Covering cases published in July 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.
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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.

Summary of this Month's Cases

The cases this month are not numerous but are quite interesting. Here is what officers can look forward to: The Supreme Court was busy and issued three opinions of interest. The issues include warrant arrests, administrative booking, and felony murder. The felony murder case is especially worthwhile. The Courts of Appeals were less busy but the Floe case makes up for it. What a preposterous crime! Plus, the court's legal discussion includes some great information about conspiracy. As for our friends in the federal courts, the Ninth Circuit issued a case of general interest that dealt with reasonable suspicion stops. All in all, not a bad month for law enforcement.

Case Menu

- State v. Balles, No. 103182-9, Washington Supreme Court (July 31, 2025)
- State v. Evans, No. 103136-0, Washington Supreme Court (July 31, 2025)
- State v. Roberts, No. 103546-2, Washington Supreme Court (July 31, 2025)
- State v. Floe, No. 59948-1, Washington Court of Appeals, Division Two (July 29, 2025)
- United States v. Behar-Guizar, No. 23-3201, Ninth Circuit Court of Appeals (July 9, 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?

Please contact your training officer if you want this training assigned to you. Visit the ACADIS portal page for status, news, resources for organizations, officers, and training managers, along with updates and links.

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. Balles, No. 103182-9, Washington Supreme Court (July 31, 2025)

Factual Background

Officers executing an authorized and issued arrest warrant likely do not routinely consider whether the warrant has a flaw or not. Rather, they obey the command of the court or other authority and complete the arrest as directed. This case involves the validity of a Department of Corrections secretary's arrest warrant for a probationer. The underlying crime for which the defendant was on probation was possession of a controlled substance, which was a crime declared unconstitutional in 2021 by the *Blake*(opens in a new tab) decision.

The Court of Appeals decision in this case was previously digested and discussed in the September 2024 edition of these digests. September 2024 Law Enforcement Digest(opens in a new tab). In this case, the Supreme Court affirmed the Court of Appeals decision and upheld the validity of the secretary's warrant despite *Blake*.

The facts are not complicated. The defendant was previously convicted and sentenced for possession of a controlled substance. His sentence included twelve months of community custody and his conditions required reporting to his community corrections officer. He failed to ever report, and that led to the issuance of a secretary's warrant in January 2020.

The warrant was issued more than a year before the *Blake* decision. After *Blake,* the warrant remained in the system. The warrant was executed, and the defendant was arrested in March 2021, after the *Blake* decision.

Later, a court invalidated the underlying drug possession case, but that occurred after the defendant's arrest.

The execution of the warrant led to the recovery of drugs, guns, drug distribution evidence, and proceeds. Not only had the defendant not been reporting to his community corrections officer but by all accounts, he had turned to drug dealing in a big way. He was charged with possession with intent. During pretrial proceedings, he filed a motion to suppress all the evidence recovered because of the secretary's warrant.

The trial court granted the suppression motion. The Court of Appeals reviewed that decision and concluded that the secretary's warrant was not automatically invalid because of Blake. That decision was in turn reviewed by the Washington Supreme Court in this case.

Analysis of the Court

The Supreme Court's analysis of the collateral effect of *Blake* on cases such as this one was not complicated. The court stated, "In its analysis of the warrant's validity post-*Blake*, the Court of Appeals reasoned that '[w]hen faced with a potentially invalid court order, the solution is not to willfully violate it. Instead, the defendant must challenge his original judgment and sentence in a timely manner and comply with the terms of the order until it is otherwise overturned.' … We agree." *Balles Slip Opinion, p. 6*

The court discussed the practical effect of the *Blake* decision in terms comparable to the Court of Appeals decision. It declared that *Blake* had rendered the prior drug conviction and the secretary's warrant "voidable" but not void. The prior conviction and warrant would be void when a court order declared them to be so, but until that happened, it was only voidable. That did not happen for the defendant until after his arrest.

The court also reviewed several prior cases that supported its analysis. In those cases, there was a requirement of a court order before a conviction could be overturned or a warrant invalidated. "Importantly, we rejected the argument [in prior cases] implying a statute deemed unconstitutional was a legal nullity. These cases support the argument that judicial action is required in order to vacate a conviction—that the conviction is voidable, not void." *Balles Slip Opinion, p. 8*

And finally, the court held in a common-sense fashion that the arrest was authorized by the statute providing for secretary's warrants. It was not based on the drug possession statute that was held invalid in *Blake.* The arrest was thus supported by a statute that has not been declared unconstitutional.

Training Takeaway

This case provides support for officers' ability to rely on the validity of existing court orders even if they are later overturned. In short, actions such as arrests can be ruled valid even if the court order is later found to be invalid.

The *Blake* decision had far-reaching implications because of the huge number of prior convictions on the books for possession of a controlled substance. Nevertheless, the orders and warrants in individual, *Blake*-affected cases are "voidable, not void" and thus can provide authority for an arrest or search.

A word of caution is warranted. Most prosecutors' offices will have been taking the necessary steps to enter court orders to dismiss cases, quash warrants, and otherwise comply with *Blake*. It is certainly not a waste of time to check as to the continued validity of a warrant from a drug possession case rather than assume that if it is in the system it must be good.

EXTERNAL LINK: View the Slip Opinion

State v. Evans, No. 103136-0, Washington Supreme Court (July 31, 2025)

Factual Background

Most officers will be aware of administrative booking. It is a procedure from court whereby defendants who are charged and summonsed into court for arraignment are “booked” and released for the purpose of identification. Documenting identifying information is required by statute and serves many important criminal history functions.

This case involves the way in which administrative booking is accomplished. The practice of having a defendant transferred from the courtroom at arraignment to the jail for the purpose of taking fingerprints and booking photos was challenged as a violation of the state constitution.

The case arose from a stolen car charge that was lodged against the defendant in 2024. Rather than having been arrested and actually booked into jail, the defendant was summonsed to court by the prosecutor. He appeared in response to the summons. As is commonly the case, since he appeared voluntarily to answer the charges, he was released on personal recognizance but with a stipulation that he be administratively booked.

The King County practice for administrative booking was that it was accomplished in the jail. The fingerprints and photos, which were taken by a Livescan device, were not challenged. Instead, the challenge was to the procedures incidental to the identification process.

Incidental to the Livescan fingerprints and photos, the defendant was briefly handcuffed, required to empty his pockets, and submitted to a pat-down search.

He also went through a metal detector and his belongings were scanned by an X-ray scanner. Defendants going through administrative booking were also at times detained in the booking area for 30 minutes and up to two hours, depending on how busy the booking desk was at the time.

The case came before the Supreme Court from a direct petition in the defendant's case. The court noted that the judge in the defendant's case (from the Kent Regional Justice Center) had ruled that the procedure was an unlawful violation of the state constitution. The court also noted that another judge (from the downtown Seattle Courthouse) had ruled that the procedure was not a violation. The Supreme Court accepted review of the case in part because of the split between the different departments of the King County Superior Court.

Analysis of the Court

The defendant's challenge was based on article I, section 7 of the Washington Constitution. That provision "guarantees that '[n]o person shall be disturbed in [their] private affairs, or [their] home invaded, without authority of law." *Evans Slip Opinion, p. 9.* The issues presented by the defendant's challenge involved (1) whether administrative booking, as conducted in King County by taking the defendant to the jail, constituted a disturbance of the defendant's private affairs; and (2) if so, whether the disturbance was "without authority of law?"

The court analyzed the disturbance issue first. It quickly determined that the handcuffing, pat down, emptying of pockets, and brief detention in a cell was comparable to an actual custodial booking and therefore a disturbance of the defendant's private affairs. The court noted that it had previously held that pat down searches are " 'highly intensive' intrusions on private affairs." *Evans Slip Opinion, p. 12.* It then added, "Therefore, we recognize that in general, an administrative booking process that requires patting someone down, placing them in handcuffs, and detaining them for up to 2 hours in a jail facility is a significant intrusion that is akin to an arrest." *Evans Slip Opinion, p. 13*

The court differentiated other aspects of the administrative booking process. Those that were akin to going through courthouse security were not deemed to be violations. It also rejected an argument from the prosecution that because the defendant could have been actually booked the intrusions were lawful. This argument was not persuasive because the defendant was *not actually booked* but was instead summonsed to court and voluntarily appeared.

The court then turned to the authority of law issue. It first rejected the prosecution's argument that the state constitution should be interpreted consistent with the federal constitution, which permits administrative searches. The court declined to adopt the federal standards. "[W]e have repeatedly declined to adopt 'a general special needs exception,' and the State does not show that we should adopt the federal exception for administrative searches as a matter of independent state law." *Evans Slip Opinion, pp. 17-18*

The court also rejected the argument that the identification statute provided the necessary "authority of law." It pointed out that the statute did not include any of the detention center

security measures as part of the mandated identification requirement. The court refused to read into the statute authorization for security that was not spelled out in the statutory provision.

The prosecution presented a further argument based on diminished expectations of privacy of charged defendants. It relied on prior cases involving probation or parole searches. A lawful probation or parole condition can satisfy the authority of law requirement if "a compelling interest, achieved through narrowly tailored means, supports the intrusion." *Evans Slip Opinion, p. 19.* The court declined to extend the probation or parole exception to cases where the defendant has not been convicted and is presumed not guilty.

The court also rejected the prosecution's arguments based on tradition and expedience and cost. The court answered these arguments as follows: "[T]he State does not have a legitimate interest, much less a compelling one, in maintaining an unconstitutional practice based solely on its longevity." and "[A]s the trial court observed, 'the government is routinely inconvenienced' by the requirements of article I, section 7 … For example, roadblocks and warrantless blood draws are 'simpler, more efficient, [and] less expensive' than obtaining warrants, but they are also flatly unconstitutional." *Evans Slip Opinion, pp. 21-22*

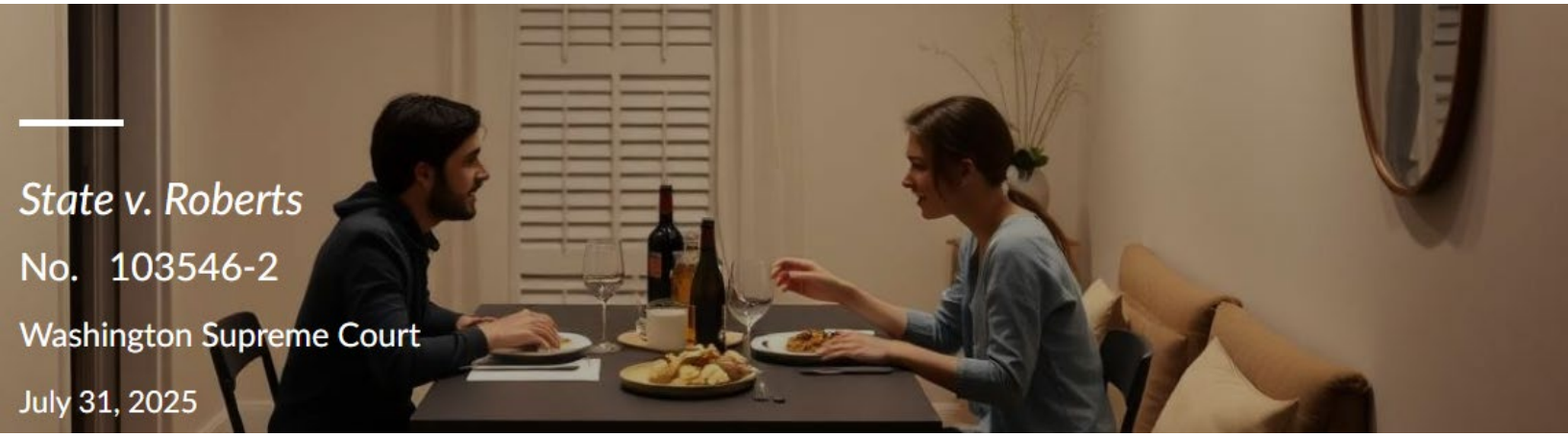
This case was a unanimous decision. It will have an impact on administrative booking procedures state-wide. The necessary security precautions that are inherent in entry into a detention facility will require adjustment. Administrative booking practices will need to be amended in order to comply with the state constitution.

Training Takeaway

Adjusting administrative booking procedures to comply with the requirements of this case will necessarily involve changes in how an out-of-custody defendant in court is fingerprinted, photographed, and checked for warrants. This in turn will require cooperation between prosecutors and identification personnel.

Administrative booking is an important criminal procedure process. It completes the identification of the defendant with respect to the present case. In-custody booking serves two crucial purposes. (1) It prepares a defendant for incarceration, and (2) it also completes the identification of the defendant in relation to the present case. For prosecutors and identification officers, accomplishing identification without the intrusion, which this court found to be unconstitutional, will be the challenge going forward.

EXTERNAL LINK: View the Slip Opinion



State v. Roberts, No. 103546-2, Washington Supreme Court (July 31, 2025)

Factual Background

Cases involving insufficient evidence are quite useful for law enforcement. They focus on the elements of the crimes and any defenses that may be available to the defense at trial. In this way, they focus on exactly what a jury would focus on. This case is of interest for that reason and for another reason as well. In addition to analyzing the elements of felony murder, the court also clarified the constitutional legal standard that applies to sufficiency of the evidence cases.

This case was previously decided by the Court of Appeals in a published opinion. It appeared in the August 2024 edition of these digests. The digest of the Court of Appeals decision, and the link to the slip opinion can be found here: Law Enforcement Digest, Aug 2024. The decision of the Supreme Court in this case supersedes the Court of Appeals decision on the sufficiency of the evidence issues but the outcome is the same from both courts.

The case originated from a home invasion shooting. The shooting victim and his girlfriend were in the victim's basement apartment, eating dinner. They heard noises upstairs, which the girlfriend testified sounded like two intruders. The girlfriend also heard the outer door to the basement being kicked in and a kick against the door of the basement apartment.

The victim boyfriend armed himself with a handgun against the intruders. Shooting broke out with shots fired from the intruders through the door into the apartment and shots fired from the victim through the door the other way. The victim sustained gunshot wounds that caused his death.

The girlfriend hid in the closet and called 911. The intruders never made it into the basement apartment. Thus, her testimony did not include a visual description of the intruders, nor any identifying details. She testified about what she heard from the other side of the basement apartment door. The effect of the lack of an eyewitness was that the identity of the defendant as one of the burglars was based on circumstantial evidence and ripe for a sufficiency of the evidence challenge.

The police investigation pieced together several items of evidence that supported the girlfriend's testimony and identified the defendant as one of the intruders. The evidence included blood spatter and DNA evidence identifying the defendant as having been injured during the gunfight inside the residence. The evidence also included the recovery of a gun case and magazine that the intruders stole. The gun case and magazine had been taken in the burglary and were found in a vehicle associated with the defendant and that had blood stains with his DNA.

The recovery of the gun case and magazine provided evidence that the intruders had committed a burglary that had gone wrong. The gun case and magazine were recovered from the vehicle as a result of a tip. The vehicle belonged to a third party, not the defendant. Also recovered from the same vehicle was blood evidence that was matched to the defendant. In addition, the defendant also thoughtfully provided the investigators with social media evidence tying him to the burglary. He rapped about the home invasion and included details consistent with the way in which the burglary and shooting occurred.

The case proceeded to trial on a charge of first-degree felony murder predicated on burglary. The defendant elected to testify in his own defense. He explained away the social media evidence as a joke. And he explained away the blood smear evidence inside the residence by claiming to have been there as a hapless drug buyer who was innocently caught up in the gun fight. His story included that he was a heroin customer and was present at the residence to make a purchase when unknown burglars broke in and committed the burglary. He was injured by stray bullets during the shooting, which explained his blood having been found in blood stains inside the residence.

The trial was a bench trial, which meant it was decided by a judge rather than a jury. The trial judge found the defendant's story not to be credible. But the judge also found that the defendant had not been proved by the prosecution to have been a shooter. However, the judge did find that the defendant was one of the burglars and for that reason was guilty of first-degree felony murder as an accomplice.

The Court of Appeals review of the conviction included considerable discussion of what legal standard should be applied to the case. However, it also found that no matter which standard was applied, there was sufficient evidence to sustain the felony murder conviction. That decision in turn led to this review of the conviction by our Supreme Court.

Analysis of the Court

The Supreme Court's analysis began with deciding the proper constitutional legal standard that applies in sufficiency of the evidence cases. The details of that discussion are probably more than most law enforcement officers would care to wade through. They can be reviewed in the slip opinion. In the end, the standard that the court applied has been with us for quite some time. The court did not wind up modifying the standard in this case.

The sufficiency standard begins with the due process clause. The court stated that, "the Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which [the accused] is charged." Roberts Slip Opinion, p. 7. The court then (after numerous pages of discussion) articulated the standard that must be applied on appeal when an appellate court reviews sufficiency of the evidence. It is a standard that is also applied by the United States Supreme Court and is thus a refreshing example of consistency between Washington State and federal legal doctrine.

The legal standard is supportive of the fact-finding processes that occur in the trial courts. The standard states, "[T]he question [for appellate courts] is 'after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.' … Importantly, the Court stated that judicial review includes 'all of the evidence' considered in a light most favorable to the prosecution." Roberts Slip Opinion, p. 8 (emphasis added).

Application of the "any rational trier of fact" standard in this case included discussion of both the direct and circumstantial evidence. The direct evidence consisted of the girlfriend's description of what she heard through the door. The most important aspect of her testimony was that there were two intruders who sounded like they were burglarizing the residence. That testimony served as proof that a burglary was in fact underway, and that it was being committed by two people, and that one of the two people opened fire through the door.

The defendant argued that the trial judge had implicitly acquitted him by finding that there was insufficient proof that he was a shooter. The court rejected the argument saying, "If a participant in a predicate felony commits a homicide during the commission of or in flight from a felony, the other participant has 'by definition' committed felony murder." Roberts Slip Opinion, p. 15. Thus, the only question was whether the defendant was a participant in the burglary.

The court applied common sense to answer the participant question. It pointed out that the blood evidence placed the defendant in the residence during the burglary. But it also pointed out that the defendant's testimony placed him in the residence during the burglary. His only claim was that he was an innocent drug buyer and not a burglar.

The court rejected the participant argument. It stated, “The [trial] judge found Roberts’s testimony was ‘not credible’ and was not persuaded by Roberts’s explanation… We defer to the trier of fact on witness credibility… Taken together, the evidence supports that Roberts acted with another person to commit burglary (the missing gun box and magazines), during the course of which Villaseñor was killed.” Roberts Slip Opinion, p. 16.

The defendant also asserted another, different sufficiency argument based on the felony murder statute. The statute provides an affirmative defense. See RCW 9A.32.030(opens in a new tab)(1)(c). The statute enables an admitted participant in a felony offense to avoid conviction for murder if they had no reason to expect that another participant was armed and might commit a killing. An affirmative defense is a defense that a defendant must assert.

The court rejected the affirmative defense. The court’s reasoning is particularly instructive. The court first pointed out that the defendant did not argue at trial that the affirmative defense applied to him. And logically, it could not have been because he was not claiming to have been one of the burglars. He claimed to have been an uninvolved hapless drug buyer. Thus, he claimed (in testimony that was found not credible) not to be a participant in the underlying crime for felony murder and the affirmative defense could not apply to him.

After rejecting both sufficiency claims, the Supreme Court upheld the defendant’s felony murder conviction. It went on to address several other less interesting issues which can be reviewed in the slip opinion. The case was decided unanimously and represents a nice win for law enforcement.

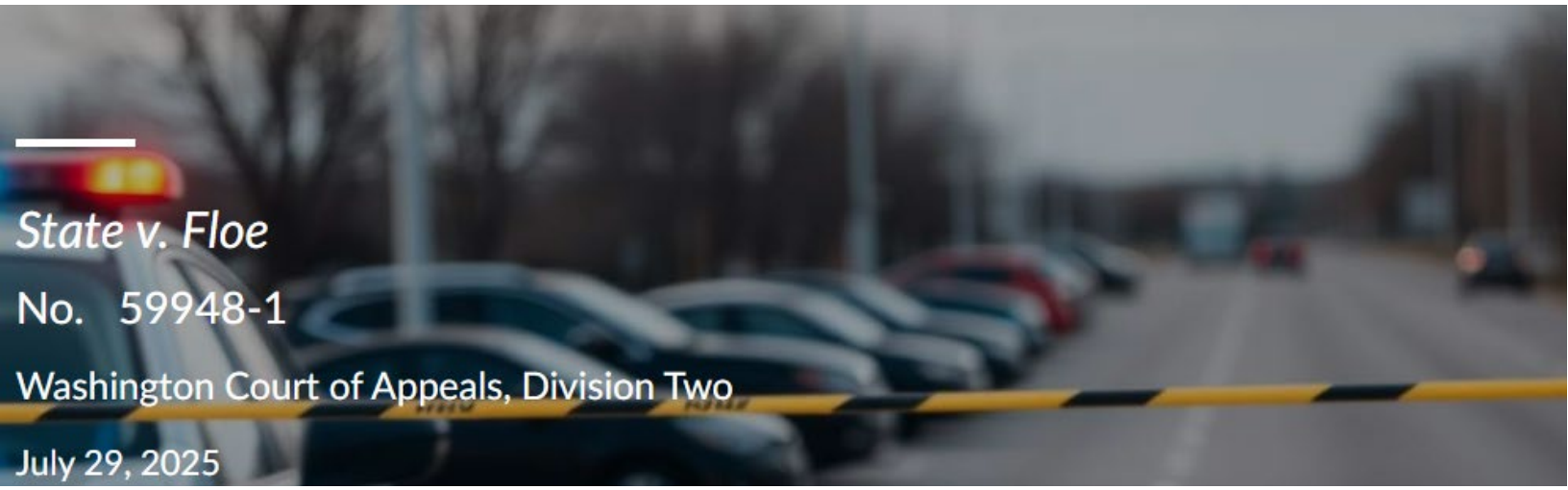
Training Takeaway

Law enforcement and prosecutors must always keep the elements of the charged crime (and any affirmative defenses) in mind during the investigation and prosecution of a criminal case. In this case, the police investigation began as a whodunit because the girlfriend could not identify the two burglars. A whodunit investigation logically involves tacit acknowledgement that someone committed the crime, just not necessarily the defendant.

By all accounts, the defendant’s testimony about having been a drug buyer came out for the first time at trial. The court noted that the defendant had admitted having been shot in the hand when he was arrested, but the opinion does not suggest he gave the detectives the story about buying drugs. It thus became significant during the trial that he admitted being present (which placed him at the scene), and that in turn caused the evidence which undermined his drug buyer story to be the most important evidence in the trial.

The court did not discuss what the effect might have been if the defendant had not only admitted being present but also having been one of the burglars. Had he done so, the elements of the affirmative defense would likely have become the most significant factual issues at trial and on appeal. This case is an excellent example of the twists and turns a case can take during investigation and prosecution.

EXTERNAL LINK: View the Slip Opinion



State v. Floe, No. 59948-1, Washington Court of Appeals, Division Two (July 29, 2025)

Factual Background

This next case has many lessons for law enforcement. But the most important by far is how not to finance one's retirement. Along with that lesson, it dives into several little-known details of Washington's accomplice and conspiracy statutes. *See* RCW 9A.08.020(opens in a new tab) and RCW 9A.28.040(opens in a new tab).

The incident took place in 2021 at a Department of Corrections office in Shelton. The *defendant* was shot in the parking lot by a gun-toting individual who fled the scene in a vehicle. The *defendant* reported the shooting as an on-the-job injury and as a crime to the police. He was treated for a gunshot wound at the hospital.

The defendant gave several statements to the police before coming clean about what happened. He asserted in his initial statements that he was shot by an unknown gunman who fled the scene. But he added that his sister had been at the parking lot before the shooting to bring him some breakfast. According to the statements, the sister drove away before the shooting.

The defendant's story began to unravel because the sister's vehicle could be seen in surveillance video still at the parking lot during the shooting. A week after the initial statements, he was re-interviewed. At first, he stuck to his original story, but when the detectives confronted him about the video evidence, he admitted having arranged for his sister to shoot him with his consent as part of an early retirement scheme.

The defendant was originally charged as an accomplice with second-degree assault and drive-by shooting. He brought a motion to dismiss because of a provision in the accomplice statute that precludes conviction if one is the victim of the underlying crime. *See* RCW 9A.08.020(5)(a). In response, the prosecution amended the charges to include six offenses. The new charges included conspiracy to commit second-degree assault and conspiracy to commit drive-by shooting.

The trial court denied the dismissal motion as to the conspiracy counts. After the motion, the case proceeded to a stipulated documents bench trial. The defendant was convicted of all of the amended offenses except forgery. He appealed his conviction as to the two conspiracy charges.

Analysis of the Court

On appeal, the defendant put forth four (4) arguments as to why he could not be convicted of the conspiracy offenses. The first argument was based on prior United States Supreme Court cases, which at first glance might have seemed to support the proposition that a victim of a crime cannot be guilty of the crime of which he or she is the victim.

The court rejected the victimhood argument. It reviewed the prior cases and concluded that they did not stand for the proposition that one may not be convicted of conspiracy to commit a crime that is a crime they could not personally commit because they were the victim. Instead, the conspiracy statute required that the conspirators collectively must take a substantial step toward the commission of the crime, regardless of who the victim might be. "Here, Floe was convicted of conspiring with Harris to commit second-degree assault and drive-by shooting. Even assuming without deciding that Floe was a victim of both underlying crimes and thus could not be charged with the substantive crimes themselves, the record demonstrates that Floe initiated the plan and convinced Harris to carry out the assault and drive-by shooting." *Floe Slip Opinion, p. 11*

The court also rejected an argument based on the assault and drive-by statutes. His claim was that those statutes precluded conviction if one were to be both the perpetrator and the victim. The court rejected the argument. Because conspiracy is focused on the criminal agreement: "To obtain a conviction, all the State 'needs to prove is that the conspirators agreed to undertake a criminal scheme and that they took a substantial step in furtherance of the conspiracy.'… The State need not show that the defendant committed any other crime." *Floe Slip Opinion, p. 13*

The court also quickly rejected the last two arguments. The first of these was that conspiracy should be treated like accomplice liability, which has a statutory defense. The defense precludes a victim from being convicted as an accomplice, but there is no such defense in the conspiracy statute. Thus, the defendant's attempt to have the defense "written in" by the court failed.

And finally, the court rejected an argument based on the required mental state (*mens rea*). It pointed out in a commonsense fashion that, "Here, the record clearly shows that Floe and Harris shared the same *mens rea*—both conspirators planned and agreed to shoot Floe. The

undisputed record shows that both Floe and Harris intended that Harris commit the crimes of assault and drive-by shooting against Floe." *Floe Slip Opinion, p. 15*

This was a unanimous decision and largely based on common sense and the actual content of the criminal statutes. Without explicitly saying so, the court acknowledged that the charging theory of the prosecutors before the amendment could have been problematic. The notion that one could not be the victim of an assault or drive-by offense if one were also the victim has a good deal more appeal than the notion that a criminal conspiracy agreement could not include a conspirator pretending to be a victim for financial gain.

Training Takeaway

This case, like the *Roberts* case, highlights the importance of the elements of charged crimes. Charging decisions are ultimately the responsibility of prosecutors. But there is every reason for law enforcement to be active partners to make sure the charges are viable and will survive appellate review.

It is also well worth the while of law enforcement to consider conspiracy as a charge where more than one person is involved in a crime. The ability to secure a conviction in a case where the primary perpetrator *cannot be convicted* of the underlying crime for legal reasons makes conspiracy a valuable tool for securing complete justice. (It is also useful for inclusion in search or arrest warrants for the same reasons.) Where there is agreement among two or more people to commit a crime, conspiracy fits the bill.

EXTERNAL LINK: View the Slip Opinion

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.

United States v. Behar-Guizar, No. 23-3201, Ninth Circuit Court of Appeals (July 9, 2025)

Factual Background

This case arises from an investigatory stop of a suspected undocumented migrant. It is a search and seizure case that was resolved according to federal search and seizure constitutional standards. It would be a mistake to consider it reliable authority for similar stops in Washington. Nevertheless, the court's reasoning is worthy of review even if the resolution of the case in Washington might have been quite different.

The incident occurred near the Mexico-U.S. border in San Diego. The defendant was observed walking along a roadway. His appearance suggested that he may have crossed a nearby river that bordered the area. The court's description of the facts which formed the basis for the reasonable suspicion stop is as follows: "On his first drive-by, he observed that Bejar-Guizar was walking in the roadway itself and was not trying to flag down any passing vehicles. Then, turning his vehicle around, the agent saw that the man had mud on his legs and boots, as if he had freshly crossed the Tijuana River. The agent stopped Bejar-Guizar to ask him several questions." Bejar-Guizar Slip Opinion, p. 4

The defendant was stopped and questioned. He admitted to illegal entry. He was arrested and charged with illegal entry. He was also duly convicted and sentenced to time served. He then appealed, claiming the stop was an unlawful, reasonable suspicion stop.

Analysis of the Court

The court began with the reasonable suspicion constitutional legal standards that attend border patrol stops of suspected unlawful entry suspects. The standard is quite forgiving for the following reasons: "In acknowledging the critical role that Border Patrol agents play, we have held that reasonable suspicion to stop someone near the border is not a high bar: Agents who lack 'the precise level of information necessary for probable cause to arrest' need not simply 'shrug [their] shoulders and allow . . . a criminal to escape.' " *Bejar-Guizar Slip Opinion p.6*

The commonsense rationale for border patrol, reasonable suspicion standards meant that the level of factual certainty could be relatively low.

The court summarized several specific legal standards that applied, saying:

- "First, we must look at the totality of the circumstances. Rather than cherry-picking each fact in isolation, we must evaluate all relevant factors together in the context of the stop."
- Because Border Patrol agents are trained to make 'inferences [ ] and deductions . . . that might well elude an untrained person,' our review of the circumstances must be 'filtered through the lens of the agents' training and experience.' "
- "Finally, reasonable suspicion review should focus not on the likelihood of *innocent* behavior in context but of *criminal* activity."

Bejar-Guizar Slip Opinion, p. 7

As one might expect, considering the court's articulation of the constitutional standards, its analysis was straightforward. "The arresting agent's observations amounted to far more than a 'mere hunch,' as Bejar-Guizar argues. Bejar-Guizar's appearance 'was not so innocuous as to suggest that he was merely plucked from a crowd at random.' … The agent is allowed to stop a suspect to find out more, as the agent properly did here." *Bejar-Guizar Slip Opinion, pp. 9-10*

Training Takeaway

The Ninth Circuit cited and discussed prior cases that all but commanded that courts practice deference to border agents in stops near the border. For reasonable suspicion stops in Washington, the standards applied in this case are of limited utility. Nevertheless, the court's emphasis on there being no need for the level of certainty that would support probable cause is worth being aware of.

This case could be quoted and cited as persuasive authority for the proposition that an officer need not "shrug [their] shoulders and allow . . . a criminal to escape…."

EXTERNAL LINK: View the Slip Opinion

Law Enforcement Digest – July 2025
Cases & References

State v. Balles, No. 103182-9, Washington Supreme Court (July 31, 2025)

- Balles Slip Opinion
- State v. Blake
- September 2024 Law Enforcement Digest

State v. Evans, No. 103136-0, Washington Supreme Court (July 31, 2025)

- Evans Slip Opinion

State v. Roberts, No. 103546-2, Washington Supreme Court (July 31, 2025)

- Roberts Slip Opinion
- Law Enforcement Digest, August 2024
- RCW 9A.32.030(1)(c)

State v. Floe, No. 59948-1, Washington Court of Appeals, Division Two (July 29, 2025)

- Floe Slip Opinion
- RCW 9A.08.020
- RCW 9A.28.040

United States v. Behar-Guizar, No. 23-3201, Ninth Circuit Court of Appeals (July 9, 2025)

- Bejar-Guizar Slip Opinion

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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.

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