Current Trends: Legal Updates to Impaired Driving Investigation and Prosecution

TSRP Bradley Lane, City of Seattle

TSRP Michelle Rutherford, Snohomish County

Trio of Hot Topics in Litigation

1. Artificial Intelligence

2. City of Wenatchee v. Stearns

3. State v. Hall-Haught

Artificial Intelligence in Criminal Justice

Present and Possible Artificial Intelligence Uses

Attorneys

- Research tools & case preparation
- Axon transcription tools
- Brief editing and proofreading
- Discovery review & processing
  - Review jail recorded phone calls
  - Case summary for filing decision

Law Enforcement

- Narrative drafts - Axon's Draft One
- Translation assistance
- Transcription assistance
- Policy Chat

Law Firms Sanctioned …. High Score!

Lacey v. State Farm General Insurance, Co. – CV 24-5205 (U.S. District Court – Central District of CA)

- Counsel used CoCounsel, Westlaw's AI tools, and Google Gemini to generate a legal outline for a discovery-related supplemental brief. Two major firms filed briefs - Ellis George and K&L Gates.
- After the Special Master flagged two issues, counsel refiled a revised brief—but it still included six AI-generated hallucinations and did not disclose AI use until ordered to respond.
- At least two cases did not exist at all. Several additional misquotes and garbled citations across three submitted versions of the brief. Revised versions attempted to silently "fix" errors without disclosing their origin in AI output.
- **Total monetary sanction: $31,100, payable jointly and severally by Ellis George LLP and K&L Gates LLP**

Look Before You Leap!

AI Hallucination Cases Database tracks legal cases where generative AI produced hallucinated citations submitted in court filings!

150 decisions (worldwide) … and counting

https://www.damiencharlotin.com/hallucinations/

Emerging Issues Surrounding AI

- Intersection of Legal Ethics Rules
  - Confidentiality – RPC 1.6
  - Diligence – RPC 1.3
  - Competence – RPC 1.1
  - Duty to Supervise – RPC 5.1
  - Candor Toward the Tribunal – RPC 3.3

Disclosure & Responsible AI Use

- Example of disclosure in footnote:

6 The above-signed counsel utilized artificial intelligence tools to assist in drafting and editing portions of this brief. All legal analysis, argumentation, and final content reflect the attorney's independent judgment and professional responsibility.

Snohomish County Prosecuting Attorney
3000 Rockefeller Ave, MS 504
Everett, WA 98201
Tel: (425) 388-3333
Fax: (425) 388-6382

Emerging Issues Surrounding AI

- Intersection of Other Rules for Attorneys
  - Cannot upload CJIS Data to third party servers
  - Cannot upload unredacted Discovery containing CJIS Data

- Discovery Requirements & Public Record Act
  - Whether inputs / outputs from AI tools are discoverable
  - Whether inputs / outputs subject to public records disclosure

Emerging Issues Surrounding AI

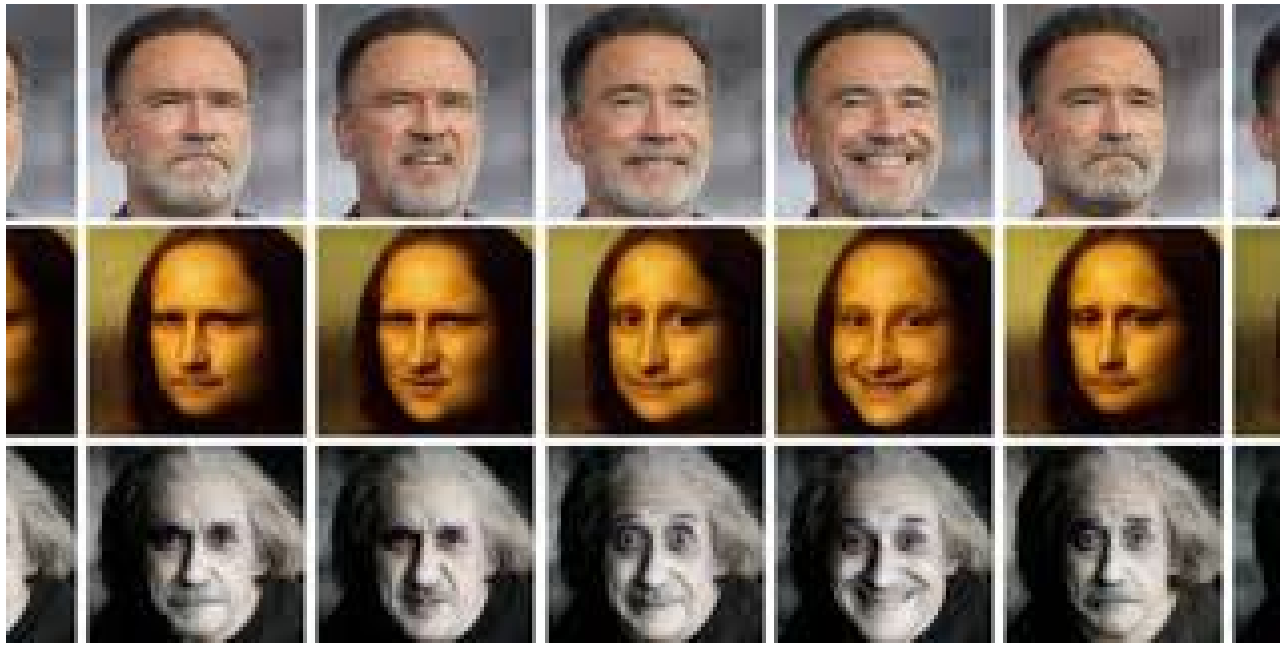
- AI for Law Enforcement
  - Agency policy on use
  - Pilot programs and use training
  - Limitations on use recommendations
- Discovery
  - AI draft not retained
  - Audit trail

Emerging Issues Surrounding AI

- AI for Law Enforcement
  - Not a substitute for communication skills
  - AI is not able to articulate observations not spoken (sight, sound, smell) & no image analysis
  - Homogenization of impairment observations leading to lack of recall during testimony later

Emerging Issues Surrounding AI

- Deepfakes … the good guys are not the only ones with access to AI



Case Law Updates

Wenatchee v. Stearns (102680-3):

Concerned Citizens are not the Same as Snitches

- 911 caller identifies himself and reports that he's currently observing a guy stagging across a parking lot and getting into a black truck, and he believes the man to be drunk

- 911 caller gives detailed description of the suspect and the black truck

Officer arrives on scene in time to see a man standing there with a cell phone to his ear who looks at the officer and points to a truck and says,

"That's him! He's wasted!"

Officer never speaks with this man

Officer can see both the driver and the vehicle match the descriptions given by the 911 caller. Officer follows the car to try and develop some more suspicion. Eventually, the officer pulls traffic for no brake lights, investigates, and the suspect is blotto (3x the *per se*)

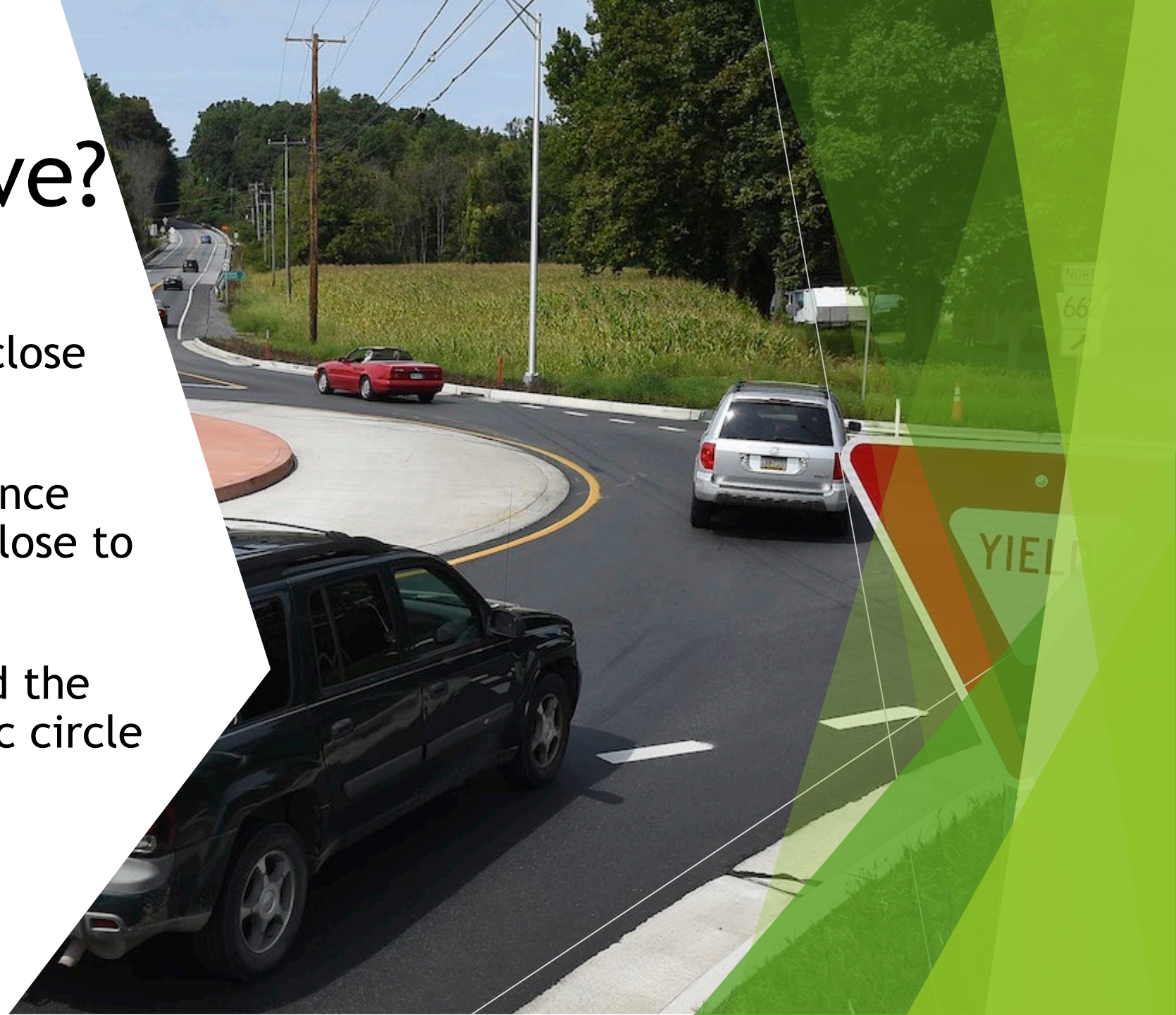
What did the Officer Observe?

Movement within the lane “close toward the center line”

The vehicle still gained distance while the officer traveled “close to the speed limit”

The vehicle “almost” clipped the curb on the inside of a traffic circle “but corrected”

Center brake light was out



Opinion of Division-III COA

1) There was no Independent Corroboration

- The officer essentially needed to go up to the guy in the parking lot with the phone and confirm that he was the 9-11 caller. It wasn't enough for the officer to merely infer that the guy who yelled to him in the parking lot was the same guy on the phone with 911

2) The Tip wasn't Reliable "enough"

- The conduct described over the phone could've been lawful conduct.
- The 911 caller made a conclusory statement in his call assuming the suspect to be drunk merely because he was staggering around the parking lot before he was able to get into his car.

Opinion of Division-III COA

"Staggering, followed by getting into a vehicle and moving it within a parking lot—the only behavior objectively described by Mr. Gilliver— certainly might make a reasonable observer suspicious, but it is not criminal behavior."

Florida v. J. L., 529 U.S. 266 (2000)

Anonymous 911 caller reports:

- Three young men standing at the bus stop
- One wearing a flannel shirt has a gun

No Info on caller's Identity

No Info on how Caller knows what he knows

Florida v. J. L., 529 U.S. 266 (2000)

- The details of the call do not support a *Terry stop and frisk*
- No crime is described
- No illicit corroboration (suspect description does not count)
- No information concerning the caller or how they knew what they knew

- J. Ruth Bader Ginsburg

Let's talk about Informants, Snitches, & Concerned Citizens

Reliability – circumstances establishing the informant's reliability

OR

Corroboration Showing:

The presence of criminal activity

OR

The informer's information was obtained in a reliable fashion

State v. Z.U.E., 183 Wn. 2d 610 (2015)

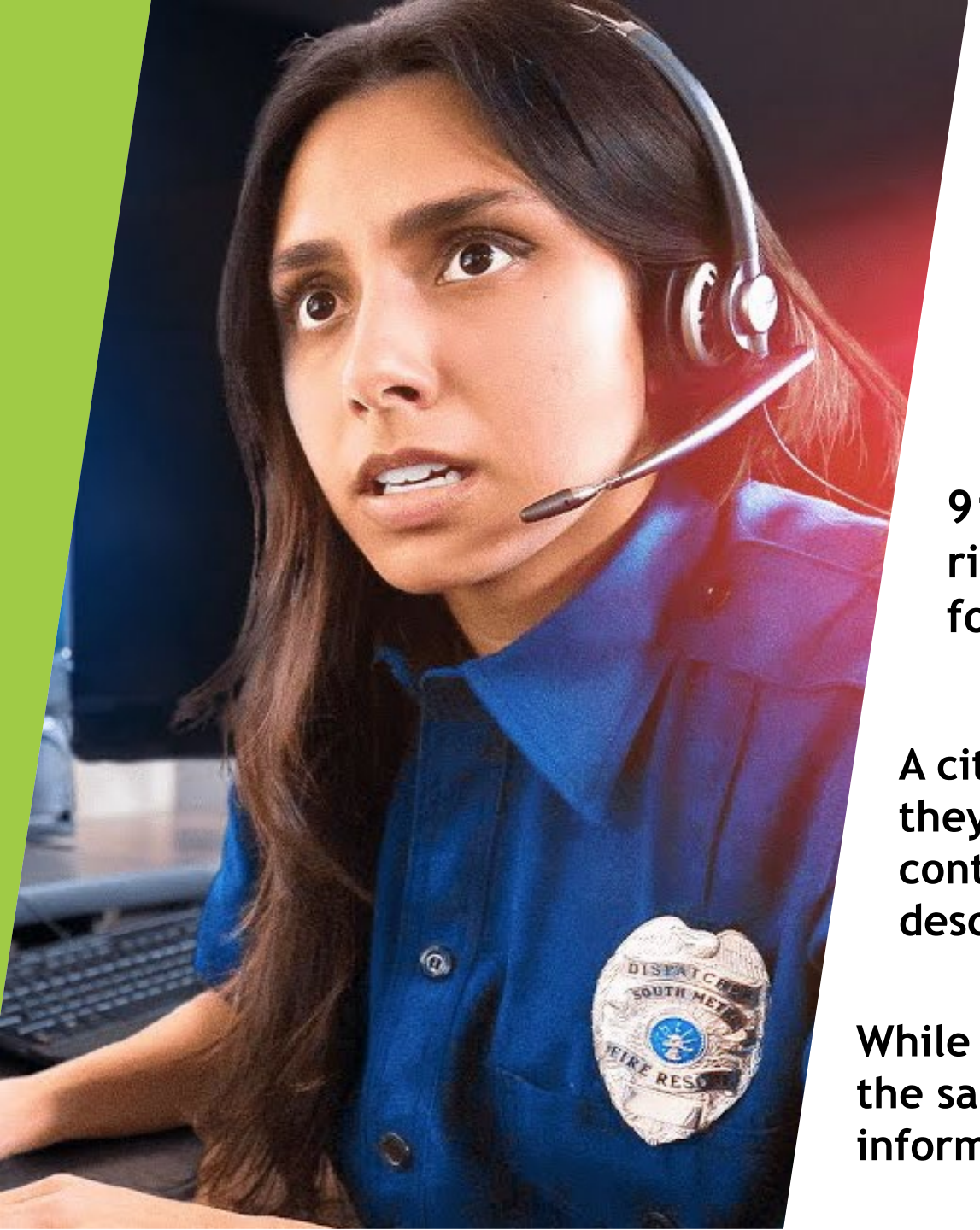
Let's talk about Informants, Snitches, & Concerned Citizens

Sufficient Factual Basis – the LEO must point to specific facts which, taken together with rational inferences, reasonably warrant an intrusion (Can be through corroboration)

AND (OPTIONALLY)

Basis of Knowledge -How the tipster gathered their facts

Wenatchee v. Stearns, citing State v. Z.U.E., 183 Wn. 2d 610 (2015)



Let's talk about Informants, Snitches, & Concerned Citizens

Citizen informants "are deemed presumptively reliable." *State v. Gaddy*, 152 Wn.2d 64, 73 (2004)

911 calls are more reliable precisely because callers risk losing their anonymity and can be held accountable for false reports. *Z.U.E.*, 183 Wn.2d at 621

A citizen informant's reliability is further enhanced when they are an eyewitness and when they report their tip contemporaneously or immediately after the events they describe. *State v. Lee*, 147 Wn. App. 912, 918 (2008)

While citizen informants are generally presumed to be reliable, the same presumption is not available to anonymous informants. *State v. Saggers*, 182 Wn. App. 832 (2014)

What's the Deal with Conclusory Statements?

"No matter how reliable it is, the State generally may not base a search or seizure on a "tip which is merely a bare conclusion unsupported by a sufficient factual basis."

A conclusory allegation alone is insufficient, However, a conclusory allegation accompanied by sufficient corroboration is a consideration (because corroborative facts alone probably supply ample RAS).

State v. Sieler, 95 Wn.2d 43, 47-48 (1980)

Our Supreme Court's Analysis:

That's Him! He's Wasted! – Reliable?

- Description of Suspect and Actions as they occurred

- Suspect description and Actions corroborated by officer

- The observed driving corroborates the tip's allegation of DUI albeit thinly

- The short amount of time between the call And the officer's arrival in comparison to the observed Conduct further corroborate tipster's information was Gathered in a reliable way

What about the Gravity of the Crime?

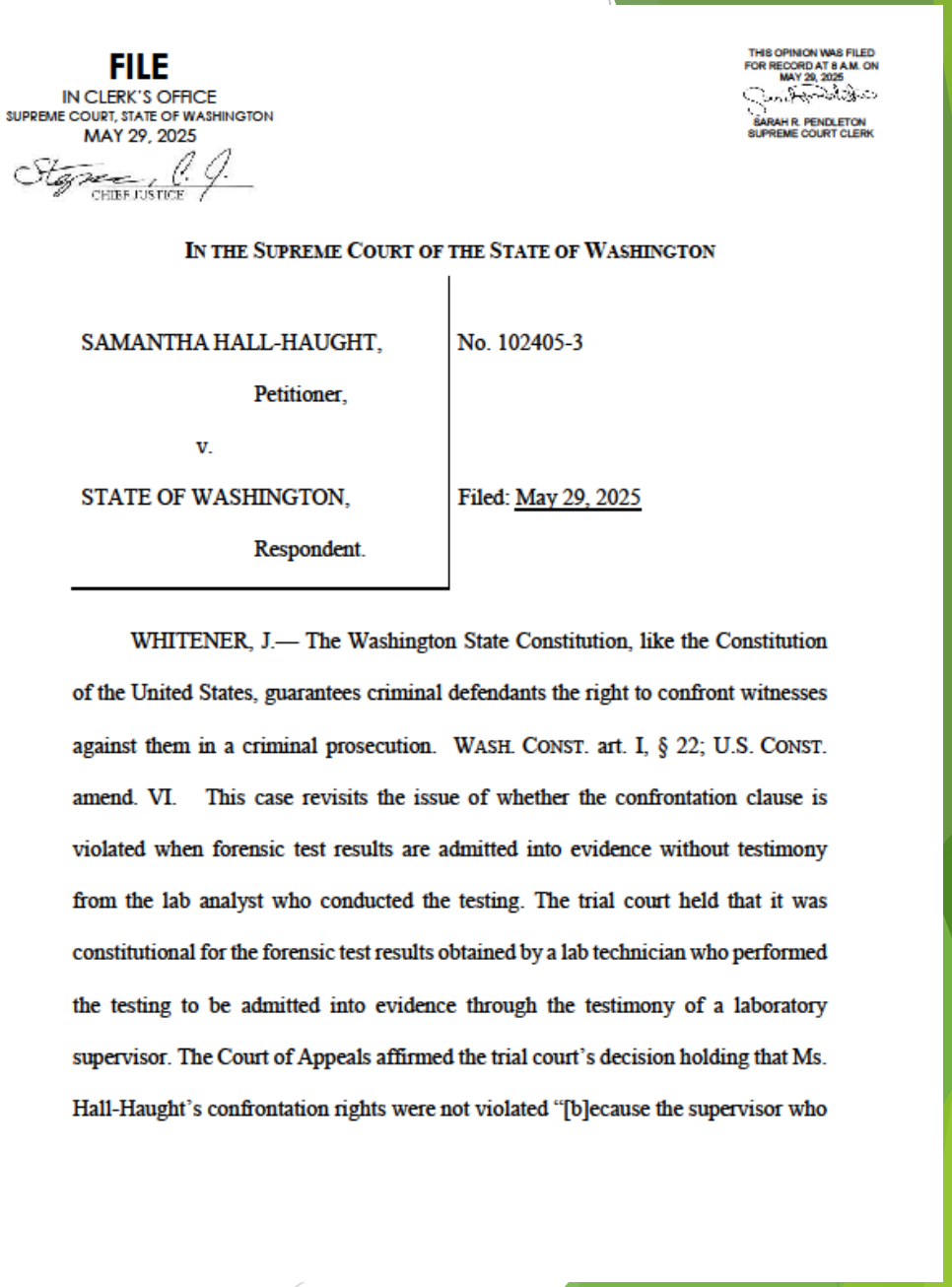
"[T]he seriousness of the criminal activity reported by an informant can affect the reasonableness calculus which determines whether an investigatory detention is permissible."

So What's a Good Take Away Here?

When a tip is reliable, that means only that the officer can treat the facts communicated in the tip as true, as if the officer observed the facts personally.

Hall-Haught v. State
2025 WL 1523492

1. Historical Timeline – how confrontation clause became a hot topic
2. New interpretation of confrontation rights related to scientific evidence
3. Impact on WSP Toxicology Laboratory
4. Impact on enforcement of impaired driving cases



FILE
IN CLERK'S OFFICE
SUPREME COURT, STATE OF WASHINGTON
MAY 29, 2025
CHIEF JUSTICE

THIS OPINION WAS FILED FOR RECORD AT 8 A.M. ON MAY 29, 2025
SARAH R. PENDLETON
SUPREME COURT CLERK

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

SAMANTHA HALL-HAUGHT, Petitioner, v. STATE OF WASHINGTON, Respondent.	No. 102405-3 Filed: May 29, 2025

WHITENER, J.— The Washington State Constitution, like the Constitution of the United States, guarantees criminal defendants the right to confront witnesses against them in a criminal prosecution. WASH. CONST. art. I, § 22; U.S. CONST. amend. VI. This case revisits the issue of whether the confrontation clause is violated when forensic test results are admitted into evidence without testimony from the lab analyst who conducted the testing. The trial court held that it was constitutional for the forensic test results obtained by a lab technician who performed the testing to be admitted into evidence through the testimony of a laboratory supervisor. The Court of Appeals affirmed the trial court's decision holding that Ms. Hall-Haught's confrontation rights were not violated "[b]ecause the supervisor who

Hall-Haught v. State – Historical Timeline

- *State v. Lui*, 315 P.3d 493 (2014) – Washington uses the "witness against" test

An expert comes within the scope of the confrontation clause if, first, that person makes a statement of fact to the tribunal and, second, that statement is "against" the defendant in that it tends to inculpate the accused.

  - Washington's rule was on federal caselaw, *Williams v. Illinois*, 132 S.Ct. 2221 (2012), interpreting 6th Amendment.
  - Prosecutors permitted to argue the Primary Analyst or Reviewer are the only witness needed at criminal trial in impaired driving cases.

Volatile Analysis Results:

ST-20-06725-A: Blood - Peripheral

ST-20-06725-A was tested by Headspace - Gas Chromatography for the presence of acetone, ethanol, isopropanol, and methanol on the date(s) indicated below. The following result was obtained:

Ethanol	**0.14 ± 0.012 g/100mL (k=3, 99.7% confidence level)**	**12/21/20, 12/22/20**

Drug Analysis Results:

ST-20-06725-A: Blood - Peripheral

ST-20-06725-A was tested by Enzyme Multiplied Immunoassay Technique (EMIT) for the presence of amphetamines, barbiturates, benzodiazepines, cannabinoids, cocaine metabolite, and opiates on 09/28/2020. The following result(s) was obtained:

Presumptive positive for cannabinoids

(test conducted by Ayodele Morris, Forensic Scientist 2)

ST-20-06725-A was tested by Liquid Chromatography/Tandem Mass Spectrometry for cannabinoids on 12/28/2020. The following result(s) was obtained:

Carboxy-THC	**positive**
THC	**17 ± 4.6 ng/mL (k=3, 99.7% confidence level)**

(test conducted by Asa Louis, Forensic Scientist 3)

Aaron M. Sachs certifies under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct: Unless indicated otherwise, I performed all testing reported above, for the submitted evidence. The document on which this certification appears is a true and complete copy of my official report and I have technically reviewed all relevant pages of testing documentation in the case record. The tests were administered according to testing methods approved by the state toxicologist pursuant to WAC 448-14-010, -020, -030 and/or RCW 46.61.506(3) by an analyst possessing a valid permit issued by the state toxicologist.

Examined by:

Aaron M. Sachs
Forensic Scientist 3
Executed this 11th day of January, 2021
at Seattle, Washington

Reviewed by:

Reviewer
Date: 1/15/21

Hall-Haught v. State - Historical Timeline

- *City of Seattle v. Wiggins*, 515 P.3d 1029 (2022) – admitting toxicology report through reviewing toxicologist and not primary analyst violated confrontation clause.

- *State v. Hall-Haught*, 27 Wn. App. 2d 1042 (2023) – admitting toxicology report through reviewing toxicologist did not violate the confrontation clause.

Hall-Haught v. State – Historical Timeline

- Prosecutors experience uncertainty in court when:
  - Relying on reviewing toxicologist when primary analyst is not available
  - Relying on primary analyst only when additional scientists were involved in testing process

- *Hall-Haught* is already in appellate process when United State's Supreme Court release new confrontation clause rule abrogating *Williams* that the *Lui* court relied upon….

Hall-Haught v. State – Historical Timeline

- *Smith v. Arizona*, 144 S.Ct. 1785 (2024) - if a forensic-testing expert conveys an out-of-court statement in support of his opinion, and the statement supports that opinion only if true, then the statement has been offered for the truth of what it asserts, as required for the admission of the statement to be barred by the Confrontation Clause
  - New language discussing hearsay relied upon by testifying expert introduced into analysis
  - Clear that Washington Supreme Court must weigh in on
    - whether *Lui* is good law in light of *Smith v. Arizona*, and
    - Whether a reviewing scientist may testify in place of the primary analyst

Hall-Haught v. State – Decision
2025 WL 1523492

- Primary analyst who created the toxicology report was a "witness against" defendant for purpose of confrontation clause
- Laboratory report is testimonial in nature and implicates confrontation clause
- Report was admitted to prove truth of the matter asserted at trial, violated confrontation clause when reviewing toxicologist testified instead of primary analyst
  - *Lui* is no longer good law
  - Prosecutors are not permitted to rely on reviewing toxicologist
  - Bench scientist / Primary analyst relationship not before court … yet

Hall-Haught v. State – Impact on Toxicology Laboratory

- Ethanol cases only impacted when primary analyst is not available to testify
- Options available when primary analyst is unavailable
  - Contract with former employees to return to testify
    - Must be budgeted
    - Limits on subpoena power of District and Municipal Courts – CrRLJ 4.8
    - Law on remote appearance antiquated
  - Retesting sample
    - Burdensome, not possible in all cases
    - Stability of impairing substances in sample over time is variable

Hall-Haught v. State – Impact on Toxicology Laboratory

- Drug cases likely to experience more issues
  - Batch testing means report may include work by multiple scientists
    - Resource constraints force batch testing and stop testing protocols
  - Increases burden on lab for testimony

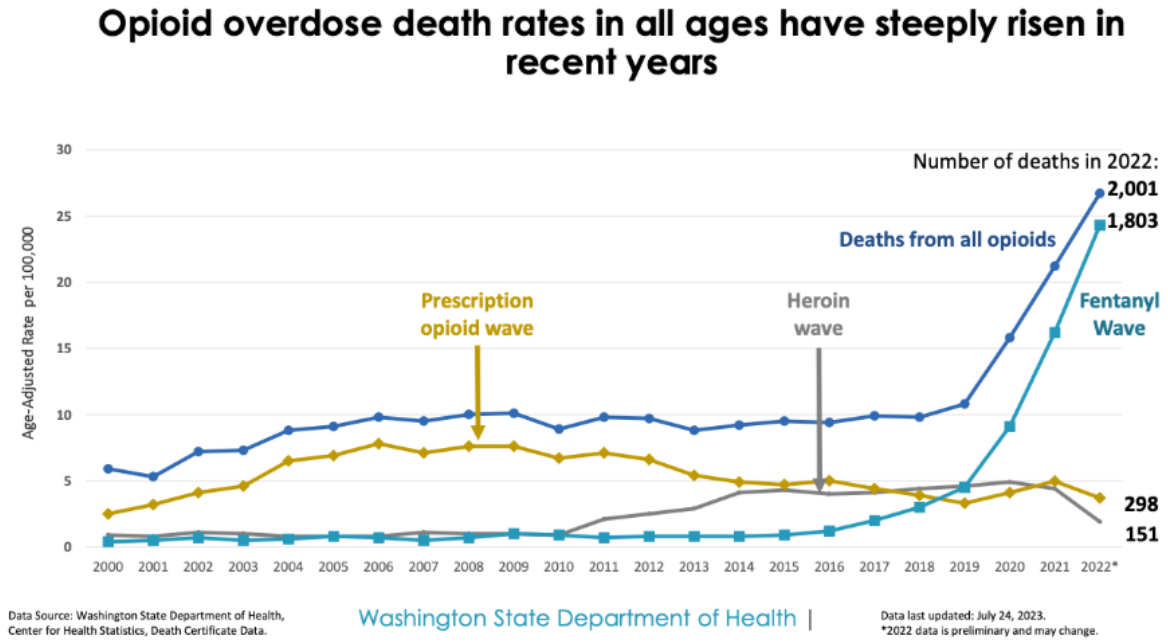
- Blood testing is only scientific evidence available for drug impairment
  - Huge increase in drug DUI cases in the past decade

Context & Historical Timeline

- 2012 - Initiative 502 legalizes cannabis in WA for recreational use… Retail stores being to open in 2014 …

Context & Historical Timeline

- ~2014 the opioid crisis gathers steam, including overdose deaths and frequency of drugs in toxicology reports in impaired driving cases.



Hall-Haught v. State – Impact on Impaired Driving Enforcement

- Delay in adjudication may lead to inadmissible toxicology evidence if analyst is no longer available for testimony
- Enforcement of drug impaired offenders suffers most
- Trials take longer, fewer can be completed in allotted time
- Logistics arrangements more difficult with multiple witnesses traveling
- Further case law developments likely at State and Federal level

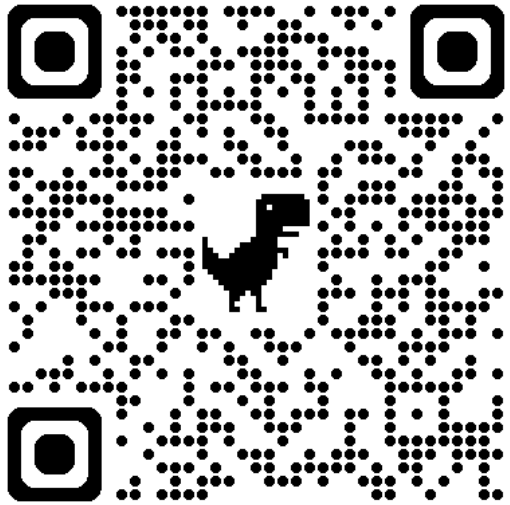
QUESTIONS

TSRP Bradley Lane, City of Seattle

Bradley.lane@seattle.gov

TSRP Michelle Rutherford, Snohomish County

mrutherford@snoco.org



Bonus Topic: What law applies to electric modes of transportation?

Electric Bikes, Scooters, Electric Personal Assistive Mobility Device, and More

- What is lawful to ride on the roadways? Sidewalks?
- Is a helmet required?
- Is a license or motorcycle endorsement required?
- Is vehicle registration required?
- Turns signals, mirrors, and horns, Oh My!