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Contents

ARREST: Supporting Affidavit

Wells v. State
ACA, No. CR-17-685, 2018 Ark. App. 391, 9/5/18

Anfernee Wells requested to suppress evidence of his arrest because, he argues, there was no supporting affidavit for the arrest warrant when the warrant first issued. Part of what has fueled Wells's suppression effort is that the reasonable-cause affidavit that supported the July 28 arrest warrant was dated September 28—a full two months after the arrest warrant itself was generated.

READ THE COURT OPINION HERE:
https://cases.justia.com/arkansas/court-of-appeals/2018-cr-17-685.pdf?ts=1536160687

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CIVIL RIGHTS: Emergency Search; Duty to Investigate

Linicomm v. Hill
CA5, No. 17-10101, 9/5/18

Vernon Linicomn was awarded primary custody of his two minor children in his divorce from their mother, Linda, who suffers from mental disorders that render her unfit to be a custodial parent. After the divorce, and prior to the incident involved in this lawsuit, Linda falsely reported to the City of Dallas's Police Department on numerous occasions that the welfare of the children was endangered while they resided with Vernon. Although the police responded on each occasion, no action was taken against Vernon because each of the reports proved to lack substance or justification.

On October 23, 2011, at approximately 4:40 p.m., Linda called 911 regarding the welfare of the children and told dispatch that Vernon was "abusing" the children. Officers Gilbert and Oliver went to Vernon's house, knocked on the door, but received no response; they departed without taking further action. At 9:20 p.m. that same night, Linda again called the police department and reported a "disturbance" pertaining to the children at Vernon's residence. Officers Hill and Matthews responded and arrived at Vernon's house between 9:30 and 10:41 p.m. Upon arrival, the officers met Linda and Dallas paramedics and firefighters outside. Linda informed the officers that her daughter was "lethargic and sick" inside Vernon's house. The paramedics stated that they had been unable to gain entry to Vernon's house. The officers tried to contact Vernon by calling his cell phone and knocking repeatedly at his front door. Vernon did not respond.

Officer Hill contacted his supervisor, Sergeant Melquiades Irizarry, who arrived on the scene soon after. Sergeant Irizarry spoke with Linda and directed Hill to announce through the police public address system that they would enter the house—with or without Vernon's cooperation. Eventually, Vernon answered the door. Vernon advised Sergeant Irizarry and Officer Hill, who were standing at the threshold of the doorway, that his daughter was asleep and did not need medical assistance. Meanwhile, Officer Matthews stood off to the side of the door with her back to Vernon and the other officers. The officers did not have a warrant to enter Vernon's house. Vernon refused to allow anyone entry without a warrant. Sergeant Irizarry placed his hand on Vernon's shoulder and asked him to step aside so that paramedics could enter and verify that Vernon's daughter was safe. Vernon pushed Sergeant Irizarry's hand away. Officer Hill then clasped Vernon's right arm and shoulder. Vernon pushed Officer Hill away, retreated, and tried to close the door to the house. Officer Hill and Sergeant Irizarry prevented Vernon from closing the door, and Vernon ran toward the back of the house. Officer Hill ran after Vernon. Officer Matthews entered the house but remained near the front door. Inside the house, a struggle ensued. Officer Hill grabbed Vernon and tried to take him to the floor. Vernon resisted. Sergeant Irizarry sprayed Vernon with pepper spray. Vernon was then handcuffed, escorted outside, and treated by paramedics. The officers spoke with Vernon's children and confirmed that they had been asleep and were not ill. The children also confirmed that Linda had a history of making exaggerated claims about their welfare.

Vernon Linicomn brought this 42 U.S.C. § 1983 action asserting that Dallas, Texas, police officers violated his Fourth Amendment rights by forcibly entering his house without a warrant, without his consent, and without reason to believe that any person inside was in imminent danger of harm; and by assaulting and arresting him with excessive force.

READ THE COURT OPINION HERE:
http://www.ca5.uscourts.gov/opinions/pub/17/17-10101-CV0.pdf

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CIVIL RIGHTS: Execution of Search Warrant; Qualified Immunity
Edwards v. Joliff-Blake
CA7, No. 17-1848, 11/1/18

Chicago Officer Michael Jolliff-Blake's confidential informant, "Doe," reported buying heroin from "Fred." Jolliff-Blake's warrant affidavit stated that Doe had bought heroin from Fred for a couple of months and Fred sold the heroin from a particular

home's basement. Further, Doe had bought heroin from Fred that day and saw Fred with over 100 baggies of heroin. Jolliff showed Doe a photo of the Edwards' home, which Doe confirmed was the location. Jolliff drove Doe to the location, where Doe confirmed that identification. Jolliff used a database to obtain a photograph of Freddy Sutton, who Doe identified as "Fred."

Jolliff's supervisor and an assistant state's attorney approved the warrant application. Aware of Doe's criminal history, the judge questioned Doe under oath and issued the warrant. Officers conducted the search four days later. Edwards and his daughter were outside and prevented from entering their home during the search, which took about two hours and uncovered no illegal drugs. Nor did the police find Sutton. The Edwards had minor property damage.

They filed suit under 42 U.S.C. 1983.

READ THE COURT OPINION HERE:
http://media.ca7.uscourts.gov/cgi-bin/rssExec.pl?Submit=Display&Path=Y2018/D11-01/C:17-1848:J:Scudder:aut:T:fnOp:N:2243890:S:0

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CIVIL RIGHTS:

Excessive Use of Force; Taser
Glasscox v. City of Argo
CA11, No. 16-16804, 9/12/18

Bob Glasscox was driving his pickup truck down the interstate in Alabama when he experienced an episode of diabetic shock. Physically unable to control his truck, Mr. Glasscox began driving erratically at high speeds. Concerned motorists reported Mr. Glasscox's driving to law enforcement, and David Moses from Argo City Police responded and gave chase. After Mr. Glasscox's truck came to a stop in the median, Officer Moses approached the truck and, while yelling at Mr. Glasscox to get out, tased him four times in rapid succession. The incident was captured on Officer Moses's body camera, which recorded Mr. Glasscox's attempts—between taser shocks—to comply with the officer's orders.

READ THE COURT OPINION HERE:
http://media.ca11.uscourts.gov/opinions/pub/files/201616804.pdf

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CIVIL RIGHTS:

Jail Policy; Strip Search and Delousing
Williams v. City of Cleveland
CA6, No. 16-4347/17-3508, 11/2/18

The City of Cleveland had in place a long-time policy of conducting group strip searches during the intake process. It appears, however, that groups of two or three detainees were only strip searched together in circumstances when large numbers of inmates were waiting to be processed. The "need" for this particular aspect of the search procedure was, therefore, one of expediency. Large groups of inmates were often transported to the jail at one time.

Tynisa Cleveland brought suit against the City of Cleveland, on behalf of herself and others similarly situated, pursuant to 42 U.S.C. § 1983. She alleged that the City's intake procedures conducted at its House of Corrections—consisting of strip searches and mandatory delousing—violated the Fourth Amendment to the U.S. Constitution.

READ THE COURT OPINION HERE:
http://www.opn.ca6.uscourts.gov/opinions.pdf/18a0245p-06.pdf

CIVIL RIGHTS:
Jail; Sexual Contact with Inmate
Martin v. Milwaukee
CA7, No. 18-1060, 9/14/18

In 2012, Milwaukee County hired Xavier Thicklen as a jail corrections officer. A zero-tolerance policy forbids corrections officers from having any sexual contact with inmates. The county repeatedly instructed Thicklen not to engage in any such contact and trained him to avoid it. Thicklen gave answers to quizzes indicating he understood the training. He nonetheless raped Shonda Martin in jail. Martin sued him and sued the county for indemnification. A jury awarded her $6,700,000 against the county, finding that the assaults were in the scope of employment. The Seventh Circuit reversed.

READ THE COURT OPINION HERE:
http://media.ca7.uscourts.gov/cgi-bin/rssExec.pl?Submit=Display&Path=Y2018/D09-14/C:17-3216:J:Manion:aut:T:fnOp:N:2218849:S:0

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CIVIL RIGHTS: Knock and Talk; Curtilage; Officers Surround a House Without a Warrant or Emergency Circumstances
Morgan v. Fairfield County, Ohio
CA6, No. 17-4027, 9/6/18

Neil A. Morgan's home, on a one-acre lot, displayed no-trespassing signs and was not readily visible to neighbors. The back has a second-story balcony, accessible only from inside the house, and not visible from the front; a fence and trees block the views from neighboring houses. The county's Street Crime Reduction and Apprehension Program (SCRAP) unit received anonymous tips that Morgan and Anita L. Graf were growing marijuana and cooking methamphetamine. SCRAP had conducted a 'knock and talk' a year earlier and given Morgan and Graff a warning.

SCRAP went to the house and, following standard practice, surrounded it before knocking. Officers stood five-to-seven feet from the house and could see inside. Deputy Campbell knocked and spoke with Graf, who shut the door, remaining inside. Meanwhile, an officer in the back noticed marijuana plants growing on the balcony. Campbell opened the door, entered, and brought them outside to wait for a search warrant. Officers found weapons, drugs, and drug paraphernalia.

On appeal, the denial of their suppression motion was overturned and their convictions vacated. After dismissal of the charges, Plaintiffs filed a 42 U.S.C. 1983 action. The Sixth Circuit reversed its dismissal as to the county and officials but affirmed that individual officers were entitled to qualified immunity.

"It is well-established that a warrantless entry of the area immediately surrounding the home is presumed unreasonable unless it meets an exception. SCRAP, following official policy, entered that constitutionally-protected area without a warrant and without satisfying any of the narrow exceptions, violating the Fourth Amendment. Because of then-existing Sixth Circuit Fourth Amendment law, however, it was not clearly established that SCRAP could not do what it did."

READ THE COURT OPINION HERE:
http://www.opn.ca6.uscourts.gov/opinions.pdf/18a0199p-06.pdf

CIVIL RIGHTS:

Precision Immobilization Technique (PIT); Refusal to Comply with Demand

Moore-Jones v. Quick

CA8, No. 18-1045, 11/28/18

Jerica Jena Moore-Jones passed Arkansas State Trooper Anthony Todd Quick's marked police car. Quick checked and found her registration was expired and began a traffic stop, which was recorded on his dash-cam. Quick pulled behind Moore-Jones, activating his emergency lights, spotlight, and sirens at 8:23 p.m. She decelerated and pulled onto the shoulder, which was narrow and unlit. She returned to the road, accelerating to 35-38 MPH, her speed for the rest of the pursuit. The posted speed limit was 55 MPH. At 8:24, she continued past the last exit before the nearest city. After the exit, Quick began a Precision Immobilization Technique (PIT) maneuver, striking Moore-Jones's right-rear fender with his left-front bumper, causing her car to spin into a ditch, hitting a cement culvert. Moore-Jones and her child were treated and released at a hospital. She was cited for expired tags and failure to yield to an emergency vehicle, both misdemeanors. She sued Quick for excessive force and assault and battery. The Eighth Circuit held that Quick is entitled to qualified immunity.

"The right to be free from a PIT maneuver in these circumstances was not sufficiently definite. From a reasonable officer's perspective, Moore-Jones refused to comply with commands to pull over. At the time, Quick was justified in using some force to secure compliance."

READ THE COURT OPINION HERE:

http://media.ca8.uscourts.gov/opndir/18/11/181045P.pdf

CIVIL RIGHTS:

Privacy Violation

Ioane v. Hodges

CA9, No. 16-16089, 9/10/18

Shelly Ioane filed suit for damages under 42 U.S.C. § 1983 against Internal Revenue Service (IRS) Agent Jean Noll, alleging that the agent violated Ioane's Fourth Amendment right to bodily privacy when, during the lawful execution of a search warrant at Ioane's home, the agent escorted Ioane to the bathroom and monitored her while she relieved herself. The panel held that weighing the scope, manner, justification, and place of the search, a reasonable jury could conclude that the agent's actions were unreasonable and violated Ioane's Fourth Amendment rights. The agent's general interests in preventing destruction of evidence and promoting officer safety did not justify the scope or manner of the intrusion into Ioane's most basic subject of privacy, her naked body. The panel further held that a reasonable officer in the agent's position would have known that such a significant intrusion into bodily privacy, in the absence of legitimate government justification, was unlawful. The agent therefore was not entitled to qualified immunity.

READ THE COURT OPINION HERE:

https://cdn.ca9.uscourts.gov/datastore/opinions/2018/09/10/16-16089.pdf

CIVIL RIGHTS:

Qualified Immunity; Deadly Force
Conlogue v. Hamilton
CA1, No. 17-2210, 10/11/18

This case involves the fatal shooting of an armed civilian by a state trooper following a prolonged standoff. The First Circuit affirmed the district court's grant of summary judgment to Sergeant Scott Hamilton, holding that Hamilton was entitled to qualified immunity.

We cannot say that an objectively reasonable police officer standing in Hamilton's shoes would have thought it a violation of the law to deploy deadly force in these highly charged circumstances. Under these circumstances, Hamilton reasonably perceived Conlogue to be an imminent threat, with no less drastic means of remediation at hand.

As we said at the outset, this is a tragic case. But the facts of record make pellucid that the police were faced with a nightmare scenario — a scenario in which an armed and disturbed individual wholly disregarded serial entreaties to disarm and engaged in a course of conduct that gradually elevated the level of threat. Tension mounted over time, and when the armed individual took actions that placed officers at imminent risk of serious bodily harm, Hamilton— reasonably concluding that no less drastic means of remediation were feasible— fired the fatal shot. Under the totality of the circumstances, we conclude that the district court's entry of summary judgment in Hamilton's favor on the basis of qualified immunity must be affirmed.

READ THE COURT OPINION HERE:
http://media.ca1.uscourts.gov/pdf.opinions/17-2210P-01A.pdf

EMPLOYMENT LAW:

Age Discrimination in Employment Act
Mount Lemon Fire District v. Guido
USSC, No. 17-587, 1/6/18

John Guido and Dennis Rankin filed suit, alleging that the Mount Lemmon Fire District, a political subdivision in Arizona, terminated their employment as firefighters in violation of the Age Discrimination in Employment Act of 1967 (ADEA). The Fire District responded that it was too small to qualify as an "employer" under the ADEA, which provides: "The term 'employer' means a person engaged in an industry affecting commerce who has twenty or more employees…The term also means (1) any agent of such a person, and (2) a State or political subdivision of a State…" 29 U. S. C. §630(b).

The United States Supreme Court ruled in favor of the plaintiffs. "Section 630's two-sentence delineation and the expression 'also means' establish separate categories: persons engaged in an industry affecting commerce with 20 or more employees and states or political subdivisions with no attendant numerosity limitation. Reading section 630(b) to apply to states and political subdivisions regardless of size gives the ADEA broader reach than Title VII, but this disparity is a consequence of the different language Congress chose to employ. The Court noted that the Equal Employment Opportunity Commission has, for 30 years, interpreted the ADEA to cover political subdivisions regardless of size, and a majority of the states impose age discrimination proscriptions on political subdivisions with no numerical threshold."

READ THE COURT OPINION HERE:
https://www.supremecourt.gov/opinions/18pdf/17-587_n7ip.pdf

EVIDENCE:
Constructive Possession; Items Thrown from Vehicle in Police Pursuit
Terry v. State of Arkansas
ACA, CR-18-50, 2018 Ark. App. 435, 9/26/18

On March 12, 2017, Deputy McDonald of the Pulaski County Sheriff's Office initiated a late-night traffic stop on the vehicle driven by Calvin Wallace Terry in North Little Rock because the vehicle's license-plate light was not operational. Terry was the only person in the vehicle. After Deputy McDonald requested Terry's driver's license, Terry drove off, and a police pursuit ensued.

The pursuit reached a speed of 85 miles per hour but decreased to 45 miles per hour in a residential area along Smalley Road. According to Deputy McDonald, he witnessed Terry throw a black object out of a window on the vehicle's passenger side along the south side of Smalley Road during the pursuit. The pursuit ended on Smalley Road when Terry surrendered. The pursuit lasted approximately ten minutes. Terry was subsequently arrested and taken to the Pulaski County Detention Facility after Deputy McDonald had completed an inventory search of the vehicle and waited for assistance.

During the search of Terry's person and vehicle, Deputy McDonald found methamphetamine residue, marijuana, and drug paraphernalia. Additionally, the detention-facility staff discovered a nylon gun holster deeply hidden in Terry's pants. After Terry's processing at the detention-facility, Deputy McDonald returned to the area where he had observed the black object being thrown out of the vehicle's window. There, Deputy McDonald discovered a bag of narcotics, which later tested positive for methamphetamine, and a gun identified as a .45-caliber Glock 30.

On appeal, Terry argues that the circuit court erred in denying his motion to dismiss the two felony charges at issue—possession of methamphetamine and simultaneous possession of methamphetamine and a firearm—because the State failed to introduce substantial circumstantial evidence that he actually or constructively possessed the contraband.

READ THE COURT OPINION HERE:
https://cases.justia.com/arkansas/court-of-appeals/2018-cr-18-50.pdf?ts=1537975185

SEARCH AND SEIZURE: Child Pornography; Probable Cause; Staleness
United States v. Contreras
CA5, No. 17-11271, 10/1/18

Sebastian Contreras contends that uploading two images of child pornography over the course of a few days from a cell phone connected to a residential WiFi network does not establish probable cause to search that residence for evidence of child pornography, because the images could conceivably have been uploaded by a temporary guest or an unauthorized neighbor. He also contends that information in the affidavit was stale because Homeland Security Investigation observed two Kik uploads in April 2016 but did not seek a warrant until March 2017.

The Court of Appeals for the Fifth Circuit offered guidance on both of these issues.

READ THE COURT OPINION HERE:
http://www.ca5.uscourts.gov/opinions/pub/17/17-11271-CR0.pdf

SEARCH AND SEIZURE:

Communication with a Seized Cell Phone

United States v. Brixen

CA7, No. 18-1636, 11/7/18

Snapchat user "Snappyschrader" identified himself as a 31-year-old male and agreed to assist a 14-year-old female in purchasing undergarments. He was actually communicating with Altoona Detective Baumgarten. After agreeing to meet at a supermarket, officers identified "Snappyschrader," actually, Edmund J. Brixen, arrested him, and seized his phone. To illustrate to Brixen that he had been communicating with an undercover detective, Baumgarten sent a message to Brixen's phone from the undercover Snapchat account. Brixen witnessed the notification appear on his phone screen.

Brixen moved to suppress this evidence arguing it constituted an unreasonable search of his cell phone. The Seventh Circuit affirmed the denial of the motion, noting that Brixen conceded that evidence recovered under a subsequent search warrant remains admissible because even after excision of the tainted evidence from the supporting affidavit, it still establishes probable cause. Upon arrest, Brixen no longer had a right to keep his phone in his pocket; once the phone was seized the notification projected on the screen was plain to see. Disabling notifications that automatically appear on the phone would have preserved the message as private but Brixen simply had no reasonable expectation of privacy in a conspicuous notification once his phone was seized.

READ THE COURT OPINION HERE:

http://media.ca7.uscourts.gov/cgi-bin/rssExec.pl?Submit=Display&Path=Y2018/D11-07/C:18-1636:J:Bauer:aut:T:fnOp:N:2246651:S:0

SEARCH AND SEIZURE:

Emergency Search; Plain View Doctrine

State of Colorado v. Pappan

CSC, No. 18SA56, 2018 Co. 71, 9/10/18

Around 6:40 in the evening, an individual called 911 to report that he observed a man in the green house directly across the street pointing a laser-sight rifle at him. Police arrived to investigate. Officers asked Pappan to come out of the house to speak with them on the porch. Because he disregarded an officer's commands while on the porch, he was placed in handcuffs and detained. Concerned for their safety, the officers "cleared" the house for other occupants. They made a peaceable entry into the house, albeit with their guns drawn. Inside, in an upstairs room, they saw in plain view and collected two laser-sight rifles. Pappan was charged with felony menacing, reckless endangerment, and disorderly conduct.

Following a pretrial hearing, the trial court granted Pappan's motion to suppress evidence obtained during the search of his home, finding that "it would have been better practice for the police to obtain a search warrant." The Colorado Supreme Court reversed the trial court's suppression order, finding the officers' warrantless search was justified by exigent circumstances. More specifically, the Court concluded: (1) the officers had an objectively reasonable basis to believe there was an immediate need to protect their lives or safety; and (2) the manner and scope of the search was reasonable. Furthermore, the Court held the warrantless seizure of the laser-sight rifles was justified by the plain view doctrine.

READ THE COURT OPINION HERE:

https://cases.justia.com/colorado/supreme-court/2018-18sa56.pdf?ts=1536686624

SEARCH AND SEIZURE:

Garage Door Opener

United States v. Correa

CA7, No. 16-2316, 11/5/18

DEA task force members lawfully found drugs in a traffic stop and seized several garage openers and keys they found in the car. An agent took the garage openers and drove around downtown Chicago pushing their buttons to look for a suspected stash house. He found the right building when the door of a shared garage opened. The agent then used a seized key fob and mailbox key to enter the building's locked lobby and pinpoint the target condominium. Another agent sought and obtained the arrestee's consent to search the target condo. The search turned up extensive evidence of drug trafficking.

The Seventh Circuit affirmed the district court's denial of a motion to suppress the drug trafficking evidence: "While the use of the garage door opener was a search and was 'close to the edge,' it did not violate the Fourth Amendment, which does not forbid this technique to identify the building or door associated with the opener, at least where the search discloses no further information. Use of the key fob and mailbox key in the lobby was not unlawful because the defendants had no right to exclude people from the lobby area. At all other stages of the investigation, the agents also complied with the Fourth Amendment."

READ THE COURT OPINION HERE:

http://media.ca7.uscourts.gov/cgi-bin/rssExec.pl?Submit=Display&Path=Y2018/D11-05/C:16-2316:J:Hamilton:aut:T:fnOp:N:2244952:S:0

SEARCH AND SEIZURE:

Impoundment; Inventory Search

United States v. Davis

CA1, No. 17-1692, 11/20/18

Joseph Davis, a musician, performed at a Hampton, New Hampshire, bar on the evening of July 1, 2016. Davis left the bar following the show but, needing to use the restroom, attempted to return a short while later and was rebuffed on the basis of the bar's no-reentry policy. Instead, Davis obtained the keys to his then-fiancée's vehicle from his brother and, without anyone else in the car, drove a short distance in search of a restroom. Three officers of the Hampton Police Department (HPD), Detective Robinson, and Officers Zigler and Hood, in two separate police vehicles, observed the vehicle leaving the bar and watched it travel, without headlights on, to a nearby parking lot. Once there, Davis stopped the vehicle perpendicularly across a designated handicap parking spot. At that point, the police officers pulled into the lot behind the vehicle, activated their emergency lights, and approached on foot.

As he neared the vehicle, Robinson observed a number of potential signs that Davis was driving under the influence of alcohol and/or marijuana. Robinson informed Davis that he had been driving without his headlights on and inquired whether he had consumed any alcohol that evening. While Davis attributed his erratic driving to his urgent need to use the restroom, Robinson suspected that Davis was impaired and took Davis's license to his cruiser to conduct a background check. Zigler and Hood remained with Davis and the Vehicle.

After the background check indicated that the vehicle was not registered to Davis, Robinson requested that he step out of the vehicle. Davis appeared to have difficulty walking, and admitted

to having had several drinks at the bar following his performance. Zigler also noted a bottle of alcohol in the car door as Davis opened it. Davis failed two of three "field sobriety" tests administered by the officers, and Robinson arrested him on suspicion of driving while intoxicated. The officers then handcuffed Davis and placed him in one of the police vehicles.

Following Davis's arrest, the police officers contacted a tow truck to remove the vehicle. The HPD has a "Motor Vehicle Inventory Search Policy" that dictates guidelines for "conducting a search . . . for the purpose of making an inventory of the contents of a motor vehicle [directed to be] towed by the members of the [HPD]." Under that policy, officers are required to conduct an inventory search whenever, inter alia,

1. The vehicle is being towed under orders of a department member when the owner or custodian of the vehicle is under arrest.

2. The vehicle is towed under orders of a department member because the driver of the vehicle is under arrest and the owner or custodian is not present…

6. The vehicle is illegally parked and is a hazard to traffic if allowed to remain.

Robinson and Zigler testified that, when a driver is arrested for driving under the influence, HPD policy calls for the vehicle to be towed. Both officers also stated that they sometimes permit an unimpaired, licensed person authorized by the arrestee to take the vehicle themselves to save the arrestee the cost of a tow. In this instance, two individuals came forward at the scene of the arrest and identified themselves as Davis's friends but refused Robinson's offer that they take the vehicle away on Davis's behalf.

While waiting for the tow truck, Zigler entered the vehicle to seize the bottle and cups in plain view. Zigler then conducted an "inventory search" of the vehicle as required by the policy quoted above, adding several items to an inventory form but leaving them in the vehicle's locked trunk.

At some point after finishing the inventory search, Zigler reached into the vehicle to place the keys in the ignition for retrieval by the tow truck operator. While doing so, Zigler for the first time saw a handgun located between the driver's seat and the center console. Zigler removed the weapon from the vehicle and noted that it was loaded and had the safety turned off. After unloading it and securing the safety, Zigler brought the handgun to the police station. Zigler testified that he took the weapon both out of concern for public safety and out of reluctance to leave an item of value in the vehicle.

On October 19, 2016, Davis was charged with being a felon in possession of a firearm in the District of New Hampshire. On November 23, 2016, he moved to suppress the handgun on the basis that the search of the vehicle resulting in its discovery was unconstitutional. The district court held two days of hearings, and ultimately denied Davis's motion on the basis that the handgun in question was discovered pursuant to the community caretaking exception. In doing so, the court credited testimony from Robinson and Zigler that the vehicle was illegally parked and posed a traffic hazard, and that no viable, willing drivers presented themselves to remove the vehicle at the time of Davis's arrest. The district court also credited Zigler's testimony that, when he discovered the handgun in the vehicle, he was reaching back into the car to place the keys in the ignition for the purpose of facilitating the tow, rather than acting for an investigatory purpose.

Davis raises two issues in this appeal. First, he contends that the district court erred in denying his motion to suppress the handgun in question, which he claims was discovered during an unconstitutional search of his vehicle. He also argues that his conviction was not supported by sufficient evidence of his knowing and intentional possession of the weapon.

READ THE COURT OPINION HERE:
http://media.ca1.uscourts.gov/pdf.opinions/17-1692P-01A.pdf

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SEARCH AND SEIZURE:

Probable Cause; Appearance
United States v. Perry
CA8, No. 17-3236, 11/15/18

A 911 caller reported "shots fired" outside a bar. The caller described the shooter as a "taller" black man with a goatee, wearing a white shirt and dark pants. A few blocks from the bar, police officers saw Perry and another man crossing the street. Perry—the taller of the two—appeared to have a goatee and to be wearing a white shirt and dark pants. After briefly making eye contact with the police, the two men split up. Perry walked between some buildings to a parking lot. The police circled around the block. They found him standing next to a car, on the passenger side. They could then see that although the back and sleeves of his shirt were white, the front was dark blue or black. They could also see he had a full beard that was longer around his chin, not a goatee. One officer went to talk to Perry. The other began checking the area for evidence. Through the windshield of the car Perry was standing next to, he saw a handgun and two magazines under the passenger seat. The officers handcuffed and arrested Perry. He was charged with possessing the handgun from the car and three bullets the police found in his pockets. Perry argues the district court should have suppressed the bullets because the police did not have probable cause to arrest him.

READ THE COURT OPINION HERE:
https://www.govinfo.gov/content/pkg/USCOURTS-ca8-17-03236/pdf/USCOURTS-ca8-17-03236-0.pdf

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SEARCH AND SEIZURE:

Search of Cellular Telephone
Derrick Leon Johnson vs. State of Arkansas
Ark App., CR-17-887, 9/19/18

The Arkansas Court of Appeals considered the question of viability of a search warrant of a cell phone, in a case involving child pornography, in a case which arose over allegations by an eleven-year-old girl. Originally, the trial court granted defendant's motion to suppress because of an error in the arrest warrant's affidavit, referencing the house when it should have noted evidence seized from defendant's person. On a second attempt, there was a different result, and the trial court denied the motion to suppress.

"The U.S. Supreme Court, in Riley v. California, 134 S. Ct. 2473, 2493 (2014), ruled a search warrant is required for search of a cell phone, even if it is seized incident to an arrest. In Arkansas, our criminal civil procedural rules, Rule 13.1, control searches as well. Here, there was no error in denying the motion to suppress."

READ THE COURT OPINION HERE:
https://opinions.arcourts.gov/ark/courtofappeals/en/item/344451/index.do?q=Johnson

SEARCH AND SEIZURE:

Stop and Frisk; Reasonable Suspicion

United States v. Reddick

CA8, No. 17-2741, 11/30/18

On January 14, 2014, police responded to a domestic relations call involving a vehicle near 712 Clearlake in Blytheville, Arkansas. The suspect involved in the incident fled the vehicle on foot. Officer Dannar was left to secure the scene.

The incident had caused a crowd of onlookers to gather which complicated Dannar's task. While Dannar was securing the scene and instructing onlookers to stay back, a man later identified as Thomas Reddick directly approached Dannar and the car. Dannar told the man to stop, stating, "If you're coming after the car, you're not getting it." Dannar later explained this command by relating past experiences where persons who have no legitimate ownership interest in a vehicle abandoned during a police interaction appear and falsely claim ownership or a right to possess the abandoned vehicle.

Reddick responded to Dannar's instructions by gesturing with his arms at Dannar without removing his hands from his large, bulky coat pockets. Reddick did not follow Dannar's instructions to stop approaching the vehicle. At approximately the same time, Sgt. St. Laurent arrived to aid Dannar at the scene. Dannar told St. Laurent that an unidentified man (Reddick) was trying to walk onto the crime scene. Dannar asked St. Laurent to identify the man. St. Laurent later testified that based on the urgent tenor of Dannar's voice, he understood that he needed to act quickly.

St. Laurent approached Reddick, who was standing slightly outside the crime scene. Reddick continued to have his hands in his coat pockets. St. Laurent asked him what he was doing and why he would not leave. St. Laurent thought Reddick's answers were "evasive." Reddick claimed not to have any identification on him. St. Laurent noticed that Reddick had his hands in his pockets. St. Laurent repeatedly asked Reddick to remove his hands from his pockets. While Reddick would briefly comply and remove his hands, he kept placing them back in his pockets. St. Laurent later testified that, in his experience, those carrying a weapon will frequently touch it as if to reassure themselves that it is still there.

St. Laurent explained that Reddick's actions made him concerned that the encounter could "evolve into something more." St. Laurent announced that he would pat the man down as a safety precaution and asked the man whether he had anything on him that an officer should know about. Reddick hesitated before saying, "No." As Reddick turned around, his coat swung out, leading St. Laurent to believe that something of some substance was in Reddick's coat pocket. St. Laurent conducted the frisk and found a .38 caliber Smith and Wesson revolver. At trial, Dannar admitted that he knew of no relationship between Reddick and the original domestic relations incident.

Reddick unsuccessfully moved the district court to suppress the firearm on the theory that he was searched in violation of the Fourth Amendment. The district court held that the officer conducted a valid Terry stop. Reddick appeals.

READ THE COURT OPINION HERE:

http://media.ca8.uscourts.gov/opndir/18/11/172741P.pdf

SEARCH AND SEIZURE: Stop and Frisk; Request to Remove Hands from Pockets
United States v. De Castro
CA3, No. 17-1901, 10/3/18

An anonymous source called 911 to report a Hispanic male pointing a gun at juveniles outside a vacant Philadelphia flower shop. The suspect was reportedly wearing a gray shirt, gray pants, and a bucket hat. Office John Mulqueeney, who had worked that area for 13 years and knew about the drug and firearm activity prevalent there, was dispatched. He approached Amin De Castro and his neighbor, who were speaking outside of the vacant flower shop. De Castro was wearing a light gray bucket hat, a gray striped shirt, and gray camouflage pants. Mulqueeney asked De Castro to remove his hands from his pockets. De Castro complied, revealing a pistol grip protruding from his pants pocket. Mulqueeney asked De Castro to raise his hands and then removed a loaded firearm from De Castro's pocket. De Castro had neither identification or a permit to carry the firearm but had a passport from the Dominican Republic. Mulqueeney handcuffed and frisked De Castro. Officer Mulqueeney handcuffed De Castro and frisked him, finding in De Castro's pocket a loaded magazine containing ammunition that matched the firearm.

De Castro was convicted as an alien in possession of a firearm following the denial of his motion to suppress all statements and physical evidence. The Third Circuit affirmed holding that Mulqueeney's request that De Castro remove his hands from his pockets did not constitute a seizure under the Fourth Amendment.

READ THE COURT OPINION HERE:
http://www2.ca3.uscourts.gov/opinarch/171901p.pdf

SEARCH AND SEIZURE:
Stop and Frisk; Use of Handcuffs
United States v. Fiseku
CA2, No. 17-1222-cr, 10/4/18

On September 20, 2014, in Bedford, New York, Sergeant Vincent Gruppuso of the Bedford Police Department was patrolling the streets in a marked patrol car. At approximately 1:15 a.m., Gruppuso saw a white Nissan Pathfinder stopped on a dirt pull-off. Gruppuso pulled up to the vehicle and had a short conversation with the driver, later identified as Jajaga, who appeared to be the only person in the car. Jajaga told Gruppuso that he lived in Staten Island and was in Bedford that night visiting a friend. He was on the pull-off, he explained, because the Pathfinder was having transmission trouble, and he was waiting for a friend who had agreed to bring a tow truck from Brooklyn.

Gruppuso drove on, but as he later testified, the situation "seemed suspicious," particularly because he knew that a nearby house was vacant while awaiting sale, making it a "prime target for… burglary." He decided to circle back and check on the vehicle. On his way back to the pull-off, Gruppuso encountered the Pathfinder driving on a nearby street, less than five minutes after the driver had complained of transmission trouble. Gruppuso followed the Pathfinder to a "park-n-ride" parking lot near the highway.

As he turned into the parking lot, Gruppuso saw the Pathfinder parked in the far corner of the lot, which was ringed by trees. He parked nearby and now observed three men in or near the Pathfinder: Jajaga sitting in the driver's seat, a second individual (later identified as Hughes) sitting in the passenger seat, and a third (later identified as Fiseku) walking around the rear of the vehicle.

Gruppuso radioed for an additional unit to join him, then got out of his car and approached the Pathfinder. Two officers soon arrived in separate police cruisers. By that time, Gruppuso had already begun interacting with Fiseku: after examining Fiseku's driver's license, Gruppuso patted him down (finding no weapons or contraband), then placed him in handcuffs. Working together, the three officers directed Jajaga and Hughes to exit the Pathfinder, then patted them down and handcuffed them as well. Gruppuso testified at the suppression hearing that the three men were handcuffed for officer safety. The officers did not draw their guns, however, because "[t]here was no threat of deadly force at that time."

The officers did not tell the men that they were under arrest, nor did they issue Miranda warnings; rather, they explained that the men "were being detained" while the officers investigated their suspicious activity. The men were then separated for individual questioning, a "common interview tactic," according to Gruppuso.

After hearing all three accounts, which were inconsistent, Gruppuso returned to Jajaga and said he didn't believe Jajaga's story. When asked "if there was anything in the vehicle that shouldn't be there," Jajaga responded, "[N]o, you can look." Id. The officers searched the vehicle and found the following items: baseball caps and a sweatshirt bearing New York Police Department insignia, a gold "repo/recovery agent" badge on a lanyard, a stun gun, a BB gun "replicating" a Colt .45 pistol, a blank pistol "replicating" a .25 automatic, flashlights, walkie talkies, gloves, a screw driver, and duct tape.

The search was complete approximately ten minutes after Gruppuso first arrived in the parking lot. At that point, concerned about a possible home invasion, Gruppuso called in a request for additional units to help canvass the area. The canvass did not reveal any criminal activity.

Fiseku appealed his conviction of conspiracy to commit Hobbs Act robbery.

READ THE COURT OPINION HERE:
http://www.ca2.uscourts.gov/decisions/isysquery/c040ce76-4a43-485c-9549-7dd890c117d1/2/doc/17-1222_opn.pdf#xml=http://www.ca2.uscourts.gov/decisions/isysquery/c040ce76-4a43-485c-9549-7dd890c117d1/2/hilite/

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SEARCH AND SEIZURE:

Voluntary Consent in Domestic Violence Situation; Protective Sweep
United States v. Coleman
CA8, No. 17-2644, 11/27/18

Ashlee Phillips, who resided with Coleman, on August 8, 2014, called 911 to claim that Coleman had punched her in the mouth and had a gun. North Little Rock Police Officer Crowder responded, finding Phillips outside the residence with facial injuries. Crowder entered the residence, where he confronted and arrested Coleman after a struggle. Additional officers responded and discovered firearms and drugs during a protective sweep of the residence and a warrant search the following day. Coleman's motion to suppress argued that all evidence seized from his residence following Officer Crowder's initial entry, including evidence seized in the warrant search, should be suppressed for violations of his Fourth Amendment rights.

READ THE COURT OPINION HERE:
http://media.ca8.uscourts.gov/opndir/18/11/172644P.pdf

SEARCH AND SEIZURE:

Vehicle Stop; Vehicle Registration Issue

State of Nebraska v. Barbeau

NSC, No. S-17-1158, 301 Neb. 293, 10/12/18

On December 11, 2015, Nebraska State Patrol Trooper Gregory Goltz was conducting a "ruse checkpoint" operation at the Giltner interchange on Interstate 80 in Hamilton County, Nebraska. As part of that operation, signs were placed along the Interstate advising drivers there was a State Patrol checkpoint ahead and a drug dog in use. No such Interstate checkpoint actually existed, but troopers monitored vehicles that left the Interstate immediately after passing the sign.

At approximately 2:52 p.m., Goltz saw a Lincoln Town Car leave the Interstate after passing the checkpoint sign. The car stopped at the end of the off ramp, signaled, and turned north onto the Giltner spur. Goltz followed the car, eventually catching up to it and traveling several car lengths behind it. The car was not speeding.

Goltz could see the car had no license plates, but had what appeared to be an in-transit tag mounted inside a black license plate holder on the rear of the car. Portions of the in-transit tag were covered by the top and bottom of the frame, preventing Goltz from reading the state of issuance and some of the numbers and handwriting on the tag. Goltz also noticed some of the handwritten numbers on the in-transit tag were written in red ink; he considered that unusual because he had never seen a Nebraska in-transit tag with red ink before. Goltz initiated a traffic stop.

After the car was stopped, Goltz approached it on foot and was able to read "North Carolina" on the in-transit tag. There were two individuals in the car. Goltz made contact with the driver and explained he had been stopped because his car did not have plates and the trooper could not read the in-transit tag. Goltz asked to see an operator's license and identified the driver as Barbeau.

Goltz asked to see the car's paperwork to determine whether the in-transit tag was "real." Barbeau told Goltz he had recently purchased the car in North Carolina and was driving it back to his home in Oregon. But Barbeau was not able to produce any paperwork or insurance information on the car. When Barbeau was unable to produce any paperwork for the car, Goltz had him step out of the car and walk to the front of Goltz' patrol car. Goltz' plan was to "investigate the vehicle" and obtain additional information from Barbeau about "where the vehicle came from" and Barbeau's travel plans. Goltz then got into his patrol car to run Barbeau's operator's license and wait for backup. Goltz had called for backup, and a canine unit, almost immediately after the stop. According to Goltz, he planned to return to Barbeau's car to take a closer look at the in-transit tag once backup arrived.

Within a few minutes of the initial stop, another trooper arrived on the scene and obtained the passenger's identification information. When Goltz ran the passenger's information, he learned there was an active warrant for his arrest. The passenger was then arrested and handcuffed.

After the passenger was arrested, the dog alerted to drugs in the trunk of Barbeau's car. A subsequent search of the car yielded an AR-15 semiautomatic rifle with ammunition and a 30-round clip; two marijuana pipes; 40 tramadol pills; 60 hydrocodone pills; and $39,575, which was determined to have been used in a controlled substance transaction.

Barbeau was then arrested. Barbeau moved to suppress the evidence obtained from the search of his car. Barbeau argued Goltz did not have probable cause or reasonable suspicion to initiate the traffic stop. Alternatively, he argued the stop should have been terminated as soon as Goltz could read the information on the in-transit tag.

READ THE COURT OPINION HERE:
https://www.nebraska.gov/apps-courts-epub/public/supreme#volumeOpinionsHeading_1

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SEARCH AND SEIZURE:

Vehicle Stop; Vehicle Owner has Outstanding Arrest Warrant

United States v. Pyles

CA6, No. 17-6334, 9/17/18

On April 26, 2017, Robbie Whitis, Jason Whitis, and Joshua Pyles drove from Somerset, Kentucky to Louisville to pick up methamphetamine and marijuana to distribute back in Somerset. On the way home, Brad Ramsey, a trooper with the Kentucky State Police, noticed their car traveling 63 miles per hour in a 70-miles-per-hour zone, amidst other vehicles going much faster. Ramsey followed the car and ran its license plate number through the Kentucky law enforcement database. The database revealed that the car's owner, Angela Burdine, had an outstanding arrest warrant.

Ramsey stopped the vehicle. He approached the car on the rear passenger's side and noticed Pyles stuffing something under a pile of clothes in the back seat. One of the occupants rolled down the window, and Ramsey smelled marijuana. Ramsey called for backup. Together, the officers searched the car and found a loaded .380 caliber handgun, a jar containing marijuana and marijuana cigarettes, a plastic bag containing marijuana, and a shoebox holding over 200 grams of methamphetamine. The officers took the three men into custody. A grand jury indicted all three on drug and firearm charges.

Pyles filed a motion to suppress the evidence.

READ THE COURT OPINION HERE:
http://www.opn.ca6.uscourts.gov/opinions.pdf/18a0204p-06.pdf

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