Covering cases published in May 2025

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Cases in the Law Enforcement Digest are briefly summarized, with a focus on how the rulings may impact Washington law enforcement officers or shape future investigations and charges. Each cited case features a hyperlinked title for those interested in reading the court's full opinion. Additionally, links to key Washington State prosecutor and law enforcement case law reviews and references are provided.

The materials included in the LED Online Training are for training purposes only. All officers should continue to consult with their department's legal advisor regarding guidance and policies relevant to their specific agency.

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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.

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 by WA Association of Prosecuting Attorneys

Case Review

The Washington State Judicial Opinions website provides free public access to the precedential, published appellate decisions from the Washington State Supreme Court and Court of Appeals.

Case Menu

This month's cases include four from our state appellate courts and two from our friends in the federal courts. The state cases include an important Washington Supreme Court case concerning informant-based probable cause. Any officer involved in probable cause stops, arrests, or warrant requests would do well to be aware of Wenatchee v. Stearns. The other state cases address the Second Amendment, human trafficking, and sexual assault victim advocate issues. The federal cases include one from the U.S. Supreme Court and one from the Ninth Circuit. The Supreme Court case arose from a civil rights lawsuit involving an officer's use of deadly force. It is of obvious interest to all officers. The Ninth Circuit case is from a drug task force investigation and involves the pitfalls of parole officer participation in criminal investigations.

Case Menu

- *State v. Gator's Custom Guns, Inc.,* No. 102940-3, Washington Supreme Court (May 8, 2025)
- *Wenatchee v. Stearns,* No. 102680-3, Washington Supreme Court (May 15, 2025)
- *State v. Callahan,* No. 86613-1, Washington Court of Appeals, Division One (May 19, 2025)
- *State v. Jobe,* No. 84329-0, Washington Court of Appeals, Division One (May 19, 2025).
- *Barnes v. Felix,* No. 23-1239, United States Supreme Court (May 15, 2025)
- *United States v. Watson,* No. 24-1865, Ninth Circuit Court of Appeals (May 23, 2025)

General Disclaimer

The case digests presented here are owned by the Washington State Criminal Justice Training Commission. They are created from published slip opinions[1] and are general and may not apply to specific issues in specific cases or investigations. They are published as a research and training resource for law enforcement officers, investigators, detectives, supervisors, agencies, and other interested law enforcement-related parties.

The digests do not constitute legal advice, nor does their publication create or imply an attorney client relationship with any law enforcement agency or officer or party. All law enforcement personnel, parties, and agencies must review the actual published case opinions and consult their agencies' legal advisors, union counsel, and local prosecutors for specific guidance on the application of the opinions to specific issues in specific cases or investigations.

Questions?

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Note: You may see *Id* at the end of some paragraphs in this LED. It is used to refer to the immediately preceding citation.

[1] Slip opinions are frequently revised after initial publication and after the creation of these case digests. In any specific case or investigation, it is necessary to review the final version of the opinion published by the Washington State Judicial Opinions website.

State v. Gator's Custom Guns, Inc., No. 102940-3, Washington Supreme Court (May 8, 2025)

Factual Background

In 2023, the Washington Legislature passed a prohibition concerning sales and distribution of semiautomatic handgun magazines with a capacity of more than ten cartridges. *See* RCW 9.41.370.(opens in a new tab) This case arose from a constitutional challenge to that statute based on both the federal Second Amendment and Washington's state constitutional right to bear arms.

In 2023, Washington's attorney general commenced civil enforcement actions against a gun shop under the newly enacted large capacity magazine (LCM) prohibition. The gun shop allegedly continued to sell magazines having a larger capacity than allowed by the statute. The shop was subjected to a formal investigation and eventually a consumer protection action.

The gun shop answered the investigation and the lawsuit by asserting that the statute was unconstitutional under both the federal and state right to bear arms provisions. In a summary judgment motion, the trial judge agreed with the shop and found that the statute was unconstitutional under both provisions.

The trial court decision was appealed to the Washington Supreme Court. The court framed the issue as whether a magazine with a more than ten cartridge capacity was an "arm" within the meaning of the two constitutional provisions.

Analysis of the Court

The court began its analysis by noting that it had previously interpreted the state constitutional provision the same as its federal counterpart when it came to the definition of an "arm." This meant that the court had to review both federal and state precedents to determine if a magazine for a semiautomatic firearm was an "arm."

The court then summarized the evidence for and against the gun shop. The attorney general introduced expert evidence indicating that a magazine was more akin to an ammunition box during colonial times, and that meant that a magazine was not an "arm" by itself. The gun shop produced countervailing evidence that a magazine was a necessary component of a semiautomatic firearm, and that semiautomatics are commonly kept for self-defense purposes.

The court sided with the attorney general. After reviewing the conflicting evidence, it also reviewed both federal and state decisions concerning "arms." The court noted that the right to bear arms provisions, protect "instruments that are designed as weapons traditionally or commonly used by law abiding citizens for the lawful purpose of self-defense. In considering whether a weapon is an arm, we look to the historical origins and use of that weapon, noting that a weapon does not need to be designed for military use to be traditionally or commonly used for self-defense. We will also consider the weapon's purpose and intended function." *Gator's Guns Slip Opinion,* pp. 8-9. For more on weapons used for self-defense, see also *City of Seattle v. Evans*, 184 Wn.2d 856(2015)(opens in a new tab)

The court concluded that its prior precedent and that of the U.S. Supreme Court suggests that a magazine was not an "arm." "We conclude that LCMs are not protected by article I, section 24 because (1) LCMs are not instruments designed as weapons, (2) LCMs are not traditionally or commonly used for self-defense, and (3) the right to purchase LCMs is not among the ancillary rights necessary to the realization of the core right to bear arms in self-defense." *Gator's Guns Slip Opinion,* p. 9

The decision upholding the ban on sale of "LCMs" was not unanimous. Two justices would have held that the provision was unconstitutional. Their reasoning included that, "Millions of people have chosen to feed ammunition into those commonly used firearms with magazines capable of holding more than 10 rounds. It necessarily follows that the Second Amendment protects the arms-bearing conduct at issue here, that is, keeping and bearing operable semiautomatic firearms with commonly used magazines for self-defense and other lawful purposes—including in the home." *Gator's Guns Slip Opinion*, Justice McCloud Dissent, pp. 2-3

Training Takeaway

The importance of this case for law enforcement is limited. The 2023 statute did not make possession of an "LCM" unlawful, only its sale or distribution. The case should not be taken as a basis for probable cause in investigations that include mere possession of an LCM. Nevertheless, the case is worth taking note of in the larger context of recent decisions under the Second Amendment and the Washington right to bear arms, and the validity of Washington gun statutes.

EXTERNAL LINK: View the Court Document

Wenatchee v. Stearns, No. 102680-3, Washington Supreme Court (May 15, 2025)

Factual Background

The term *informant* is most often associated with drug distribution investigations. But the legal standards for informants include information or tips provided to law enforcement in other contexts as well. This case arose from a DUI stop and arrest that originated with a 911 call. The court clarified how tips from 911 calls are to be considered and evaluated in the context of a reasonable suspicion or probable cause stop.

The incident took place in 2019 in Wenatchee. A 911 caller (who was identified by name by the 911 system) reported that the defendant was displaying symptoms of intoxication, had driven his truck briefly in the parking lot, and was in the truck again and behind the wheel. A Wenatchee police officer was dispatched to the call and arrived within a few minutes.

The officer was directed to the defendant in his truck. The 911 caller, identified the defendant, saying, *"That's him! He's wasted!" Wenatchee Slip Opinion*, p. 3. The officer at the scene did not know that she was speaking to the 911 caller, but she could see that the defendant matched the description from the 911 call. She followed the defendant at first without activating her emergency equipment.

As she was following the defendant, the officer saw driving consistent with intoxication. There were several separate examples which contributed to the officer's suspicion of DUI. Just before the officer made her decision to make the stop, she also saw that a brake light was out on the truck. She activated her emergency equipment to effectuate the stop. After activation, the defendant's driving continued to show signs of intoxication.

The defendant brought his truck to a stop, got out, and walked back toward the officer. Once she was close enough, the officer observed additional symptoms of alcohol intoxication. The defendant was arrested. He submitted to a breath test and was found to have three times the lawful BAC (Blood Alcohol

Content). He was later charged with DUI (Driving Under the Influence), DWLS (Driving While License Suspended), failure to obey, and an ignition interlock violation.

The defendant brought a suppression motion to suppress the breath test and the rest of the evidence from the stop. His argument was that the stop was not supported by reasonable suspicion. The district court judge denied the motion and convicted the defendant in a stipulated facts trial. The conviction and suppression motion were then appealed to the Superior Court, which reversed the district court and overturned the convictions. That decision was affirmed by the Court of Appeals. The city then petitioned for review by the Supreme Court.

Analysis of the Court

The Supreme Court began with the usual general standard that warrantless stops and arrests are presumed unreasonable. The court also reiterated that exceptions are few and carefully drawn. The court then framed the issue in this case as one of the exceptions: "One exception is for brief investigative stops, also known as 'stop and frisk' or '*Terry* stops.' This type of stop 'is permissible whenever the police officer has a reasonable suspicion, grounded in specific and articulable facts, that the person stopped has been or is about to be involved in a crime." *Wenatchee Slip Opinion,* p.7

A brief investigative stop can be based at least in part on a tip. "When reasonable suspicion is based on an informant's tip, 'the State must show that the tip bears some 'indicia of reliability' under the totality of the circumstances.' " *Id.* This broad standard for brief investigative stops based on a tip was the standard which the Supreme Court sought to clarify in this case.

In its analysis the court discussed several terms common to informant based cases. The first was "indicia of reliability." The court stated, "These indicia of reliability take the form of either '(1) circumstances establishing the informant's reliability' or '(2) some corroborative observation, usually by the officers, that shows either (a) the presence of criminal activity or (b) that the informer's information was obtained in a reliable fashion.' " *Wenatchee Slip Opinion*, p.8

Two other common terms discussed by the court were "veracity" and "basis of knowledge." The court stated, "The informant's veracity and their basis of knowledge are not strictly necessary elements of proof, but we have acknowledged these considerations 'are helpful to the reliability inquiry.' " *Id.*

The court's clarification of the terms that come up in informant cases is worth reading in its entirety:

> We take this opportunity to clarify the definition of both terms and how they fit into our analysis of reasonable suspicion. "Factual basis" refers to the requirement for all *Terry* stops that "the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." ... Factual basis is always necessary to establish reasonable suspicion arising from a tip, whether the facts come from details in the tip itself, corroborating observations, or some combination thereof. "Basis of knowledge" refers to how the tipster gathered their facts, such as through their own senses (e.g., sight, sound, smell) or through a particular means or intermediary (e.g., eavesdropping, looking through binoculars or at the reflection in a mirror, hearing from a friend). As we reaffirmed in Z.U.E.(opens in a new tab), basis of knowledge need not be shown in order to establish reasonable suspicion so long as the totality of the circumstances indicate the tip's reliability. *Wenatchee Slip Opinion*, p. 10

Having clarified the informant or tipster analysis, the court applied it to the facts. The court noted that identified citizen informants are more reliable than anonymous or professional informants, and that modern 911 systems that identify callers contribute to the reliability of citizen informants or tipsters. In its discussion, the court noted that the dissent (along with dissenting justices on the U.S. Supreme Court) have recently pushed for a rule that discounts the reliability of 911 callers. The court sidestepped that argument and left for another, future case the question of whether to adopt such a rule for Washington.

The court also discussed whether unconscious bias should undermine the reliability of citizen informants. It declined to fashion a separate rule to address unconscious bias. "Courts can better safeguard private affairs not by removing from consideration the fact that a tip came from a citizen informant making a 911 call but, rather, by adding consideration of unconscious bias to the totality of circumstances." *Wenatchee Slip Opinion*, p. 16

After reviewing the facts in light of the clarified reliability standard, the court upheld the lawfulness of the officer's stop. "We hold that the totality of the circumstances indicate that Gilliver's tip was reliable. Gilliver was a citizen informant who used the 911 system to give an eyewitness account contemporaneous with events indicating an active DUI.

The circumstances do not indicate that Gilliver's call was malicious and fraudulent, nor that conscious or unconscious bias played a role in his perception of Stearns's behavior or his decision to call 911." *Wenatchee Slip Opinion*, p. 20

The court's decision in this case was unanimous. But officers should be aware that two justices wrote separately to argue that citizen informants through the 911 system should not be accorded enhanced reliability. In the view of two justices, 911 calls are so frequently abused that they undermine the notion that identified citizens reporting criminal behavior should carry any presumption of reliability. Whether that perspective will be adopted in the future remains to be seen.

Training Takeaway

"Corroborative observation" by an officer may be the primary reason this case resulted in the conviction being affirmed. If the officer had activated her emergency equipment as soon as she saw the defendant leaving the parking lot, this case might well have gone the other way. Both the majority and concurring opinions spent considerable time reviewing the officer's observations after the defendant left the parking lot. The officer's decision not to activate her emergency equipment immediately enabled the court to consider the defendant's driving as having provided reasonable suspicion by itself.

Another takeaway concerns report writing. In writing reports, corroborative observations should include two specific subjects. First, observation of evidence of criminal activity (such as in this case, the erratic driving suggestive of DUI) should be carefully documented. Second, observations that corroborate the informant or tipster's statements should also be documented.

Here, the officer's observations of the defendant's driving supported the reliability of the 911 caller. Her report could have included an express statement that, "The driving I saw was completely consistent with the caller's statement that, 'He's wasted!' "

The opinion does not give us the content of the officer's report, but it is likely that her report reflected the same attention to detail that was evident from her investigation. This was a job well done.

EXTERNAL LINK: View the Court Document

State v. Callahan, No. 86613-1, Washington Court of Appeals, Division One (May 19, 2025)

Factual Background

This case concerns the application of the human trafficking statute to a sexual abuse case involving a single sexual assault victim. The defendant challenged the legal sufficiency of the human trafficking charge after having been convicted of that charge and several other more common child sex abuse charges. The case will be of interest to detectives and prosecutors specializing in sexual abuse cases.

The abuse of the victim began in California when the victim was in third grade. She was then living in abhorrent conditions with parents who were involved with drugs. She was befriended by the defendant at school. The defendant worked as a math tutor at the school and was assigned to work with the victim one-on-one in the classroom. The defendant began his illicit relationship with the victim by inquiring about her home life.

The defendant's daughter was a classmate of the victim. The defendant invited the victim to his home to play with his daughter. The play with the daughter led to the defendant bathing both girls, and eventually, the victim spent the night in the defendant's home. Sleeping arrangements included the victim sleeping in the defendant's bed. That led to the defendant causing the victim to have sexual contact and intercourse with him.

The victim became a virtual member of the defendant's family. The sexual abuse also continued. The victim would resist sometimes, and the defendant would use coercion to get her to do what he wanted. The coercion was simply the threat of sending the victim back home to her drug-abusing parents.

The defendant moved his family and the victim to Washington in 2015. The abuse continued in Washington until 2021. While in Washington, the defendant continued to use the threat of sending the victim back to her parents if she did not comply with his sexual demands.

In 2021, the victim turned eighteen and abruptly decided to end the abuse. She told her boyfriend about it and together they planned her escape.

Soon after leaving the defendant's home, the victim reported the abuse to the police. The investigators arranged for a sexual assault examination. The examination included DNA swabbing of the victim's breasts. The last act of abuse reported by the victim included the defendant having oral contact with her breasts. The DNA result corroborated that sex act.

The defendant was charged with several sexual abuse counts and with human trafficking. He was convicted and sentenced to 20 years in prison on the human trafficking charge. He appealed the human trafficking conviction arguing that there was insufficient evidence to support that charge.

Analysis of the Court

The title of the offense reviewed by the court evokes smuggling, pimps, and commercial abuse of multiple victims for sexual purposes. The court's review of the statute, however, indicated that smuggling or exchange of money or multiple victims was not necessary for a conviction.

The court began its analysis with the statute. *See* RCW 9A.40.100.(opens in a new tab) This statute is complicated and applies to a wide variety of sexual trafficking circumstances. For this case the court referenced the jury instructions. It boiled down the charge to the following: "[T]he court instructed the jury: A person engages in trafficking when he harbors, transports, obtains, or receives by any means another person, knowing or in reckless disregard of the fact that the other person is less than eighteen years of age and is caused to engage in a commercial sex act. And, consistent with RCW 9A.40.100(6)(a), the court defined 'commercial sex act' as 'any act of sexual contact or sexual intercourse for which *something of value is given or received* by any person.' " *Callahan Slip Opinion, p. 6* (italics added)

The court also restated the usual legal standards that apply to sufficiency of the evidence cases. These are favorable to the prosecution and include, "To determine whether sufficient evidence supports a conviction, we view the evidence in a light most favorable to the State and consider whether 'any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.' " *Callahan Slip Opinion, p. 5-6*

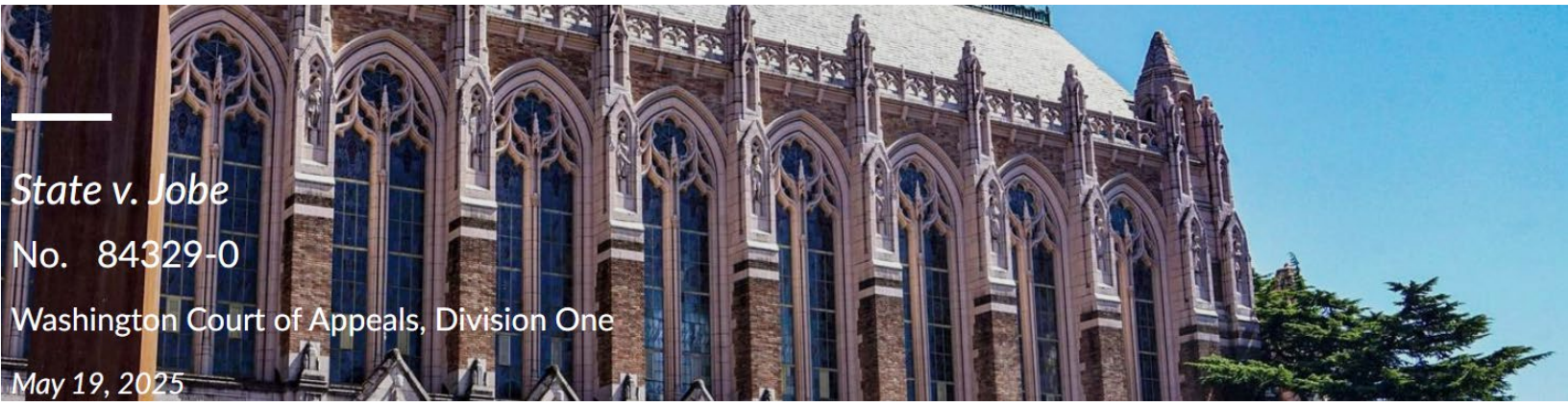
The court then applied the sufficiency standards and the statute to the facts. The court held that the facts supported the conviction. The court disputed the defendant's argument that the charge required an exchange of sex for value with a third person. "So, the plain language of the statute expresses a legislative intent to include every exchange of sex for value as a commercial sex act. The broad language does not limit commercial sex acts to sexual contact with a third person. Indeed, it would be an absurd result to proscribe trafficking as the harboring of minors for the purpose of sex acts with third parties but not the harboring of minors for the purpose of sex acts with the harborer. Both result in the same harm—harboring children for sexual exploitation." *Callahan Slip Opinion, p. 8-9*

The court also compared its interpretation of Washington's trafficking statute to its federal counterpart. The court reviewed an Eighth Circuit opinion which it found was consistent with its interpretation of RCW 9A.40.100. Thus, the court found additional support for its view that a sex trafficker need not provide a victim to a third party in order to be guilty of trafficking in Washington.

Training Takeaway

The interpretation of the human trafficking statute in this case is well worth considering in sex abuse investigations. In cases where a perpetrator provides a home, food, and shelter to a victim while exploiting them for sexual purposes, the charge can be considered as part of a comprehensive charging strategy. According to the court, in light of the definition of "commercial sex act," the perpetrator need not traffic the victim to a third party to be guilty of the crime.

EXTERNAL LINK: View the Court Document



State v. Jobe, No. 84329-0, Washington Court of Appeals, Division One (May 19, 2025).

Factual Background

This case is significant for those involved in sexual assault investigations. It concerns the privilege that protects statements from a sex abuse victim to a sexual assault victim advocate. The advocate in this case shared an office with the University of Washington Police Department. Nevertheless, the confidentiality of the victim's statements to the advocate were held to be confidential and not subject to disclosure to the defendant and his attorney.

The incident took place in July 2022. The victim summoned an Uber ride from Capitol Hill in Seattle to her home in the University of Washington campus area. The ride ended with the defendant making sexual advances toward the victim and then overpowering her and subjecting her to sexual assault. The assault took place in the defendant's Uber car.

The victim was able to escape. She immediately sought help and reported the attack to the UW police. Police investigators contacted the defendant. His statements to the officers admitted much of the timeline and events reported by the victim, but he insisted the encounter was consensual and initiated by the victim.

As part of the investigation, the victim was counseled by a victim advocate employed by the university. The advocate kept an office in the same location as the police, but her records and files were kept confidential and were not available to the police. The defendant became aware of the victim's contact with the advocate. He also became aware of a prior incident reported by the victim from 2018 against a student at the university. She had been counseled by an advocate from that incident too.

The defendant sought to compel disclosure of the victim's records from both assaults. The trial court at first ordered records to be produced, but later reconsidered and denied the request after the UW petitioned for reconsideration. During the ruling, the trial court reviewed some of the

records *in camera.* That legal term means off the record, in chambers, and not in open court.

The defendant was convicted at trial of second-degree rape. He appealed. His appeal included challenges to both the refusal to compel disclosure and the manner in which the trial court reviewed the records and made the ruling.

Analysis of the Court

The privacy of sexual assault victim counseling records and communications is protected by a statutory privilege. *See* RCW 5.60.060(opens in a new tab)(7). The privilege applies to communications between a sexual assault victim and a "sexual assault advocate." The court noted that such advocates are defined as an "[e]mployee or volunteer from a community sexual assault program or underserved populations provider, victim assistance unit, program, or association, that provides information, medical or legal advocacy, counseling, or support to victims of sexual assault …" *Jobe Slip Opinion p. 6*

The defendant's argument against the application of the privilege focused on her association with the investigating law enforcement agency, the UW police department. The defendant argued that the advocate could not be from a community sexual assault program or victim assistance unit because she worked alongside the police.

The court interpreted the privilege statute to include the UW advocate even though she shared offices with the police and used a UW police email address. The court noted that although her office was in the same location as the police, her work was separate and not accessible to the police. The court reasoned that if the legislature had intended that sexual assault advocates not share office space with the police, it could have explicitly said so. Since it did not, the association between the advocate and the police did not affect the privilege.

The court also rejected a second argument from the defendant. He claimed that the "student life" office for which the advocate worked was related to an "educational institution" rather than a "community sexual assault program." The court responded that the advocate need not work for a program that provides sexual assault support exclusively. "Neither the language nor the purpose of the statute support interpreting it to require that the advocate be working with a program that provides *only services* to sexual assault survivors." *Jobe Slip Opinion, p. 11* (italics added)

The court applied its broad interpretation of the privilege statute to the facts. It concluded that the advocate's records were not improperly withheld from the defendant by the trial court. In reaching its final decision, the court examined whether the trial court judge improperly carried out the *in camera* review of the records. The details of that discussion are not directly of interest to law enforcement and can be reviewed in the slip opinion. It is sufficient to note that the court stated, "because Jobe has failed to demonstrate that [the advocate's] records contain evidence material to his defense, we affirm the trial court's decision not to conduct an *in camera* review." *Jobe Slip Opinion, p. 15*

Training Takeaway

In holding that the sexual assault advocate records were privileged, the court stressed the separation of the advocate's work from that of the police. "Here, even if Adams's e-mail and physical office are within UWPD, the evidence shows that Adams is independent from the UWPD, and her records are not accessible to law enforcement. Also, her work relevant to this case focused on 'trauma-informed support,' which is within the statutory definition of 'sexual assault advocate' as she provided 'information, medical or legal advocacy, counseling, or support to victims of sexual assault.' ... Jobe's argument that she is not a sexual assault advocate within the meaning of the statute is unavailing." *Jobe Slip Opinion, p. 9*

It is not unusual for sexual assault investigators to work closely with victim advocates. In all such cases, it is important to respect boundaries between the two types of work. Police are called upon to investigate reported sexual assault offenses. Advocates are called upon to provide support to alleged victims. Crossing over from one area of responsibility to the other risks jeopardizing the privilege. Because the privilege is intended to protect a sexual assault victim from disclosure of her sexual assault counseling communications, care should be taken not to cross the boundary.

EXTERNAL LINK: View the Court Document

Barnes v. Felix, No. 23-1239, United States Supreme Court (May 15, 2025)

Federal cases should be reviewed by Washington law enforcement with caution. There are many issues of interest to Washington law enforcement, to include criminal procedure, search and seizure, application of evidence rules, and uses of force, and other constitutional issues, that are decided differently by Washington courts compared to their federal counterparts.

All law enforcement personnel, parties, and agencies must review the actual published case opinions in these cases and consult their agencies' legal advisors, union counsel, and local prosecutors for specific guidance on whether the application of federal cases should be applied to specific issues in specific cases or investigations.

Factual Background

Court decisions in use of force cases always involve second-by-second and minute-by-minute examination of a terrible event. This case involves refinement by the United States Supreme Court of the review standards that apply to such cases in federal court. Broadly speaking, the review standards *define how* courts analyze the reasonableness of an officer's use of force and the perspective from which the need to use force was viewed. This case is well worth reading for any officer concerned about civil or criminal liability in use of force cases.

The incident took place in 2016 in Houston, Texas. The involved officer was on patrol and was advised that the suspect driver had outstanding "toll violations." He activated his emergency equipment and successfully stopped the suspect car. He contacted the driver and proceeded with a traffic stop and investigation. The circumstances and purpose of the stop began as noncontroversial.

The stop took a turn for the worse while the officers were conducting the stop. The driver had turned off the ignition. He explained that the car was not his and said that he might have some identification in the trunk. He also did not fully comply with the officer's commands; he continued to rummage through papers in the car, despite being told to stop several times.

The officer could smell marihuana and directed the suspect to get out of the car and assist with obtaining the identification from the trunk.

The suspect did not comply. Instead, he turned on the ignition and put the car in gear. The officer responded by jumping on the door sill and commanding the suspect "*Don't fucking move*," several times. *Barnes Slip Opinion, p. 2.* The suspect caused the car to move forward despite the commands. The officer drew his gun and fired two shots into the car. The car came to a stop and the officer called for backup and medical aid. Unfortunately, the suspect died before medical aid arrived.

The court's description of the facts included a second-by-second timeline. This was from a review of dash cam video footage, which captured the entire incident. The court judged that the decision to fire the fatal shots occurred during a two-second period after the suspect engaged the transmission and the officer climbed onto the door sill. This was important to the ultimate decision in the case because it deemphasized the earlier facts concerning the interaction between the officer and the suspect prior to the moment of the shooting.

The suspect's mother brought a civil rights, unlawful use of force federal lawsuit in Texas. The federal district court trial judge dismissed the suit. The judge applied what was referred to as the "moment of threat rule," which had been promulgated by the Fifth Circuit Court of Appeals in prior use of force cases. Under that rule, the court focused almost entirely on the seconds during which the officer made the decision to use deadly force.

The Fifth Circuit reviewed the dismissal. It too applied the moment of threat rule and affirmed the dismissal. The court held that during the two seconds when the officer was aboard the vehicle, which was moving, he could have reasonably believed his life was in danger. Thus, his use of force was properly deemed reasonable and lawful under the Fourth Amendment. That was the decision accepted for review by the United States Supreme Court.

Analysis of the Court

Much of the court's opinion was devoted to time. The dash cam evidence facilitated a second-by-second breakdown of what happened and when. In turn, that evidence caused the Supreme Court to reject the moment in time rule.

The court began with a discussion of the legal standards that apply nationwide to federal use of force lawsuits. The Fourth Amendment requires federal courts to focus on the objective reasonableness of an officer's use of force and to review those actions in light of the totality of the circumstances. "The 'touchstone of the Fourth Amendment is 'reasonableness,' as measured in objective terms… So the question in a case like this one, as this Court has often held, is whether the force deployed was justified from 'the perspective of a reasonable officer on the scene,' taking due account of both the individual interests and the governmental interests at stake." *Barnes Slip Opinion, pp. 4-5*

The reasonableness inquiry has an important subrequirement. Namely, the reasonableness of an officer's action must be considered in light of the totality of the circumstances. "There is no 'easy-to-apply legal test' or 'on/off switch' in this context… Rather, the Fourth Amendment requires, as we once put it, that a court 'slosh [its] way through' a 'factbound morass.' … Or said more prosaically, deciding whether a use of force was objectively reasonable demands 'careful attention to the facts and circumstances' relating to the incident, as then known to the officer." *Barnes Slip Opinion, p. 5*

In regard to the moment in time rule, the court stated that the rule violates the totality of the circumstances requirement. "The moment-of-threat rule applied in the courts below prevents that sort of attention to context, and thus conflicts with this Court's instruction to analyze the totality of the circumstances." *Barnes Slip Opinion, p. 7*. The court reversed the lower courts' decisions because they had not taken into account the full circumstances of the stop, to include the actions of the suspect in starting up the car and putting it in gear.

It is notable that the overturning of the lower court decision was not a win for the involved officer. The case was remanded for the lower courts to apply the correct totality of the circumstances analysis and reconsider the dismissal. Also, there was discussion in the case that suggested future cases may be significantly impacted by the totality analysis. "We do not address here the different question Felix raises about use-of-force cases: whether or how an officer's own 'creation of a dangerous situation' factors into the reasonableness analysis." *Barnes Slip Opinion, p.9*. The court left for future review important and consequential decisions concerning officer mistakes in use of force cases.

Training Takeaway

Federal cases concerning use of force are almost never a reliable source of black letter rules for all use of force issues in Washington. Our unique police procedure statutes and the many state court decisions applying the Washington Constitution have caused Washington to part company with the federal courts in numerous areas. State law can be just as determinative in particular cases as even decisions from the U.S. Supreme Court, such as *Barnes*.

Nevertheless, it is well worth considering that the *Barnes* case directs courts to review the totality of the circumstances in use of force cases. An officer's use of force is to be considered in light of all that transpired during the encounter. It would be a contradiction of *Barnes* to focus only on the moments just before the application of force in a traffic stop incident.

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United States v. Watson

No. 24-1865

Ninth Circuit Court of Appeals

May 23, 2025

United States v. Watson, No. 24-1865, Ninth Circuit Court of Appeals (May 23, 2025)

Factual Background

Task force investigations commonly include probation or parole officers and can be quite successful. Afterall, criminals released from prison and supervised on probation or parole do not always mend their ways. This case highlights the need to carefully design investigations that involve probation or parole officers. It is important to be mindful of the pitfalls that can attend involvement of officers, who in the eyes of the courts inherently have the authority to compel the people they supervise to speak and act.

The incident at issue in this case took place in 2022 in Idaho. A drug task force learned from an informant that the defendant was distributing fentanyl. Task force officers commenced an investigation starting with intercepting the defendant's communications. They gleaned incriminating evidence from the investigation, but they also determined that the defendant was on supervision with the Idaho Department of Corrections. They then devised an investigation that included stopping the defendant's vehicle and searching it under authority of his parole agreement.

The defendant signed a parole agreement in connection with his state court parole. The agreement included two provisions that factored into the court's review of the case. The first was that the defendant was required to cooperate with requests of his parole officer—the second concerned interaction with police officers. The defendant was required to inform any officers who might detain him that he was on supervision and the name of his parole officer.

The defendant's parole agreement permitted his parole officer to perform compliance checks. These could include searches of his vehicle, residence, and person. The task force devised an investigation which would include a stop of the defendant's vehicle and a compliance check to search the vehicle for the suspected fentanyl.

The operation was carried out as planned. A police officer stopped the defendant for a traffic infraction. "After receiving confirmation from [parole] officers that they wanted Watson's vehicle searched, officers detained Watson, handcuffed him, and put him in the back of Officer Scott's patrol vehicle while Officer Scott and other investigators searched Watson's vehicle." *Watson Slip Opinion, p. 7*

Fentanyl was found during the search. Also during the search, one of the parole officers contacted the defendant and asked him whether they would find anything in the vehicle. The defendant responded and admitted truthfully that they would. The investigation then moved to the defendant's residence. Under authority of the parole agreement, the task force searched the residence and recovered more drugs and drug proceeds.

While the search of the residence was taking place, a police officer approached the defendant and questioned him. The officer advised the defendant of his *Miranda* rights. The defendant made incriminating statements during the questioning and showed the police officers where additional drugs could be found. The task force recovered over four pounds of fentanyl from the residence and over $8,000 of drug proceeds.

The defendant was indicted on a federal distribution charge. In pretrial proceedings, he challenged the admissibility of his statements to the parole officers and the police officer. The trial court denied the motion. The defendant then entered into a plea agreement but reserved the right to appeal the suppression motion decision.

Analysis of the Court

The court began with the general principle that the Fifth Amendment privilege against self-incrimination only applies to those who affirmatively claim it. Because the defendant did not invoke his right against self-incrimination when he was questioned by either the parole officers or the police, that principle might have been sufficient to resolve the issue.

However, the Fifth Amendment also protects against coerced confessions. "This can occur when the government creates a situation where 'an individual's refusal to answer incriminating questions subjects him to a penalty.' " *Watson Slip Opinion, pp. 12-13.*

The court noted that parole conditions that require a defendant to answer questions have the potential to create a "penalty situation" where a defendant is given a choice between answering and incriminating himself, or not answering and violating his parole, and being subject to a return to prison.

The court discussed two prior cases which involved the penalty situation. One was from the United States Supreme Court, which held that a parole condition that required that "the defendant to 'be truthful with his probation officer in all matters' did not render an otherwise voluntary statement involuntary because it did not *require* him to answer his probation officer's inquiries." *Watson Slip Opinion, p.14* *See Minnesota v. Murphy*, 465 U.S. 420 (1984).(opens in a new tab) The other was from a prior Ninth Circuit decision which held the opposite.

The prior Ninth Circuit decision reviewed a case involving a similar but distinct parole condition. "In contrast, we have found a penalty situation where the probation condition required the probationer to 'promptly and truthfully answer all reasonable inquiries' because staying silent could result in revocation of probation." *Watson Slip Opinion, p. 14.* *See United States v. Saechao*, 418 F.3d 1073 (9th Cir. 2005).(opens in a new tab)

The court acknowledged that the two parole conditions were quite similar but explained the difference as follows:

> The key differentiating feature between the probation conditions in *Saechao* and *Murphy* was whether the probationer was free to remain silent without risking revocation of parole. Murphy's probation condition proscribed *false* statements only, leaving him free to remain silent so long as he was truthful when he spoke… In contrast, Saechao's probation condition expressly penalized the refusal to answer a question—failure to answer a relevant inquiry regarding the conditions of his probation would have justified revocation of probation. *Watson Slip Opinion, p. 15*

The court applied the legal standards that apply where a parolee is compelled to cooperate to resolve the defendant's appeal. The court determined that the incriminating statements to the police officer were insulated from the penalty situation because the officer complied with *Miranda.* The court also cited testimony from the parole officers: "[Parole] Officer Landers stated that he did not communicate with or approach Watson because a pending investigation was ongoing, and he wanted to avoid 'creat[ing] the illusion' that [parole] officers were forcing Watson to make incriminating statements." *Watson Slip Opinion, p.17*

The court acknowledged that the design of the operation carried a risk that the defendant could be confused about the role of the parole officers versus the police. "Ultimately, despite the risk of confusion possible in an integrated operation like this one, the district court properly concluded that Watson's admissions were made voluntarily. Watson was never told that refusing to answer officers' questions would result in the revocation of his parole or another penalty." *Watson Slip Opinion p. 20*

Training Takeaway

The slight variation between the parole conditions at issue in the *Murphy* and *Saechao* cases highlights the danger of using probation and parole authority to advance a criminal investigation.

The Ninth Circuit rejected the defendant's appeal and affirmed his conviction but also noted, "Overall, and as the district court emphasized, officers 'muddied the water' between the parole compliance check and the investigation of drug trafficking by conducting the vehicle and residence searches as a parole compliance check instead of obtaining a warrant based on ample probable cause." *Watson Slip Opinion, p.18*

For officers involved in joint operations with parole and probations officers, care should be taken in the design of investigations. Legal advisors likely will need to parse the language in parole or probation agreements to determine whether compelled incrimination risks might make a search warrant a better option.

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Cases & References

State v. Gator's Custom Guns, Inc., No. 102940-3, Washington Supreme Court (May 8, 2025)

- *Gator's Guns Slip Opinion*
- RCW 9.41.370
- *City of Seattle v. Evans*, 184 Wn.2d 856(2015)

Wenatchee v. Stearns, No. 102680-3, Washington Supreme Court (May 15, 2025)

- *Wenatchee Slip Opinion*
- *Z.U.E*

State v. Callahan, No. 86613-1, Washington Court of Appeals, Division One (May 19, 2025)

- *Callahan Slip Opinion*
- RCW 9A.40.100

State v. Jobe, No. 84329-0, Washington Court of Appeals, Division One (May 19, 2025).

- *Jobe Slip Opinion*
- RCW 5.60.060 (7)

Barnes v. Felix, No. 23-1239, United States Supreme Court (May 15, 2025)

- *Barnes Slip Opinion*

United States v. Watson, No. 24-1865, Ninth Circuit Court of Appeals (May 23, 2025)

- *Watson Slip Opinion*
- *Minnesota v. Murphy*, 465 U.S. 420 (1984)
- *United States v. Saechao*, 418 F.3d 1073 (9th Cir. 2005)

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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