

JUNE 2019
LAW ENFORCEMENT
DIGEST



LAW ENFORCEMENT ONLINE TRAINING DIGEST

Welcome to the June 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 May training covers the cases issued in June 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

June 2019 EDITION

Covering select case opinions issued in June 2019

1. State v. Haggard: Search Warrant; Search & Seizure; Plain View
2. United States v. Brown: Terry Stop; Reasonable Suspicion; Flight
3. Mitchell v. Wisconsin: DUI; Blood Draw; Exigent Circumstances
4. ADDITIONAL RESOURCE LINKS: Legal Update for Law Enforcement (WASPC, John Wasberg) & Prosecutor Caselaw Update (WAPA, Pam Loginsky)



1 SEARCH WARRANT; PLAIN VIEW; SEARCH AND SEIZURE

Search Warrant; Search & Seizure; Plain View
[State v. Haggard](#), COA No. 77426-3-I (June 3, 2019)
Court of Appeals, Division I

FACTS:

Defendant was found guilty of Burglary in the 2nd Degree and Arson in the 2nd Degree after waiving his right to a jury trial and agreeing to the stipulated facts. Most of the court's opinion discusses the defendant's challenge to a sentencing issue that will not be covered in this discussion. This summary focuses on the defendant's challenge to the search warrants executed in this case.

While investigating the disappearance of the defendant's sister, the detective applied for a warrant to search the property where the defendant and his sister had been living prior to her disappearance. During the execution of that search warrant, officers discovered evidence of the Burglary and Arson the defendant was charged with in this case. He claims that the warrants were deficient, and the evidence should have been suppressed.



1 SEARCH WARRANT; PLAIN VIEW; SEARCH AND SEIZURE

Search Warrant; Search & Seizure; Plain View
[State v. Haggard](#), COA No. 77426-3-I (June 3, 2019)
Court of Appeals, Division I

TRAINING TAKEAWAY – SEARCH WARRANT, SUFFICIENCY OF PROBABLE CAUSE:

For a search warrant to issue, the affidavit must provide probable cause. Probable cause is established where the affidavit presents facts and circumstances sufficient to establish a reasonable inference that a person is probably involved in criminal activity, and evidence of the crime could be found in the place to be searched. [State v. Thein](#), 138 Wn.2d 133 (1999)

Probable cause exists where a warrant is sought to search the home where a now-missing woman lived with her brother and other family and household members when the facts include that:

- The woman disappeared without notice to anyone, including the person she was to meet on the day of her disappearance;
- She had been involved in a physical dispute with her half-brother who also lived in the home and who was observed filling in a hole on the property soon after the woman's disappearance;
- The half-brother impersonated the missing woman in a text message to their sister; and
- His story changed multiple times during his contacts with law enforcement.

Those facts are enough for a reasonable person to conclude that the half-brother was involved in criminal activity, and evidence of that criminal activity could be found in the shared residence.



1 SEARCH WARRANT; PLAIN VIEW; SEARCH AND SEIZURE

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TRAINING TAKEAWAY – SEARCH WARRANT, PARTICULARITY:

A warrant must describe with particularity items for which probable cause exists to search. As long as there is a showing of reasonably specific underlying circumstances that establish evidence of illegal activity will be found in the place to be searched, the warrant may be sufficiently particular even where it lists generic classifications of evidence to be seized.

The particularity requirement ensures that officers are given sufficient guidance to prevent them from merely rummaging unchecked through a person's belongings.

- It limits the searching officers' discretion for what they search for and/or seize.



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TRAINING TAKEAWAY – SEARCH WARRANT, PARTICULARITY:

Although the affidavit in this case contained generic classifications of the items to be searched and seized, it gives sufficient guidance to the officers to ensure the search isn't a wholesale rummaging through the contents of the house and cars.

- Generic classifications included: clothes, phones, belongings, medications, suitcases, documents, etc
- Underlying information included: specifying evidence that may be used to establish whether the victim was missing voluntarily, and information, including from the half-brother, that the victim lived in the house, and had been in the car and the truck around the time of her disappearance.

Prior cases have upheld affidavit language including:

- “Specific items plus any other evidence of the homicide...and any and all evidence of assault and rape included but not limited to...specified items.” [State v. Clark](#), 143 Wn.2d 731 (2001)
- “Trace evidence from the victim in the van”



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PRACTICE POINTER – SEARCH WARRANT, PARTICULARITY:

The search warrant particularity requirement is intended to ensure warrants provide enough guidance to officers executing the warrant to prevent overly general searches, searches not based on sufficient probable cause, and general riffling through a person's belongings.

- You should try to describe the evidence you're seeking in the most particular and detailed way possible.
- You will still run into situations where you're seeking somewhat general categories of evidence.
- The key to ensuring these meet the particularity requirement is that they are supported with specific ties to the crime being investigated.

It's better to be in a position to need to file a supplemental search warrant based on what you find in response to your first warrant, than to overreach the first time and lose the evidence you discover because you didn't yet have the facts to support probable cause to search that evidence.



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Court of Appeals, Division I

TRAINING TAKEAWAY – SEARCH WARRANT, RECKLESS OMISSION:

A search warrant is invalid where there is evidence of a deliberate, material omission or statements made in the reckless disregard of the truth, versus simple negligence or innocent mistake.

Failing to include information that the missing woman's boyfriend was in jail for domestic violence at the time the woman disappeared – where the affidavit did reference that he had been arrested for domestic violence a month prior to the search warrant application and that the pond on the property was filled in “while [the boyfriend] was incarcerated” – led the court to conclude that the detective's omission of a more explicit statement was likely mere negligence or an innocent mistake rather than a deliberate or reckless omission that would invalidate the search warrant.

The court also notes that the affidavit mentioned the boyfriend, and his car was one location to be searched, but generally the focus was on the statements and actions of the half-brother.



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[State v. Haggard](#), COA No. 77426-3-I (June 3, 2019)
Court of Appeals, Division I

TRAINING TAKEAWAY – SEARCH WARRANT, SCOPE OF WARRANT:

It did not exceed the scope of the search warrant for officers to slightly move a welder while photographing its serial number when the number was clearly visible and exposed in plain sight on the front of the welder.

Recording serial numbers that are in plain view does not constitute a search or seizure.

[Arizona v. Hicks, 480 U.S. 321](#) (1987)

Generally manipulating and moving items to document the serial number would not be permitted without specific authorization in the warrant to do so.

The welder in this case was a different situation than moving an item to look for a serial number because the number was already within plain sight. The slight movement was merely done to allow the detective to photograph the number.



2

TERRY; REASONABLE SUSPICION; FLIGHT

Terry Stop; Reasonable Suspicion; Flight
[United States v. Brown](#), No. 17-30191 (Jun. 5, 2019)
Ninth Circuit Court of Appeals

FACTS:

An employee of a downtown Seattle YMCA called 911 around 7pm to report that one of the residents told her that he'd seen a young black man wearing a camouflage jacket and red sneakers outside who had a gun. The caller didn't indicate that the unidentified YMCA resident yelled or shouted, was visibly upset by seeing the gun, or was otherwise alarmed by the gun's presence. There was no indication that the man was harassing or threatening any residents, loitering, known at the YMCA, or had done anything other than be seen with a gun by the resident.

The unnamed resident remained in the YMCA lobby while employee called 911. The resident was heard saying that she didn't want to make a firsthand report because she doesn't like the police. The resident didn't speak the dispatcher, the responding officers, or provide her name.



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TERRY; REASONABLE SUSPICION; FLIGHT

Terry Stop; Reasonable Suspicion; Flight
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Ninth Circuit Court of Appeals

FACTS:

While Seattle officers were speaking to the caller, two King County Sheriff's Office Metro Transit Unit officers also responded to the call. A deputy spotted the defendant, who was on foot and matched the 911 description. He began a pursuit, driving behind the defendant slowly for several blocks before activating his lights and driving the wrong way down a one-way street to follow the defendant. The defendant then ran. The deputy and a second unit pursued the defendant for a block before stopping him and ordering him to the ground at gunpoint. Officers discovered a firearm in his waistband, and a further search revealed drugs, cash, and other items on his person.

The defendant moved to suppress the evidence based on a lack of reasonable suspicion for the Terry stop. The district court denied the motion. It is now being appealed to the 9th Circuit Court of Appeals.



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TERRY; REASONABLE SUSPICION; FLIGHT

Terry Stop; Reasonable Suspicion; Flight
[United States v. Brown](#), No. 17-30191 (Jun. 5, 2019)
Ninth Circuit Court of Appeals

TRAINING TAKEAWAY:

A 911 call reporting that an unknown 3rd party saw a black man with a gun is not sufficient reasonable suspicion to support a *Terry* stop in a state where possession of a firearm is presumptively legal.

- A brief, warrantless, investigatory seizure (*Terry* stop) is permitted if the officer has reasonable and articulable suspicion that the person is or is about to be engaged in criminal activity. [Illinois v. Wardlow](#), 528 U.S. 119 (2000)
- To determine whether this standard is met, the court weighs the totality of the circumstances of such a stop, including both the content of the information possessed by police, and its degree of reliability. [United States v. Williams](#), 846 F.3d 303 (2016)



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TERRY; REASONABLE SUSPICION; FLIGHT

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Ninth Circuit Court of Appeals

TRAINING TAKEAWAY – RELIABILITY OF ANONYMOUS TIP:

A tip must be reliable not only in identifying a particular person, but also in its assertion of illegal behavior. An anonymous tip lacking in reliability in these areas provides little support for a finding of reasonable suspicion. [Florida v. J.L.](#), 529 U.S. 266 (2000)

Unlike a known informant whose reputation can be assessed and who can be held accountable if the allegations made turn out to be fabricated, an anonymous tip rarely demonstrates the informant's basis of knowledge or reliability.

- The actual 911 caller had no direct knowledge of the alleged “man with a gun.” The resident who relayed the information to her was unwilling to identify herself to 911 or to speak to police, and there was no way for the reliability of her tip to be assessed.



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TERRY; REASONABLE SUSPICION; FLIGHT

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Ninth Circuit Court of Appeals

TRAINING TAKEAWAY – REASONABLE SUSPICION:

A (1) mere hunch or innocuous facts plus a (2) person's flight do not create sufficient reasonable suspicion to justify a Terry stop under the 4th Amendment.

Facts the court identifies as the basis for the deputy's stop:

1. No testimony that it was a high crime area
 - Note: by itself this wouldn't justify a Terry stop in Washington, but it could be one element in a larger collection of facts. [State v. Fuentes](#) (2015)
2. An unknown black man had a gun when Washington State doesn't criminalize mere possession of a firearm
3. An anonymous tip lacking key elements of reliability and which gave no indication of illegal activity
4. The man's flight after the deputies activated their emergency lights



2

TERRY; REASONABLE SUSPICION; FLIGHT

Terry Stop; Reasonable Suspicion; Flight
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Ninth Circuit Court of Appeals

TRAINING TAKEAWAY – REASONABLE SUSPICION:

NOTE: The flight is only included in the reasonable suspicion analysis because the case is being evaluated in a federal court, under the less restrictive 4th Amendment standards.

- Under Article 1, Sec. 7 of the Washington State constitution, only the facts known to the deputies PRIOR to the suspect's flight would be considered.

A seizure occurs when there is a show of authority sufficient to convey to any reasonable person that a voluntary departure from the scene isn't a realistic alternative. [State v. Young](#), 135 Wn. 2d 498 (1998), citing [State v. Stroud](#) (1986)

- In Washington courts, the flight would be considered after the point of seizure (which occurred when the deputies activated their emergency lights).



2

TERRY; REASONABLE SUSPICION; FLIGHT

Terry Stop; Reasonable Suspicion; Flight
[United States v. Brown](#), No. 17-30191 (Jun. 5, 2019)
Ninth Circuit Court of Appeals

TRAINING TAKEAWAY – REASONABLE SUSPICION OF CRIMINAL ACTIVITY:

Although officers aren't required to identify the exact crime suspected, you must be able to articulate suspicion as to some criminality beyond a mere hunch.

The court finds that without more information leading to a reasonable suspicion of unlawful behavior, an anonymous tip of some person merely possessing a gun doesn't satisfy this standard.

- It is presumptively lawful to carry a gun in Washington.
- While carrying a concealed pistol without a license is a misdemeanor, it is merely a civil infraction to not carry a concealed pistol license. [§ 9.41.050\(1\)\(a\)](#)
- Washington is also a “shall issue” state – meaning that local law enforcement must issue a concealed weapons license if he applicant meets the qualifications. [§ 9.41.070\(1\)](#)

Taking these facts together and in the absence of any other indicators of unlawful behavior such as reliable information that the person was prohibited from possessing a gun or had displayed or threatened with it, it's a weak inference that he was unlawfully carrying the gun without a license.



2

TERRY; REASONABLE SUSPICION; FLIGHT

Terry Stop; Reasonable Suspicion; Flight
[United States v. Brown](#), No. 17-30191 (Jun. 5, 2019)
Ninth Circuit Court of Appeals

TRAINING TAKEAWAY – REASONABLE SUSPICION OF CRIMINAL ACTIVITY:

While articulable facts that the person reported to be possessing a firearm was prohibited from doing so (by prior felony conviction, court order, etc.) or that the manner of carrying was unlawful (carrying, exhibiting, displaying, or drawing in a manner that warrants alarm for the safety of others) would have increased the reasonable suspicion, there was no such evidence presented in this case.

The anonymous resident simply reported seeing a man with a gun. She didn't indicate being frightened, threatened, upset, or otherwise distressed by seeing the gun.

Without any additional information, or the ability to follow up with the anonymous witness due to her unwillingness to identify herself to law enforcement, the responding officers lacked a reasonable basis on which to conclude that the firearm was possessed or carried in any manner other than as legally permitted.



2

TERRY; REASONABLE SUSPICION; FLIGHT

Terry Stop; Reasonable Suspicion; Flight
[United States v. Brown](#), No. 17-30191 (Jun. 5, 2019)
Ninth Circuit Court of Appeals

TRAINING TAKEAWAY – FLIGHT:

Flight from the police does not immediately establish reasonable suspicion, but rather is just one (significant) factor in a 4th Amendment reasonable suspicion analysis.

The court has long acknowledged that innocent parties do sometimes flee from the scene of a crime (ex - to avoid being falsely identified as a suspect, an unwillingness to be a witness for the investigation, a general fear of the police, etc.).

- Again, remember that this case was decided in the federal court, and therefore evaluated under the less restrictive 4th Amendment standard.
- Under Article 1, Sec. 7 of the WA constitution, a Washington State court would have evaluated the stop as occurring when the deputies activated their emergency lights.



2

TERRY; REASONABLE SUSPICION; FLIGHT

Terry Stop; Reasonable Suspicion; Flight
[United States v. Brown](#), No. 17-30191 (Jun. 5, 2019)
Ninth Circuit Court of Appeals

TRAINING TAKEAWAY – FLIGHT:

Racial dynamics – along with a simple desire not to interact with police - is also noted as an “innocent” reason a person may flee officers. In addition to recent publicity highlighting the disparity of enforcement against people of color, and in particular, black men, this same issue has been noted in the court’s cases spanning the last two decades. Certain populations have different experiences and perceptions of how a potential interaction with law enforcement may unfold, which may lead them to flee without other reason.

In a case lacking more facts to support reasonable suspicion, the court notes it is “particularly hesitant to allow flight to carry the day in authorizing a stop” when considered in light of these dynamics.

NOTE:

In his [concurrency](#), Judge Friedland clarifies that nothing in the record implies that the deputies actions were racially motivated, and that the concern that the defendant had a gun, regardless of race, was something worth investigating given the serious public safety threat that firearms present. However, in this case, the circumstances ultimately fell short of reasonable suspicion.



2

TERRY; REASONABLE SUSPICION; FLIGHT

Terry Stop; Reasonable Suspicion; Flight
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Ninth Circuit Court of Appeals

TRAINING TAKEAWAY – FLIGHT:

The court acknowledges that the defendant's flight might be suggestive of wrongdoing, but here there was only an unreliable tip without other reliable suspicion of criminal behavior for that flight to corroborate.

Unlike in previous rulings regarding the issue of flight, the defendant didn't refuse to speak with the officers after a verbal request or to obey a verbal command to stop prior to fleeing.

The officers followed behind the defendant without making any attempt to call out to him or otherwise engage him prior to his flight at the activation of their emergency lights, which under the federal standard means that he wasn't seized.



3

DUI; BLOOD WARRANT; EXIGENT CIRCUMSTANCES

DUI; Exigent Circumstances; Blood Search Warrant
[Mitchell v. Wisconsin](#), No. 18-6210 (2019)
US Supreme Court

FACTS:

Defendant was arrested for DUI after providing a PBT result of .24 BAC. By the time they arrived at the station for the evidential breath test, the defendant was too lethargic for the officer to conduct the test. The officer drove the defendant to the hospital to obtain a blood test. By the time they arrived at the hospital, the defendant was unconscious. His blood was drawn pursuant to Wisconsin's implied consent law that presumes that a person who is incapable of withdrawing implied consent to breath testing has not done so. The blood result was .222.

The defendant moved to suppress the results of the blood draw claiming it was a violation of his 4th Amendment right against unreasonable searches because the blood draw was conducted without a warrant. The trial court denied the motion, and the defendant was convicted of DUI. He appealed, and the Wisconsin Supreme Court took it up, affirming the lawfulness of the blood test. The case is now before the US Supreme Court.

There is no true majority opinion in this case: four justices signed the plurality opinion, and one (Justice Thomas) agreed with their ruling but authored his own opinion preferring the court had established a per se rule under which "the natural metabolism of alcohol in the blood stream creates an exigency once police have probable cause to believe the driver is drunk, regardless of whether the driver is conscious." The remaining four justices dissented in two separate opinions.



3

DUI; BLOOD WARRANT; EXIGENT CIRCUMSTANCES

DUI; Exigent Circumstances; Blood Search Warrant
[Mitchell v. Wisconsin](#), No. 18-6210 (2019)
US Supreme Court

TRAINING TAKEAWAY – UNCONSCIOUS DRIVER, DUI BLOOD DRAW:

Exigent circumstances generally permit a warrantless blood draw to be conducted on an unconscious driver under arrest for DUI.

A chemical test on a DUI suspect is a search, and typically requires either consent or a search warrant to obtain.

A highly intoxicated (to the point of unconsciousness) driver poses a significant medical urgency and a threat to public safety. This, along with the fact that alcohol and drugs are rapidly dissipating from the suspect's body as time elapses, supports a finding of exigency.

The [Washington Implied Consent statute, RCW 46.20.308\(4\)](#) mirrors the Wisconsin statute at issue here, and similarly permits a warrantless blood draw in cases where the facts satisfy the exigent circumstance doctrine.



3

DUI; BLOOD WARRANT; EXIGENT CIRCUMSTANCES

DUI; Exigent Circumstances; Blood Search Warrant
[Mitchell v. Wisconsin](#), No. 18-6210 (2019)
US Supreme Court

PRACTICE POINTER:

Although Washington law permits warrantless DUI blood draws under exceptions to the warrant requirement, including exigent circumstances, it should still remain a last resort.

Your case is always going to be stronger if you've secured a warrant for the suspect's blood.

Although applying for a warrant is more work up front, you ultimately save the work that will otherwise occur with future legal challenges inherent in a warrantless blood draw case, making your case stronger and easier to prosecute from the beginning.

Even in this ruling, the court narrowly left the door open for the defendant to argue that the facts of his case didn't meet the necessary exigency. While there are certainly situations where it is impractical or impossible to get a warrant, and proceeding with a warrantless draw is legally permitted, it is generally just not a preferred best practice.



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>

John has also updated several of his outstanding legal references through July 2019:

1. **[Outline: Arrest, Search & Seizure, Independent Grounds](#)**
2. **[Outline: Initiation of Contact Rules Under The Fifth Amendment](#)**
3. **[Article: Eyewitness Identification Procedures: Legal and Practical Aspects](#)**

FURTHER READING

Staff Attorney Pam Loginsky of the Washington Prosecutor's Association publishes an exceptional weekly summary of a wide range of caselaw geared toward the interests of Washington State Prosecutors, but also useful for law enforcement.

<http://waprosecutors.org/case-laws/>

WAPA's database of manuals contains not only the Search and Seizure Manual, but many other manuals on topics relevant to law enforcement:

<http://waprosecutors.org/manuals/>

Questions?

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