been prejudice to the rights of the accused which materially affect the accused's right to a fair trial. The court shall set forth its reasons in a written order.

To justify dismissal under CrR 8.3(b), the defendant must show that (1) arbitrary action or governmental misconduct occurred and (2) the misconduct caused prejudice affecting the defendant's right to a fair trial. Government misconduct does not require that the State act dishonestly or in bad faith and simple mismanagement is enough. The CrR 8.3(b) requirements are similar to the preaccusatorial delay due process requirements and the analysis is substantially the same. The defendant must show actual prejudice and a dismissal under CrR 8.3(b) by a trial court is an extraordinary remedy.

Based on the same prejudice in the lost ability to locate and contact numerous witnesses that were potentially critical to his defense, the Court of Appeals found that Keen's right to a fair trial were prejudiced. The dismissal of the rape charges with prejudice was affirmed.