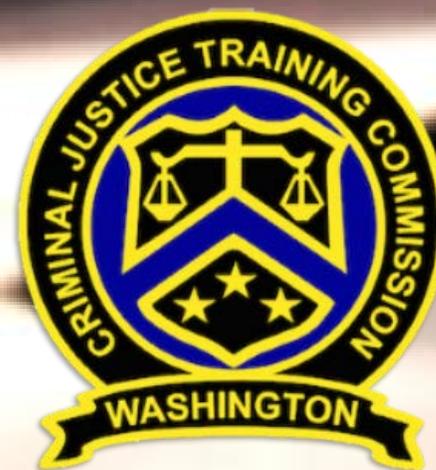
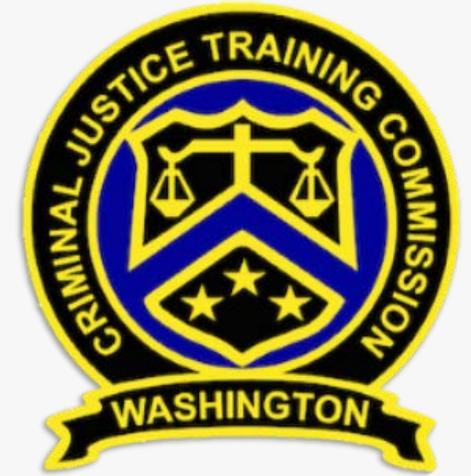


JANUARY 2019  
LAW ENFORCEMENT  
DIGEST



# LAW ENFORCEMENT ONLINE TRAINING DIGEST



Welcome to the January 2019 Law Enforcement Digest Online Training! This LED continues the transition to an online training resource created with the Washington law enforcement officer in mind. Select court rulings from the month of the edition (ex – this January training covers the cases issued in January 2019) are summarized briefly, arranged by topic, with emphasis placed on the practical application of legal changes to law enforcement practices.

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.*

# LAW ENFORCEMENT ONLINE TRAINING DIGEST

JANUARY 2019 Edition

Covering select case opinions issued in January 2019

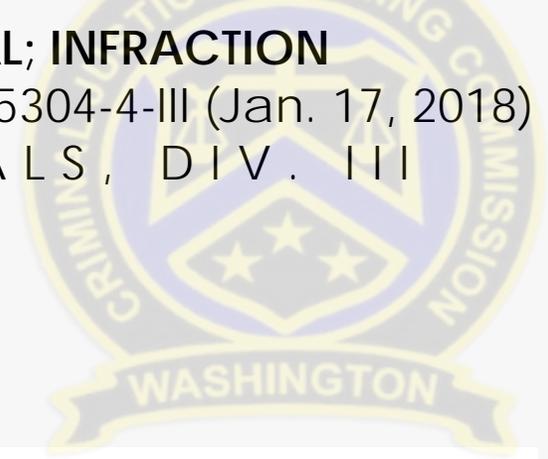


1. TRAFFIC STOP; TURN SIGNAL; INFRACTION
2. TRAFFIC STOPS; TERRY STOP; PASSENGER ID
3. TERRY STOP; POSSESSION OF A FIREARM
4. UNLAWFUL POSSESSION OF A FIREARM
5. COURT TESTIMONY; EXPERT WITNESS; CELL PHONE FORENSICS
6. ADDITIONAL RESOURCE LINKS: Legal Update for Law Enforcement (WASPC, John Wasberg) & Prosecutor Caselaw Update (WAPA, Pam Loginsky)

# 1

## TRAFFIC STOP; TURN SIGNAL; INFRACTION

TRAFFIC STOP; TURN SIGNAL; INFRACTION  
State v. Brown, COA No. 35304-4-III (Jan. 17, 2018)  
COURT OF APPEALS, DIV. III



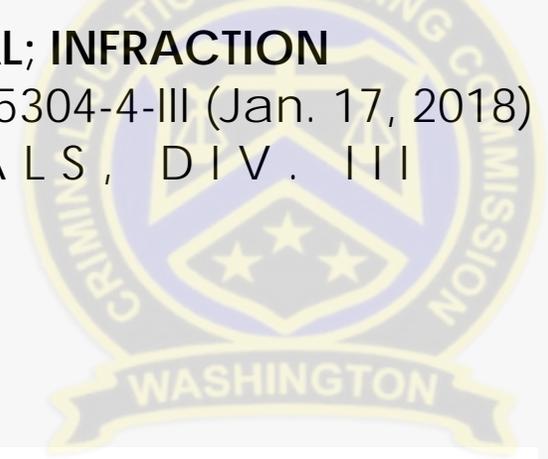
### FACTS:

Driver was in the middle lane of travel. He properly signaled to change lanes into the dedicated left turn lane. He then did not reactivate his left turn signal when he then turned left from that reserve lane.

# 1

## TRAFFIC STOP; TURN SIGNAL; INFRACTION

TRAFFIC STOP; TURN SIGNAL; INFRACTION  
State v. Brown, COA No. 35304-4-III (Jan. 17, 2018)  
COURT OF APPEALS, DIV. III



### TRAINING TAKEAWAY:

A driver has not violated RCW 46.61.305(2), which requires a driver to, when required, continuously signal an intention to turn or cross lanes during at least the last one hundred feet traveled before turning or moving lanes, unless it is a “circumstance that implicates public safety.”

A driver does not need to reinitiate his turn signal after he signals to enter a left-turn-only lane, enters the lane, and the turn signal cancels (“cycles off”) before he turns from the lane.

- “Cycle Off” defines the process by which a car’s blinker lever is fully activated, and then automatically turns itself off once the vehicle senses that it has completed the intended positional change.

The court found there was no implication of public safety, and therefore, the driver’s action did not constitute a valid reason to stop the vehicle because in this scenario, the signal was not required.

# 2 TRAFFIC STOP; TERRY; ID OF PASSENGER

TRAFFIC STOP; TERRY; ID OF PASSENGER  
[United States v. Landeros](#), No. 17-10217, Jan 2019  
NINTH CIRCUIT COURT OF APPEALS

## FACTS:

Respondent was a passenger in a vehicle that was lawfully stopped by police for speeding. The driver provided his license as requested by the officer. The stop occurred on Native American reservation land, which had underage drinking and 10pm curfew prohibitions for minors. The officer testified that he smelled alcohol in the vehicle, and believed the 2 females in the back seat looked underage. The women, ages 19 and 21, complied with the officer's request for their identification.

The officer testified that he did not believe the male passenger was underage (he was in fact 23). The officer then "commanded" the passenger to provide ID. The passenger refused to identify himself and told the officer that he was not required to do so by law. After a second refusal to provide ID, the officer requested backup. The backup officer arrived after several minutes and also commanded that the passenger identify himself. Both officers repeatedly commanded the man to exit his vehicle. After several minutes, the passenger exited the car.

# 2 TRAFFIC STOP; TERRY; ID OF PASSENGER

TRAFFIC STOP; TERRY; ID OF PASSENGER  
[United States v. Landeros](#), No. 17-10217, Jan 2019  
NINTH CIRCUIT COURT OF APPEALS

## FACTS, cont.:

The officer testified that when the passenger exited, it was the first time he noticed two empty beer bottles, a machete, and pocketknives on the front passenger seat. The passenger was placed in cuffs immediately after exiting the car, and was charged in the district court with an open container violation and failing to provide his true name and refusal to comply with a law enforcement officer. The passenger consented to a search of his pockets, which revealed a pipe and six bullets. He was charged in federal court with possession of ammunition by a convicted felon. His motion to suppress the evidence was denied, and he entered a plea agreement that allowed him to appeal that ruling.

# 2 TRAFFIC STOP; TERRY; ID OF PASSENGER

TRAFFIC STOP; TERRY; ID OF PASSENGER  
[United States v. Landeros](#), No. 17-10217, Jan 2019  
NINTH CIRCUIT COURT OF APPEALS

## TRAINING TAKEAWAY:

**Without reasonable suspicion that a passenger has committed a criminal offense, an officer may not extend a lawfully initiated vehicle stop because that passenger refuses to identify himself.**

A *Terry* stop for a suspected traffic violation cannot be extended without additional reasonable suspicion that the person is committing a crime. Once the infraction or warning is issued, the justification for the stop ends.

**Unless there is reasonable suspicion that a passenger in a vehicle has committed a crime, then the officer has no justification for demanding that the passenger ID himself.**

# 2 TRAFFIC STOP; TERRY; ID OF PASSENGER

TRAFFIC STOP; TERRY; ID OF PASSENGER  
[United States v. Landeros](#), No. 17-10217, Jan 2019  
NINTH CIRCUIT COURT OF APPEALS

## TRAINING TAKEAWAY:

The “mission” of a traffic stop is to deal with the suspected traffic violation and related safety issues. Asking unrelated questions to extend the contact after the warning or infraction is issued is not permitted.

- See, [Rodriguez v. United States](#), US Supreme Court 2015 – officer’s “hunch” didn’t justify extending a traffic stop to request drug dog for search.

The officer had already dealt with the original traffic testified that he did not believe that the passenger in the car was underage.

The officer provided no other lawful justification for extending the stop by “demanding” (also his words in testimony) the passenger’s ID, requesting backup, and then both officers repeatedly demanding the passenger exit the vehicle over a period of several minutes.

# 2 TRAFFIC STOP; TERRY; ID OF PASSENGER

TRAFFIC STOP; TERRY; ID OF PASSENGER  
[United States v. Landeros](#), No. 17-10217, Jan 2019  
NINTH CIRCUIT COURT OF APPEALS

## TRAINING TAKEAWAY:

Requesting identification from the girls in the back seat was justified because the officer testified that he believed that they may have been underage.

**The extension of the original stop was justified because the officer formed independent reasonable suspicion as to the girls possibly violating the underage drinking and curfew restrictions.**

Once he confirmed their ages (19 and 21), then the stop should have ended where there was no independent reasonable suspicion as to criminal activity on the part of the male passenger.

# 2 TRAFFIC STOP; TERRY; ID OF PASSENGER

TRAFFIC STOP; TERRY; ID OF PASSENGER  
[United States v. Landeros](#), No. 17-10217, Jan 2019  
NINTH CIRCUIT COURT OF APPEALS

## PRACTICE POINTER:

The “reasonable time” to handle a traffic stop is determined by what is expected by the original reason for the stop.

In other words, you can’t artificially drag a stop out to allow for backup to arrive or for time to gather more unrelated information.

If you are contacting a passenger after you’ve initiated a traffic stop, make sure you have a strong justification for articulating the reasonable suspicion you had for that individual if you are moving past casual conversation in any way.

# 3 TERRY STOP; POSSESSION OF A FIREARM

TERRY STOP; POSSESSION OF A FIREARM

[State v. Tarango](#), COA No. 35305-2-III (Jan. 31, 2019)  
C O U R T O F A P P E A L S , D I V . I I I

## FACTS:

Man calls 911 to report that he parked next to a car in a parking lot and noticed the passenger was holding a firearm in his lap. He reported no other sign of criminal activity. The CAD record entered into evidence during the suppression motion indicated that the passenger in the car wasn't holding or pointing the gun at anyone.

The first officer went to the location and located the vehicle matching the reporting party's description. He called in the license plate, but was unable to contact the vehicle before it left the parking lot. Several other officers arrived to the scene and conducted a felony stop on the vehicle.

# 3 TERRY STOP; POSSESSION OF A FIREARM

TERRY STOP; POSSESSION OF A FIREARM

[State v. Tarango](#), COA No. 35305-2-III (Jan. 31, 2019)

COURT OF APPEALS, DIV. III

## FACTS, CONT.:

The driver denied that there were any firearms in the vehicle and consented to a search of the vehicle. Officers then obtained the passenger's identification and learned that he was under active DOC supervision. DOC officers were called to the scene to search the vehicle. In their search, the DOC officers spotted what appeared to be the grip of a firearm behind the passenger seat – when they moved the bag that was covering the item, officers saw a black semiautomatic (matching the RP's description of the gun he saw the passenger holding on his thigh in the car), as well as a revolver and ammunition. At that point, officers drew back, sealed the vehicle, and applied for a search warrant.

# 3 TERRY STOP; POSSESSION OF A FIREARM

TERRY STOP; POSSESSION OF A FIREARM

[State v. Tarango](#), COA No. 35305-2-III (Jan. 31, 2019)

COURT OF APPEALS, DIV. III

## FACTS, CONT.:

While that occurred, an officer contacted the reporting party to get a statement. The RP told the officer that while in line inside the store, the suspect made eye contact with him while putting his finger to his lip, which the RP felt was a signal for him to “keep quiet about what you saw.”

The suspect was charged with 2 counts of Unlawful Possession of a Firearm. His motion to suppress the evidence from the car was denied. The court’s findings from that motion incorrectly indicated that the officers knew about the “keep quiet” interaction between the suspect and the RP before they initiated the *Terry* stop and/or executed the DOC search of the vehicle. In fact, that information came after the contact and search.

# 3 TERRY STOP; POSSESSION OF A FIREARM

TERRY STOP; POSSESSION OF A FIREARM

[State v. Tarango](#), COA No. 35305-2-III (Jan. 31, 2019)  
C O U R T O F A P P E A L S , D I V . I I I

## TRAINING TAKEAWAY:

**A civilian's report that a person possessed a firearm in public, without anything else indicating possible criminal activity, is not a sufficient justification for a *Terry* stop.**

Washington is an "open carry" state. State law, in conjunction with the federal and state constitutional rights to possess a firearm, permit the lawful carrying of an unconcealed firearm in Washington "unless the circumstances manifest an intent to intimidate another or warrant alarm for the safety of other persons." [RCW 9.41.050](#), [RCW 9.41.270](#).

- There are, of course, additional restrictions on who can carry, when, and what; and regarding the issuance and guidelines of concealed carry, but none of these change the basis for the court's ruling.

# 3 TERRY STOP; POSSESSION OF A FIREARM

TERRY STOP; POSSESSION OF A FIREARM

[State v. Tarango](#), COA No. 35305-2-III (Jan. 31, 2019)

COURT OF APPEALS, DIV. III

## TRAINING TAKEAWAY:

A person seen sitting in a car with his hand on a gun that is on his thigh is, without any other information, is presumed to simply be a person exercising his or her lawful right to openly carry a firearm in Washington.

- At the time the *Terry* stop was initiated, officers had no information other than an identified civilian caller was reporting that he saw a man sitting in a car with a firearm on his leg.
- It wasn't until after the stop was initiated that officers determined that the suspect was on DOC supervision and was prohibited from possessing firearms.

# 3 TERRY STOP; POSSESSION OF A FIREARM

TERRY STOP; POSSESSION OF A FIREARM

[State v. Tarango](#), COA No. 35305-2-III (Jan. 31, 2019)

COURT OF APPEALS, DIV. III

## TRAINING TAKEAWAY:

The record didn't contain any additional facts on which the officers could have supported their decision to conduct a *Terry* investigation.

- There was only very limited, and general, testimony that the car was “behind a store” in a parking lot, and one statement that grocery stores are frequently targeted for robbery.
- While this might have been taken as an inference that the suspect was there to rob the store, there wasn't any credible argument or support for this. Parking in the back of the store isn't especially telling considering the concerned 911 caller was parking there himself.
- None of the information later confirming that the suspect was legally prohibited from possessing a firearm was known at the time of the stop.

# 4 UNLAWFUL POSSESSION OF A FIREARM

## UNLAWFUL POSSESSION OF A FIREARM

[United States v. Torres](#), No. 15-10492 (Jan. 9, 2019)

NINTH CIRCUIT COURT OF APPEALS

### FACTS:

An undocumented immigrant was contacted by police after a 911 caller indicated he was trying to sell a stolen bicycle from his truck. The defendant consented to a search of the backpack in his truck, which had a loaded .22 revolver, bolt cutters, and two homemade silencers for the gun. He was subsequently charged in federal court and convicted for a violation of 18 U.S.C. § 922(g)(5)(A) – Unlawful Alien in Possession of a Firearm.

For this appeal, the defendant is admitting that (1) he is an undocumented immigrant unlawfully present in the US, and (2) possessed the firearm found in his truck. The only issue is whether the federal statute is constitutional.

# 4 UNLAWFUL POSSESSION OF A FIREARM

## UNLAWFUL POSSESSION OF A FIREARM

United States v. Torres, No. 15-10492 (Jan. 9, 2019)  
NINTH CIRCUIT COURT OF APPEALS

### TRAINING TAKEAWAY:

The 9<sup>th</sup> Circuit held that 18 U.S.C. § 922(g)(5)(A) is a lawful restriction prohibiting those unlawfully in the United States from possessing firearms.

The US Supreme Court has recognized that the 2<sup>nd</sup> Amendment right to bear arms is not a blanket permission to all people, in all places, at all times to possess any firearm. (See, District of Columbia v. Heller, 2008).

Rather than offering a definitive ruling on whether undocumented immigrants are included in the scope of the 2<sup>nd</sup> Amendment generally, the court here went forward with an assumption that he did. They then found that the government interest in keeping firearms out of the hands of those unlawfully in the US is a reasonable restriction.

# 5 COURT TESTIMONY; EXPERT WITNESS; CELL PHONE DATA EXTRACTION

COURT TESTIMONY; EXPERT WITNESS  
[State v. Ramirez](#), COA No. 49245-8-II (January  
3, 2019)  
COURT OF APPEALS, DIVISION II

## FACTS:

A cell phone was recovered from the scene of a robbery. The detective sent the cell phone to the Computer Crime institute ("CCI") at Dixie State University so they could perform a "chip-off" procedure. [Chip-off forensics is a high-tech method of extracting and analyzing data stored on flash drives. It allows the extraction of data even if the device is damaged or the data has been deleted.]. CCI provided the detective with hundreds of pages of extracted data.

Before the defendant's trial, the State notified the court and defense that the technician who performed the extraction on the defendant's phone could not be located to testify. They requested to substitute the data extraction results with testimony from CCI's assistant director. After a hearing, the court permitted the assistant director to testify about the extraction process.

At trial, the assistant director testified extensively about the chip-off process and the preparation of the report. The case detective testified about the data extracted from the phone that allowed him to connect the cell phone with the co-defendant, and in turn the defendant.

# 5 COURT TESTIMONY; EXPERT WITNESS; CELL PHONE DATA EXTRACTION

COURT TESTIMONY; EXPERT WITNESS  
[State v. Ramirez](#), COA No. 49245-8-II (January  
3, 2019)  
COURT OF APPEALS, DIVISION II

## TRAINING TAKEAWAY:

The technician who performed data extraction from a cell phone seized during the investigation of a robbery is not required to testify as a witness under the Confrontation Clause because the technician's testimony is not "*against*" the defendant since it was limited to the preparation rather than the interpretation of or conclusion-drawing from the data.

The detective was the witness whom the defendant would cross-examine in order to press for information about how and why the conclusions were drawn from the data and applied to proving the defendant's guilt.

# 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?

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