

AUGUST 2018
LAW ENFORCEMENT
DIGEST



LAW ENFORCEMENT ONLINE TRAINING DIGEST



Welcome to the new **Law Enforcement Digest Online Training!** This refreshed edition of the LED continues the transition to an online training resource created with the Washington law enforcement officer in mind. Select court rulings from the previous month are summarized briefly, arranged by topic, with emphasis placed on the practical application of legal changes to law enforcement practices.

Each cited case includes a hyperlinked title for those who wish to read the court's full opinion. Links have also been provided to additional Washington State prosecutor and law enforcement case law reviews and references.

The materials contained in this document are for training purposes. All officers should consult their department legal advisor for guidance and policy as it relates to their particular agency.

LAW ENFORCEMENT ONLINE TRAINING DIGEST

AUGUST 2018 Edition

Covering Select Cases Issued in JULY 2018

1. Failure to Transfer Title; Pretext Stop; Traffic Stop
2. Unlawful Possession of a Firearm; Prior Convictions
3. Double Jeopardy; Kidnapping
4. Attempt Crimes; Manslaughter

Additional Resource Links: Legal Update for Law Enforcement (WASPC, John Wasberg) & Prosecutor Caselaw Update (WAPA, Pam Loginsky)



1 FAILURE TO TRANSFER TITLE; TRAFFIC INFRACTION; *TERRY STOP*

FAILURE TO TRANSFER TITLE

[State v. Hendricks](#), COA No. 49823-5-II (Jul. 3, 2018)

Court of Appeals, Division II

FACTS:

Defendant was arrested for Violation of a No Contact Order after the truck he was riding in was stopped for having been sold more than 15 days prior without a corresponding transfer of the title. The license plate of the vehicle was also partially obstructed by the trailer hitch.

Defendant now appeals his conviction with a technical legal argument that the Failure to Transfer Title statute (RCW 46.12.050(5)(a)) is not a traffic infraction under RCW 46.63.020. He also claims that his attorney was ineffective because he did not move to suppress evidence on the basis that the deputy's stop was pretextual.

1 FAILURE TO TRANSFER TITLE; TRAFFIC INFRACTION; *TERRY STOP*

FAILURE TO TRANSFER TITLE
[State v. Hendricks](#), COA No. 49823-5-II (Jul. 3, 2018)
Court of Appeals, Division II

TRAINING TAKEAWAYS:

- (1) Failure to Transfer Title is a valid traffic infraction, and a lawful reason to initiate a traffic stop to investigate its commission.
- (2) A stop is not pretextual where an officer initiated it with reasonable articulable suspicion that a traffic infraction was being committed, and the only testimony presented indicates he didn't even know the defendant was in the vehicle until AFTER the stop was made.
 - The deputy initiated the stop to investigate the failure to transfer title and a partially obscured license plate.
 - It was only AFTER initiating the traffic stop and contacting the driver of the vehicle that the deputy recognized the defendant.

2 UNLAWFUL POSSESSION OF A FIREARM; PRIOR CONVICTIONS

UNLAWFUL POSSESSION OF A FIREARM
[State v. Garcia](#), 191 Wn.2d 96 (July 5, 2018)
WA STATE SUPREME COURT

FACTS:

Defendant was charged with Unlawful Possession of a Firearm in the 1st Degree. He moved to dismiss the charge because the State relied on a qualifying crime under which he had not been advised at sentencing that the conviction would preclude him from legally possessing firearms.

2 UNLAWFUL POSSESSION OF A FIREARM; PRIOR CONVICTIONS

UNLAWFUL POSSESSION OF A FIREARM
[State v. Garcia](#), 191 Wn.2d 96 (July 5, 2018)
WA STATE SUPREME COURT

TRAINING TAKEAWAY:

A trial court's failure to properly inform a defendant at the time of sentencing that he was prohibited from possessing a firearm may be remedied to allow a later charge of Unlawful Possession of a Firearm if the State can prove that the defendant subsequently acquired actual knowledge of his ineligibility to possess firearms.

Although the State couldn't prove that the defendant was notified during sentencing on the original 1994 conviction, they were able to show that he later acquired actual knowledge of his ineligibility to possess firearms through the formal notice provided in his 10 subsequent felony convictions.

2 UNLAWFUL POSSESSION OF A FIREARM; PRIOR CONVICTIONS

UNLAWFUL POSSESSION OF A FIREARM
[State v. Garcia](#), 191 Wn.2d 96 (July 5, 2018)
WA STATE SUPREME COURT

PRACTICE POINTERS:

Even if the court had ruled against the State, the officer would have done nothing wrong in arresting the suspect. Any reasonable officer reviewing the suspect's criminal history would have seen the prior conviction for a serious felony and the subsequent felony convictions and believed the suspect was ineligible to possess a firearm.

The appeal was based on a technical legal argument and prior court discrepancy that wouldn't have been known to an officer investigating the potential crime.

2 UNLAWFUL POSSESSION OF A FIREARM; PRIOR CONVICTIONS

UNLAWFUL POSSESSION OF A FIREARM
[State v. Garcia](#), 191 Wn.2d 96 (July 5, 2018)
WA STATE SUPREME COURT

PRACTICE POINTERS:

In order to properly investigate a potential crime and provide the required proof for each of its elements, you need to be:

- (1) familiar with what evidence is admissible to prove the crime, and
 - (2) know what prior convictions are needed to support a crime that has a preliminary qualification
- The degree and sentencing range of the crime of [Unlawful Possession of a Firearm](#) depends on what caused the person's right to possess a firearm to be restricted, and when that removal of rights occurred.

2 UNLAWFUL POSSESSION OF A FIREARM; PRIOR CONVICTIONS

UNLAWFUL POSSESSION OF A FIREARM
[State v. Garcia](#), 191 Wn.2d 96 (July 5, 2018)
WA STATE SUPREME COURT

PRACTICE POINTERS:

Prosecutors hold the final determination of what charges to pursue in court, which includes amending an officer's referred or directly submitted charges.

Prior convictions can be confusing, particularly when they're older and/or out of state, so your job is to thoroughly review what you have at the time of the arrest.

It is the prosecutor's job to further verify before the court any prior convictions that could influence the proper charge or sentence range.

3 DOUBLE JEOPARDY; KIDNAPPING

Attempted Kidnapping in the 1st Degree
[State v. Classen](#), COA No. 49762-0-II (Jul. 24, 2018)
COURT OF APPEALS, DIVISION II

FACTS:

The defendant, an acquaintance of the victim, showed up at her house one morning while she and her infant son were entering her vehicle to leave. The victim offered the defendant a ride down the street. After driving down the street, the victim asked the defendant if he wanted to get out. He refused. The defendant asked the victim out, and she did not reply. He then began poking the victim in the ribs, grabbing her hair, and eventually punching her. He ordered the victim to drive, wielding scissors he found in the car as a weapon, and temporarily duct taping the victim's hands to her steering wheel. He grabs at her genitals, and threatens to rape and kill both the victim and her infant son.

When the victim's car runs out of gas, she pulls to the side of the road, and is able to flee the vehicle onto the highway. The defendant runs after her, catching up to her and pushing her to the ground. She gets up and runs with the defendant again chasing after her. As she attempts to get help from another motorist, the defendant grabs her and slams her head against the man's truck. Other bystanders intervene, and the defendant continues to pursue the victim, as well as assault and threaten to kidnap one of the woman who pulled over to assist the victim.

3 DOUBLE JEOPARDY; KIDNAPPING

Attempted Kidnapping in the 1st Degree
[State v. Classen](#), COA No. 49762-0-II (Jul. 24, 2018)
C O U R T O F A P P E A L S , D I V I S I O N I I

FACTS, cont.:

The defendant is now appealing his convictions for Kidnapping and Attempted Kidnapping, which were charged as separate counts relating to the same victim. He claims that the acts were part of a single incident, and therefore double jeopardy prohibited the State from charging him as if they were separate crimes.

NOTE: **Double-Jeopardy** is a constitutional right of both the US and Washington State constitutions that prohibits a person from (1) being prosecuted for the same offense after being acquitted, (2) being prosecuted for the same offense after being convicted, or (3) receiving multiple punishments for the same offense. [WA Supreme Court ruling - State v. Villanueva-Gonzalez \(2014\)](#).

3 DOUBLE JEOPARDY; KIDNAPPING

Attempted Kidnapping in the 1st Degree
[State v. Classen](#), COA No. 49762-0-II (Jul. 24, 2018)
COURT OF APPEALS, DIVISION II

TRAINING TAKEAWAY:

Where there is a break in the restraint of a kidnapping victim in which the victim breaks free of the defendant's initial restraint, and the defendant then recaptures or attempts to recapture the same victim, each act may be charged as a separate crime.

- Kidnapping is a “continuing course of conduct” crime, meaning the crime consists of (1) the act of abduction itself and (2) the continued restraint of a victim's liberty.
- The act/crime of Kidnapping continues as long as the victim's liberty is substantially interfered with through the unlawful detention.

3 DOUBLE JEOPARDY; KIDNAPPING

Attempted Kidnapping in the 1st Degree
State v. Classen, COA No. 49762-0-II (Jul. 24, 2018)
COURT OF APPEALS, DIVISION II

PRACTICE POINTERS:

Whether a crime is a single, continuing act, or is considered to be separate acts that may be charged independently, will be determined by a close review of the facts.

- Where the crime being investigated is a “continuing course of conduct,” a detailed timeline of the event and/or documentation of any break in the restraint or action will be critical to establish the events as distinct, independent crimes.

Here, multiple witnesses (including the victim) testified to the victim's break from her captor's restraint when she fled the car. The fact that he continued to chase after the victim each time she fled from him after the initial abduction and restraint indicated that his intent was to recapture her.

4 ATTEMPT CRIMES; MANSLAUGHTER

Attempted Manslaughter in the 1st Degree
[In re Personal Restraint of Knight](#), COA No. 49521-0-II (Jul. 10, 2018)
COURT OF APPEALS, DIVISION II

FACTS:

Defendant filed a Personal Restraint Petition seeking to withdraw his guilty plea on a charge of Attempted Manslaughter in the 1st Degree. This plea was an *Alford* plea reached in a deal to reduce the original charge of Assault 1st degree (which reduced the sentence range facing the at-the-time 17 year old defendant). Defendant was subsequently convicted of several later violent felonies, and is now sentenced as a “persistent offender” to life without the possibility of parole on these new charges.

Defendant argues that since there is no such crime as “Attempted Manslaughter in the 1st Degree,” his conviction under that charge constitutes prejudicial constitutional error, and therefore the State cannot now use it to support sentencing him under the persistent offender statute.

4 ATTEMPT CRIMES; MANSLAUGHTER

Attempted Manslaughter in the 1st Degree
In re Personal Restraint of Knight, COA No. 49521-0-II (Jul. 10, 2018)
COURT OF APPEALS, DIVISION II

TRAINING TAKEAWAY:

There is no crime of Attempted Manslaughter in the 1st Degree because an attempt crime requires that the underlying crime has an “intent” requirement, and Manslaughter in the 1st Degree has only a “recklessly caused” requirement.

- “A person is guilty of an attempt to commit a crime if, with intent to commit a specific crime, he or she does any act which is a substantial step toward the commission of that crime.” [RCW 9A.28.020\(1\)](#)
- [Manslaughter in the 1st Degree](#) is not an intent crime – [RCW 9A.32.060\(a\)](#), requires only that the defendant “recklessly causes the death of another person.”
Note: Prong (b) of the statute does require intentional and unlawful killing of an unborn child by inflicting injury upon its mother.
- You can’t simply add an “[Attempted](#)” to any criminal statute when such a crime does not exist, and there is no element of “intent” required by the charge.

FURTHER READING

For further cases of interest to law enforcement, please see the comprehensive monthly Legal Update for Law Enforcement prepared by Attorney John Wasberg (former longtime editor of the original LED), which is published on the WASPC Law Enforcement Resources webpage:

<http://www.waspc.org/legal-update-for-washington-law-enforcement>

The Washington Prosecutor's Association publishes a comprehensive weekly summary of a wide range of caselaw geared toward the interests of Washington State Prosecutors. This resource is authored by WAPA Staff Attorney Pam Loginsky.

<http://70.89.120.146/wapa/CaseLaw.html>

Questions?

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