

LAW ENFORCEMENT DIGEST

August 2022



COVERING CASES PUBLISHED IN AUGUST 2022

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Cases in the Law Enforcement Digest are briefly summarized, with emphasis placed on how the rulings may affect Washington law enforcement officers or influence future investigations and charges. Each month's Law Enforcement Digest covers court rulings issued by some or all of the following courts:

- **Washington Courts of Appeals.** The Washington Court of Appeals is the intermediate level appellate court for the state of Washington. The court is divided into three divisions. Division I is based in Seattle, Division II is based in Tacoma, and Division III is based in Spokane.
- **Washington State Supreme Court.** The Washington Supreme Court is the highest court in the judiciary of the U.S. state of Washington. The court is composed of a chief justice and eight justices. Members of the court are elected to six-year terms.
- **Federal Ninth Circuit Court of Appeals.** Headquartered in San Francisco, California, the United States Court of Appeals for the Ninth Circuit (in case citations, 9th Cir.) is a federal court of appeals that has appellate jurisdiction over the district courts in the western states, including Washington, Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada and Oregon.
- **United States Supreme Court:** The Supreme Court of the United States is the highest court in the federal judiciary of the United States of America.

TOPIC INDEX

- Qualified Immunity & Section 1983 Claims
- Tribal Rights to Fish on Non-tribal lands

CASES

1. [J.K.J. v. City of San Diego](#) 20-55622 (August 2, 2022)
2. [Simmons v. Arnett](#) 20-55043 (August 31, 2022)
3. [Manriquez v. Ensley](#) 20-16917 (August 30, 2022)
4. [Simmons v. State](#) 55029-6-II (August 16, 2022)


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** - WA Association of Prosecuting Attorneys [[2018-2021](#)] | [[2022](#)]

QUESTIONS?

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- If you have questions/issues relating to using the ACADIS portal, please review the [FAQ site](#).
- Send Technical Questions to lms@cjtc.wa.gov or use our [Support Portal](#).
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 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.

HISTORICAL BACKGROUND AND TRAINING TAKEAWAYS FOR
ALL CASES DECIDED BY THE NINTH CIRCUIT COURT OF
APPEALS IN THIS LED WITH KNOWLEDGE CHECKS
(SO PLEASE READ)

Section 1983 Claims

The United States legal system was founded predominantly on theories and traditions from 18th Century English “common law” (law made by judges on a case-by-case basis). Under English tradition, “the king could do no wrong” was a guiding principle that granted the king, or “sovereign,” and his representatives full and complete immunity. Citizens had no cause of action or avenue for justice when the wrongdoer was or acted on behalf of the king. While the United States rejected many traditions and trappings of sovereign rule, it maintained the tradition of sovereign immunity. That meant that those acting under “the color of law” (e.g. government officials, police officers) were immune from liability for harm to citizens while acting in their capacity as government actors.

After the Civil War, there was a significant increase in violence and violation of federal constitutional and civil rights by vigilante groups against black citizens in southern states where slavery had recently been abolished. To address this, in 1868 Congress ratified the **Fourteenth Amendment (due process and equal protection clauses)** and, subsequently, enacted the Civil Rights Act of 1871 (also referred to at the time as the Ku Klux Klan Act). Part of this Act created a **right of an individual to file a civil lawsuit in federal court against government officials for violation or deprivation of an individual’s constitutional rights**. This civil action is known as a “Section 1983 claim” because the Civil Rights Act of 1871 was “codified” or numbered under the federal statute 42 U.S.C Sec. 1983.

Section 1983 claims remained relatively uncommon until the 1960s leading up to and after the Civil Rights Act of 1964. In 1961, the United States Supreme Court in *Monroe v. Pape* clarified that a **Section 1983 claim could be pursued against state officials acting “under color of state law”** even if the official’s actions had violated state law or exceeded the scope of their duties. **A Section 1983 claim cannot be brought directly against a State, but rather is brought against a state official** (often, but not always, a police officer). Typically, a **Section 1983 lawsuit is filed against state officials in their individual capacity to recover damages (money) or for an injunction or “injunctive relief” (to stop a violation or enforce a right)**.


While a state official can be sued individually under Section 1983 for violation of a federal right (such as excessive force in violation of the Fourth Amendment’s protection against unreasonable search or seizure), **state officials can claim “qualified immunity.”** Qualified immunity is a judicially created doctrine that must be raised as an affirmative defense. If proven, **qualified immunity shields government officials from being held personally liable for constitutional violations—like the right to be free from excessive police force—for money damages under federal law so long as the officials did not violate “clearly established” law.**

Qualified immunity, like all affirmative defenses, must be asserted and proven by the defendant. The defendant must introduce evidence, which, if found to be credible, will negate criminal liability or civil

liability, even if it is proven that the defendant committed the alleged acts. For example, in a criminal case, the prosecution may prove every element of murder, but then the defendant can assert the affirmative defense of self-defense.

In summary, **a Section 1983 is not a cause of action but the avenue through which a citizen can file a civil lawsuit in federal court against state officials for monetary damages or other relief (such as seeking an injunction) for violation of a citizen's federal rights (usually arising under the U.S. Constitution). So, a Section 1983 claim must assert a violation of a federal right.**

As you will see in the three Ninth Circuit Court of Appeals cases in this LED, a citizen (plaintiff) filed a Section 1983 lawsuit against individual state officials (police officers) for violations including the Fourth Amendment (unreasonable search and seizure), the Fourteenth Amendment (Due Process Clause – right to medical attention), and the Eighth Amendment (excessive use of force).



J.K.J. v. City of San Diego

No. 20-55622

UNITED STATES COURT OF APPEALS FOR
THE NINTH CIRCUIT

August 2, 2022

TOPIC: Qualified Immunity & Section 1983 Claims

Factual Background

In August of 2016, San Diego police officers stopped a Cadillac with an expired registration. Two men sat in front of the Cadillac and Jenkins sat in the back. The officers learned that the two men in front had drug offense convictions. An Officer Durbin questioned Jenkins and she appeared coherent and showed no signs of distress. Upon discovering that Jenkins was subject to an arrest warrant involving a prior methamphetamine offense, Officer Durbin handcuffed Jenkins and put her in the back of his police cruiser.

All three passengers were secured and the officers searched the Cadillac. The officers found a Saran Wrap like plastic that was known to officers as being commonly used for a narcotics sale and two wallets, one of which was full of money. The officers found no drugs.

At some point, Jenkins vomited inside Durbin's cruiser. An Officer Taub called for paramedics and Durbin asked Jenkins if she was detoxing. Jenkins responded, *"No, I'm sick, my stomach is hurting."* She added, *"I'm pregnant."* Hearing this information, Durbin told Taub to cancel the paramedics. Taub approached Jenkins and asked if she had eaten something. Jenkins responded in the negative. Taub told Jenkins that they just wanted Jenkins to be okay. Durbin told Taub that Jenkins reported being pregnant and the call for paramedics was cancelled.

Officer Durbin transported Jenkins to the police station for processing. On the ride there, Jenkins expressed discomfort and became agitated. At one point, she screamed loudly, *"Please help me, please help me,"* and Durbin asked her what was going on. After Jenkins remained silent for around ten minutes, Officer Durbin stopped the car to check on her. He opened the rear door, patted her, and told her that he needed her to stay awake. Jenkins told Durbin that she was sick and then screamed at him. Officer Durbin told her that she would be fine and continued to the station.

On arrival, Durbin opened the rear door. Jenkins was laying face down across the backseat. Durbin patted her and she screamed, taking several rapid breaths. Durbin removed Jenkins to the pavement and Jenkins screamed for help. Durbin told an approaching officer, *"She doesn't want to go to jail."* Durbin and the other officer fingerprinted Jenkins as she lay on her side. Durbin asked if Jenkins wanted water, to which she replied, *"Yes, please."* Durbin confirmed Jenkins' identity and placed her back in the cruiser.

About 11 minutes later, Durbin opened the rear door of the cruiser and saw that Jenkins had fallen unconscious. Durbin immediately removed Jenkins and radioed for paramedics. Another officer arrived with a breathing tool and Durbin began CPR. Durbin told the gathering officers that Jenkins had a narcotics warrant but that this was not a narcotics arrest and added that, *"She may have ingested something."* Jenkins told other

officers that he had Narcan in his trunk. Paramedics arrived, but despite their best efforts, Jenkins fell into a coma. Jenkins died nine days later.

On an amended complaint, J.K.J. brought several claims against the officers and the City of San Diego. Two of which were brought under 42 U.S.C. § 1983. One claim, brought against Taub and Durbin, was labeled, “Unreasonable Search and Seizure – Denial of Medical Care.” Another was labeled, “Deprivation of Life without Due Process.”

The defendants moved to dismiss the claims, and the District Court granted the motion with prejudice. On the merits, the District Court held that J.K.J.’s first cause of action failed to state a plausible claim for denial of medical care under the Fourteenth Amendment. Additionally, the court concluded that Taub and Durbin were entitled to qualified immunity. The District Court dismissed the deprivation of life claim as duplicative of the denial of medical care claim. J.K.J. appealed.

Analysis of the Court

Among other things, the Ninth Circuit (the Court) considered the denial of medical care claim. J.K.J. argued that the District Court made three errors with regard to this claim. First, it did not apply a Fourth Amendment standard in addition to a Fourteenth Amendment analysis. Second, that the District Court improperly concluded that J.K.J. failed to state a plausible claim that Officer Durbin was deliberately indifferent to Jenkins’ serious medical need. Finally, that the District Court found that Taub and Durbin were entitled to qualified immunity. Because the Appellate Court would affirm that Durbin and Taub were entitled to qualified immunity, it did not address J.K.J.’s first two arguments.

The Court noted that **qualified immunity shields government officials** under § 1983 *unless* “**(1) they violated a federal statutory or constitutional right, and (2) the unlawfulness of their conduct was clearly established at the time.**” Courts have discretion to decide which of these two prongs to address first, and if its analysis under one prong is dispositive, it does not need to analyze the other. Under both prongs, the plaintiff has the burden of proof. The Court of Appeals began with the clearly established prong. Under that prong, unless J.K.J. could show that on the date the officers encountered Jenkins it was clearly established that their conduct was unlawful, qualified immunity applied.

The Court noted that a clearly established right is **one that is sufficiently clear that every reasonable official would have understood that what they are doing violates it.** The Supreme Court has cautioned that lower courts **should not analyze whether rights are clearly established at a high level of generality, nor should they require a prior case match a claim on all fours.** Instead, the Court’s inquiry is whether, the violative nature of the defendant’s particular conduct is clearly established in light of the **specific context** of the case. Qualified immunity, thus, protects all but the plainly incompetent or those who knowingly violate the law.

J.K.J. argued that a reasonable officer in Taub or Durbin’s position would have been on fair notice that their conduct violated clearly established law. J.K.J. noted that several cases had held that deliberate indifference exists when an official purposefully ignores or fails to respond to a detainee’s pain or possible medical need. The Court noted that this argument suggests a general rule like the one the Supreme Court warned lower courts against adopting. It also noted that only one case was even remotely similar, and that case did not establish that law enforcement’s failure to recognize a detainee’s serious mental need was deliberately indifferent because, “all they knew about the mental condition was what they could observe of his behavior

and that behavior did not obviously connote serious illness.”

In the present case, the Court noted *that officers asked Jenkins whether she was withdrawing or detoxing, and she responded no. Jenkins explained she was sick, her stomach was turning, and that she was pregnant. Taub asked Jenkins directly, “Did you eat something, just for our knowledge?” Jenkins was no longer vomiting and responded, “mm-mmm” while shaking her head side to side. Taub responded, “Alright, that’s fine. We just wanna make sure you’re gonna be okay.” Jenkins asked for a napkin to clean herself up and said, “Come on man, I’m too pretty for this,” but did not ask for medical aid. And, while driving to the police station, Jenkins explained that she did not want to go to jail. To argue that Jenkins’ medical need was obvious ignored the critical context of her encounter with police. In no prior cases had a police officer had to grapple with a detainee who exhibited signs of medical distress but explained them away.*

The Court held that J.K.J. failed the clearly established prong of the qualified immunity test with any binding precedent. As such, the Court held that J.K.J. failed to carry the burden of showing the alleged unlawfulness of Taub and Durbin’s conduct was clearly established at the time they encountered Jenkins. Thus, they were entitled to qualified immunity and the District Court properly dismissed J.K.J.’s denial of medical care claim.

The Court affirmed the decision of the District Court.

Training Takeaway

Qualified immunity shields government officials under 42 U.S.C. § 1983 unless **(1) they violate a federal statutory or constitutional right, and (2) the unlawfulness of their conduct was clearly established at the time.** The qualified immunity standard shields all but the plainly incompetent or those who knowingly violate the law. When performing a qualified immunity analysis for government officials, courts can choose which prong of the test to apply first. If either prong of the test fails, they do not have to analyze the other. **The violation of a clearly established right defeats qualified immunity. An act violates a “clearly established right” when any reasonable government official would have understood that what they were doing violated the right.** A court’s inquiry is whether the violative nature of the defendant’s particular conduct is clearly established **in light of the specific context of the case.**

Pretrial detainees in state custody have a due process right to adequate medical treatment. A claim of violation of a pretrial detainee’s due process right to adequate medical treatment is evaluated under an objective deliberative indifference standard. The elements of a pretrial detainee’s due process claim for the denial of adequate medical treatment are:

1. The defendant (government official) made an intentional decision with respect to conditions under which the detainee was confined,
2. Those conditions put the detainee at substantial risk of suffering serious harm,
3. The defendant did not take reasonable available measures to abate that risk, even though a reasonable official in the circumstances would have appreciated the high degree of risk involved, making consequences of the defendant’s conduct obvious, and
4. By not taking such measures, the defendant caused the detainee’s injuries.

A government official’s failure to take reasonable measures to abate risk must be objectively unreasonable

and this determination must turn on the facts and circumstances of each particular case. Mere lack of due care by a state official does not deprive an individual of life, liberty, or property under the due process clause. **A pretrial detainee alleging a violation of the due process right to adequate medical care must plausibly allege facts demonstrating something akin to reckless disregard in order to state a claim.**

In *J.K.J. v. the City of San Diego*, the arresting officers did not violate a clearly established right when they failed to recognize and respond to the arrestee's serious medical need while transporting her to the police station. This is true **even though the arrestee exhibited signs of medical distress, which the arrestee explained away as symptoms of pregnancy because she did not want to admit to ingesting drugs and wanted to avoid jail.** Thus, the officers had qualified immunity from a claim for the violation of the arrestee's due process rights, in denial of medical care, or for any violation of the Fourth Amendment relating to the denial of medical care that arose from the arrestee's death from an apparent drug overdose.

[EXTERNAL LINK: View the Court Document](#)



Simmons v. Arnett

No. 20-55043

UNITED STATES COURT OF
APPEALS FOR THE NINTH
CIRCUIT

August 31, 2022

TOPIC: Qualified Immunity & Section 1983 Claims

Facts Summary

On Thanksgiving Day of 2013, Simmons was 57 years old and 11 years into a life sentence at California State Prison in Los Angeles County, California. Simmons found work as a barber. Five days a week, he went to each of the prison's buildings to give haircuts to inmates. That morning, when he arrived at his assigned building, nothing appeared to be out of the ordinary. There was one guard, Garth Arnett, in a control booth overlooking the two floors and the common yard. In the common yard, sixteen to eighteen inmates gathered, including some that Simmons recognized as members and associates of the Two-Fivers gang.

Simmons asked Arnett if he could walk around the cells and sign inmates up for haircuts, which he was allowed to do. Simmons also heard members of the Two-Fivers ask if they could sit together at a table in the common yard. The guard agreed to this, as well. As Simmons was talking to a prisoner on the second floor, the yard below went quiet. A commotion ended the silence when another inmate, Murillo, was attacked by the Two-Fivers. Murillo was not attacked at full force but was hit for about thirty seconds and became bloodied. Arnett told the inmates to stop "horse-playing" and the scuffle stopped.

Murillo then crossed the yard and climbed the stairs to the second floor, where Simmons had been speaking with another inmate. As Murillo walked past Simmons, he suddenly turned around and struck him in the head, right above his left ear. Murillo continued to hit Simmons, who claimed he did not fight back.

Arnett immediately responded to the fight by activating the building alarm and announcing on the prison-wide radio that two inmates were fighting. Arnett ordered Murillo and Simmons to stop fighting. Arnett was prohibited from leaving the control booth unmanned but doing nothing could have resulted in severe injury or death to Simmons, Murillo, or other inmates that might join the fight. Arnett had two options he could use to stop the fight: (1) a Mini-14 semiautomatic rifle that shot live rounds, and (2) a 40mm launcher that shot less-lethal sponge rounds made of plastic bodies and foam noses.

Arnett chose to use the 40mm launcher. Simmons was in between Arnett and Murillo, so Arnett could not shoot Murillo. Arnett fired a round at Simmons from about 10 yards away, aiming for Simmons's legs and avoiding his groin, consistent with protocol for using the launcher. The round hit and broke Simmons's leg. Arnett continued to order the inmates to stop fighting and fired two more rounds at Simmons, hitting him in his butt and thigh. At this point, other prison staff arrived and Murillo and Simmons laid prone on the floor.

A few years later, Simmons filed a civil rights lawsuit in federal court alleging that, among other things, Arnett violated his Eighth Amendment rights. Arnett moved for summary judgment and the district court granted the motion. Simmons appealed.

Analysis of the Court

The Eighth Amendment commands that **“cruel and unusual punishments [shall not be] inflicted by the government.”** Simmons accuses Arnett of violating his Eighth Amendment right by using excessive force when he stopped the fight between Murillo and Simmons. Arnett argued that he did not violate Simmons’s rights, and that he was entitled to qualified immunity. **Qualified immunity protects government officials who violate constitutional rights from civil liability if their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.**

The Ninth Circuit (the Court) addressed two issues: (1) whether Arnett’s conduct violated Simmons’s constitutional right when viewing the facts in the light most favorable to Simmons, and (2) whether the relevant right was clearly established at the time Arnett acted, such that he should have known not to violate it.

To sustain an excessive force claim against Arnett, Simmons needed to show that, among other things, Arnett’s actions were not **“a good faith effort to maintain or restore discipline,”** and that Arnett instead acted **“maliciously and sadistically for the very purpose of causing harm.”** The courts consider many factors when determining whether this standard has been satisfied. These factors include **the need for application of force, the relationship between the need for force and the amount of force used, any effort made to temper the severity of the force used, and the extent of the threat to the safety of staff and inmates.** Courts have recognized that prison officials should be accorded wide-ranging deference when they are exercising their judgment to maintain prison safety. In the specialized context of prison operations, the use of force can be a legitimate means for preventing small disturbances from becoming dangerous to other inmates or the prison personnel.

In this case, it was undisputed that Arnett was the only guard in the control booth and that he saw a fight break out. Arnett had a duty to keep prison staff and the prisoners in his care safe and the fight between Simmons and Murillo could have threatened that safety. Arnett was not permitted to leave the control booth – he used the lowest level of force available to him. Finally, Simmons was between Arnett and Murillo. Even when considered in the light most favorable to Simmons, there was no evidence that Arnett had any improper motive, let alone that he acted maliciously and sadistically for the very purpose of causing harm.

These facts made it clear that Arnett did not violate Simmons Eighth Amendment rights. Arnett was entitled to summary judgment.

Even though the Court determined that Arnett did not violate Simmons’s constitutional rights, the court considered the second question, as well: whether the rights Arnett allegedly violated were clearly established such that a reasonable official would have (or should have) known not to violate them. For a right to **be clearly established, the right must first be defined at the appropriate level of specificity. Then, the contours of that right must be sufficiently clear that a reasonable official would understand that what they were doing violates that right.**

Simmons argued that past cases should have put Arnett on notice that he would be violating Simmons's constitutional rights through his alleged conduct in this case. In the first case he offered, the prison guard in question fired live rounds at a completely passive and unarmed inmate standing near a fight between other inmates. The rounds struck the inmates leg and broke his femur. The Court reasoned that case offered guidance, suggesting that a prison guard should not shoot a fighting inmate with live rounds and should instead take **efforts to temper the severity of their response and use less lethal force**. This is exactly what Arnett did. Simmons offered no other precedent to support the contention that Arnett's alleged actions violated a clearly established right. This failure confirmed the Court's holding that Arnett's actions were protected by qualified immunity – even if the court were to assume that they somehow may have violated the Eighth Amendment.


The Court concluded that Arnett took reasonable steps to address an urgent situation, and affirmed the District Court, holding that there was no constitutional violation. The Court further held that the guard was protected by the doctrine of qualified immunity.

Training Takeaway

The affirmative defense of **qualified immunity protects government officials who violate constitutional rights from civil liability if their conduct does not (1) violate clearly established statutory or constitutional rights (2) of which a reasonable person would have known**. To sustain an inmate's Eighth Amendment claim for the use of excessive force against a prison guard, the inmate must show (among other things), that the guard's actions **were not a good faith effort to maintain or restore discipline and that the guard acted maliciously and sadistically for the very purpose of causing harm**.

In the specialized context of prison operations, use of force can be a legitimate means for preventing small disturbances from becoming dangerous to other inmates or prison personnel. Prison officials should be accorded wide-ranging deference when they are exercising their judgment to maintain prison safety. In this case, the prison guard's decision to shoot an inmate with sponge rounds to break up a fight was not an excessive use of force in violation of the Eighth Amendment, even if the inmate had been attacked without provocation and was not fighting back. The guard was alone in the control booth and not permitted to leave it. The guard had a duty to keep prison staff and prisoners in their care safe. The fight between the inmate and another prisoner could have threatened that safety. The guard used the lowest level of force available to them and there was no evidence that the guard acted maliciously or sadistically.

[EXTERNAL LINK: View the Court Document](#)



Manriquez v. Ensley
No. 20-16917
UNITED STATES COURT OF
APPEALS FOR THE NINTH
CIRCUIT
August 30, 2022

TOPIC: Qualified Immunity & Section 1983 Claims

Facts Summary

In August of 2016, Officer Brian Lawrence pulled over a truck in an area notorious for drug trafficking. A search of the truck revealed a handgun, marijuana, and a glass pipe containing residue consistent with methamphetamine. Several officers arrived at the scene, including Officer Joel Ensley, and arrested the two people in the truck. A search of one of the arrestee's, John Ray Soriano, yielded a key to Room #1 of the Copper Mountain Motel. Law enforcement was already investigating Soriano for drugs sold around that motel, so Ensley prepared an affidavit for a warrant application to search the motel room. A judge authorized the warrant over the phone.

The warrant listed the place to be searched as: [T]he premises known as: 577 W. Kiser Room #1 Superior AZ 85173, known as the Copper Mountain Motel, an L shaped configuration of motel rooms, with Room #1 located on the northeast corner of the property. Room #1 is a brown-colored block building, which has a white front door, which is missing the room number.

The search of the motel room only uncovered small quantities of marijuana, a shard of meth, a scale, and some other drug paraphernalia. Officer Ensley called the judge who had issued the initial warrant and asked for permission to, "amend the search warrant to include another location" – Soriano's "primary residence," a house he shared with his uncle, Manriquez.

Officer Ensley's phone call with the judge was recorded. Ensley informed the judge that they had executed the search warrant on the primary location and that law enforcement wanted to search Soriano's primary residence, a house located on West Sonora.

- Ensley asked, *"Do we have your permission to amend the search warrant?"*
- The judge replied, *"yeah, go ahead and amend it."*
- Ensley said, *"Okay. Are we – it would still serve that right now as one continuous search warrant? That's okay?"*
- The Judge, *"That's fine."*

After the conversation, no officer physically amended the warrant before searching Manriquez's home.

Manriquez claims that when the officers arrived at his home, he opened the door and they “gang rushed” him, bringing him to the ground, and began punching him. The officers claim that after they told Manriquez they had a warrant to search his home, he became belligerent and was restrained for officer safety.

The search of Manriquez’s home revealed a digital scale with white residue and a meth pipe. The County Attorney’s Office declined to prosecute Manriquez for drug trafficking or his conduct during the altercation at his home. Officer Ensley issued a citation to Manriquez for possession of drug paraphernalia and obstructing governmental operations.

The judge hearing the case was the same that granted the original warrant application. Before trial, Manriquez moved to exclude evidence seized from his home, arguing that (1) the search warrant was invalid on its face, (2) the warrant application lacked probable cause, and (3) the officers obtained the warrant through deception. The judge granted the motion without comment. Manriquez also moved to dismiss both charges, and the judge dismissed the possession charge. Manriquez was found guilty of obstructing government operations. Manriquez did not appeal.

Manriquez filed a civil action against the Town of Superior and four police officers, including Lawrence and Ensley. The court granted qualified immunity to some of the parties on some of the claims but concluded that Officers Lawrence and Ensley were not entitled to qualified immunity on Manriquez’s illegal search claim. The District Court noted that, (1) the warrant was facially invalid for failure to specify the location to be searched, and (2) prior precedent clearly established that a search warrant must identify, with particularity, the place to be searched.

Officers Lawrence and Ensley appealed.

Analysis of the Court

The Ninth Circuit (the Court) noted that an official sued under 42 U.S.C. § 1983 is entitled to qualified immunity unless it is shown that: (1) **the official violated a statutory or constitutional right**, and (2) **the right was clearly established at the time the violation occurred**.

In considering the first prong of this test, the Court noted that the Fourth Amendment provides that “no warrants shall issue, but upon probable cause, supported by oath or affirmation, and **particularly describing the place to be searched, and the persons or things to be seized**.” The particularity requirement protects property owners “by interposing, ex ante, the ‘deliberate, impartial judgment of a judicial officer... between the citizen and the police,’ and by providing, ex post, a right to suppress evidence improperly obtained and a cause of action for damages.”

In determining whether the particularity requirement has been met, courts should analyze “(1) **whether the warrant describes the place to be search with ‘sufficient particularity to enable law enforcement officers to locate and identify the premises with reasonable effort,’** and (2) **whether any reasonable probability exists that the officers may mistakenly search another premise.**”

The Court noted that it was undisputed that the warrant only listed the motel room, not the home, when officers searched Manriquez’s home. However, **a technical error is not necessarily fatal to a warrant if the rest of the description adequately describes the place to be searched**. The question is whether the defects in

the warrant were such that **they would have been noticed by a reasonably careful officer who read the warrant before executing it.** Thus, a warrant may be so facially deficient (i.e., by failing to particularize the place to be searched or the things to be seized), that the executing officers cannot reasonably presume it to be valid.

In the present case, The Court believed that a reasonable officer should have noticed that the warrant authorized only the search of the motel room, not Manriquez's home. The twist, however, was that a judge had orally authorized the search of Manriquez's home, even though the warrant was not physically amended to reflect that authorization. Moreover, Manriquez did not argue that the search exceeded the scope of the one authorized by the judge. So, the officers did, in fact, search the home with the approval of an independent judiciary.

But a facially deficient warrant may not be salvaged just because a judge authorized the search or the search did not exceed the limits intended by the judge. The text of the Fourth Amendment requires the government specify the place to be searched. And that makes sense – this requirement curtails potential government abuse by informing people about the scope of the authorized search so that they can later challenge it in court.

Thus, the officers violated the Fourth Amendment by relying on a facially deficient warrant when they searched Manriquez's home.

The Court turned to the second prong of the qualified immunity test, whether the right was **clearly established** at the time the violation occurred. The Supreme Court has held that a right is not clearly established unless the right's contours were sufficiently definite that any reasonable official in the defendant's shoes would have understood that they were violating it. The lower courts must, therefore, resist defining a clearly established right at a high level of generality because doing so avoids the crucial question whether the official *acted reasonably in the particular circumstances they faced.*

Manriquez argued that the right the officers violated was clearly established at the time the officers searched his home. In the past, officers who searched a plaintiff's home were not entitled to qualified immunity when the warrant failed to describe the items to be seized. But in all of the cases cited by Manriquez, the warrants in question were never valid. In this case, **the original warrant was valid.** The only issue was whether the court-approved amendment to the warrant was valid if the officers themselves did not make the ministerial change to the warrant. The officers **could have validly corrected the warrant by simply adding the new location to it.** Additionally, there is no doubt the judge authorized the search of Manriquez's home.

The Court reasoned that a reasonable officer could have believed that – based on the lack of direct case law at the time – that they could execute a court-authorized search if: (1) the officer already had a valid warrant and (2) a judge orally authorized expanding the scope of that warrant, even if the officer forgot to physically amend the warrant. A reasonable officer would have viewed physically amending the warrant as the sensible and preferred course of action, but not necessarily believe that failing to write down the court's amendment would make the warrant invalid under the Fourth Amendment. Thus, it was not clearly established, at the time, that the search of Manriquez's home violated the Fourth Amendment.

The Court held that Officer Lawrence and Officer's Ensley's conduct violated a Fourth Amendment right that was not clearly established at the time of the violation. Thus, the district court erred in denying the officers qualified immunity.

Training Takeaway

An official sued under § 1983 is entitled to qualified immunity unless it is shown that: (1) **the official violated a statutory or constitutional right**, and (2) **the right was clearly established at the time the violation occurred**. The Fourth Amendment requirement that a warrant particularly describe the place to be searched protects property owners before the search by interposing the deliberate and impartial judgment of a judicial officer between the citizen and the police. It protects the property owner after the search by providing a right to suppress evidence improperly obtained and a cause of action for damages.

In determining whether the Fourth Amendment's particularity requirement for search warrants has been met, courts should analyze (1) **whether the warrant describes the place to be searched with sufficient particularity to enable law enforcement officers to locate and identify the premises with reasonable effort**, and (2) **whether any reasonable probability exists that the officers may mistakenly search another premises**. A technical error in a search warrant, like an incorrect address, is not necessarily fatal under the Fourth Amendment if the rest of the description in the warrant adequately describes the place to be searched. The test for whether a defect in a search warrant is fatal is whether the defect is such that **it would have been noticed by a reasonably careful officer who read the warrant before executing it**. A search warrant can be so deficient on its face that the executing officers cannot reasonably presume it to be valid. For example, failing to particularize the place to be searched or the things to be seized.

In this case, the police officers violated the Fourth Amendment when they searched the drug trafficking suspects home using a search warrant that only listed a motel room. It did not matter that a judge had orally authorized the search of the suspect's home because the officers did not physically amend the warrant to reflect that authorization. A facially deficient warrant may not be salvaged because a judge authorized the search or the search did not exceed the limits intended by the judge.

At the time, the law was not clearly established that the officers needed to amend the physical warrant after the judge orally expanded the search to include the drug trafficking suspect's house. Thus, the officers were entitled to qualified immunity against the suspect's § 1983 illegal search claim because, based on the lack of case law, a reasonable officer could have viewed physically amending a warrant as sensible and the preferred course of action, but not believe that the error in failing to write down the court's amendment would prevent the warrant from being valid under the Fourth Amendment.

[EXTERNAL LINK: View the Court Document](#)

Simmons v. State
No. 55029-6-II
COURT OF APPEALS OF
WASHINGTON, DIVISION 2
August 16, 2022



TOPIC: Tribal Rights to Fish on Non-tribal Lands

Facts Summary

Two members of the Cowlitz Tribe (Petitioners) were harvesting razor clams along the Washington coast in an area that the Cowlitz Tribe had historically done so. They were approached by an officer of the Department of Fish and Wildlife, who learned that they were harvesting clams without a license and far in excess of the daily individual limit. The Petitioners admitted that they were harvesting clams without a license but claimed that they were allowed to exercise the Quinault Tribe's treaty rights to gather clams.

They were cited for unlicensed harvesting and for harvesting in excess of the daily limit.

Analysis of the Court

Absent an express federal law to the contrary, **Native Americans outside the boundaries of a reservation are held subject to nondiscriminatory state laws that are applicable to all citizens of the State. Native Americans may possess aboriginal title**, which is the right to use and occupy their aboriginal territory. These rights include the right to fish and harvest shellfish where a tribe has historically done so. The federal government, as sovereign, has the inherent power to take the land of Native Americans and extinguish their aboriginal rights. Aboriginal title is extinguishable in many ways. It is extinguishable by treaty, by sword, by purchase, by the exercise of complete dominion adverse to the right of occupancy, or otherwise. Though extinguishable in several ways, Congress has the exclusive power to do so. Congress' intent to extinguish aboriginal title must be expressly stated in a legislative act or treaty, **or it must be clear from the surrounding circumstances.**

In this case, both parties agree that there is no treaty between the Cowlitz Tribe and the federal government. The Petitioners argued that though there was no treaty, they had retained their aboriginal rights because they had never been extinguished by an express act of Congress. The State countered that, in 1853, Congress declared that in 1855, all lands west of the Cascades were to be sold. Congress allocated money to remove the non-treaty Native Americans, including the Cowlitz, from their territory. And, in the 1863 Lincoln Proclamation, the Cowlitz Tribe's land was ordered to be sold. The Petitioners countered that even if the Cowlitz Tribe's occupancy rights were extinguished, their fishing rights were separate and remained intact. The Court found that argument unpersuasive because there is a history of treating fishing rights as extinguished with occupancy rights unless there is an explicit provision stating otherwise.

Considering the historical record and prior case law, the Court held that the Cowlitz Tribe's off-reservation aboriginal rights to fish had been extinguished. The Court of Appeals affirmed the Petitioners convictions.

Training Takeaway

Native Americans may possess aboriginal title. Aboriginal title refers to land occupancy rights based on the exclusive use and occupancy of a particular territory at the time of first European contact. Aboriginal title includes the right to fish in places where a tribe has historically done so. Aboriginal title is extinguishable through multiple means. It exists at the federal government's pleasure and may be extinguished by treaty, by sword, by purchase, by the exercise of complete dominion adverse to the right of occupancy, and other ways.

The Cowlitz Tribe's off-reservation rights were extinguished by the 1863 Lincoln Proclamation. Because these off-reservation rights were extinguished, the Petitioners had no tribal rights to harvest shellfish on Washington State's coast without a license.

[EXTERNAL LINK: View the Court Document](#)

Law Enforcement Digest – August 2022

TOPICS

- Qualified Immunity & Section 1983 Claims
- Tribal Rights to Fish on Non-tribal lands

CASES

1. [J.K.J. v. City of San Diego](#); 20-55622 (August 2, 2022)
2. [Simmons v. Arnett](#); 20-55043 (August 31, 2022)
3. [Manriquez v. Ensley](#); 20-16917 (August 30, 2022)
4. [Simmons v. State](#); 55029-6-II (August 16, 2022)

WA Legal Updates

For further reading, 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** by WA Association of Prosecuting Attorneys [\[2018-2021\]](#) | [\[2022\]](#)