

Race must be considered in determining legality of police stops and seizures, WA state Supreme Court rules

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The Washington state Supreme Court on Thursday ruled that a person's race, and law enforcement's long history of discrimination against people of color, should be taken into account when determining the legality of police seizures.

The court also clarified state law to say that police have seized a person if an objective observer would conclude that the person was not free to leave or refuse a request. But, the court wrote, that "objective observer" must be aware that discrimination and biases "have resulted in disproportionate police contacts, investigative seizures, and uses of force against Black, Indigenous, and other People of Color."

"Today, we formally recognize what has always been true: In interactions with law enforcement, race and ethnicity matter," Justice Mary Yu [wrote for the unanimous court](#). "Therefore, courts must consider the race and ethnicity of the allegedly seized person as part of the totality of the circumstances when deciding whether there was a seizure."

The case concerns Palla Sum, a person of color, who was sleeping in his car in Tacoma, when police came upon him. An officer ran his plates and determined the car was not stolen.

The officer knocked on the window, asked Sum questions and asked him for identification.

Sum gave a false name and the officer went back to his cruiser to check records. Sum then drove off, crashed into a front lawn and was caught as he attempted to run away.

He was subsequently charged with making a false statement, attempting to flee police and unlawful possession of a firearm, after a gun was found in his car.

But Sum argued his statements to police should be inadmissible, because he was "unlawfully seized" by police after the officer asked for his identification and said that had been car thefts in the area.

From the moment the officer knew the car wasn't stolen, Sum argued, he didn't have "reasonable suspicion" to seize Sum, and that's exactly what their subsequent interaction amounted to.

“A reasonable person in Sum’s position would not have felt free to ignore the officer,” Sum’s lawyers wrote. They urged the court to adopt a new standard, for what constitutes an illegal seizure. The hypothetical “reasonable person” should be “familiar with patterns of policing in America and the risks a person of color takes in walking away from or disregarding police interaction.”

The court agreed, writing that an objective observer would have concluded that Sum was not free to refuse the officer’s requests “due to the deputy’s display of authority.”

The officer did not ask about Sum’s health or safety or ask if he needed assistance, the court wrote, instead he implied he was investigating him for car theft.

“At that point, Sum was seized,” Yu wrote, “this seizure was not supported by a warrant, reasonable suspicion, or any other authority of law.”

Sum’s false statement, was inadmissible, the court found. His other two convictions, which were not challenged, remain. He is currently in prison in Oregon.

In an amicus brief, public defender and civil rights groups argued that law enforcement’s history of discriminating against people of color needs to be reflected in how the law is interpreted.

“Centuries of violence and dehumanizing treatment of people of color have required BIPOC communities to develop survival strategies that demand over-compliance with law enforcement,” the groups, including the King County Department of Public Defense and the ACLU of Washington, wrote. “For courts to continue to blind themselves to that reality when evaluating the freedom an individual would feel to unilaterally terminate a law enforcement contact is to further enshrine existing racial disparities into the legal system.”

The “objective observer” standard that the court adopted evolved from a first-in-the-nation [2018 rule change](#) that the court implemented to try to improve diversity on juries.

For years, prosecutors and defense attorneys have been able to exclude a certain number of potential jurors for virtually any reason. They couldn’t exclude jurors explicitly because of race, but if a prosecutor moved to exclude a Black juror it was virtually impossible to prove that it was because of race.

But the state Supreme Court changed the rules to ban any juror challenges based on “implicit, institutional, and unconscious” racial bias. If an “objective observer” could see race as a factor, the juror challenge should not be allowed.

At least 13 other states have since made similar changes or are considering them.

In both the jury selection rule change and the ruling on what constitutes a seizure, the court found that “purposeful, explicit discrimination” is not necessary for there to be a problem. Rather, the rule change and the ruling, seek to address implicit racial bias that

“exists at the unconscious level, where it can influence our decisions without our awareness.”

Jennifer Winkler, Sum’s attorney, said the ruling “brings seizure law in our state into the 21st century.

“It sets out better, fairer, and more objective guidelines for judicial decision-making,” Winkler said.