UofA UNIVERSITY OF ARKANSAS SYSTEM CRIMINAL JUSTICE INSTITUTE

CJI Legal Briefs

Volume 24, Issue 1
Fall 2019

A Publication of the Criminal Justice Institute–University of Arkansas System

Contents

CIVIL RIGHTS: Constitutional Right to Equal Protection—Release of Juvenile Arrest Photograph

A.N. v. Syling
CA10, No. 18-2112, 7/8/19

A.N., then sixteen, was arrested in 2017 by an Alamogordo Police Department (APD) detective pursuant to an arrest warrant. The warrant was issued by a judge in the New Mexico Children's Court based on an affidavit in which an APD detective alleged A.N. had committed a delinquent act, that is, an act "that would be designated as a crime under the law if committed by an adult," N.M. Stat. Ann. § 32A-2-3(A). Because A.N. was less than eighteen years old, she was considered a juvenile and was detained at a juvenile detention facility after her arrest. On the same day A.N. was arrested, two adults were arrested and charged with the same crime referenced in A.N.'s arrest warrant.

Four days after A.N.'s arrest, APD Lieutenant David Kunihiro prepared a news release ("News Release") regarding the arrest of the two adults and A.N., which included the charges brought and the crime allegedly committed. The News Release identified A.N. by name, reported the crime she had been charged with, and stated that she was sixteen and being held at a juvenile detention facility. At APD Executive Assistant Audra Smith's suggestion, the News Release included A.N.'s booking photo. APD Chief Keith Daron Syling and APD Deputy Chief Roger Schoolcraft reportedly approved the News Release before it was released to the public.

The APD, acting through Smith or another as-of-yet unidentified APD employee, provided the News Release to media and news organizations and posted it on APD's public Facebook page. By the next

day, the News Release, including the information related to A.N. and her arrest, had been picked up and published by various media organizations, including TV stations in Albuquerque and El Paso. The APD's Facebook post of the News Release had also been viewed and shared hundreds of times and generated more than 100 comments.

A.N. and her mother, Katherine Ponder, brought this action against Syling, Schoolcraft, Kunihiro and Smith, the defendants, asserting claims under federal and state law. The defendants appeal the district court's denial of their motion to dismiss A.N. and Ponder's equal protection claim under 42 U.S.C. § 1983 based on qualified immunity. Upon review, the Tenth Circuit Court of Appeals, found as follows:

"The clearly established standard for determining whether an official has violated a plaintiff's right to equal protection under the law is not extremely abstract or imprecise under the facts alleged here, but rather is relatively straightforward and not difficult to apply. Stated differently, this general rule is sufficiently specific to have put Defendants on notice in this case that they would violate A.N.'s right to equal protection under the law if they intentionally and without a rational basis differentiated between her and similarly situated juvenile arrestees in applying New Mexico's laws against the disclosure of juvenile arrest and delinquency records. As a result, any reasonable official in the Defendants' shoes would have understood that they were violating the Plaintiffs' equal protection rights."

READ THE COURT OPINION HERE:
https://www.ca10.uscourts.gov/opinions/18/18-2112.pdf

CIVIL RIGHTS:

Deadly Force; Individual with Knife
Swearingen v. Judd
CA8, No. 18-1126, 7/8/19

This case arose from a police shooting in which a suspect was killed. The administrators of the decedent's estate sued the police officer who fired the fatal shots, alleging that he violated the decedent's constitutional rights by using unreasonable force.

During the summer of 2014, Ryan Swearingen, aged 27, and his three children attended a family cookout at the home of his parents, Ivan and Ronda Swearingen, in Fort Madison, Iowa. Ryan and his children planned to spend the night at his parents' home on August 2.

Around 1:16 a.m. on August 3, Fort Madison police captain James Carle spoke with his girlfriend by cell phone while he worked the night shift. Carle's girlfriend reported seeing a man walking outside the house that she shared with Carle. She described him walking into their backyard and then into a back alleyway, where he started slashing the tires of several parked vehicles with a knife.

Carle drove his patrol car to the alleyway and saw a male bent over the rear driver's side tire of Carle's personal vehicle. Upon seeing Carle, the man ran down the alleyway in the opposite direction. Carle pursued the man by car and then on foot. During the pursuit, Carle used his radio to request assistance from other officers. Around 1:46 a.m., Carle saw the suspect enter the Swearingen residence and lock the back door. Carle notified police dispatch that he was at the Swearingen residence, and he started pounding on the back door demanding that the suspect unlock it.

Within minutes, several officers arrived at the home. Officers Smajlovic and Riggs moved to the front of the house to prevent anyone from escaping. Carle maintained his position at the back entrance, where he was joined by Officer Karl Judd and Officer Hartman.

Awakened by the barking of the family dog, Ivan went to the back laundry room and saw uniformed police officers banging on the door and pointing their firearms at him. Ronda, also awakened, went to the kitchen. Both Ivan and Ronda saw Ryan holding at least one knife as he moved around the first floor of the house.

Through the window in the back door, officers also could see Ryan holding at least one knife. They yelled at Ryan to put the knife down, but he did not.

Smajlovic and Riggs eventually entered the unlocked front door and made their way through the front living room and into the dining room, which opened into the kitchen. Once in the dining room, Smajlovic could see through the kitchen and laundry room to the back entrance, where Carle and the other officers were pounding on the door. Smajlovic saw Ryan holding a green-handled knife and standing to the left of the back door. He unholstered his pistol, pointed it at Ryan, and yelled, "Drop the knife." Ryan did not acknowledge Smajlovic's order. As Smajlovic and Riggs entered the kitchen, Ivan blocked their path. Seeing that Ivan was unarmed, Smajlovic holstered his pistol and used an empty-hand maneuver to engage with him.

As Ivan blocked Smajlovic's advance, Ryan walked through the kitchen and into a side bedroom. There, he entered an adjoining walkthrough closet, which connected back to the laundry room near the back door. Meanwhile, the officers at the back entrance gained entry by breaking the window in the door and opening it from within.

Carle entered the house first, followed by Judd and Hartman. Carle and Judd each had their service pistols unholstered, and Hartman drew his taser. As Judd moved through the laundry room and toward the kitchen, he noticed the closet door to his right move and saw that it was cracked open. At the same time, Riggs pointed his taser's laser sight toward the opening and called out, "The door moved. Somebody is in behind that door."

Judd opened the closet door with his right hand as he held his pistol in his left. Ryan was standing behind the closet door with a knife. Judd quickly stepped back and fired three shots that struck Ryan in his left arm and lower back. Ryan and Judd were about two to three feet apart when Judd fired.

Accounts differ as to Ryan's position within the closet at the time of the shooting. Judd alleges that Ryan held the knife in a "dagger position" at the right side of his face and took a step toward Judd, as if to lunge at him. Hartman caught sight of Ryan as he came from behind Judd, with his taser's laser sight focused on Ryan's left shoulder. Hartman later testified that Ryan was holding the knife at his side in
a reverse grip, with the blade pointed toward his elbow as he fell to the ground. Ivan describes seeing the left side of Ryan's torso facing the kitchen as the closet door opened, but he could not see Ryan's right hand. After the shooting, Riggs approached the closet and saw a green-handled knife underneath Ryan's arm, with the blade pointed toward his body.

Ryan died at a local hospital. Medical reports found that the three bullets followed a left-to-

right, back-to-front trajectory when they entered Ryan's body.

The Court of Appeals for the Eight Circuit concluded that the facts and authorities are insufficient to establish the violation of a clearly established right:

"While the Swearingens identify some factors militating against a need for deadly force in this instance, it remains undisputed that Judd was suddenly confronted, at a distance of only three feet, with a suspect who was armed with a knife after ignoring multiple commands to drop it. Accepting for purposes of summary judgment that Ryan was neither advancing toward Judd nor holding the knife with the blade directed at the officer, the suspect still had been noncompliant and could have caused serious injury or death in a matter of seconds by repositioning himself and the knife. The situation is fairly described as tense and rapidly evolving. Even if Judd should have attempted to apprehend Ryan without firing his weapon, the officer's actions sit along the 'hazy border between excessive and acceptable force.' *Saucier v. Katz*, 533 U.S. 194, 206 (2001). Under these circumstances, we cannot say that Judd's use of deadly force, even if just over the line of reasonableness, violated a clearly established right. Cf. *Parks v. Pomeroy*, 387 F.3d 949, 957-58 (8th Cir. 2004).

READ THE COURT OPINION HERE:
https://ecf.ca8.uscourts.gov/opndir/19/07/181126P.pdf

CIVIL RIGHTS: Deadly Force Justified

Smith v. Kilgore
CA8, No. 18-1040, 6/11/19

Tina Smith, mother of Raymond A. Smith Jr., sued the Kansas City Chief of Police, the members of the Board of Police Commissioners, and officers Selvir Abidovic, Christopher Krueger, Christopher James Taylor, and Andrew E. Keller, alleging they violated her son's constitutional rights when two officers used deadly force against him. The defendants moved for summary judgment, which the district court granted. Smith appeals. The Eighth Circuit Court of Appeals affirmed.

About 4:00 P.M. on May 26, 2012, officers Abidovic and Keller were dispatched on a report of suspicious activity in a park. Officer Abidovic found two people nearly fitting the dispatcher's description, one later identified as Raymond Smith. Officer Abidovic approached the suspects, who began walking away. He yelled, "Stop, come talk to me!" Smith began running away from officer Abidovic, out of the park. Officer Abidovic chased him on foot. Officer Keller radioed dispatch about the pursuit. Officers Krueger and Taylor were dispatched to assist.

Chasing Smith into a parking lot, officer Abidovic saw a gun in his hand. He announced over dispatch radio, "He's armed!" He pointed his gun at Smith, shouting, "Drop the gun!" Smith did not drop it. As Smith was climbing over a chain-link fence, he fired a shot at officer Abidovic. Officer Abidovic then fired three shots at Smith. Officer Keller radioed dispatch, "Shots fired." From their patrol car, officers Krueger and Taylor found Smith on the other side of the fence. They saw him begin to raise his gun in their direction. Officer Krueger fired five shots at Smith. He fell to the ground. Officer Abidovic called for an ambulance. Smith died from the gunshot wounds.

The Eighth Circuit affirmed the district court's grant of summary judgment for defendants, holding that there was no potentially admissible evidence in the record supporting plaintiff's allegations that the decedent was unarmed, did not point his gun at officers, and did not shoot at an officer. The court also held that the district court correctly ruled that the officers were reasonable in using deadly force. Therefore, the district court properly rejected the assault, battery, and wrongful death claims, as well as properly dismissed the Monell claim. Finally, because the individual officers fulfilled their constitutional obligations, the Board and the Police Chief cannot be liable for failing to train them.

READ THE COURT OPINION HERE:
https://ecf.ca8.uscourts.gov/opndir/19/06/181040P.pdf

CIVIL RIGHTS:

Emergency Entry; Deadly Force
Baker v. City of Trenton
CA6, No. 18-2181, 8/29/10

Shortly before his high school graduation, 18-year-old Kyle Baker apparently experimented with LSD. The after-effects afflicted him for several days, resulting in his having to be removed from class because of behavioral issues. Kyle's friend, Collin, checked in on him after school, then went to the police and told them that Kyle needed help and that Kyle was armed and upset with his mother.

Four officers went to the house, not knowing that the mother was not actually home with Kyle. Without waiting for a warrant, the officers entered Kyle's home. He appeared at the foot of the basement stairs, wielding a lawnmower blade. When the officers attempted to subdue Kyle with a taser, he came up the basement stairs swinging. The lawnmower blade struck an officer, who fell back, then shot and killed Kyle.

The Sixth Circuit affirmed summary judgment in favor of the defendants in a suit under 42 U.S.C. 1983. Calling the case "heart-rending." The Court stated that given the circumstances and governing case law, the officers' entry into Kyle's home was justified under the exigent-circumstances exception and the use of force did not violate the Fourth Amendment. The officer had probable cause to believe that Kyle posed a significant threat of death or serious physical injury.

READ THE COURT OPINION HERE:
http://www.opn.ca6.uscourts.gov/opinions.pdf/19a0221p-06.pdf

CIVIL RIGHTS:

Excessive Force in Making an Arrest
Hinson v. Bias
CA11, No. 16-14112, 6/14/19

Matthew Hinson filed an action under 42 U.S.C. §1983 against Bias, Anderson, Kremler, Williams, and Schoonover (collectively, the "Officers"). In a verified complaint, he alleged that the Officers each violated his Fourth Amendment right against the use of excessive force and his Eighth Amendment right to be free from deliberate indifference to medical needs.

Upon review, the Eleventh Circuit Court of Appeals found as follows:

"Here, the crime was extremely serious: a man had just been knifed to death, apparently without provocation. The Officers also observed blood on Hinson's hands and shirt, which tended to corroborate the idea that Hinson was the one

who had stabbed the victim. In addition, Hinson matched the physical description of the suspect that a witness had provided. And when Officers encountered Hinson, they had every reason to believe he was still armed. Even if the Officers saw or heard Hinson drop a knife out his front window, they had no way of knowing whether he had other weapons inside the truck with him. (As it turned out, Hinson did have another knife inside the truck, tucked between his seat and the center console.). Hinson was also in a functioning vehicle.

"Particularly in light of his erratic behavior, the Officers reasonably believed that Hinson posed a substantial and immediate threat to their safety and that of others. Notably, Hinson had also repeatedly failed to comply with nearly all of the Officers' simple instructions, making him seem even more unpredictable to a reasonable officer. On these facts, a reasonable officer could feel a compelling need to apply force to obtain control of Hinson and ensure he did not hurt himself, the Officers, or others.

"As for the proportionality of the force to the need for it, we first consider Anderson's takedown of Hinson. As we have noted, immediately before Anderson took Hinson to the ground, Hinson failed to comply with the Officers' instructions to stop moving back towards Bias. And he did this after repeatedly ignoring the Officers' prior instructions to put his hands up, to keep them up, and to exit the truck. So the Officers were faced with a man who had just apparently slashed the victim in the throat without provocation; they had no way of knowing whether he remained armed; they had just seen him fail repeatedly to comply with their instructions; and in violation of the Officers' instructions, he was moving towards an unarmed Officer who was already in close proximity to him. Under these circumstances, a reasonable officer could conclude that the amount of force Anderson applied in taking Hinson to the ground was appropriate, in light of the need to prevent what reasonably could have appeared to be imminent harm to Bias, since Hinson continued to move towards him.

"We now turn to the strikes the Officers inflicted on Hinson while he was on the ground. According to the Officers' uncontradicted attestations, Bias was straddling Hinson, trying to handcuff him. Bias repeatedly instructed Hinson to give Bias his hands, and Hinson once again failed to comply. So, Bias explained, he became concerned that Hinson was trying to get a weapon while his hands were under his body. To avert that from possibility, Bias inflicted hammer strikes to Hinson's body, along with interceding repeated instructions to Hinson to make his hands available to Bias for cuffing. After the third strike, when Hinson was continuing to ignore Bias's instructions, Anderson used a "pain-compliance" hand strike to Hinson's head in an effort to obtain compliance. As soon as Hinson gave his hands to Bias, no further blows occurred.

"Once again, in the situation confronting the Officers, the Officers knew that for no apparent reason, Hinson had just stabbed the victim in the throat; they had no way to be sure he was not armed at the time; he had repeatedly failed to comply with instructions; and it seemed he may be trying to get his hands on a weapon while Bias was trying to cuff him. Under these circumstances, we cannot say that the fist blows the Officers used to get Hinson to follow the instructions to produce his hands for cuffing inflicted an unreasonable amount of force in light of the need to maintain the safety of Officers and others.

"And this is particularly true when we consider the last Fourth Amendment excessive-force factor: the severity of the injuries. Here, photographic evidence shows abrasions around Hinson's left eye

and forehead, as well as a small bruise on the part of Hinson's right knee that abutted the ground while Bias tried to handcuff him. Hinson's medical records from his admission to the jail reflect nothing further and describe Hinson's abrasions as "minor and not bleeding" at that time. And Dr. Rao opined that Hinson's only injuries were 'merely superficial and non-life threatening" and "not consistent with being punched, kicked, or beaten with a flashlight…' Hinson's jail medical records also show that Hinson's injuries healed soon after his admission to the jail.

"When we account for all of the Fourth Amendment excessive-force factors, then, we must conclude that the Officers' conduct in taking Hinson to the ground and fist-striking him were objectively reasonable uses of force on this record. As a result, the Officers did not violate Hinson's Fourth Amendment right to be free from the use of excessive force in securing his arrest. Since Hinson cannot show a violation of his Fourth Amendment right, the Officers are entitled to qualified immunity on Hinson's Fourth Amendment claim. And since no Fourth Amendment violation was established, the Officers who allegedly failed to intervene to stop the use of force in Hinson's arrest are also entitled to qualified immunity."

READ THE COURT OPINION HERE:
http://media.ca11.uscourts.gov/opinions/pub/files/201614112.pdf

CIVIL RIGHTS:

Excessive Force; Mistaken Identity
Shanaberg v. Licking County
CA6, No. 18-3916, 8/23/19

The Licking County, Ohio, Sheriff's Office received a report of a drunk driver, with the vehicle's license plate number. The database reported the vehicle as stolen. The suspect's name came back: Brandon Scott Powell, who was allegedly "armed and dangerous."

In minutes, using the caller's updates on the vehicle's location, three deputies found it stopped on a dirt road with the driver standing outside. The deputies told the driver to get on the ground. He dropped to his knees and put his hands in the air. As the deputies approached, Deputy Brian Stetson instructed the driver to lie down on the ground.

The driver yelled back that he would not comply and asked what he had done wrong. Stetson and the driver repeated the conversation nine times, with the driver becoming more belligerent. At one point, the driver reached toward his open truck door but then returned his hands to the air. The driver had three warnings that deputies would tase him if he did not obey. Stetson tased the driver. Deputies then handcuffed him. The driver was not Powell but was the vehicle's owner, Ty Shanaberg.

Powell had allegedly stolen the vehicle months before, but the police later recovered it. The vehicle remained in the stolen-vehicle database. Shanaberg sued under 42 U.S.C. 1983.

The Sixth Circuit affirmed summary judgment for Stetson, finding he was entitled to qualified immunity on Shanaberg's excessive-force claim. Given what Stetson knew, it was objectively reasonable to tase Shanaberg after warning him.

READ THE COURT OPINION HERE:
http://www.opn.ca6.uscourts.gov/opinions.pdf/19a0211p-06.pdf

CIVIL RIGHTS:

Excessive Force; Unreasonable Seizure

Vanderhoef v. Dixon

CA6, No. 18-5993, 8/21/19

Logan Vanderhoef crashed his Ford Mustang into Maurice Dixon's vehicle. Dixon, an off-duty, part-time reserve Maryville, Tennessee police officer, responded by holding Vanderhoef and his passengers at gunpoint for about two minutes. Keller let them go after a bystander threatened to call the police.

A jury found that Dixon violated Vanderhoef's Fourth Amendment rights (42 U.S.C. 1983). The district court set aside the jury's verdict, ruling that Dixon was entitled to qualified immunity because no clearly established law put him on notice that doing what he did was unconstitutional. The Sixth Circuit reversed, finding as follows:

"The facts presented at trial adequately established a violation of plaintiff's constitutional rights to be free from excessive force and unreasonable seizure under the Fourth Amendment. At the time of this accident and confrontation, Dixon should have known that pointing his gun at a non-fleeing teenager whom he did not reasonably suspect of any prior crime beyond speeding and reckless driving and holding him at gunpoint for roughly two minutes, violated the plaintiff's Fourth Amendment rights."

READ THE COURT OPINION HERE:

http://www.opn.ca6.uscourts.gov/opinions.pdf/19a0204p-06.pdf

CIVIL RIGHTS:

Failure to Intervene

Turner v. Thomas

CA4, No. 18-1733, 7/19/19

Robert Sanchez Turner was attacked by protesters at the "Unite the Right" rally on August 12, 2017, in Charlottesville, Virginia. Turner claims that, pursuant to a stand-down order under which police officers at the rally were instructed not to intervene in violence among protesters, officers watched his attack and did nothing to help. Turner brought suit against Al Thomas Jr., former Chief of the Charlottesville Police Department; W. Stephen Flaherty, Virginia State Police Superintendent; and the City of Charlottesville. The district court concluded that Thomas and Flaherty were entitled to qualified immunity.

The Fourth Circuit affirmed the district court's dismissal of the complaint for failure to state a claim, holding that defendants were entitled to qualified immunity because it was not clearly established at the time of the rally that failing to intervene in violence among the protesters would violate any particular protester's due process rights.

READ THE COURT OPINION HERE:

http://www.ca4.uscourts.gov/opinions/181733.P.pdf

CIVIL RIGHTS: Handcuffing of 7-Year-Old Elementary Student
K.W.P. v. Kansas City Public Schools
CA8, No. 17-3602, 8/1/19

K.W.P., a 7-year-old elementary school student, filed a 42 U.S.C. 1983 suit against Kansas City Public Schools, Officer Brandon Craddock, and Principal Anne Wallace for violations of his rights under the Fourth and Fourteenth Amendments. The student's claims arose when he was handcuffed in school after an outburst in the classroom against a classmate that was incessantly teasing him. The district court determined that disputed material facts precluded dismissal of the student's claim against the officer and principal, and denied summary judgment to the school.

Upon review, the Eighth Circuit held that neither the officer nor the principal violated the student's constitutional rights, and they were entitled to qualified immunity on the student's claim of unreasonable seizure and excessive force.

"In this case, a reasonable officer could conclude that, based on the student's recent resistance, keeping him in handcuffs for 15 minutes until a parent arrived was a reasonable course of action and was necessary to prevent him from trying to leave and posing harm to himself. Furthermore, the principal's failure to intervene and have the officer remove the handcuffs was reasonable in light of her previous experience with the student. Even if the reasonableness of the officer and the principal's actions were questionable, the student could not show that a reasonable official would have been on notice that their conduct violated a clearly established right."

The court also held that, because there was no violation of the student's constitutional rights, the student's municipal liability claims failed. Therefore, the court reversed the district court's denial of summary judgment for the officer, principal, and KCPS, remanding for entry of summary judgment in their favor on the student's claims.

READ THE COURT OPINION HERE:
https://ecf.ca8.uscourts.gov/opndir/19/08/173602P.pdf

CIVIL RIGHTS: Internet Law; Anonymous Speech; Censorship
Novak v. City of Parma
CA6, No. 18-3373, 7/29/19

Anthony Novak created a "farcical Facebook account" that looked like the Parma, Ohio, Police Department's official page. The page was up for 12 hours and published posts including a recruitment advertisement that "strongly encouraged minorities to not apply" and an advertisement for a "Pedophile Reform" event.

Some of its approximately 100 followers thought it was funny. Others were angry or confused and called the police station. The Department posted a warning on its official Facebook page. Novak reposted that warning on his page, to "deepen his satire." Novak deleted "pedantic comments" on his page explaining that the page was fake.

The Department contacted Facebook requesting that the page be shut down and informed local news outlets. Novak deleted his creation. Based on a search warrant and subpoena, Facebook disclosed that Novak was behind the fake. The police obtained warrants to search Novak's apartment and to arrest him, stating that Novak unlawfully impaired the department's functions. Novak responded that, other than 12 minutes of

phone calls, the police department suffered no disruption.

Novak was acquitted, then sued, alleging violations of his constitutional and statutory rights. The district court dismissed in part, with 26 claims remaining. The Sixth Circuit granted the officers qualified immunity on claims related to anonymous speech, censorship in a public forum, and the right to receive speech were dismissed.

READ THE COURT OPINION HERE:
http://www.opn.ca6.uscourts.gov/opinions.pdf/19a0170p-06.pdf

CIVIL RIGHTS:

Search of Curtilage Without a Warrant
Watson v. Pearson
CA6, No. 18-6407, 6/28/19

Officers, attempting to serve a civil levy on Joseph Watson, knocked on the door of Watson's presumed residence until Watson came outside. Watson said that the house belonged to his girlfriend, who was inside, and that he did not live there. Watson actually rented the house with his girlfriend. Watson said that he did not have keys and could not get back inside. The officers asked Watson whether he had anything against which they could levy then told Watson that he was free to leave. After Watson left, the officers walked around the house's exterior to "look for items that could possibly be levied." They smelled marijuana coming from the crawl-space vent; they claim that they saw partially smoked marijuana joints outside. The "joints" were never tested. The officers obtained a search warrant for the residence later that day based on that evidence, previous complaints about activity at the residence, Watson's criminal record, and a confidential informant's tip. Inside, they located a large amount of marijuana and evidence indicative of its sale and use.

The state of Tennessee subsequently instituted criminal proceedings against Watson. Watson moved to suppress the evidence derived from the officers' search of the residence, claiming that they had violated his Fourth Amendment rights. The state trial court granted the motion and the Tennessee Court of Criminal Appeals affirmed. The courts concluded that the officers violated his rights by searching the curtilage of the residence without a warrant and without a valid excuse for not obtaining one. This conclusion is not disputed by the officers.

Watson contemporaneously brought his own action under 42 U.S.C. § 1983, alleging that the officers had violated his Fourth Amendment rights. The district court granted summary judgment in favor of the defendants. Although the court agreed that Watson's Fourth Amendment rights had been violated, it held that Officers Mendez and Talbott were entitled to qualified immunity because those rights were not clearly established when the incident occurred. The court determined that "a reasonable officer could have thought that Watson did, in fact, disclaim his privacy interest in the later-searched residence."

The Court of Appeals reversed stating that the officers were not entitled to qualified immunity because they violated Watson's constitutional rights and because those rights were clearly established when the incident occurred.

READ THE COURT OPINION HERE:
http://www.opn.ca6.uscourts.gov/opinions.pdf/19a0138p-06.pdf

CIVIL RIGHTS: Law Enforcement Officer Speaking Against the Department

Morgan v. City of Milbank
CA8, No. 18-2730, 8/8/19

David Mogard sued the City of Milbank, police chief Boyd Van Vooren, and city administrator Jason Kettwig, alleging termination without due process and in retaliation for his exercise of First Amendment free speech rights. Mogard was hired as a Milbank patrol officer in 2008. In April 2016, after a high-speed chase, he complained to Police Chief Boyd Van Vooren about the patrol vehicle's tires and seatbelts. Mogard later complained to the assistant police chief, then to city administrator Jason Kettwig and to a city council member. He also tried to schedule a meeting with the mayor. The following month, the city council—on recommendations from Van Vooren and Kettwig—voted to terminate him.

The district court denied defendants' motion for summary judgment, concluding they were not entitled to qualified immunity because (1) Mogard's right not to be retaliated against for speaking on matter of public concern was clearly established; (2) Mogard was denied due process prior to the deprivation of a clearly-established, constitutionally-protected interest in employment and his reputation; and (3) there are issues of disputed fact about the reason for Mogard's termination. Defendants appeal the denial of qualified immunity.

Upon review, the Court of Appeals for the Eighth Circuit found, in part, as follows:

"Viewing the facts most favorably to Mogard, even if he were terminated in retaliation for his speech, the defendants did not violate 'a clearly established statutory or constitutional right of which a reasonable person would have known.' Plaintiffs claiming employer retaliation in violation of First Amendment rights must show that they 'engaged in activity protected by the First Amendment.' *Groenewold v. Kelley*, 888 F.3d 365, 371 (8th Cir. 2018). 'A public employee's speech is protected under the First Amendment if he spoke as a citizen on a matter of public concern, but a public employee's speech is not protected if he spoke pursuant to his official duties.' *Garcetti v. Ceballos*, 547 U.S. 410, 418 (2006).

"When Mogard complained to the chief and assistant chief about the features of his patrol car, he was acting 'pursuant to' his job duties, regardless of whether his job required him to report on the condition of the patrol cars. Even if Mogard may have transformed unprotected speech pursuant to job duties into protected speech by speaking to community leaders, defendants could reasonably conclude that Mogard was speaking solely as an aggrieved police officer. Employee decisions to go outside of their ordinary chain of command does not necessarily insulate their speech. Mogard's right to make this speech under these circumstances is therefore not clearly established.

"Furthermore, plaintiff failed to establish a deprivation of a liberty interest, because he did not show that he was stigmatized by the stated reasons for his discharge and that the statements were made public. Therefore, plaintiff failed to demonstrate a constitutional violation, and the police chief and administrator were entitled to summary judgment. Finally, because plaintiff failed to demonstrate a deprivation of a property or liberty interest, his claims against the City also failed."

READ THE COURT OPINION HERE:
https://ecf.ca8.uscourts.gov/opndir/19/08/182730P.pdf

CIVIL RIGHTS: Sting Operation; No Wrongdoing in Employing the Technique

United States v. Harney
CA6, No. 18-6010, 8/14/19

The FBI gained control over Playpen, a child pornography website. Agents used a controlled server containing a copy of the website and continued operating Playpen to catch its users. Playpen uses Tor, which conceals users' IP addresses and other identifying information. The government sought a warrant to authorize additional instructions to the content that a computer automatically downloaded when visiting the site, to cause the user's computer to send back specific information, including the actual IP address. A magistrate authorized the government to use the technique to search any computer that logged into Playpen with a username and password for 30 days. The technique identified Jeffrey Harney.

He created a Playpen profile and spent about 80 minutes on the site during the window of observation. The protocol captured Harney's IP address, which allowed agents to get his physical address from his internet provider. Officers obtained a warrant and searched Harney's house. Harney admitted and a forensic examination confirmed that he had downloaded child pornography. The government charged Harney with receiving and possessing child pornography.

The Sixth Circuit affirmed the denial of Harney's motions to suppress the evidence and to require the government to hand over all information about the technique, finding as follows:

"Harney insists that investigators could not rely on the warrant in good faith because it authorized illegal or outrageous conduct: the government's continued operation of Playpen. The government after careful consideration made the difficult decision to continue operating this website briefly. That had a downside (exposing the pictured children to more harm) and an upside (apprehending individuals who fuel the demand for more child pornography). See *United States v. Anzalone*, 923 F.3d 1, 5–6 (1st Cir. 2019). Lest all sting operations be suppressed, this conduct does not require suppression of the evidence or dismissal of the indictment.

"The investigators acted in good faith in relying on the warrant. The government did not violate 18 U.S.C. 3509(m), which prohibits reproducing child pornography 'in any criminal proceeding.' An investigation is not a criminal proceeding. Harney has not shown that the government engaged in wrongdoing in employing the technique."

READ THE COURT OPINION HERE:
http://www.opn.ca6.uscourts.gov/opinions.pdf/19a0195p-06.pdf

CIVIL RIGHTS: Unconstitutional Policy

J.K.J. v. Polk County
CA7, No. 18-1498, 6/26/19

M.J.J. and J.K.J. were inmates at Polk County Jail in Wisconsin at various times between 2011 and 2014. Darryl Christensen admits he engaged in sexual acts with the women individually. He urged the women not to discuss his sexual advances; his assaults were kept hidden from jail officials until a former inmate reported her own sexual encounters with Christensen to an investigator in a neighboring county.

An investigation led to Christensen pleading guilty to several counts of sexual assault. He is serving a 30-year prison sentence. J.K.J. and M.J.J. sued Christensen and the county under 42 U.S.C. 1983,

alleging Eighth and Fourteenth Amendment claims, with a state law negligence claim against the county. A jury found Christensen and the county liable and awarded each woman $2 million in compensatory damages. The jury also levied punitive damages against Christensen, $3,750,000 to each plaintiff.

The Seventh Circuit affirmed as to Christensen. His assaults were predatory and knowingly criminal. However, the court reversed as to the county. To impose liability against the county for Christensen's crimes, there must be evidence of an offending county policy, culpability, and causation. Christensen's acts were reprehensible, but the evidence shows no connection between the assaults and any county policy.

READ THE COURT OPINION HERE:
http://media.ca7.uscourts.gov/cgi-bin/rssExec.pl?Submit=Display&Path=Y2019/D06-26/C:18-1498:J:Brennan:aut:T:fnOp:N:2361273:S:0

CIVIL RIGHTS:

Uncooperative Individual who is a Threat to Himself but not to Others
Studdard v. Shelby County
CA6, No. 19-5084, 8/12/19

In Shelby County, Tennessee, Deputy Kyle Lane responded to a hit-and-run call. People at the scene told Lane to follow Edmond Studdard, who was walking away along the road and had slit his wrists. Lane turned his motorcycle around and rode after Studdard. Studdard ignored Lane's request to stop and turned toward Lane, displaying what appeared to be a knife. Lane saw Studdard's bloody wrists. Lane continued to follow Studdard and called for backup, noting that Studdard had a knife and had slit his wrists. Three deputies parked their vehicles north of Studdard, seeking to block his path forward with Lane followed from the south. They exited their vehicles and displayed firearms. Studdard halted. They directed Studdard to drop the knife. Studdard stood still, knife in hand. An officer said that they would shoot if Studdard did not drop the weapon. Studdard raised the knife to his throat and began "swaying." "Almost immediately," two deputies opened fire. Studdard fell. Deputy Terry Reed kicked the knife out of Studdard's hand. The officers administered aid. Studdard died in the hospital due to complications from the gunshot wounds.

In his wife's 42 U.S.C. 1983 action, the Sixth Circuit affirmed the denial of the officer's motion for summary judgment based on qualified immunity. "To justify lethal force, an officer must have probable cause to believe the suspect presents an immediate threat of serious physical harm to the officer or others. Officers may not shoot an uncooperative individual when he presents an immediate risk to himself but not to others."

READ THE COURT OPINION HERE:
http://www.opn.ca6.uscourts.gov/opinions.pdf/19a0191p-06.pdf

CIVIL RIGHTS:

Use of Flashbang; Excessive Force
Z.J. v. Kansas City Board of Police Commissioners
CA8, No. 17-3365, 7/25/19

Z.J. a minor, filed suit against the SWAT team officers, the detectives, and the Board under 42 U.S.C. 1983, after she suffered Post-Traumatic Stress Disorder (PTSD) from the blast of a flash-bang grenade. In this case, even though the SWAT team knew the suspect was already in custody, they broke open the screen door of the suspect's

residence and threw a flash-bang grenade into the living room of the home before a young woman could open the door with the keys she was holding in her hand. The only people inside where three women and a two-year-old girl. The girl suffered PTSD from the officers' use of the flash-bang grenade.

The Eighth Circuit held that the SWAT team officers were not entitled to qualified immunity because any reasonable officer would have known the use a flash-bang grenade under these circumstances constituted excessive force:

"It was clearly established at the time that use of a flash-bang grenade was unreasonable where officers have no basis to believe they will face a threat of violence and they unreasonably fail to ascertain whether there are any innocent bystanders in the area where the grenade is deployed. Therefore, the district court did not err by denying summary judgment based on qualified immunity. The court also held that detectives are entitled to summary judgment because there was probable cause to support the search warrant, and because their decision to use a SWAT team, regardless of whether it was reasonable, did not violate clearly established law. Accordingly, the court reversed the district court's grant of summary judgment as to the detectives."

READ THE COURT OPINION HERE:
https://ecf.ca8.uscourts.gov/opndir/19/07/173365P.pdf

CONSTITUTIONAL LAW:

Double Jeopardy; Two Sovereigns

Gamble v. United States

USSC, No. 17-646, 587 U.S. ___, 6/17/19

Terance Martez Gamble pleaded guilty under Alabama's felon-in-possession-of-a-firearm statute. Federal prosecutors then indicted him for the same instance of possession under federal law. Gamble argued that the federal indictment was for "the same offence" as the one at issue in his state conviction, exposing him to double jeopardy under the Fifth Amendment.

The Eleventh Circuit and Supreme Court affirmed the denial of his motion, invoking the dual-sovereignty doctrine, according to which two offenses "are not the 'same offence' " for double jeopardy purposes if "prosecuted by different sovereigns." The dual sovereignty doctrine is not an exception to the double jeopardy right but follows from the Fifth Amendment's text. As originally understood, an "offence" is defined by a law, and each law is defined by a sovereign. Where there are two sovereigns, there are two laws and two "offences." The Court stated that "Gamble's historical evidence is too feeble to break the chain of precedent linking dozens of cases over 170 years."

READ THE COURT OPINION HERE:
https://www.supremecourt.gov/opinions/18pdf/17-646_d18e.pdf

FIFTH AMENDMENT:
Duty to Disclose Information
United States v. Dones-Vargas
CA8, No. 18-2600, 8/21/19

A jury convicted Orlando Dones-Vargas of two drug trafficking offenses and sentenced him to 235 months' imprisonment. After trial, it came to light that the government had been unaware of payments that local police made to cooperating witness and thus had failed to disclose that information to the defense. Dones-Vargas moved for a new trial stating that the government had violated its duty to disclose material information favorable to the defense, under the constitutional rule of *Brady v. Maryland*, 373 U.S. 83 (1963), and *Giglio v. United States*, 405 U.S. 150 (1972). These cases state that the Due Process Clause of the Fifth Amendment requires the government to disclose to the accused favorable evidence that is material to guilt or punishment.

"Determining whether a failure to disclose impeachment evidence is 'material' requires consideration of the record as a whole. The relative strengths of the prosecution's case and the impeachment value of the undisclosed evidence bear on whether disclosure in time for use at trial would have made a difference."

The Court of Appeals for the Eighth Circuit concluded that nondisclosure of the relatively small payments in these circumstances, when considered against the backdrop of a substantial prosecution case, does not undermine confidence in the jury's verdict. The impeachment evidence was not material, and Dones-Vargas has not established a violation of the Due Process Clause.

READ THE COURT OPINION HERE:
https://ecf.ca8.uscourts.gov/opndir/19/08/182600P.pdf

MIRANDA: Interrogation After Request for an Attorney
United States v. Potter
CA6, No. 18-5839, 6/11/19

In this case, the Court of Appeals for the Sixth Circuit noted that an average "dose" of methamphetamine weighs between one tenth and one-quarter of a gram. And there are 28.3 grams to an ounce. So Michael Potter confessed to peddling a lot of doses of meth when he told police that he had sold some ten pounds. To make matters worse for Potter, he had been convicted of seven prior drug offenses. His prior drug offenses supported his mandatory life sentence.

On appeal, Potter challenges his conviction arguing that the police elicited his statements after he invoked his right to an attorney under *Miranda v. Arizona*, 384 U.S. 436 (1966), and so violated the bright-line rule to stop questioning adopted by *Edwards v. Arizona*, 451 U.S. 477 (1981). The Court disagree with Potter, rejected his argument, and affirmed his conviction and sentence.

On June 26, 2015, police arrested Potter on unrelated charges. That night, he told police he did not want to talk. The next day, he changed his mind. After signing a Miranda waiver, he spoke with Agents Jason Roark and Shannon Russell from the Tennessee Second Judicial District Drug Task Force. During this interrogation, Potter admitted that, starting in August 2014, he had bought about ten pounds of methamphetamine from a different Georgia supplier (not Hogan) and sold it in east Tennessee.

Before trial, Potter moved to suppress his statements to Agents Roark and Russell. At a suppression hearing, he testified that he had asked for a lawyer many times during the

interview, but the agents ignored his requests. Russell disputed this account. He explained that Potter mentioned a lawyer and "may have" asked whether he needed one, but never requested an attorney or sought to stop the interrogation. The magistrate judge found Potter not credible, held that his statements about an attorney did not require the police to end their questioning, and recommended that the district court deny Potter's motion. The district court adopted this recommendation.

Upon review, the Sixth Circuit Court of Appeals found, in part, as follows:

"Potter argues that the Fifth Amendment gives an individual the right not to 'be compelled in any criminal case to be a witness against himself.' U.S. Const. amend. V. In *Miranda v. Arizona*, 384 U.S. 436 (1966), the Court safeguarded this right by prescribing judicial rules of the road for officers who interrogate individuals in police custody, including that the individuals have a right to an attorney during the inquiry. Potter's argument in this case concerns a second prophylaxis that the Court later adopted in *Edwards v. Arizona*, 451 U.S. 477 (1981), to protect the Miranda right to an attorney that protects the Fifth Amendment right against self-incrimination. *Edwards* held that the police must immediately cease questioning if a suspect invokes the Miranda right. It thus invalidated a suspect's waiver of the right because—even if knowingly and voluntarily made—the waiver arose from questioning after a request for a lawyer. Courts enforce *Edwards's* 'second layer of prophylaxis' through 'the threat of suppression.' So much depends on whether statements about an attorney trigger *Edwards's* bright-line rule to stop questioning. Here, for example, Potter argues that the district court should have suppressed his statements about his distribution of ten pounds of methamphetamine because, contrary to *Edwards*, Roark and Russell obtained those statements after Potter had invoked his Miranda right.

"The Supreme Court in *Davis* set a high bar to trigger *Edwards*. To compel officers to end questioning, a 'suspect must unambiguously request counsel.' *Davis v. United States*, 512 U.S. at 452 (1994). So 'ambiguous or equivocal' requests for an attorney do not put reasonable officers on notice that the interrogation must stop. *Davis* explained its rationale for this standard when responding to the argument that it might sometimes engender harsh results: 'The primary protection' for the Fifth Amendment, *Davis* said, 'is the Miranda warnings themselves.' While *Edwards* added a second layer of judicial protection on top of those warnings, *Davis* was 'unwilling' to add a third one. And *Davis's* bottom-line holding—that a suspect who said 'maybe I should talk to a lawyer' did not unambiguously ask for counsel—confirms that an individual must make a firm request.

"*Davis's* clear command has doomed several *Edward's* claims in our circuit. Take, for example, the statement 'I think I should talk to a lawyer, what do you think?' Was that an unambiguous request for counsel? No. *United States v. Delaney,* 443 F. App'x 122, 130 (6th Cir. 2011). How about 'it would be nice' to have an attorney?' Insufficient. *Ledbetter v. Edwards*, 35 F.3d 1062, 1070 (6th Cir. 1994). Or 'I really should have a lawyer, huh?' Equivocal. *United States v. Mays*, 683 F. App'x 427, 433 (6th Cir. 2017). For what it's worth, other circuits have likewise rejected *Edwards* claims based on similar statements. We have, by contrast, found requests for an attorney unambiguous (triggering *Edwards*) when a suspect told the police that he wanted to be left alone 'until I can see my attorney,' *Tolliver v. Sheets,* 594 F.3d 900, 923 (6th Cir. 2010), or

directed the police to 'call his attorney's phone number,' *Moore v. Berghuis*, 700 F.3d 882, 887 (6th Cir. 2012). We have even reached that result when a person said 'maybe I should talk to an attorney by the name of William Evans.' *Abela v. Martin,* 380 F.3d 915, 926–27 (6th Cir. 2004). Despite the 'maybe' in this statement, we said that the surrounding circumstances—the suspect referred to a specific attorney, the suspect handed the officer the attorney's business card, and the officer said that he would call the attorney—turned what would otherwise be an equivocal request into an unambiguous one. In which camp do Potter's statements fall? They were just as equivocal as the statements from *Davis, Delaney*, or *Ledbetter.* The magistrate judge found as a historical fact that Potter, at most, 'may have mentioned an attorney.' Russell likewise testified that Potter 'mentioned' an attorney and 'may have…asked if he needed one.' But Potter 'never requested to actually have [an attorney] present' and 'never once said that he wanted to stop' the interview to wait for one. Nothing in these credited facts shows that Potter unambiguously requested counsel. The mere mention of an attorney does not cut it. *Davis*, 512 U.S. at 459.

"Potter points out that, on the night before the interrogation, he told the agents he did not wish to speak to them. That does not help him either. The agents honored his request, and it was Potter who initiated the exchange with them the next day. Before that interrogation, Potter received Miranda warnings and signed a waiver stating that he understood his rights and was 'willing to make a statement and answer questions without a lawyer present.' As the magistrate judge also found, Potter was 'not interested in having an attorney present.' He wanted to talk to the agents because 'he wanted out of jail' and thought it would help his chances if he did so. All told, the 'circumstances surrounding' Potter's statements cement our conclusion because they show that the agents respected the Miranda right that *Edwards*' rule seeks to protect and that Potter nevertheless opted to voluntarily speak with them."

READ THE COURT OPINION HERE:
http://www.opn.ca6.uscourts.gov/opinions.pdf/19a0128p-06.pdf

RACE BASED ENFORCEMENT; FIRST AMENDMENT RETALIATION

Clark v. Clark
CA8, No. 18-1234, 6/13/19

On January 25, 2016, Genevieve County Deputies Austin Clark ("Deputy Clark") and Matthew Ballew responded to a 9-1-1 report of gunshots from the vicinity of a rest area. When they arrived at the rest stop to investigate, the officers encountered Gregory Clark ("Gregory") seated at a table adjacent to the building. After calling in Gregory's identification, a brief, somewhat adversarial discussion about Gregory's race ensued. Gregory drove away in his vehicle after the officers went inside the building to continue their investigation. The officers then followed Gregory for approximately 19 miles on the highway, at which point Gregory stopped his vehicle on an exit ramp. After further discussion and investigation, Gregory was allowed to leave.

Gregory filed this action against Deputy Clark, alleging constitutional violations under the First Amendment, Fourth Amendment, and the Equal Protection Clause of the Fourteenth Amendment. The district court granted summary judgment in favor of Deputy Clark on all claims on the basis of qualified immunity. The Eight Circuit Court of Appeals affirmed:

"The seizure of Gregory on the highway exit ramp did not run afoul of the Fourth Amendment and was reasonably related in scope to the circumstances which justified the law enforcement action.

"To prove an equal protection claim in the context of a police interaction, Gregory must prove that the officer exercised his discretion to enforce a law solely on the basis of race. *Johnson v. Crooks*, 326 F.3d 995, 999-1000 (8th Cir. 2003). This requires a showing of both discriminatory purpose and discriminatory effect. Encounters with officers may violate the Equal Protection Clause when initiated solely based on racial considerations. *United States v. Frazier,* 408 F.3d 1102, 1108 (8th Cir. 2005).

"When the claim is selective enforcement of the traffic laws or a racially-motivated arrest, the plaintiff must normally prove that similarly situated individuals were not stopped or arrested in order to show the requisite discriminatory effect and purpose. *Chavez v. Ill. State Police*, 251 F.3d 612, 634-48 (7th Cir. 2001). Gregory has not provided sufficient evidence to raise a fact question about whether he was singled out for investigation because of his race. He has presented no evidence to establish that similarly situated individuals were not stopped or investigated. He has not identified any affirmative evidence from which a jury could find that Gregory has carried his burden of proving the pertinent motive. *Crawford-El v. Britton,* 523 U.S. 574, 600 (1998). While the statement 'don't play the race card with me' may have been hostile and unprofessional, it does not, alone, carry the burden of showing racial discrimination on Deputy Clark's part–particularly so when the alleged discriminatory acts are consistent with legitimate police work.

"To properly state a claim for First Amendment retaliation, Gregory is required to show 'a causal connection between a defendant's retaliatory animus and [his] subsequent injury.' *Osborne v. Grussing,* 477 F.3d 1002, 1005 (8th Cir. 2007) (quoting *Hartman v. Moore,* 547 U.S. 250, 259 (2006)). As discussed above, the initial encounter was consensual and Deputy Clark had sufficient reasonable and articulable suspicion to conduct an investigative seizure of Gregory. In light of Deputy Clark's legitimate motive to investigate, Clark has failed to draw the requisite causal connection to state a First Amendment retaliation claim.

READ THE COURT OPINION HERE:
https://ecf.ca8.uscourts.gov/opndir/19/06/181324P.pdf

SEARCH AND SEIZURE:

Attenuation Doctrine

United States v. Lowery

CA8, No. 18-3109, 8/30/19

On a cold and windy January night, Michael Lowry was waiting at a bus stop near U.S. Highway 40 and I-70 in Independence, Missouri. The bus stop had two shelters, separated by about 25 yards, and was located in a high crime area. Lowry was wearing heavy clothes and seated inside one of the two shelters.

Tyson Parks was inside the other shelter. Law enforcement had previously banned Parks from the bus stop.

Shortly after 9 p.m., Officer Joseph Thomas Hand of the Independence Police Department arrived at the bus stop on a routine patrol. Independence proactively patrolled the bus stop and Officer Hand tried to visit it five or six times a night. He was accompanied by a ride-along officer from another

police department who was in the process of being hired by Independence. The ride-along officer had not been deputized and therefore could not assist Officer Hand with any police activities. Officer Hand was responsible for the ride-along officer's safety.

Officer Hand immediately noticed Parks and approached him. He later admitted that he was frustrated because he knew that Parks was banned from the bus stop and he had previously found Parks intoxicated and causing disturbances there. As he approached, he yelled that Parks needed to leave. At the same time, he noticed Lowry looking in his direction and then getting up to walk behind the other shelter, out of his sight. Lowry remained behind the shelter a short time and then returned to the front side, while Officer Hand was still talking with Parks. He remained there until Officer Hand looked in his direction again and they made eye contact. When Lowry turned away and started to walk behind the shelter for a second time, Officer Hand shined his flashlight on him and ordered him to come over.

Normally, Officer Hand testified, he would have approached Lowry and talked with him, but because he had a ride-along in his car and was busy with Parks in the other shelter he directed Lowry to come to him. Officer Hand testified that he suspected Lowry was engaged in some sort of criminal activity and might have been hiding weapons, drugs or alcohol. He also believed that Lowry was attempting to avoid contact. Lowry's bulky clothing, his backpack, and his presence at a bus stop in a high crime area amplified Officer Hand's suspicions.

Lowry obeyed the directive and Officer Hand asked him to provide identification, which he also did. Lowry then waited by the patrol car while Officer Hand ran a warrant check. The warrant check revealed outstanding warrants and warned that Lowry was known to be violent. Officer Hand approached Lowry and asked him to place his hands behind his back, at which point Lowry informed Officer Hand that he had a gun in his waistband, a clip in his back pocket, and a collapsible baton in his backpack. He also told Officer Hand that he was a convicted felon. Officer Hand placed him under arrest and searched him, recovering the gun, the clip, and the baton.

Lowry was charged with being a felon in possession of a firearm in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). He filed a motion to suppress the evidence as the fruit of an unlawful stop. The motion, including whether or not the attenuation doctrine should apply to prevent suppression, was briefed and a hearing was conducted before the magistrate.

The magistrate recommended that the motion be denied because Officer Hand had reasonable suspicion to stop Lowry, and the district court adopted the recommendation. Neither the magistrate nor the district court addressed the attenuation issue. Lowry entered a conditional guilty plea, reserving the right to challenge the suppression decision.

The Eighth Circuit affirmed the district court's denial of Lowery's motion to suppress evidence. The court held that the officer who stopped Lowery lacked reasonable suspicion to detain him. However, the court held that the officer discovered the evidence against Lowery after he learned of an outstanding arrest warrant, and thus the initial violation of Lowery's Fourth Amendment rights was sufficiently unrelated to the ultimate discovery of the evidence that suppression was inappropriate. Therefore, the discovery of the evidence used against Lowery was attenuated from his unlawful stop.

The "attenuation doctrine" is an exception to the exclusionary rule that applies when the connection between unconstitutional police conduct and the evidence is remote or has been interrupted by some intervening circumstance, so that the interest protected by the constitutional guarantee that has been violated would not be served by suppression of the evidence obtained. *Utah v. Strieff*, 136 S. Ct. 2056, 2061 (2016); *Hudson v. Michigan*, 547 U.S. 586, 593 (2006).

READ THE COURT OPINION HERE:
https://ecf.ca8.uscourts.gov/opndir/19/08/183109P.pdf

SEARCH AND SEIZURE:

Body Cavity Search
State of Minnesota v. Brown
MSC, No. A17-0870, 8/14/19

The Supreme Court reversed the decision of the court of appeals affirming Guntallwom Karloya Brown's conviction, holding that a body cavity search performed by forcing him to be strapped down and sedated in order to undergo an invasive anoscopy against his will in the presence of non-medical personnel was unreasonable under the Fourth Amendment.

After Brown was strapped down and sedated he was forced against his will to undergo an anoscopy. During the procedure, the doctor located a plastic baggie containing cocaine in Brown's body cavity. The State charged Brown with one count of fifth-degree possession of a controlled substance. He moved to suppress evidence of the drugs, arguing that the search, even though conducted pursuant to a valid search warrant, was unreasonable. The district court denied the motion, and Brown was convicted. The court of appeals affirmed, concluding that the anoscopy was a reasonable search. The Minnesota Supreme Court reversed, holding that the extreme intrusion of Brown's dignitary rights by the coerced anoscopy outweighed the State's need to retrieve relevant evidence of drug possession, and therefore, the evidence retrieved from the search must be suppressed.

READ THE COURT OPINION HERE:
https://mn.gov/law-library-stat/archive/supct/2019/OPA170870-081419.pdf

SEARCH AND SEIZURE:

Closely Regulated Industry
Calzone v. Olson
CA8, No. 18-1674, 7/26/19

Ronald Calzone seeks a ruling that the Missouri State Highway Patrol is forbidden to stop and inspect his 54,000-pound dump truck, used in furtherance of his private commercial venture, without probable cause. Calzone operates a dump truck in support of his horse and cattle ranch, Eagle Wings Ranch. He holds a Missouri-issued commercial driver's license, and his truck has Missouri-licensed plates marking it as a 54,000-pound vehicle for "local" commercial use.

A Missouri state trooper stopped Calzone in June 2013 to inspect his dump truck under a Missouri statute that authorizes random roadside inspections of commercial motor vehicles. Calzone objected to the stop and refused to allow the inspection. He later filed this action under 42 U.S.C. § 1983, seeking, among other things, to enjoin the superintendent of the highway patrol from authorizing and directing patrol officers to stop and inspect his dump truck without individualized suspicion that he failed to comply with state law.

The Fourth and Fourteenth Amendments forbid the State to conduct unreasonable searches and seizures. The traditional standard of reasonableness in the context of a criminal investigation requires a warrant and probable cause to believe that a search will discover evidence of unlawful activity. See *Vernonia Sch. Dist. 47J v. Acton,* 515 U.S. 646, 652-53 (1995). But in the case of commercial property that is involved in a "closely regulated" industry whose operation "poses a clear and significant risk to the public welfare," *City of Los Angeles v. Patel,* 135 S. Ct. 2443, 2454 (2015), the property owner has a reduced expectation of privacy, and a warrantless seizure and inspection may be reasonable without an individualized showing of probable cause. *New York v. Burger,* 482 U.S. 691 (1987).

To invoke this authority based on a state scheme governing a closely regulated industry, the State must satisfy three criteria: (1) the regulatory scheme advances a substantial government interest; (2) warrantless inspections are necessary to further the regulatory scheme; and (3) the rules governing the inspections are a constitutionally adequate substitute for a warrant, i.e., the rules must provide notice that the property may be searched for a specific purpose and must limit the discretion of the inspecting officers. Missouri law authorizes the state patrol to conduct "random roadside examinations or inspections" of commercial motor vehicles.

The Court of Appeals for the Eighth Circuit held that by choosing to operate a heavy truck in furtherance of a commercial venture, Calzone subjects himself to a pervasive regulatory scheme and has a reduced expectation of privacy. Missouri maintains a substantial interest in ensuring the safety of the motorists on its highways and in minimizing damage to the highways from overweight vehicles, and that interest does not dissipate simply because Calzone's commercial activity is on behalf of his own ranch rather than for hire. We therefore conclude that Missouri's regulatory scheme advances a substantial government interest as applied to Calzone. The Missouri statute is a permissible substitute for a warrant, because they provide notice to commercial truck drivers of the possibility of roadside inspection by a designated law enforcement officer, and they limit the scope of the officer's inspections to an examination solely for regulatory compliance.

READ THE COURT OPINION HERE:
https://ecf.ca8.uscourts.gov/opndir/19/07/181674P.pdf

SEARCH AND SEIZURE:

Detention of Vehicle Passenger
United States v Yancey
CA7, No. 18-2935, 6/27/19

During a Rock Island, Illinois traffic stop, two officers were arresting the driver of a vehicle on an outstanding warrant, when they recognized Paris Yancey, the passenger. Based on their past interactions with Yancey, and their familiarity with a contact sheet labeling him as potentially armed, the officers decided to pat him down for weapons. Before they could do so, Yancey ran. The officers tackled him and saw a handgun sticking out of his waistband. Yancey was subsequently convicted of felony possession of a firearm. Yancey claimed that police lacked justification to keep him from leaving the scene.

The Seventh Circuit affirmed. "Under Supreme Court precedent, police officers can detain passengers in a car while a stop is ongoing if they have a lawful reason to seize the driver. The officers lawfully stopped the car in which

Yancey rode as a passenger and that stop was still lawfully ongoing when Yancey tried to flee; it was not unreasonable for the officers to detain him."

READ THE COURT OPINION HERE:
http://media.ca7.uscourts.gov/cgi-bin/rssExec.pl?Submit=Display&Path=Y2019/D06-27/C:18-2935:J:Brennan:aut:T:fnOp:N:2361866:S:0

SEARCH AND SEIZURE: Emergency Search; BAC; Unconscious Individual

Mitchell v. Wisconsin
USSC, No. 18-6219

Gerald Mitchell was arrested for operating a vehicle while intoxicated after a preliminary breath test registered a blood alcohol concentration (BAC) triple Wisconsin's legal limit for driving. Taken to a police station for a more reliable breath test using evidence-grade equipment, Mitchell was too lethargic for a breath test. Taken to a nearby hospital for a blood test, Mitchell was unconscious. His blood was drawn under a state law that presumes that a person incapable of withdrawing implied consent to BAC testing has not done so.

Charged with violating drunk-driving laws, Mitchell moved to suppress the blood test results. The Wisconsin Supreme Court affirmed the lawfulness of Mitchell's blood test.

The United States Supreme Court vacated. A plurality concluded that when a driver is unconscious and cannot take a breath test, the exigent-circumstances doctrine generally permits a blood test without a warrant. BAC tests are Fourth Amendment searches. A warrant is normally required but the "exigent circumstances" exception allows warrantless searches to prevent the imminent destruction of evidence when there is a compelling need for official action and no time to secure a warrant.

The Court previously held that the fleeting nature of blood-alcohol evidence alone did not bring BAC testing within the exigency exception but that unconscious-driver cases involve a heightened urgency. When the driver's stupor deprives officials of a reasonable opportunity to administer a breath test using evidence-grade equipment, a blood test is essential for achieving the goals of BAC testing. Highway safety is a compelling public interest; legal limits on a driver's BAC serve that interest. Enforcing BAC limits requires testing that is accurate enough to stand up in court and prompt because alcohol dissipates from the bloodstream. When a drunk-driving suspect is unconscious, health, safety, or law enforcement needs can take priority over a warrant application. A driver's unconsciousness is itself a medical emergency and a driver so drunk as to lose consciousness is likely to crash, giving officers other urgent tasks.

The Court noted that on remand, Mitchell may attempt to show that his case was unusual and that police could not have reasonably judged that a warrant application would interfere with other pressing needs.

READ THE COURT OPINION HERE:
https://www.supremecourt.gov/opinions/18pdf/18-6210_2co3.pdf

SEARCH AND SEIZURE:

Emergency Search;
Sound of Toilet Flush in Motel Room
United States v. Daniels
CA5, No. 18-30791, 7/10/19

After officers initiated a "knock and talk" on Lazandy Daniels' motel room, they heard running throughout the room and the sound of a toilet flushing, which could reasonably suggest that the room's occupants were attempting to destroy evidence.

The Court of Appeals for the Fifth Circuit stated that although searches and seizures inside a home without a warrant are presumptively unreasonable, an officer may search a person's property if the exigencies of the situation' make the needs of law enforcement so compelling that a warrantless search is objectively reasonable. The Court found, in part, as follows:

"A valid exigency exists when an officer believes that evidence is being destroyed— although an officer may not rely on the need to prevent destruction of evidence when that exigency was created or manufactured by the conduct of the police. In other words, an officer may not engage or threaten to engage in conduct that violates the Fourth Amendment in order to create an exigency justifying warrantless entry.

"We will first address whether there was an exigency justifying the search. To do so, we use a non-exhaustive five-factor test: (1) the degree of urgency involved and the amount of time necessary to obtain a warrant; (2) the reasonable belief that contraband is about to be removed; (3) the possibility of danger to the police officers guarding the site of contraband while a search warrant is sought; (4) the information indicating that the possessors of the contraband are aware that the police are on their trail; and (5) the ready destructibility of the contraband and the knowledge that efforts to dispose of it and to escape are characteristics in which those trafficking in contraband generally engage. See *United States v. Aguirre*, 664 F.3d 606 (5th Cir. 2011).

"Daniels argues that a 'single toilet flush' was not enough to justify entry. If a solitary flush were the only evidence of exigency in the record, he might be right. But the officers relied on more than just the flush. In fact, they were flush with exigency evidence. After he knocked, Agent Greaves could hear 'running throughout the room, running back and forth like from the right side where the door was back to the left side by the window.' He says there were times when James's 'voice was real close to the door' and when he 'could tell he was much further away from the door,' indicating that James was running back and forth. Agent Greaves had told James he was a police officer, so he was aware that the police were on his trail. And Agent Webber testified that it is 'not uncommon for drug dealers to flush narcotics down the toilet. Combined with the toilet-flushing sounds, this all reasonably suggests that the room's occupants might have been attempting to destroy evidence. The Aguirre factors therefore suggest that exigent circumstances existed justifying the warrantless search. So, the district court did not err in finding there was an exigency to justify the warrantless search. The officers had a full house of evidence, and a full house beats a flush.

"Now that we know an exigency existed, we must ask whether the officers created the exigency. Daniels says the officers' aggressive conduct made him believe that he was trapped, in violation of the Fourth Amendment, thereby creating the exigency. But the officers acted within the bounds of our case law. In *Kentucky v. King*, 563 U.S. 452

(2011) police banged on the door as loud as they could, but that did not create the exigency. Even though the defendant argued that the officers demanded entry, he couldn't back that up with any evidence in the record. Likewise, Daniels does not point to any evidence in the record that the agents actually threatened his Fourth Amendment rights. While the officers here knocked vigorously, the knocking was relatively brief—around two minutes—and the officers did not attempt to force entry prior to hearing the toilet flush. The officers did not create the exigency. Daniels fails to meet his burden of showing a Fourth Amendment violation. So the district court did not err in denying his motion to suppress.

READ THE COURT OPINION HERE:
http://www.ca5.uscourts.gov/opinions/pub/18/18-307910-CR0.pdf

SEARCH AND SEIZURE:

Entry to Arrest; Drugs Observed
United States v. Huskisson
CA97, No. 18-1335, 6/5/19

Anthony Hardy, arrested on drug conspiracy charges, led DEA agents to his drugs and guns and provided information that Hardy purchased methamphetamine from Paul Huskisson six times over the preceding five months, for $8,000 per pound, at Huskisson's house and at his car lot. Huskisson had stated that Huskisson's source expected a shipment of methamphetamine the next day. Hardy called Huskisson. Agents recorded that conversation. Huskisson agreed to deliver 10-12 pounds of methamphetamine. The next day, the two agreed during additional recorded calls that the deal was to occur at Huskisson's home that night.

Agent Cline followed Hardy to Huskisson's house; watched Hardy enter, with an entry team on standby; and saw a car pull into the driveway. Two men exited the car with a cooler and entered the house. Minutes later, Hardy walked outside and gave a prearranged signal to indicate he had seen methamphetamine in the house. No search warrant had yet been issued. The entry team entered the house and arrested Huskisson, who refused to consent to a search of his residence, and the other men. Officers saw in plain sight an open cooler with 10 saran-wrapped packages of a substance which field tested positive for methamphetamine. DEA agents then filed the warrant application, which stated: "The law enforcement officers observed an open cooler with ten saran wrapped packages that contained suspected methamphetamine. The suspected methamphetamine later field tested positive for the presence of methamphetamine."

The warrant was issued four hours after the initial entry. The Seventh Circuit upheld denial of a motion to suppress:

"The entry was unlawful. Ordinarily, the evidence would be excluded but because the government had so much other evidence of probable cause, and had already planned to apply for a warrant, the evidence is admissible. Though the government should not profit from its bad behavior, neither should it be placed in a worse position."

READ THE COURT OPINION HERE:
http://media.ca7.uscourts.gov/cgi-bin/rssExec.pl?Submit=Display&Path=Y2019/D06-05/C:18-1335:J:Brennan:aut:T:fnOp:N:2351010:S:0

SEARCH AND SEIZURE:

Franks Hearing; Search Warrant

United States v. Moody

CA4, No. 18-4213, 7/29/19

On March 24, 2016, as part of a larger investigation into narcotics trafficking, police used a confidential informant to buy heroin from Benitez Auguarius Moody, a suspected drug dealer. Later that evening, Portsmouth Police Detective Beth Shelkey applied for warrants to search Moody's home and vehicle. Shelkey's supporting affidavit described the investigation, including the controlled heroin purchase on March 24 as well as other drug transactions:

> *During the past 6 months, this affiant and other members of the Portsmouth Police Department [Special Investigations Unit] have utilized Confidential Informants who have been up to and inside of 1212 Lindsay Ave Portsmouth, VA and purchased quantities of heroin and cocaine from MOODY. During the investigation controlled purchases have been conducted directly from 1212 Lindsay Ave Portsmouth VA and from a 2004 black in color BMW convertible displaying Virginia tags VLD-9617 reregistered to MOODY.*
>
> *Within the past 24hrs this affiant and other members of the Portsmouth Police Department utilized a Confidential Informant who placed a telephone call to MOODY asking to purchase heroin from MOODY. MOODY arranged to meet the Confidential Informant in a pre arranged location. During this controlled purchase, MOODY and other coconspirators (two unidentified black females) were observed leaving from 1212 Lindsay Ave Portsmouth, VA and surveilled traveling to the pre arranged location and selling the Informant heroin. The heroin was recovered by members of the Portsmouth Police Department Special investigations Unit, field tested and resulted positive for heroin.*

A state magistrate issued the warrants that same day. The resulting searches uncovered four firearms, drugs, drug paraphernalia, and thousands of dollars in cash. Moody was ultimately indicted by a federal grand jury on multiple counts of drug possession with intent to distribute, drug distribution, and firearm offenses.

Moody sought an evidentiary hearing to challenge a facially sufficient search warrant affidavit. Such hearings are called "Franks hearings," named for the Supreme Court's decision permitting them in *Franks v. Delaware*, 438 U.S. 154 (1978). In his request, Moody argued that a police officer's trial testimony contradicted her search warrant affidavit that had led to evidence used at his trial. The district court, however, refused to hold a Franks hearing, finding that Moody had failed to make the necessary threshold showing.

The Court of Appeals for the Fourth Circuit affirmed, stating:

"…A defendant must meet a high bar before he may challenge the veracity of a facially valid search warrant affidavit. …In this case, defendant failed to show that the mere imprecision of the warrant affidavit showed falsity. Even assuming the affidavit was false, defendant failed to show intentional falsity or a reckless disregard for the truth by the officer."

READ THE COURT OPINION HERE:

http://www.ca4.uscourts.gov/opinions/184213.P.pdf

SEARCH AND SEIZURE:

Franks Hearing; Search Warrant

United States v. Clark

CA7, No. 18-2604, 8/15/19

Michael Clark was convicted of possessing a mixture containing fentanyl in violation of 21 U.S.C. § 841(a)(1). Clark had been found in a hotel room with more than 80 grams of a mixture of heroin and fentanyl, a digital scale, and cellophane bags. He does not appeal any aspect of his jury trial, but he challenges the denial of his motion for a Franks hearing challenging the issuance of the search warrant for the hotel room.

The Seventh Circuit vacated Michael Clark's conviction and remanded the case for an evidentiary hearing on his Franks challenge:

"Merely to obtain a Franks hearing, a defendant need only make a substantial preliminary showing that the warrant application contained a material falsity or omission that would alter the issuing judge's probable cause determination and that the affiant included the material falsity or omitted information intentionally or with a reckless disregard for the truth. Clark asserted that the police investigator who applied for the warrant deliberately or recklessly omitted critical information affecting the credibility of the unidentified informant who told police about drug distribution at the hotel. Here, the foundation for probable cause independent of the credibility of the informant was so meager that the informant's credibility was material for Franks purposes. The police had provided no information about the informant's credibility."

READ THE COURT OPINION HERE:

http://media.ca7.uscourts.gov/cgi-bin/rssExec.pl?Submit=Display&Path=Y2019/D08-15/C:18-2604:J:Hamilton:aut:T:fnOp:N:2384674:S:0

SEARCH AND SEIZURE:

Knock and Announce

United States v. Diaz-Ortiz

CA8, No. 18-2948, 6/20/19

On June 16, 2016, officers with the Ozark Drug Enforcement Team and the Bureau of Alcohol, Tobacco, Firearms and Explosives took Justin Thurston, a methamphetamine dealer, into custody. Prior to being taken into custody, Thurston told the officers that his supplier, whom he knew as "Pedro," had a room at the Microtel Hotel, located in Joplin, Missouri. Thurston also indicated that he had seen a large amount of methamphetamine in the room earlier that day. The officers then drove to the Microtel Hotel and contacted hotel management. They eventually learned that the man Thurston identified as "Pedro" was actually Diaz-Ortiz and that Diaz-Ortiz was renting room 239. Based upon the information provided by Thurston, the officers applied for a search warrant.

While waiting for the search warrant, the officers learned that Thurston had been released from custody. The officers became worried that Thurston would alert Diaz-Ortiz to their presence and that Diaz-Ortiz would begin destroying evidence. They therefore decided to enter the room and secure Diaz-Ortiz to prevent the potential destruction of evidence. The officers went to room 239 and knocked on the door. Hearing Diaz-Ortiz approach the door, they used a key card obtained from hotel management and entered. Upon entering, the officers detained Diaz-Ortiz and advised him of his Miranda rights. They did not search the room. According to the district court, Diaz-Ortiz implied to the officers that he did not wish to speak with them until he had a lawyer present. Officers engaged in conversation with Diaz-Ortiz while they were waiting for the search warrant, however, and Diaz-Ortiz told them that

there were three pounds of methamphetamine in the room.

A few hours after entering the room and detaining Diaz-Ortiz, more officers arrived with a signed search warrant. Only then did the officers search the room. Their search uncovered: approximately three pounds of methamphetamine, $10,331 in cash, a loaded handgun, and sample amounts of heroin and cocaine. Diaz-Ortiz was arrested and transported to the Newton County Jail.

Diaz-Ortiz argues for the first time that the search evidence should have been suppressed because it was obtained after an alleged violation of the knock-and-announce rule under the Fourth Amendment.

The Eighth Circuit Court of Appeals found, in part, as follows:

"The Supreme Court's ruling in *Hudson v. Michigan*, 547 U.S. 586 (2006) disposes of this case. In Hudson, the Supreme Court considered whether a gun and drugs seized by officers pursuant to a search warrant should be suppressed because the officers had violated the knock-and-announce rule in the course of executing the warrant. Based on the facts of that case, the Court found that 'whether that preliminary misstep had occurred or not, the police would have executed the warrant they had obtained, and would have discovered the gun and drugs inside the house.' The Court then held that because the knock-and-announce violation had nothing to do with the seizure of the evidence, the exclusionary rule was inapplicable.

"Similarly, in this case, the officers' alleged violation of the knock-and-announce rule had nothing to do with their seizure of the gun, drugs, and cash in Diaz-Ortiz's hotel room pursuant to their search warrant. As the district court found, the search warrant was based solely on evidence obtained prior to the officers' entry. Therefore, regardless of whether the officers violated the knock-and-announce rule, they still would have obtained and executed the warrant and discovered the aforementioned evidence. Accordingly, Diaz-Ortiz's claim is foreclosed."

READ THE COURT OPINION HERE:
https://ecf.ca8.uscourts.gov/opndir/19/06/182948P.pdf

SEARCH AND SEIZURE:

Plain Feel Doctrine
United States v. Greene
CA3, No. 18-2923, 6/25/19

Officer Mark Stefanowicz of the Hanover Township Police, while speaking with Manley and Greene, smelled unburnt marijuana emanating from the vehicle. Greene then began acting suspiciously by "repeatedly seeking to leave, and attempting to leave, the scene of the traffic stop…initially standing up and then sitting back down in the passenger seat when ordered out of the vehicle; and standing up and reaching for his waistband, as though trying to conceal something on his person. Stefanowicz responded to Greene's suspicious behavior by patting him down as permitted by *Terry v. Ohio*, 392 U.S. 1 (1968). In doing so, Stefanowicz felt a bulge, the seal of a plastic baggie, and the texture of its contents. Based on his extensive experience, Stefanowicz immediately recognized the bag as marijuana, so he had no need to manipulate it. After removing the baggie, Stefanowicz placed Greene under arrest.

The Court of Appeals for the Third Circuit stated that under *Minnesota v. Dickerson*, police may

seize contraband during a lawful pat-down if the contraband's "contour or mass makes its identity immediately apparent." 508 U.S. 366, 375 (1993). This "plain-feel doctrine" permits an officer to seize an object when, given his training and experience, he develops probable cause to believe it is contraband (1) by the time he concludes it is not a weapon and (2) "in a manner consistent with a routine frisk." *United States v. Yamba*, 506 F.3d 251, 257, 259 (3d Cir. 2007). Here, Officer Stefanowicz, based on his extensive experience in drug investigations, identified a bag of marijuana in Greene's pocket during a lawful pat-down. He did not manipulate the bulge—and had no need to do so—because he immediately recognized it by its feel and texture.

READ THE COURT OPINION HERE:
http://www2.ca3.uscourts.gov/opinarch/182923p.pdf

SEARCH AND SEIZURE:

Privacy Expectation of Trespasser
United States v. Sawyer
CA7, No. 18-2923, 7/9/19

Chicago Police responded to a reported residential burglary in progress. M.G. met officers at the property and stated that he owned the home as a rental property with no current tenants and that no one should be inside. M.G. spotted a window cracked open and, peering inside, he saw someone in the house. Officers banged on the door and ordered all the occupants outside. Devontay Sawyer and three others came out and stood with the officers on the porch.

M.G. asked the officers to "check my house." Inside, officers found a backpack; they opened it and discovered four guns. Outside, officers placed the four men in custody. The backpack was brought outside. An officer opened it, found a cell phone, gave Miranda warnings, and asked the arrestees who owned the phone. Sawyer responded that it was his phone and bag. Sawyer later denied it was his bag. Sawyer moved to suppress the contents of the backpack and his statements.

The government successfully argued that Sawyer failed to provide evidence that he had a subjective expectation of privacy in the backpack and that, as a trespasser, Sawyer had no legitimate expectation of privacy; officers had obtained the owner's consent to search the home. Sawyer conditionally pleaded guilty to knowingly possessing a firearm as a felon.

The Seventh Circuit affirmed. The officers were entitled to search the backpack as part of their ongoing investigation of a burglary; Sawyer, as a trespasser, had no reasonable expectation of privacy in the backpack he brought in when he unlawfully entered the premises.

READ THE COURT OPINION HERE:
http://media.ca7.uscourts.gov/cgi-bin/rssExec.pl?Submit=Display&Path=Y2019/D07-09/C:18-2923:J:St__Eve:aut:T:fnOp:N:2366593:S:0

SEARCH AND SEIZURE:

Probable Cause; Dog Sniff
United States v. Simon
CA7, No. 18-2442, 8/21/19

Marshon Simon was stopped for failing to signal sufficiently ahead of turning. A drug-sniffing dog alerted on Simon's car. Officers searched it. They did not find drugs, but found a gun. The government charged Simon as a felon-in-possession.

The Seventh Circuit affirmed the denial of Simon's motions for recusal, suppression, and

supplementation. "The district court properly assessed credibility and found that the officers had probable cause to initiate the traffic stop and did not prolong the stop to allow for the dog sniff. The mere absence of drugs does not undermine the probable cause to search for drugs, provided there was probable cause in the first place. The judge conducted the proper Harris evaluation and concluded the dog's satisfactory certification and training provide sufficient reason to trust his alert."

The Court stated that a dog's alert on a car can give probable cause to search the entire car. Indeed, a good dog's alert can provide a rebuttable presumption of probable cause to search:

If a bona fide organization has certified a dog after testing his reliability in a controlled setting, a court can presume (subject to any conflicting evidence offered) that the dog's alert provides probable cause to search. The same is true, even in the absence of formal certification, if the dog has recently and successfully completed a training program that evaluated his proficiency in locating drugs.

The ultimate question is "whether all the facts surrounding a dog's alert, viewed through the lens of common sense, would make a reasonably prudent person think that a search would reveal contraband or evidence of a crime. A sniff is up to snuff when it meets that test.

READ THE COURT OPINION HERE:
http://media.ca7.uscourts.gov/cgi-bin/rssExec.pl?Submit=Display&Path=Y2019/D08-21/C:18-2442:J:Manion:aut:T:fnOp:N:2387194:S:0

SEARCH AND SEIZURE:

Probable Cause; Facebook Account

United States v. Nyah

CA8, No. 17-3730, 6/26/19

On July 7, 2016, Des Moines Police Detective Jeffrey Shannon submitted an affidavit requesting a search and seizure warrant for Facebook, Inc., to disclose the contents of accounts belonging to Meamen Jean Nyah and three other people. He sought the warrant under 18 U.S.C. § 2703, which governs the required disclosure of customer communications or records by a provider of electronic communication service or remote computing service.

Shannon started by recounting information that was obtained during an investigation seven months earlier. He averred that on December 3, 2015, he had received a tip that members of a local gang would be filming a music video while in possession of firearms at an apartment in Des Moines. The affidavit said that police officers searched the apartment on December 3, discovered several firearms, and encountered Nyah among the people present for the filming of the video. The music video was then posted to Facebook and YouTube on approximately January 7, 2016. The affidavit stated that Nyah, along with three other people, was "clearly visible in the video," and was handling at least one of the firearms recovered during the December search.

The affidavit explained that each of the four people identified had "utilized his Facebook account to post the music video, display photographs carrying firearms, display photographs of what appear to be marijuana, and/or proclaim his gang affiliation." The affidavit also stated that Nyah had been arrested on December 7, 2015, for carrying weapons after a police officer found a loaded gun in the glove

compartment of a car in which Nyah was the front-seat passenger. The officer detected the odor of marijuana emanating from the vehicle and saw Nyah reach into the glove compartment and appear to dig inside frantically. The weapons charge against Nyah eventually was dropped after the driver admitted that the firearm belonged to him. Police also found marijuana in a backpack in the trunk of the car. Finally, the affidavit stated that between December 2015 and May 2016, Shannon and other law enforcement officers had observed Nyah in photographs posted to his Facebook profile "that include him posing with firearms and smoking what appears to be marijuana."

A magistrate judge issued a warrant on July 7, 2016, authorizing law enforcement officers to search for information associated with Nyah's Facebook account that was stored at Facebook's corporate premises, for the period from November 1, 2015, to July 7, 2016. The warrant commanded the officers to execute the warrant on or before July 21. On July 8, Shannon delivered the warrant to Facebook, and the company turned over the requested material on July 22. The Facebook records seized by the government included photographs and messages that were evidence of Nyah's drug use and possession of firearms. A grand jury then charged Nyah with one count of possession of a firearm as an unlawful user of a controlled substance, in violation of 18 U.S.C. § 922(g)(3). Nyah moved to suppress the evidence obtained from the search of his Facebook account. He argued that there was insufficient probable cause to support issuance of the warrant.

Nyah first contends that Shannon's affidavit did not establish probable cause to support the issuance of the search warrant. Probable cause exists when there is a "fair probability that contraband or evidence of a crime will be found in a particular place." *Illinois v. Gates*, 462 U.S. 213, 238 (1983).

The Court of Appeals for the Eighth Circuit concluded that the affidavit established probable cause that Nyah's Facebook account contained evidence of Nyah possessing firearms as an unlawful drug user. Shannon reported that he and other officers had observed photographs posted to Nyah's Facebook profile "that include him posing with firearms and smoking what appears to be marijuana." Nyah responds that the affidavit was devoid of evidence that the photographs show him posing with real firearms and smoking real marijuana. But there was an ample basis for the magistrate judge to infer a fair probability that Nyah possessed real guns and drugs. Shannon, a trained drug investigator with many years of experience investigating violent crime, reported that the items appeared authentic in the Facebook photographs. He also averred that Nyah possessed an apparently genuine firearm in the music video; that conclusion was corroborated by a seizure of real firearms from the site where the music video was filmed on the date of the filming. The affidavit also contained evidence that Nyah was found in a car emitting an odor of marijuana, with real marijuana in the trunk, during the traffic stop on December 7. There was thus a substantial basis to support the issuing judge's determination of probable cause.

READ THE COURT OPINION HERE:
https://ecf.ca8.uscourts.gov/opndir/19/06/173730P.pdf

SEARCH AND SEIZURE:

Probable Cause; GPS Tracking

United States v. Petruk

CA8, No. 17-3823, 7/11/19

Over a two-week period in September 2016, law enforcement officers across two states obtained four warrants to search three vehicles associated with Elfred William Petruk: a 1994 Chevrolet Camaro (Camaro), a 2001 Chevrolet Silverado pickup truck (Silverado), and a 2005 Chrysler 300 (Chrysler). Three of the warrants permitted officers to install Global Positioning System (GPS) tracking devices on each of the vehicles. The fourth warrant allowed them to search the Chrysler. The affidavits supporting each warrant application contained largely the same information. Petruk challenges each warrant as unsupported by probable cause.

The Court of Appeals for the Eighth Circuit found, in part, as follows:

"The Fourth Amendment protects persons against unreasonable searches. U.S. Const. amend. IV. Installing a GPS tracker on a vehicle to monitor that vehicle's movements is a search within the meaning of the Fourth Amendment and thus generally requires a warrant. *United States v. Faulkner,* 826 F.3d 1139, 1144 (8th Cir. 2016) (citing *United States v. Jones*, 565 U.S. 400, 404–05 (2012).

"Like the district court, we conclude that the affidavits supporting each of the GPS warrant applications provided probable cause to believe that Petruk was involved in methamphetamine trafficking and that the location data from the vehicles would lead to evidence of that trafficking. In this case, four confidential informants provided information indicating that Petruk had teamed up with other known drug dealers to sell large quantities of methamphetamine in the Duluth area and was using multiple vehicles to travel regularly to Minneapolis/St. Paul to resupply. It is well established that the statements of a reliable confidential informant are themselves sufficient to support probable cause for a search warrant. *United States v. Wright*, 145 F.3d 972, 975 (8th Cir. 1998). The key inquiry is whether the confidential informant's information is, in fact, reliable. See, e.g., *United States v. Williams*, 10 F.3d 590, 593 (8th Cir. 1993). As we have repeatedly recognized, when an informant has provided reliable information in the past or where his tip was independently corroborated, a court may deem the informant's tip sufficiently reliable to support a probable cause determination. *United States v. Caswell*, 436 F.3d 894, 898 (8th Cir. 2006).

"The supporting affidavits established that all four CIs had a record of providing reliable information to law enforcement. Each of the CIs had provided information that led to the arrest of multiple individuals who were selling controlled substances, and also to the issuance of one or more search warrants that resulted in the seizure of controlled substances. Two of the CIs had also conducted one or more controlled purchases of illegal drugs. Moreover, the information provided by the Cis in Petruk's case was corroborated not only by the other CIs, but by law enforcement officers as well. See, e.g., *United States v. Keys,* 721 F.3d 512, 518 (8th Cir. 2013) (The receipt of consistent information from two separate sources is a form of corroboration.) Through multiple personal observations, officers learned that Petruk drove various vehicles and that he was connected to at least one other known methamphetamine trafficker in the area.

Petruk nevertheless argues that the warrants were not supported by probable cause because

the corresponding applications did not state the basis of the CIs' knowledge and because the information they provided was 'stale.' First, it is true that when an affidavit in support of a search warrant is based upon information from an informant, the informant's reliability, veracity, and basis of knowledge are relevant considerations. But they are not 'independent, essential elements' to finding probable cause. See *Gates*, 462 U.S. at 230–33. Indeed, a 'deficiency' in either the informant's reliability or his basis of knowledge 'may be compensated for, in determining the overall reliability of a tip, by a strong showing as to the other, or by some other indicia of reliability.' *Gates*, 462 U.S. at 233. In this case, the CIs' reliable track record and the officers' independent corroboration make up for any deficiency in basis of knowledge.

"Second, although information supporting a warrant can become 'stale' if it is not 'sufficiently close in time to the issuance of the warrant and the subsequent search,' *United States v. Davis,* 867 F.3d 1021, 1028 (8th Cir. 2017), there is no staleness problem here. We have no fixed formula for deciding when information has become stale, but we consider the nature of the crime being investigated and the property to be searched. Where the crime under investigation is 'of a continuous nature,' the passage of time between the last described act and the application for a warrant is less significant. See, e.g., *United States v. Maxim*, 55 F.3d 394, 397 (8th Cir. 1995) (concluding that given the continuing nature of the crime of unlawful possession of weapons, three-year-old and four-month-old information included in supporting affidavit was not stale). Here, the information that officers received from July to early September 2016 indicated that Petruk was engaged in ongoing large-scale methamphetamine distribution involving several vehicles, such that any time lapses between the provision of the information and the applications for the search warrants did not render the information stale. Information about criminal activity at an earlier, unspecified time may combine with factually connected, recent, time-specific information to provide a substantial basis for the conclusion that the criminal activity described in an affidavit is sufficiently close in time to the search warrant application.

The district court properly denied Petruk's motion to suppress all evidence derived from the execution of the warrants.

READ THE COURT OPINION HERE:
https://ecf.ca8.uscourts.gov/opndir/19/07/173823P.pdf

SEARCH AND SEIZURE:

Reasonable Suspicion; Information Obtained by a Team of Officers
United States v. Guzman
CA8, No. 18-1506, 6/13/19

As part of an investigation of large-scale methamphetamine trafficking ring Detective Dan Christiansen, who was part of a surveillance team, contacted State Trooper Andrew Steen to stop a minivan. Christiansen told Steen that the minivan's occupants possessed drugs and firearms. Steen was instructed that he did not have wait to develop his own probable cause for a traffic violation before stopping the minivan but that he should make the stop look routine.

Steen stopped the minivan, and Sioux Falls Police Officer Jason Christensen arrived to provide assistance. Steen approached the driver's side and Christensen approached the passenger's side. Steen falsely told Morales, who was driving, that his brake light was out and asked him to step out

of the vehicle. For his part, Christensen asked Guzman, who was sitting in the passenger seat, also to exit. When Guzman obliged, Christensen saw a small plastic bag containing marijuana between the passenger seat and the doorsill. The officers placed Morales and Guzman in handcuffs. Steen and Christensen searched the minivan and found a pound of marijuana, various cell phones, cash, and a small digital scale that tested positive for methamphetamine. A search of Guzman's person revealed a loaded Glock 19, approximately and 29 grams of methamphetamine.

On appeal, both defendants challenge the district court's denial of their respective motions to suppress.

The Court of Appeals for the Eight Circuit stated, in part, as follows:

"The Fourth Amendment protects the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures. U.S. Const. amend. IV. A traffic stop constitutes a seizure and therefore must be supported at least by reasonable suspicion. *United States v. Givens*, 763 F.3d 987, 989 (8th Cir. 2014). Reasonable suspicion exists 'when a law enforcement officer has a particularized and objective basis for suspecting the particular person stopped of criminal activity.' *Navarette v. California*, 134 S. Ct. 1683, 1687 (2014). In deciding whether there is reasonable suspicion, 'an officer may rely on information provided by other officers as well as any information known to the team of officers conducting the investigation.' *United States v. Mora-Higuera*, 269 F.3d 905, 910 (8th Cir. 2001).

"Morales and Guzman argue that Steen's stop of the minivan violated their Fourth Amendment rights and that all evidence obtained as a result of that stop must be suppressed as fruit of the poisonous tree. They contend that they were not specifically identified as the occupants of the van before the stop, depriving Steen of reasonable suspicion to believe the minivan's occupants were engaged in criminal activity. The district court found that before agents directed Steen to stop the minivan, they had positively identified that the occupants of the grey van were in fact Morales and Guzman."

The district court did not err in finding that law enforcement officers knew that Morales and Guzman were inside the minivan before it was stopped. The Court therefore affirmed the district court's denial of each defendant's motion to suppress.

READ THE COURT OPINION HERE:
https://ecf.ca8.uscourts.gov/opndir/19/06/181506P.pdf

SEARCH AND SEIZURE:

Stop and Frisk; Flight
United States v. Brown
CA9, No. 17-30191, 6/5/19

A police officer spotted Daniel Derek Brown, a black man who was on foot, and activated their lights and pursued him by car. The officers did not order or otherwise signal to Brown to stop and he reacted by running for about a block before the officers stopped him at gunpoint.

The panel held that the officers lacked reasonable suspicion that criminal activity was afoot before stopping and frisking Brown where there was no reliable tip, no reported criminal activity, no threat of harm, no suggestion that the area was known for high crime or narcotics, no command to stop, and no requirement to even speak with

the police. The court noted that it was particularly hesitant to allow flight to carry the day in authorizing a stop.

READ THE COURT OPINION HERE:
http://cdn.ca9.uscourts.gov/datastore/opinions/2019/06/05/17-30191.pdf

SEARCH AND SEIZURE:

Stop and Frisk; Reasonable Suspicion; Evidence Other than Memory
Tory v. City of Chicago
CA7, No. 18-1935, 8/2/19

Three Chicago police officers stopped three black men in a grey sedan to investigate a shooting that had happened nearby a few hours earlier. When the passengers sued a year later, none of the officers remembered the Terry stop. They relied on other evidence to show that reasonable suspicion had existed.

Cell phone footage taken by one of the plaintiffs during the encounter depicted Sergeant King, the officer who initiated the stop, citing the plaintiffs' suspicious behavior in the area of the shooting as the reason that he had pulled them over. A police report showed that dispatches to officers, including King, identified the suspects as three black men in a grey car. The descriptions of the car's model varied.

The district court held that these descriptions were close enough to justify the Terry stop and that the officers were entitled to qualified immunity because the stop did not violate clearly established law. The Seventh Circuit affirmed, rejecting a "suggestion" that the defendants' failure of memory was a concession of liability.

"The Fourth Amendment does not govern how an officer proves reasonable suspicion for a Terry stop; he can rely on evidence other than memory. The police report demonstrates what King knew and the cell-phone video shows him giving the shooting as the reason for the stop."

READ THE COURT OPINION HERE:
http://media.ca7.uscourts.gov/cgi-bin/rssExec.pl?Submit=Display&Path=Y2019/D08-02/C:18-1935:J:Barrett:aut:T:fnOp:N:2378770:S:0

SEARCH AND SEIZURE:

Reasonable Suspicion; Shining a Flashlight at an Individual
United States v. Turner
CA8, No. 18-2262, 8/16/19

At approximately 11:30 p.m. on August 9, 2017, a dispatcher alerted Lincoln Police Department ("LPD") Officer Christopher Monico to a possible disturbance near the trailer court where Defendant Samuel Turner lives. As Monico drove through Turner's trailer court looking for a suspect, Monico observed a woman standing next to a cluster of mailboxes and stopped to talk to her. The woman was Kimberlie Bridges, an acquaintance of Turner's and the mother of his child. Officer Craig Price arrived on the scene shortly thereafter to serve as backup.

While Monico and Price were talking to Bridges, Turner approached. Monico shined a flashlight on Turner and asked him about the disturbance. Turner asked Monico to lower the flashlight because it was in his face. As Monico did so, he saw that Turner was standing on what looked like a bag containing methamphetamine.

Monico ordered Turner and Bridges to place their hands on a nearby vehicle. Turner did not comply. The officers approached Turner. As they did, Turner reached down, touched the bag of methamphetamine, and attempted to grab it. The officers physically seized him and, after some

resistance, handcuffed him and placed him in a cruiser. As they did, Turner stated that the "dope" was not his. Turner filed a motion to suppress his stop and subsequent arrest. He claimed that Monico and Price lacked a reasonable suspicion to detain and question him when they stopped near his house to investigate the disturbance.

The Court of Appeals for the Eighth Circuit stated that an officer may generally approach an individual and ask him questions, even when the officer does not have a basis for suspecting that the individual has committed or is committing a crime, so long as the officer does not convey a message that compliance with his request is required. *United States v. Cook*, 842 F.3d 597, 600 (8th Cir. 2016) (quoting *Florida v. Bostick*, 501 U.S. 429, 435 (1991)). Furthermore, if in the process of questioning the individual the officer develops a reasonable suspicion or probable cause to believe that a crime is being committed by that individual, the officer may take further, reasonable action to confirm or dispel that suspicion or probable cause. See *Hayden*, 759 F.3d at 847 (holding that officers did not violate the Fourth Amendment when they seized and searched a man after a consensual encounter because they had developed a "reasonable suspicion that criminal activity was afoot"). That is exactly what happened here. Moreover, nothing in the record suggests Officers Monico and Price did anything while they were questioning Turner to convey the message that his compliance was required. Shining a flashlight to illuminate a person in the darkness is not a coercive act that communicates an official order to stop or comply. Consequently, the district court did not err in denying Turner's motion to suppress.

READ THE COURT OPINION HERE:
https://ecf.ca8.uscourts.gov/opndir/19/08/182262P.pdf

SEARCH AND SEIZURE:

Vehicle Search Incidental to Arrest

United States v. Norman

CA4, No. 18-4214, 8/15/19

On December 7, 2016, officers with the United States Marshals Fugitive Task Force and the local sheriff's office received information that Thomas Edward Norman, wanted on an outstanding warrant for violating the terms of his supervised release, could be found in a black Camry on Archer Road in Spartanburg, South Carolina. Arriving on the scene, the officers approached the vehicle, removed Norman, and placed him under arrest pursuant to the outstanding warrant. They then searched Norman and found a large amount of cash and a cell phone in his pockets. The officers also removed and searched the sole passenger in the vehicle, Princess Harrison; they found a baggie in her hair, which she admitted contained cocaine residue.

When officers placed the cash seized from Norman's person on the driver's side seat of the Camry, they saw additional cash on the car's floorboard. The officers later ascertained that the total amount of cash recovered from Norman's person and the floorboard was $1,244. The officers also observed a small tied-up quarter baggie sitting behind the gear stick on the center console of the vehicle. One officer testified that, based on the baggie's distinctive appearance and his seventeen years of experience with narcotics investigations, he believed the baggie contained contraband. The baggie's contents later tested positive for heroin.

After arresting Norman and Harrison and observing the cash and baggie in plain view, the officers conducted an extensive search of the vehicle. They subsequently located packages containing cocaine and "molly" (a street term for powdered ecstasy) under a bag on the floor of the back seat and a firearm under the driver's side seat.

Norman challenges the district court's denial of his motion to suppress the fruits of the warrantless search of the Camry.

The Fourth Circuit Court of Appeals agreed with the Government that the officers' search of the Camry was a valid search incident to the arrest of Harrison:

"Police may conduct a warrantless search of a vehicle 'incident to a lawful arrest when it is reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle.' *Arizona v. Gant,* 556 U.S. 332, 343 (2009). After finding a bag of white powder in Harrison's hair — which she admitted to the arresting officer was cocaine — and observing a suspicious baggie and a large amount of cash in plain view, the officers had a reasonable basis to believe they might find additional drugs in the Camry in which Harrison, an arrestee, was a passenger."

READ THE COURT OPINION HERE:
http://www.ca4.uscourts.gov/opinions/184214.P.pdf

SEARCH AND SEIZURE: Vehicle Inventory Search; Driver's Towing Request

United States v. Dunn
CA8, No. 18-2393, 6/25/19

Around 1:00 AM on April 12, 2017, Kalil Wesley Dunn fell asleep at the wheel of a moving Buick sedan on a Minneapolis, Minnesota, street. The Buick ran into three parked cars before spinning to a stop in the middle of the street, sustaining heavy front-end damage and a flat tire which rendered the vehicle undriveable. Minneapolis police officers arrived on the scene and found the Buick sitting in the street, facing the wrong direction and blocking traffic. The officers observed the vehicle's condition and location and, pursuant to Minneapolis Police Department policy, chose to tow and impound it. They did so despite the fact that Dunn had already contacted a private tow truck. The officers, continuing to follow departmental policy, conducted an inventory search of the Buick before towing it. During the search, they discovered two semi-automatic pistols, two baggies containing crack cocaine, and two digital scales. Dunn was arrested and detained by local authorities.

After an evidentiary hearing, a magistrate judge recommended denial of Dunn's motions to suppress, finding that the April 12th search was a valid inventory search. The district court adopted the Report and Recommendation over Dunn's objections, stating that nothing in the law or Minneapolis Police Department policy requires officers to consult a vehicle's driver before making towing arrangements.

Dunn moved to suppress evidence gathered in the April 12th inventory search, arguing that the search was unreasonable because Minneapolis police should have waited and deferred to his private towing arrangements rather than impounding his vehicle.

Upon review, the Eighth Circuit Court of Appeals found:

"An inventory search is considered reasonable if it is conducted according to standardized police procedures. Here, it is undisputed that Minneapolis Police Department policy allows officers to tow and impound a vehicle that is impeding traffic when the owner cannot immediately remove the vehicle on his own. It is also undisputed that officers must conduct an inventory search before impounding a car. Dunn acknowledges that departmental policy does not require officers to ask vehicle owners if they wish to make private towing arrangements

before the officer's tow and impound a vehicle. He contends, however, that the standard policy did not apply because he informed the officers that he had already made private towing arrangements and the officers should have deferred to those arrangements. Dunn cites no legal authority for this proposition, nor any legal authority showing that the Minneapolis Police Department's towing policy is unreasonable.

"Because Dunn admits that the officers followed departmental policy in impounding and inventorying his vehicle, and because an inventory search conducted according to standard departmental policies is reasonable, we find that the April 12th search of Dunn's vehicle was reasonable. See *United States v. Marshall*, 986 F.2d 1171, 1174 (8th Cir. 1993). The district court properly denied Dunn's motion to suppress the evidence gathered during that search."

READ THE COURT OPINION HERE:
https://ecf.ca8.uscourts.gov/opndir/19/06/182393P.pdf

SECOND AMENDMENT:

Sensitive Place Where Firearms Prohibited
United States v. Class
DCC, No. 15-3015, 7/19/19

In May 2013, Rodney Class drove to the United States Capitol in Washington, D.C. He parked his car in one of the many angled parking spots that line the 200 block of Maryland Avenue SW (the "Maryland Avenue lot"). That parking spot sits just north of the United States Botanic Gardens and approximately 1,000 feet from the entrance to the Capitol itself. The street is accessible to the general public, but the parking spot Class used is reserved on weekdays for employees of the House of Representatives. The parking lot is marked by a sign indicating a permit is required. Class locked his car and walked inside the Capitol. Upon his return, several police officers were peering into his car. One asked Class if he had any weapons inside, and he answered that he did. The officer told Class that it was illegal to have weapons on Capitol Grounds and took Class to Capitol Police headquarters. When the car was searched, three firearms were found.

The DC Circuit affirmed Class's conviction for violating a federal law prohibiting the possession of firearms on the grounds of the United States Capitol. The court held that the Second Amendment does not give defendant the right to bear arms in the Maryland Avenue parking lot because it was set aside for the use of government employees, was in close proximity to the Capitol building, and was on land owned by the government. Therefore, the court considered the lot as a single unit with the Capitol building, and concluded that the lot was a "sensitive" place where firearms prohibitions were presumptively lawful. Class's arguments to the contrary were unavailing. The court also held that Class's conviction did not violate the Due Process Clause where the text of the Capitol Grounds ban was quite clear, and an ordinary citizen would readily understand from the text of the statute that he may not carry a firearm on the Capitol Grounds or inside the Capitol.

READ THE COURT OPINION HERE:
https://www.cadc.uscourts.gov/internet/opinions.nsf/0/C285DB3765D160098525843C0051597A/$file/15-3015-1798017.pdf