UNIVERSITY OF ARKANSAS SYSTEM
CRIMINAL JUSTICE INSTITUTE

CJI Legal Briefs

Volume 26, Issue 3
SPRING 2022

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

Contents

CIVIL LIABILITY: Deadly Force; Shooting of Fleeing Subject

ASC, No. CR-20-520, 2021 Ark. 157, 9/16/21

In the afternoon of March 19, 2019, the Bastrop Police Department (BPD) received two reports of an armed confrontation at the Eden Apartments. The first report warned "they are drawing guns." The second identified one perpetrator as "Thomas Johnson," who was driving a red truck with rims. Officer Joshua Green responded to the reports.

Approaching the apartments, Green encountered a stationary red truck with flashing hazards near the H.V. Adams Elementary School, which had been closed for a few months. The truck matched the reported description, so Green initiated a stop. The truck began to pull away, so Green instructed the driver to stop, which he did. From his squad car, Green reported the license plate. Green then instructed the driver to turn off the engine, which he did. When Green exited his car, Thomas Johnson III stepped out of the truck's passenger side holding a semiautomatic pistol with an extended magazine. (His brother—named Thomas Johnson, Jr.—was driving the car). Green ordered Johnson to shut the door, but Johnson ignored him and ran toward the school, sparking an armed chase that would span approximately two minutes.

As vehicles passed nearby, Green drew his weapon and yelled, "Drop the gun!" When Johnson failed to comply and continued to run, Green fired at him. Green chased Johnson into the adjacent open field away from the road and reported "shots fired!" over his radio. Green recalled seeing Johnson looking over his shoulder at him and the barrel of the gun pointing back in his direction. He continued to chase Johnson across the field, ordering him to drop the gun and instructing onlookers to lie on the ground.

Officer John McKinney responded to Green's radio call, heard the distant gunshots, and proceeded to the opposite side of the field. When he arrived, he saw Johnson approaching his squad car, outrunning Green. Johnson saw McKinney and changed direction toward the tree line bordering the Eden neighborhood. McKinney ordered Johnson to stop and drop the gun. When he did not, McKinney fired from his squad car at Johnson, who stumbled, looked at McKinney, picked up his gun, and continued to flee. McKinney stepped out of his squad car and fired three more shots. Both officers gave chase and repeatedly ordered Johnson to stop and drop the gun as he approached the tree line. When in range, both officers shot, and Johnson fell and dropped his gun. Johnson died on the scene from the gunshot wounds.

In a suit under 42 U.S.C. 1983, the court granted the officers summary judgment based on qualified immunity.

The Fifth Circuit stated that Green and McKinney reasonably believed that Johnson (1) suspected of an armed confrontation, (2) fleeing as police attempted to detain him, (3) running towards one of the officers in the presence of bystanders, (4) armed with a semiautomatic pistol, and (5) refusing to obey audible police commands to drop his weapon—posed a threat of serious physical harm to themselves and bystanders. The use of deadly force was not constitutionally excessive. The officers could have reasonably believed that Johnson threatened them and others with serious physical harm.

READ THE COURT OPINION HERE:
https://www.ca5.uscourts.gov/opinions/pub/21/21-30204-CV0.pdf

CIVIL LIABILITY: Denial of Qualified Immunity; Disputed Facts

Stanton v. Elliott
CA4, No. 21-1197, 2/1/22

West Virginia State Troopers Cory Elliott and James Cornelius received three 911 calls about Spencer Lee Crumbley. Two different callers stated that Crumbley was armed and dangerous and keeping his family hostage. Another caller stated Crumbley made threats about shooting the police.

The troopers, heading to Crumbley's property, discussed Crumbley's rumored drug connections. Crumbley came out of the house screaming and threatened a shootout. He had nothing in his hands but threatened to get a weapon. Crumbley went between the yard where the troopers were and the house, threatening to get a weapon and shoot the troopers. Crumbley pulled down his pants to expose his genitals while spinning in a circle. Crumbley then got a shovel, threatened the troopers with it, then ran, throwing the shovel. He then fell in the snow. When Elliott turned a corner, he saw Crumbley turned away from him. Crumbley then abruptly turned toward Elliott and began to raise his hands, causing Elliot to believe that he might have a gun. Elliott fatally shot him. Crumbley did not have a gun.

In a suit under 42 U.S.C. 1983, the Fourth Circuit reversed the district court's grant of qualified immunity to Elliott. Crumbley was shot in the back, raising a genuine dispute about Elliot's version of events. The facts might show a violation of a clearly established constitutional right.

READ THE COURT OPINION HERE:
https://www.ca4.uscourts.gov/Opinions/211197.P.pdf

CIVIL LIABILITY: No Case Law Requiring Warning at the Earliest Possible Moment Regarding Use of Deadly Force
Powell v. Snook
CA11, No. 19-13340, 2/8/22

Patrick Snook, a police sergeant who was at the wrong house because of imprecise dispatch directions, shot and killed William David Powell, who was innocent of any crime and standing in his driveway. Powell was holding a pistol because he and his wife thought they had heard a prowler.

Powell's wife filed a 42 U.S.C. 1983 action against Snook in his individual capacity, alleging that he violated her husband's constitutional right to be free from excessive force.

The Eleventh Circuit affirmed the district court's grant of Snook's motion for summary judgment based on qualified immunity, concluding that Powell has not identified case law with materially similar facts or with a broad statement of principle giving Snook fair notice that he had to warn Powell at the earliest possible moment and before using deadly force. The court found that Powell has not shown that Snook's actions were unreasonable for qualified immunity purposes.

READ THE COURT OPINION HERE:
https://media.ca11.uscourts.gov/opinions/pub/files/201913340.pdf

CIVIL LIABILITY: Non-Threatening Individual Engaged in Vehicular Flight is Entitled to be Free from Deadly Force
Jefferson v. Lias
CA3, No. 20-2526, 12/16/21

Officer Timothy Staffer of the Elizabeth, New Jersey, Police Department saw Devin Jefferson traveling at high speed with his car alarm blaring. Staffer, suspecting the vehicle was stolen, attempted a traffic stop. Jefferson was driving with an open container of alcohol. Fearing a probation violation, Jefferson did not stop. Officer George Lias joined the pursuit after hearing radio dispatches, only aware that Jefferson was driving a possibly stolen vehicle. Although other officers observed Jefferson traveling at high speeds, running red lights, ignoring police signals to pull over, and driving close to other vehicles, Lias did not personally witness Jefferson doing so.

Jefferson hit a fire hydrant. Officers surrounded Jefferson's vehicle. Jefferson reversed, striking a police vehicle before backing into an intersection. Lias arrived as Jefferson was driving away. Lias claims that he discharged his firearm because he feared for his own safety and others around him. Jefferson was struck in his forearm, fracturing his bones, but drove away.

Jefferson later pled guilty to second-degree eluding. The district court rejected Jefferson's 42 U.S.C. 1983 suit, finding Lias entitled to qualified immunity.

The Third Circuit reversed:

"A jury should make factual determinations regarding Lias's decision to employ deadly force against Jefferson. Video footage makes clear that neither Lias nor anyone else was in danger of being struck by Jefferson. It is clearly established

that an otherwise non-threatening individual engaged in vehicular flight is entitled to be free from being subjected to deadly force if it is unreasonable for an officer to believe his or others' lives are in immediate jeopardy. Jefferson's second-degree eluding conviction does not preclude his excessive force claim."

READ THE COURT OPINION HERE:
https://www2.ca3.uscourts.gov/opinarch/202526p.pdf

CIVIL LIABILITY: Passive Resistance

Williamson v. City of National City
CA9, No. 20-55966, 1/24/22

In July 2018, protestors, including Tasha Williamson, performed a "die-in" at a city council meeting in National City, related to the death of Earl McNeil, a black man who died in police custody. At a predetermined time, the protestors disrupted the meeting by chanting, and several of them made their way toward the public speaking podium and city council members. After showing the city council members their "bloody hands," six protesters lay down on the ground near the podium, keeping their red-painted hands raised and chanting "I am Earl McNeil," and "you have blood on your hands." Several other people associated with the protest remained in the audience showing painted red hands, chanting, and video-recording the demonstration. The mayor called for order, but the protesters refused to stop their demonstration, and the council meeting was adjourned.

A few minutes after the protest began, National City police officers informed the protesters that they would be arrested if they did not leave the podium area. When the six protesters ignored repeated requests to leave, the officers began arresting them. The protesters had previously agreed that, if arrested, they would act as dead weight and refuse to cooperate with being removed. The six protestors followed through with this agreement, and officers pulled or carried each of them out.

Officers Lucky Nguyen and John McGough handcuffed Williamson with her wrists behind her back and brought her to a seated position. But as they lifted her toward a standing position, they lost their grip on her and she rolled back to the ground on her stomach. The Officers then repositioned Williamson onto her back and again tried lifting her. Officer Nguyen held Williamson under her left arm, and Officer McGough held her under her right arm. As they lifted her up, Williamson initially placed her feet under her, but she did not support her own weight. The Officers struggled to lift Williamson and pulled her backward by her arms and wrists while she was in nearly a seated position. Williamson was loudly chanting before the Officers started removing her from the room. During the approximately 12 seconds that she was being pulled from the room, Williamson screamed continually. As the Officers and Williamson approached the exit door, Officer McGough released Williamson's upper right arm, and Officer Nguyen dragged her through the doorway alone, by her left wrist and forearm.

In the hallway outside the meeting room, Williamson told the Officers that they had hurt her shoulder, and they called an ambulance. The Officers also double-cuffed Williamson to lessen the tension on her arms and make her more comfortable, but she complained that they were "still pulling" her arms in doing so. Paramedics arrived, evaluated Williamson, and offered to take her to the hospital, but she refused to go with them. The Officers then arrested Williamson and took her to a detention facility. After she was

released the next morning, Williamson drove herself to the hospital. She suffered a sprained wrist, mild swelling, and a torn rotator cuff.

Williamson sued the Officers under 42 U.S.C. § 1983 and California's Tom Bane Civil Rights Act (the Bane Act), Cal. Civ. Code § 52.1, alleging that they used excessive force against her in violation of the Fourth Amendment. Specifically, she claimed that it was excessive for them to "pull the full weight of her body by her hyperextended arms." The Officers moved for summary judgment based on qualified immunity. The district court denied the Officers' motion.

The Ninth Circuit reversed, concluding that the officers did not use excessive force in violation of the Fourth Amendment where the type and amount of force used by the officers was minimal.

"In this case, the officers did not strike plaintiff, throw her to the ground, or use any compliance techniques or weapons for the purpose of inflicting pain on her. Rather, they held her by her arms and lifted her so they could pull her out of the meeting room after she went limp and refused to leave on her own or cooperate in being removed. Furthermore, the inherent risk of two officers pulling someone who has gone limp and refuses to move by her own power is not significant. The panel also concluded that although the City's interest in forcibly removing plaintiff was low, it was not nonexistent, and the balance of interests favors defendants."

READ THE COURT OPINION HERE:
http://cdn.ca9.uscourts.gov/datastore/opinions/2022/01/24/20-55966.pdf

CIVIL LIABILITY: Profane Speech No Basis for Disorderly Conduct Arrest

Wood v. Eubanks
CA6, No. 20-3599, 2/8/22

Michael Andrew Wood wore a shirt bearing the words "F%*k the Police" to the county fair. According to Wood, police officers ordered him to leave and escorted him from the fairgrounds because of his shirt. While leaving, Wood made several coarse insults directed to the police and the fairground's administrator. The officers then arrested Wood for disorderly conduct.

After the charges were dismissed, Wood filed a 42 U.S.C. 1983 action against the officers, alleging false arrest and retaliation. The district court granted the defendants summary judgment, citing qualified immunity on the false arrest claim and insufficient evidence of retaliation.

The Sixth Circuit reversed:

"Wood's speech was protected by the First Amendment. With respect to the retaliation claim, the court held that a reasonable jury could conclude the officers were motivated to surround Wood and require him to leave in part because of his shirt. While Wood's speech was profane, the circumstances did not create a situation where violence was likely to result. Neither proximity nor Wood's demeanor and volume provided probable cause for arrest. Because there was no probable cause to arrest Wood for disorderly conduct, and because Wood's right to be free from arrest was clearly established, the officers are not entitled to qualified immunity."

READ THE COURT OPINION HERE:
https://www.opn.ca6.uscourts.gov/opinions.pdf/22a0025p-06.pdf

CIVIL LIABILITY: Traffic Stop; Subject who Became Confrontational Tased

Betts v. Brennan
CA5 No. 21-30101, 1/11/22

Officer Ross Brennan stopped Timothy Betts, Sr. early in the afternoon on November 23, 2018, for speeding. Brennan exited his cruiser and asked Betts to exit his truck. Initially, Betts complied. Once Betts was outside the truck, Brennan explained he had stopped Betts for going thirteen miles per hour over the speed limit. Betts immediately disagreed, arguing there was "no way" he was going that fast. After a short exchange, Betts sat back down in the driver's seat of the truck. Although continuing to maintain he had not been speeding, Betts remarked: "That's fine, I ain't going to argue with you." Brennan asked Betts for his license, insurance, and registration while Betts sat in the truck, angled toward Brennan.

Betts, continuing to argue about the stop, handed the documents to Brennan. Brennan then stepped away from the truck, creating distance between himself and Betts, and asked Betts to stand at the back of the truck. Betts refused, saying: "I'm fine… I'm not causing you no threat." Brennan moved slightly closer and, over Betts's protests, told him to "go walk to the back of the truck or I'm going to make you walk to the back of the truck." Betts replied that Brennan had no reason or authority to order him to do that. This exchange continued for several seconds, with Brennan repeatedly commanding Betts to walk to the back of the truck and Betts refusing. Betts then told Brennan: "I'm not disobeying. I'm not causing you no threat. I've done this before." Brennan responded by stating: "For my safety and your safety, I'm asking you to step to the back of the truck."

Betts began shouting that Brennan was lying. Brennan disagreed. Amid this verbal struggle, Betts told him: "If you tase me, I'm going to sue you." Betts repeated he was "not being aggressive" and "not even reaching for [his] phone." As the argument continued, Brennan leaned closer to the truck and grasped Betts's arm while again ordering him to exit. Betts jerked his arm away and told Brennan not to touch him. He again stated he did not have to exit the truck and claimed Brennan was becoming aggressive. At the same time, Betts slung one foot out of the vehicle. Brennan again tried to approach Betts, and Betts kicked his foot out, stood up to exit, and clenched his fist. While doing so, Betts told Brennan he might want to call his people.

Again stepping away from the truck, Brennan shouted to Betts to turn around and put his hands behind his back. Betts stood near the driver's compartment at a 45-degree angle away from Brennan with his hands raised over his head. Brennan repeatedly ordered Betts to put his hands behind his back, and after several commands Betts did so. Brennan then repeatedly told Betts to turn and face him. Betts did not do so but instead kept his body at an angle. Brennan repeated this command several more times, warning Betts that he would tase him if Betts did not comply.

When Betts did not comply, Brennan deployed his taser, hitting Betts in the upper leg. Betts screamed and fell to the ground. Brennan ordered Betts to turn over on his stomach, and Betts complied. Brennan then handcuffed Betts, warning that if he continued to resist Brennan would tase him again. As Brennan handcuffed Betts and sat him up, Betts began shouting profanities: "You just d#*n shot me for f#*&@g nothing, you owe me, you f*@#d up. I'm getting something out of this."

The entire encounter—from the initial stop to Betts's arrest—lasted about four minutes. Betts later pled guilty to resisting arrest. B. Betts sued Brennan, the Louisiana State Police (LSP), and the Louisiana Department of Public Safety and Corrections. He alleged violations of the Fourth Amendment. Brennan invoked qualified immunity. He argued that his single tase of Betts was both a reasonable amount of force under the circumstances and not forbidden by clearly established law.

The district court denied Brennan summary judgment. It concluded his use of force was objectively unreasonable under the Fourth Amendment because Betts had been stopped for a minor traffic infraction, posed no threat or flight risk, and was "at most" passively resisting when he was tased. Brennan appealed.

The Fifth Circuit Court of Appeals found as follows:

"This case involves no disputed facts because the encounter was captured on Officer Brennan's bodycam.

"We disagree that Betts's resistance was 'at most passive.' Betts did not just mouth off at Brennan, ignore one of his orders, or move away from his grasp. Rather, as the video shows, Betts adopted a confrontational stance at the outset and things got worse from there. Betts repeatedly contested why he was stopped, ignored dozens of Brennan's commands, disputed Brennan's authority, accused him of lying, batted away his hand, warned Brennan to call other officers, and dared Brennan to tase him. Most importantly, Betts repeatedly disputed Brennan's power to order him to stand behind the truck. Faced with an angry driver, Brennan reasonably wanted to get Betts away from the driver's compartment where a weapon might easily be hidden.5 Yet, after Brennan told Betts this order was 'for my safety and for your safety,' Betts retorted: 'Come on, that's a lie.'

"Other factors show Brennan's use of force was reasonable. For instance, he did not tase as a first resort. That is, he did not immediately resort to the taser without attempting to use physical skill, negotiation, or even commands. This Court has several times found that the speed with which an officer resorts to force is relevant in determining whether that force was excessive to the need. To the contrary, Brennan properly used measured and ascending actions that corresponded to Betts's escalating verbal and physical resistance. Brennan tried to get Betts to stand behind the truck by invitation, explanation, command, and even by grasping his arm. And Brennan warned Betts more than once that he would be tased if he did not comply with his orders. Only when all those lesser options appeared to have failed did Brennan use his taser.

Furthermore, Brennan tased Betts only once. That was enough to subdue Betts and allow Brennan to handcuff him. At that point, additional force was not necessary and Brennan did not use any (although he did warn Betts that further resistance would be met with another tase). This shows a reasonable relationship between the need for force and the amount of force used.

"In sum, we conclude that Officer Brennan did not violate the Fourth Amendment by tasing Betts one time in order to arrest him."

READ THE COURT OPINION HERE:
https://www.ca5.uscourts.gov/opinions/pub/21/21-30101-CV0.pdf

CIVIL LIABILITY: Unreasonable Application of Force; Knee on Back

Timpa v. Dillard
CA5, No. 20-10876, 12/15/2

On the evening of August 10, 2016, Anthony Timpa called 911 and asked to be picked up. He stated that he had a history of mental illness, he had not taken his medications, he was "having a lot of anxiety," and he was afraid of a man that was with him. The call ended abruptly. When the operator called back, Timpa provided his location on Mockingbird Lane in Dallas, Texas. In the background of the call, the sounds of honking and of people arguing could be heard. A motorist then placed a 911 call to report a man "running up and down the highway on Mockingbird [Lane,]… stopping traffic" and attempting to climb a public bus. A private security guard called 911 with the same report and noted his belief that the man "[was] on something." The dispatcher requested officers respond to a Crisis Intervention Training (CIT) situation and described Timpa as a white male with schizophrenia off his medications.

Timpa's family filed a 42 U.S.C. 1983 suit, alleging that five officers of the Dallas Police Department violated Timpa's Fourth Amendment rights by causing his death through the prolonged use of a prone restraint with bodyweight force during his arrest.

The Fifth Circuit reversed the district court's grant of summary judgment in favor of the officers as to the excessive force claims. Viewing the facts in the light most positive to plaintiffs, the court concluded that none of the Graham factors justified the prolonged use of force.

"In this case, a jury could find that Timpa was subdued by nine minutes into the restraint and that the continued use of force was objectively unreasonable in violation of Timpa's Fourth Amendment rights."

The court also concluded that plaintiffs have raised a genuine issue of material fact as to whether the use of a prone restraint with bodyweight force on an individual with three apparent risk factors—obesity, physical exhaustion, and excited delirium—created a substantial risk of death or serious bodily injury. Furthermore, the record supports that Timpa was subdued nine minutes into the continuing restraint and did not pose a threat of serious harm. Finally, the court held that the state of the law in August 2016 clearly established that an officer engages in an objectively unreasonable application of force by continuing to kneel on the back of an individual who has been subdued.

Accordingly, the court reversed the district court's judgment as to these claims.

READ THE COURT OPINION HERE:
https://www.ca5.uscourts.gov/opinions/pub/20/20-10876-CV0.pdf

DRIVING WHILE INTOXICATED: Basis for Stop; Crossing Fog Line

Baker v. State, ACA, No. CR-21-378, 2022 Ark. App. 53, 2/2/22

On the night of July 12, 2019, Deputy Coleman, arrested Gaynell Baker for driving while intoxicated. She entered a plea of no contest in Russellville District Court and appealed the conviction to the circuit court.

Baker moved to suppress evidence obtained as a result of the traffic stop, arguing that Deputy Coleman lacked probable cause to initiate the stop. At the suppression hearing, Deputy Coleman

testified that he was on routine patrol when he observed an SUV in front of him "hit the fog line two separate times." A video of the encounter was also played at the hearing. The circuit court ultimately denied the motion to suppress, finding probable cause.

The Arkansas Court of Appeals found as follows:

"In order to make a valid traffic stop, an officer must have probable cause to believe there has been a violation of a traffic law. *Prickett v. State*, 2016 Ark. App. 551, at 3, 506 S.W.3d 870, 872. Probable cause is defined as facts or circumstances within a police officer's knowledge that are sufficient to permit a person of reasonable caution to believe that an offense has been committed by the person suspected.

"Arkansas Code Annotated section 27-51-104(b)(1) and (6) (Repl. 2010) makes it unlawful for any person to drive a vehicle conducting 'improper or unsafe lane changes' or 'in such a manner as to evidence a failure to maintain proper control on the public thoroughfares or private property in the State of Arkansas.' Further, 'a vehicle shall be driven as nearly as practical entirely within a single lane and shall not be moved from the lane until the driver has first ascertained that movement can be made with safety.' Ark. Code Ann. § 27-51-302(1) (Repl. 2010).

"Accordingly, having considered the plain language of our statutes and given our liberal review of the record, Deputy Coleman had probable cause to stop Baker, and we affirm the circuit court's denial of her motion to suppress."

READ THE COURT OPINION HERE:
https://opinions.arcourts.gov/ark/courtofappeals/en/item/520523/index.do?q=CR-21-378

EVIDENCE:
Photographs of Firearms on a Cell Phone
United States v. Torres-Perez
CA1, No. 19-2014, 12/30/21,

José Torres-Pérez was convicted of unlawful possession of a machine gun. Mr. Torres argues on appeal that there was insufficient evidence on which to convict him on the possession of a machine gun charge and that the district court erred in admitting photographs of various firearms and accessories found on his cell phone. The government advocated that the photographs were admissible to prove that Mr. Torres generally knew about firearms and specifically knew the Glock found in the truck had been transformed into an automatic weapon.

The First Circuit Court of Appeals found that the district court did not abuse its discretion in admitting the photographs from Mr. Torres' cell phone.

"The photographs were relevant to Mr. Torres' knowledge of firearm characteristics and high-capacity capabilities. That he had these images on his phone and accessed them months before this incident could help the jury find that he was familiar with firearms generally and acquainted with the external and readily observable altered features of the Glock such that the jury could infer that Mr. Torres knew the Glock was altered to operate as a machinegun. *United States v. Shaw*, 670 F.3d 360, 364-65 (1st Cir. 2012)."

READ THE COURT OPINION HERE:
http://media.ca1.uscourts.gov/pdf.opinions/19-2014P-01A.pdf

EYEWITNESS IDENTIFICATION: Single Photograph Display During Course of Criminal Investigation

United States v. Smith
CA8, No. 21-1104, 12/23/21

In January 2019, police officers responded to a 911 report that a woman named Raynesha was being held against her will by a man with a gun. The caller identified the motel and room number where the two would be found. Upon arrival, officers spoke to Raynesha Amling, who stated that she was fine and would soon be leaving in an Uber. She called the man she alleged to be the 911 caller, becoming very loud and angry during the conversation because she believed she would be taken into custody on an arrest warrant. The officers identified the man in the room as Curtis Lee Smith. They decided to end the investigation, relying on Amling's indication that she was fine. As the responding officers departed, detectives notified them that a warrant had been issued for Amling's arrest and charges had been approved against Smith. The detectives indicated that they would be joining the officers on scene. One detective stayed at the police station to apply for a search warrant for Room 220.

The officers remained nearby and arrested Amling when she left the room. They asked Smith to exit the motel room, but he did not do so. Detectives arrived shortly thereafter, whereupon an officer again knocked on the door. When Smith opened it, officers entered and handcuffed him. They took him to the police station, where Smith waited approximately twenty minutes while a detective questioned Amling. During this time, Smith yelled from his interview room, prompting the detective to stop interviewing Amling and ask if he wanted to talk. Smith affirmed that he did and initialed each line of a printed Miranda waiver prior to his interview.

The search warrant was approved shortly after Smith was arrested. Officers found marijuana, three firearms, ammunition, a cell phone, and more than $2,000 in cash in the room. After observing a bullet hole in a shared wall, they checked on the neighboring room. Jennifer Allred, the guest in that room, immediately identified a photo of Smith as a person staying in Room 220 whom she had spoken to about a gunshot.

After being indicted on federal drug and firearm charges, Smith moved to suppress the evidence from the motel room, his in-custody statements, and Allred's photo identification. Smith argues his photo identification should have been suppressed because it was obtained during an impermissibly suggestive procedure.

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

"When considering the admissibility of identification evidence, the court must first determine whether the identification procedures were impermissibly suggestive. *United States v. Williams*, 340 F.3d 563, 567 (8th Cir. 2003). The court then consider whether, given the totality of the circumstances, the suggestive procedures created a very substantial likelihood of irreparable misidentification.

"Upon observing a bullet hole in a wall to a neighboring room during the motel room search, the officers checked on the occupant of that room, Jennifer Allred. Allred stated that a bullet had penetrated her dividing wall several days prior, and that she had gone outside to investigate. She spoke to two people from Room 220, who she knew had been staying there for several days. The man let her use his phone to call the front desk. Allred immediately identified Smith as the man she had spoken to when an

officer showed her a mugshot photo of Smith wearing an orange jail uniform.

"Smith argues that showing that photo in these circumstances was impermissibly suggestive. We have recognized that use of single-photograph displays can be impermissibly suggestive. See *United States v. Patterson*, 20 F.3d 801, 806 (8th Cir. 1994). We hold that Allred's identification was admissible because there was not a very substantial likelihood of irreparable misidentification. *Simmons v. United States*, 390 U.S. 377, 384 (1968)). We consider the opportunity of the witness to view the criminal at the time of the crime, the witness' degree of attention, the accuracy of her prior description of the criminal, the level of certainty demonstrated at the confrontation, and the time between the crime and the confrontation.

"Allred did not provide a description prior to being shown the photo of Smith, nor did she state her level of certainty about the identification or how closely she had observed Smith previously. She had had a conversation with him, however, and knew that he had been staying in the motel for several days. It is unclear when she had last seen Smith, but she had spoken to him about the gunshot only a few days prior to the photo identification. She confirmed without hesitation that the photo matched the person she had seen, which implies a high degree of certainty. We therefore conclude that the district court did not err in denying the suppression of Allred's statements."

READ THE COURT OPINION HERE:
https://ecf.ca8.uscourts.gov/opndir/21/12/211104P.pdf

SEARCH AND SEIZURE: Arrest Made Outside of Residence; Subsequent Protective Sweep of the Residence

State of New Jersey v. Radel
SCNJ, No. A-44-20, 1/20/22

In June 2011, Christopher Radel pled guilty to a weapons offense. In March 2015, the trial court sentenced Radel to a probationary term with credit for two days served in custody. In October 2015, the court entered an order directing in part that "members of Little Falls Police Department respond to Radel's home, located at 103 Browertown Road in the Township of Little Falls, immediately upon receipt of a copy of this Order, for the limited purpose of retrieving" any firearms, including a Beretta. The Prosecutor's Office faxed the order to Sergeant Robert Prall more than two months after entry of the order. Before carrying out the order twelve days later, Sergeant Prall learned that Radel resided at 81 Browertown Road; that Radel had two active municipal arrest warrants; and that -- based on a firearms registry search -- Radel possessed firearms other than the Beretta listed on the order. On January 19, 2016, Sergeant Prall set in motion a plan to enforce the order to retrieve weapons and arrest Radel on the outstanding warrants.

At 10 a.m., seven Little Falls police officers positioned themselves to surveil both 103 and 81 Browertown Road, which were separated by only two other houses. Within ten minutes of the start of the surveillance, a sergeant heard a very loud metallic bang coming from the backyard of 81 Browertown and, almost simultaneously, saw a person "wearing something blue" enter the rear door of the residence. Less than ten minutes after the sergeant's sighting of a blue-clad person in the backyard, Radel walked out the front door of 81 Browertown, wearing a blue coat and carrying

a laundry basket. Radel placed the basket in the backseat of his car, which was parked in the driveway. When Radel turned around, a detective arrested and handcuffed him. He did not resist.

Sergeant Prall hoped to secure Radel's consent to search his house but determined that Radel's impaired condition due to alcohol or drugs ruled out that option. Sergeant Prall ordered a protective sweep of 81 Browertown for purposes of officer safety because there were weapons and other persons "potentially on the property." Sergeant Prall came to that conclusion because two vehicles were parked in the driveway; the home's windows had coverings, obstructing a view into the residence; the blue-jacketed person the other sergeant observed in the backyard may not have been the same person who exited the front door; and the order directed the officers to retrieve the firearms.

During the approximately five-minute sweep, no one was found inside. In carrying out the sweep, however, the officers observed in plain view imitation firearms, butterfly knives, hatchets, bows and arrows, a ballistic vest, simulated police identification badges, marijuana, drug paraphernalia, a glass pipe, and a safe capable of storing firearms. The police transported Radel to headquarters and secured the residence. After obtaining a search warrant, the police found multiple weapons, drugs and related paraphernalia, and over $8,000 in cash.

The trial court denied Radel's motion to suppress the evidence, and the Appellate Division reversed, finding "no support for the [trial court's] conclusion that the police had a reasonable and articulable suspicion that there were other persons inside the home or that they posed a risk to the police or others."

This case presented an issue of first impression for the New Jersey Supreme Court: whether police have a right to conduct a protective sweep of a home when an arrest is made outside the home and, if so, the requisite justification for a warrantless entry and protective sweep. In doing so, the Court balanced two important values: an individual's fundamental privacy right in the home and the significant state interest in officer safety.

The Court concluded that when an arrest occurs outside a home, the police may not enter the dwelling or conduct a protective sweep in the absence of a reasonable and articulable suspicion that a person or persons are present inside and pose an imminent threat to the officers' safety.

"This sensible balancing of the fundamental right to privacy in one's home and the compelling interest in officer safety will depend on an objective assessment of the particular circumstances in each case, such as the manner of the arrest, the distance of the arrest from the home, the reasonableness of the officers' suspicion that persons were in the dwelling and likely to launch an imminent attack, and any other relevant factors. A self-created exigency by the police cannot justify entry into the home or a protective sweep."

READ THE COURT OPINION HERE:
https://www.njcourts.gov/attorneys/assets/opinions/supreme/a_44_20.pdf?c=vgj

SEARCH AND SEIZURE:
Backpack Searched During Premises Search

United States v. Congo
CA1, No. 20-2184, 12/17/21

On November 18, 2018 at around 6:00pm, agents from the United States Drug Enforcement Administration (DEA) executed a no-knock search warrant at an apartment at 42 Washington Avenue in Old Orchard Beach, Maine. The agents entered using a ram to force the door open and found seven people inside the apartment, including the defendant Congo. They searched the entire apartment and recovered more than ten grams of fentanyl and more than 33 grams of cocaine base, as well as drug paraphernalia. While searching one of the bedrooms, the agents found a backpack on the floor which was determined to be Congo's based on a search of its contents. Inside the backpack, they found a storage unit bill and key, several cell phones, a New York City parking receipt, and a New York City toll invoice. The agents seized no evidence from Congo's person. Three of the seven individuals in the apartment during the search were not charged with crimes relating to it; one was arrested on an outstanding arrest warrant and two were released from the scene. The storage unit corresponding to the storage unit bill and key found in the backpack was subsequently searched, and a .380 caliber pistol, ammunition, documents bearing Congo's name, a digital scale, and a small bag containing THC were recovered.

The search warrant the agents were executing in searching the 42 Washington Avenue apartment was issued on November 8, ten days earlier. In the affidavit supporting the application for the warrant, DEA Special Agent Ryan Ford attested to facts demonstrating probable cause that evidence of a conspiracy to distribute, and to possess with intent to distribute, controlled substances would be found on the premises of the 42 Washington Avenue apartment. The affidavit was based on an extensive investigation. The investigation uncovered evidence that Lisa Lambert was a primary conspirator in a fentanyl and cocaine base trafficking conspiracy run out of the 42 Washington Avenue apartment. It also established that Congo lived at the apartment and was dating Lambert.

Special Agent Ford also attested in the affidavit to his personal experience that drug traffickers frequently conceal drugs, records pertaining to drug sales, and other contraband at private places, including their own residences. Attachment B to the affidavit, entitled "Items To Be Seized," lists the types of evidence expected to be found. In addition to controlled substances and drug paraphernalia, it names "[a]ny/all cellular telephones located in the premises," "[d]ocumentary or other items of personal property that tend to identify the person(s) in the residence, occupancy, control or ownership of the respective locations to be searched," and "records…and receipts relating to the transportation, ordering, purchase, sale or distribution of controlled substances, and the acquisition, secreting, transfer, concealment and/or expenditure of proceeds derived from the distribution of controlled substances."

Special Agent Ford further attested to the need for a no-knock warrant. He cited a number of factors including: the proximity of the bedroom where Congo and his girlfriend stayed to a bathroom, which could lead to destruction of evidence; information from a cooperating defendant that she1 had seen Congo carrying what she described as a "pistol," but which she thought might be a pellet gun, and that Congo had bragged to her about killing people; an anonymous tip that

"[the residents of 42 Washington Avenue] are dangerous and have guns" and that "Congo…has a 9mm pistol and threatened to kill my friend"; that Special Agent Ford was uncertain of the identity of at least one resident of the apartment and had no ability to determine his criminal history, access to weapons, or propensity to engage in violence; and that in his experience, drug dealers frequently possess weapons in order to protect their drugs or the proceeds of their drug sales.

On December 17, 2018, Congo was charged with one count of conspiring to distribute, and to possess with intent to distribute, cocaine base and fentanyl; one count of possessing with intent to distribute cocaine base and fentanyl; and one count of making the residence at 42 Washington Avenue available for use for the purpose of unlawfully storing, distributing, and using a controlled substance.

On March 4, 2019, Congo moved to suppress all of the evidence obtained through the search of his apartment on November 18, 2018. In the motion to dismiss, he argued that the affidavit supporting the warrant did not establish probable cause that evidence of a crime existed within the 42 Washington Avenue apartment. Congo also contended that there was no nexus "linking purported criminal activity to either the apartment or to [his] person or property."

Aboudcar Congo contends that his backpack was illegally searched when DEA Agents executed a search warrant on an apartment where he was staying. Congo argues that because the affidavit to the search warrant does not establish probable cause that he was a member of the drug conspiracy. When the officers realized the backpack that they found on the floor in the 42 Washington Avenue apartment was his, they should have ceased searching it immediately. He argues that because the search of his backpack was improper, all evidence derived from it, should have been suppressed.

The Court of Appeals for the First Circuit stated that it is well established that generally any container situated within residential premises which are the subject of a validly-issued warrant may be searched if it is reasonable to believe that the container could conceal items of the kind portrayed in the warrant.

"The backpack was found on the floor of the 42 Washington Avenue apartment during a search pursuant to a validly issued warrant. The backpack could be reasonably expected to, and in fact did, contain evidence anticipated in the affidavit supporting the warrant. There was nothing improper about the search, and the district court did not err in not suppressing the evidence seized from the backpack or the evidence obtained as a result of the search of the backpack."

READ THE COURT OPINION HERE:
http://media.ca1.uscourts.gov/pdf.opinions/20-2184P-01A.pdf

SEARCH AND SEIZURE: Border Searches

United States v. Skaggs
CA7, No. 0-1229, 2/2/22

Charles Skaggs, Jr. was charged with 12 counts related to his production and possession of child pornography, based on evidence found in thumb drives seized from him during a warrantless border search at Minneapolis-St. Paul International Airport. The district court denied a motion to suppress, convicting Skaggs of all counts.

The Seventh Circuit affirmed.

"No court has ever required more than reasonable suspicion for a border search. An investigation revealed that Skaggs had a prior sexual misconduct conviction, traveled abroad multiple times and was involved with overseas orphanages, posted suggestive pictures on Facebook of himself with young girls. He was the director of Ukrainian Angels, whose name appeared to be borrowed from a well-known child pornography website, and, in addition, was suspected of child sex tourism and traveling to Ukraine to meet minors. Skaggs lied during his customs interview, stating that he had no thumb drives with him. These facts, taken together, give rise to reasonable suspicion of criminal activity."

READ THE COURT OPINION HERE:
http://media.ca7.uscourts.gov/cgi-bin/rssExec.pl?Submit=Display&Path=Y2022/D02-02/C:20-1229:J:Kanne:aut:T:fnOp:N:2828637:S:0

SEARCH AND SEIZURE:
Consent Search of Motel Room
United States v. Jones
CA7, No. 21-1293, 1/6/22

On November 16, 2017, Allen County Sheriff Warrants Division Officers Andrew Brenneke and Duane Romines received an arrest warrant for Whitney Gosnell. Gosnell, listed as 5'3'' and 130 to 140 pounds, had allegedly violated the terms of her probation. Following up on an anonymous tip that Gosnell was staying at the Deluxe Inn Motel in Fort Wayne, Indiana, Officers Brenneke and Romines went to the motel around 8:45 p.m. The motel manager informed them that Gosnell was staying in a room with Larry Jones and his son. The officers ran a warrant check, which revealed that Jones had arrests dating back to the 1990s and was listed as a "known resister," "convicted felon," and "substance abuser."

Officers Brenneke and Romines went to Jones's motel room and listened at the door for voices. Not hearing any, they knocked on the door several times and called out "Larry," but did not hear a response. Officer Brenneke knew Jones's street name, so he called out, "Hey, Crunch," and Jones responded, "What?" One or both officers said, "It's police. We're not here for you," to which Jones said, "She's not here. She can't be here." At this point, the officers had not yet explained that they had an arrest warrant for Gosnell.

The officers asked Jones to open the door, and he requested some time before opening it. Both officers estimate that approximately 30 to 60 seconds elapsed between the first knock and when Jones opened the door, fully dressed. The officers were in full uniform with their guns holstered, and there is no dispute that they spoke in conversational tones throughout the encounter. The officers reiterated that they were not there for Jones, showed him the arrest warrant for Gosnell, and explained that they would like to "verify" Gosnell was not there. Officer Brenneke estimates they spent approximately 15 to 20 seconds explaining they would like to search where a person could be or would hide. Jones repeated that Gosnell was not there but eventually said, "That's fine," and moved away from the door. Officer Romines estimated they talked to Jones for less than a minute before entering. At some point, Officer Romines told Jones they "would not open small drawers and things like that."

After entering the motel room, the officers looked in the kitchenette, bathroom, and shower. Officer Romines then lifted up one of two beds but found nothing underneath. There was a six-to-ten-inch gap between the beds and the floor. Before Officer Brenneke checked under the second bed, Jones stated, "Well, she couldn't be under there."

Officer Romines responded, "She could be under there, just like she could have been under the first one." Officer Brenneke proceeded to lift the second bed and saw the firearm.

Jones pled guilty to possessing a firearm as a convicted felon after the denial of his motion to suppress. The Seventh Circuit affirmed the denial of the motion.

"Jones has not shown that he was seized prior to the search. In light of the totality of the circumstances, a reasonable person in Jones's position would have felt free to decline the officers' request to open the door. Jones voluntarily consented to a search of his motel room."

READ THE COURT OPINION HERE:
http://media.ca7.uscourts.gov/cgi-bin/rssExec.pl?Submit=Display&Path=Y2022/D01-06/C:21-1293:J:St__Eve:aut:T:fnOp:N:2815485:S:0

SEARCH AND SEIZURE:
Consent to Enter Residence
United States v. Alloway
CA8, No. 21-1279, 2/22/22

The Missouri Division of Family Services (DFS) hotline received a call reporting drug activity, verbal abuse of children, and weapons at the house where Alloway lived with her boyfriend and his two minor children. A DFS social worker went to the house to do a welfare check that night. Two sheriff's deputies, Travis Cochenour and Jeremiah Bragg, went along. Alloway saw them drive up and went outside to meet them. They told her the reason for their visit, and she invited them into the house. Alloway told them to wait in the kitchen while she went upstairs to get the older child.

While the social worker interviewed the child, Deputy Cochenour saw three loaded rifles. Where those rifles were is disputed. After confirming that Alloway was a felon, he arrested her. At that point, Alloway's boyfriend came home. He told deputies that he was also a felon, and that there was another gun in the bedroom safe. When he refused to open the safe, he was also arrested. While the deputies were on the phone getting a search warrant for the safe, they spotted more guns in plain sight in the bedroom. They obtained and executed two search warrants for the residence. All told, they found 13 guns, over 125 grams of meth, and other drug evidence.

Alloway moved to suppress all of the evidence. She argued that Deputy Cochenour found the first three guns as a result of an unconsented, warrantless search, and that everything discovered after that was the fruit of the poisonous tree. She appeals the denial of her motion to suppress the drugs and guns.

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

"Generally, a warrantless search of or entry into a home violates the Fourth Amendment. But a warrantless search is valid if conducted pursuant to the knowing and voluntary consent of the person subject to a search. Consent may be express or implied. The question is not whether the defendant subjectively meant to consent, but whether her conduct would cause a reasonable person to believe she consented to the search.

"Alloway argues that she only consented to the social worker entering the house, based on the fact that the social worker, rather than the deputies, asked to come in. But the record plainly shows that Alloway consented to the deputies

coming inside with the social worker. At the suppression hearing, Alloway herself testified that 'I told them that they could come in the kitchen.'

"Deputy Travis Cochenour's testimony at that hearing corroborates this: 'She invited us in.' So does Deputy Jeremiah Bragg's: 'She said we could come on in, and I held the door as everybody entered.' The district court didn't err when it found that the deputies had permission to enter the house—telling someone to 'come in' is express consent to entry for Fourth Amendment purposes.

READ THE COURT OPINION HERE:
https://ecf.ca8.uscourts.gov/opndir/22/02/211279P.pdf

SEARCH AND SEIZURE: Consensual Encounter; Consent to Search

United States v. Ahmad
CA7, No. 19-3490, 12/22/71

Deputy Sheriff Derek Suttles of the Morgan County Sheriff's Office was on drug-interdiction duty in central Illinois observed an RV with a dirty license plate traveling on Interstate 72. He followed the RV as it exited the freeway and pulled into a truck-stop parking lot. The driver, Syed Ahmad, entered the convenience store with one of his passengers. When a store employee informed the deputy that the two men were acting strangely, the officer asked to speak with them before they reentered the RV. They agreed. After a few preliminary questions, the deputy asked for Ahmad's driver's license and the rental agreement for the vehicle. Ahmad produced the documents. The deputy then asked for consent to search the RV. Ahmad agreed, but the deputy did not immediately conduct a search. Instead, he called for a K-9 unit.

The unit arrived a few minutes later, and Ahmad agreed to a dog sniff of the RV. The dog quickly alerted. At that point—about 15 minutes into the encounter—Ahmad was detained while the deputy searched the RV, where a large quantity of marijuana was discovered.

Ahmad moved to suppress the drugs, arguing that his consent to search was involuntary because he had already been seized for Fourth Amendment purposes when the deputy retained his driver's license and the RV rental agreement.

The Seventh Circuit affirmed the denial of the motion.

"The deputy's brief possession of Ahmad's license and rental agreement did not transform this otherwise consensual encounter into a seizure. Ahmad voluntarily consented to both the external dog sniff and the search of the RV."

READ THE COURT OPINION HERE:
http://media.ca7.uscourts.gov/cgi-bin/rssExec.pl?Submit=Display&Path=Y2021/D12-22/C:19-3490:J:Sykes:aut:T:fnOp:N:2809577:S:0

SEARCH AND SEIZURE: Emergency Search; "Pings" to Locate an Individual

United States v. Hobbs
CA4, No. 19-4419, 2/1/22

This case arose from allegations of domestic violence reported to Baltimore County police by Erick Hobbs' former girlfriend, Jaquanna Foreman, shortly after 7:00 p.m. on February 3, 2018. At the time, Foreman was home with her seven-year-old daughter. Foreman told the responding officers that Hobbs had come to the back of her home, brandished a semi-automatic handgun, and used the gun to break a window in the home.

He then forcibly entered the home and removed a television. Before leaving the home with the television, Hobbs threatened to kill Foreman, her daughter, and other family members, and stated that if she contacted the police, he also would kill any responding officers.

The officers escorted Foreman and her daughter to the police station, where Foreman provided additional details about Hobbs, including aliases, dates of birth, information about his vehicle and his social media usage, and a cell phone number. She also stated that Hobbs had a criminal record. Foreman informed Detective Michael Nesbitt that, in addition to the handgun Hobbs displayed that night, she previously had seen him armed with assault rifles and that he was "obsessed with firearms." Nesbitt verified that Hobbs had a violent criminal history, including convictions for robbery and attempted murder.

Based on this information, Detective Nesbitt concluded that there was "an extreme urgent threat to the community." Around midnight, he submitted an "exigent form" to TMobile, Hobbs' cell phone provider. That request sought immediate police access without a warrant to "pings" revealing Hobbs' cell phone location, and to call logs displaying the phone numbers that Hobbs contacted, which would enable the officers to locate Hobbs. On the "exigent form," Nesbitt stated that the basis for the exigency was "[s]uspect threatened girlfriend[']s life with a handgun, said he will not be taken alive by police[,] was armed." As Nesbitt was preparing this request, another officer began detailing information to obtain an arrest warrant. Within an hour, T-Mobile responded with realtime "pings" on Hobbs' cell phone that alerted Nesbitt every 15 minutes to Hobbs' general location within 3,000 to 5,000 meters. Another detective used call logs obtained from TMobile to determine which of Hobbs' associates lived within the geographical range of each "ping" to pinpoint Hobbs' location more precisely.

About six hours after the domestic incident, a team of officers attempted to effect a traffic stop of Hobbs' vehicle. Hobbs tried to flee from the officers until his car eventually collided with a parked vehicle. The officers placed Hobbs under arrest and recovered a loaded handgun on the ground between the driver-side door of his car and the curb. Later that night, Detective Nesbitt secured a search warrant for Hobbs' car, and two days later obtained a search warrant for the same cell phone information obtained earlier pursuant to the "exigent form." The police also executed a separate search warrant for Hobbs' residence and seized 65 rounds of ammunition from his home.

Hobbs moved to suppress evidence of the firearm, arguing that the exigent circumstances exception to the warrant requirement did not justify the use of the cell phone "pings" and call logs.

The Circuit Court denied his motion and the Fourth Circuit affirmed the lower court decision.

READ THE COURT OPINION HERE:
https://www.ca4.uscourts.gov/opinions/194419.p.pdf

SEARCH AND SEIZURE: Information Regarding Unlawful Seizure Redacted from Affidavit; Sufficient Information for Probable Cause Still Existed

United States v. Brooks
CA8, No. 20-3601, 1/6/22

Kia Deangelo Brooks on the morning of January 23, 2017, arrived at a checkpoint operated by the Transportation Security Administration at the Clinton National Airport in Little Rock, Arkansas. He intended to board a flight bound for California. As Brooks's carry-on bag passed through the x-ray machine, a TSA agent noticed a "large organic mass" inside.

To evaluate a possible threat, the agent escorted Brooks and his bag to a secondary screening area. Inside the bag, the agent found a pair of large manilla envelopes labeled "Legal Documents." He opened the envelopes and discovered what turned out to be $112,230 of cash that was vacuum-sealed and rubber-banded together in separate bundles. Consistent with TSA policy, the agent contacted his supervisor.

At 7:36 a.m., two police officers were dispatched to the TSA screening area. An airport dispatcher informed the officers that the TSA had discovered "bulk cash." When the officers arrived, TSA agents showed them Brooks's bag, which was sitting open on the screening-area desk. A police officer testified that the envelopes inside the bag also were open and that he "could see all the cash was vacuum-packed." The officer found the manner of packaging suspicious.

The police officer contacted detectives from the police department to suggest further investigation of Brooks. Shortly before 8:00 a.m., he asked Brooks to accompany him to the security office inside the airport. Brooks agreed to do so.

Roughly 15 minutes later, two detectives, Hudson and Flannery, arrived and began to question Brooks about the currency. Brooks claimed that the cash came from a two-year-old legal settlement and from his personal earnings. During the meeting, Brooks turned over another $4,115 in cash from his front pocket and a hydrocodone pill from a canister tied around his waist. The detectives also found two bottles of "promethazine with codeine" in Brooks's personal belongings. The detectives then placed Brooks's suitcase alongside several other suitcases in the hallway outside the office. Detective Hudson walked his drug-sniffing dog alongside the luggage. When the dog alerted to Brooks's suitcase, Hudson opened it. The interior smelled strongly of marijuana, but Hudson did not find any narcotics. The detectives arrested Brooks for possession of hydrocodone and promethazine without a valid prescription.

Another officer transported Brooks to the police department's Northwest Division office, about 12 miles away from the airport. They arrived at around 9:00 a.m. An hour later, Detective Flannery for the first time advised Brooks of his rights under Miranda v. Arizona, 384 U.S. 436 (1966). Brooks waived his rights and agreed to answer questions. Brooks suggests that the post-Miranda interview began a few minutes after 9:00 a.m., but the district court found without clear error that Brooks's post-Miranda statements came "at least an hour" after he was arrested and after he signed the waiver form at 10:00 a.m.

Brooks was then interviewed by Hudson, Flannery, and two special agents from the Department of Homeland Security. During the conversation, Brooks admitted that he structured large cash withdrawals from various branches of Bank of America in an effort to avoid currency reporting requirements.

A month after the airport incident, a special agent from the Drug Enforcement Administration applied for a warrant to search Brooks's residence for evidence of drug trafficking. In his affidavit supporting the warrant, the agent focused on three sources of information.

First, the affidavit detailed Brooks's connections to Roderick Smart, a known drug trafficker. Smart relied on a California-based network to supply marijuana to central Arkansas. Smart's bank accounts had been closed after a drug investigation at his residence, but his girlfriend maintained an account at Bank of America. A bank representative informed agents that he began to notice suspicious activities involving the girlfriend's account after Smart's accounts were closed. The banker said that four men, one of whom was later identified as Brooks, made deposits of $20 bills that smelled like "marijuana, cheap perfume, or baby powder" into the girlfriend's account. Sometime later, Brooks entered the same bank carrying a backpack filled with currency and asked to exchange $20 bills for $100 bills. When an employee asked for identification, Brooks became agitated and departed. On other occasions, Brooks purchased cashier's checks payable to Smart's business. He also made cash deposits into bank accounts belonging to others in California and elsewhere.

Second, the affidavit described the airport incident and the evidence obtained by the detectives who interviewed Brooks. This discussion explained that Brooks was carrying large amounts of cash in vacuum-sealed bags and offered no plausible explanation for the source of the funds. The affidavit further stated that a drugsniffing canine had alerted to Brooks's bag at the airport, that Brooks had been arrested at the airport for possession of hydrocodone and promethazine without a valid prescription, and that Brooks had admitted to structuring cash transactions.

Third, the affidavit recounted an earlier episode involving Brooks at the Little Rock airport. On November 6, 2016, a man arrived at the Southwest Airlines baggage claim and asked to claim luggage for Julie Harrison. Harrison was a suspected drug smuggler; she was banned from doing business with Southwest after she repeatedly purchased tickets in California, checked luggage, and then left the airport without boarding a flight. Through this method, Harrison successfully sent luggage to other parties across the United States. In November 2016, when a Southwest employee asked to see the man's identification, he refused to provide it. The man then walked over to the baggage conveyor belt, grabbed two bags, and ran out of the airport. After the January 2017 airport incident, DEA agents reviewed Little Rock airport records and identified Brooks as the man who took the bags sent by Harrison in November 2016.

A judge issued a search warrant for Brooks's residence on February 15, 2017. The ensuing search discovered $168,832 in cash, two firearms, ammunition, a pound of marijuana, and six heat-sealed bags with marijuana residue.

The district court concluded that Brooks's detention at the airport was an unlawful seizure. Accordingly, the court excised from the affidavit any information concerning (1) Brooks's pre-Miranda warning statements to the detectives, (2) the positive canine alert to Brooks's bag, and (3) the prescription drugs seized from Brooks. But the court concluded that Brooks's post-Miranda warning statements at the Little Rock police station were properly included because they were sufficiently attenuated from the unlawful seizure at the airport. The court also did not redact any

information about the discovery of the vacuum-sealed currency itself, because it was discovered during a valid administrative search by the TSA. Finally, the court concluded that after redacting the tainted information, the remaining facts in the affidavit established probable cause for the search of Brooks's residence, so the evidence seized from the home was admissible.

The Court of Appeals affirmed the decision of the district court.

READ THE COURT OPINION HERE:
https://ecf.ca8.uscourts.gov/opndir/22/01/203601P.pdf

SEARCH AND SEIZURE: No Expectation of Privacy in Social Media Post

Commonwealth of Massachusetts v. Carrasquillo, MSJC, No. SJC-13122, 2/7/22

In this case, the Massachusetts Supreme Judicial Court affirmed the superior court judge denying Averyk Carrasquillo's motion to suppress a video recording which he published to his social media account, Snapchat. It depicted an individual seen from the chest down holding what appeared to be a firearm. After accepting a friend request from an undercover police officer, Carrasquillo published the video at issue to his social media account. The officer made a recording of the posting, and that recording was used in criminal proceedings. The trial judge concluded that no search had occurred and denied Carrasquillo's motion to suppress. The Massachusetts Supreme Judicial Court affirmed, holding that he did not retain a reasonable expectation of privacy in his social media stories.

READ THE COURT OPINION HERE:
https://www.mass.gov/doc/commonwealth-v-averyk-carrasquillo-sjc-13122/download

SEARCH AND SEIZURE: Particularity of Affidavit for Human Trafficking

United States v. Palms
CA10, No. 20-5072, 12/21/21

On November 20, 2018, Tulsa police officer Justin Oxford was investigating online advertisements for suspected prostitution. Officer Oxford responded to one of the ads and was directed to meet M.W. in room 220 at the Peoria Inn in Tulsa. When he arrived, he saw Ramar Palms parked in a car near room 220.

After M.W. let Officer Oxford into the room, he asked for a sex act and put money on the nightstand. When M.W. agreed, Officer Oxford identified himself as a police officer and arrested her. M.W. told Officer Oxford that she was being forced to work as a prostitute and identified Palms as her pimp. Officer Oxford also saw a text message from Palms on M.W.'s phone screen. The police arrested Palms in the parking lot and seized his cell phone.

Officer Oxford sought a warrant to search Palms's cell phone from a Tulsa County judge. In his affidavit supporting the warrant, Officer Oxford detailed the events of November 20, 2018, and the information he obtained from M.W. about her connection with Palms. The judge issued a warrant to search Palms's cell phone. The warrant authorized the police to search Palms's cell phone for records, data, communications and information which are evidence of Human Trafficking. Specifically, the warrant authorized the police to search Palms's cell phone for evidence:

including, but not limited to, all digital evidence stored on removable storage and magnetic or electronic data contained in the contents of such tablet, cell phone, laptop, camera and/or memory cards, including electronic data storage

devices, which in whole or part contain any and all evidence related to the subscriber information from the SIM (subscriber identification module) and/or ownership information for the device, electronic mail, call logs, contacts, calendars, location services information, global positioning (GPS) data and information, internet chat communications, browser cache, auto-complete forms, stored passwords, instant messaging, SMS (short message service), MMS (multimedia message service), social media account data and information, application data and information, documents, photographs, images, graphics, pictures, videos, movies, audio or video recordings, any associated metadata, and any recorded documents depicting communications, correspondence or storage of these communications, files, graphics, documents, or other data related to the crime of Human Trafficking.

Officer Brian Booth, a member of the Tulsa Police Department's intelligence unit, extracted all the data from Palms's cell phone pursuant to the warrant. Officer Booth gave the extracted information, excluding the cloud data, to Officer Oxford, who searched it.

Prior to trial, Palms submitted a motion arguing the evidence obtained from his cell phone should be suppressed because the warrant and the search of his cell phone violated the Fourth Amendment. One of his arguments was that the warrant lacked the particularity required by the Fourth Amendment because it did not limit the search to specific materials or to a specific crime. After the evidentiary hearing, the district court denied Palms's motion to suppress. The district court held the warrant satisfied the Fourth Amendment because it was supported by probable cause, and it was sufficiently particular because the search was reasonable.

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

"The Government contends the warrant contained such a limitation because it permitted the officers to search and seize only evidence of 'human trafficking.' But Mr. Palms argues 'human trafficking' is not sufficiently specific because the warrant did not cite a specific criminal statute and because human trafficking is a broad term that gave the officers carte blanche to search and seize anything in the phone's contents they believed might pertain in any way to any human trafficking, at any time, whether for forced labor, for sex, for drug trafficking, or anything else arguably tied to the broad universe of human trafficking.

"To be sufficiently particular, search warrants do not have to identify specific statutes for the crimes to which they are limited. See *United States v. Christie*, 717 F.3d 1156, 1165 (10th Cir. 2013) (holding a warrant was particular when it was limited to information 'related to the murder, neglect, and abuse of' a child); *United States v. Brooks*, 427 F.3d 1246, 1252–53 (10th Cir. 2005) (holding a warrant satisfied the particularity requirement when it authorized officers to search a computer 'for evidence of child pornography'). Palms's contrary suggestion would inject the kind of technical precision the Fourth Amendment does not require. *Christie*, 717 F.3d at 1166 (explaining the particularity requirement has never 'been understood to demand of a warrant technical precision or elaborate detail but only practical limitations affording reasonable specificity'. Therefore, the lack of a statutory citation does not automatically render a warrant invalid. Rather, we must determine whether the warrant adequately limited the scope of the search despite the absence of a statutory reference.

"The warrant here is sufficiently limited. Oklahoma state law explicitly prohibits human trafficking. Okla. Stat. tit. 21, § 748(B) ('It shall be unlawful to knowingly engage in human trafficking.') And the definition of 'human trafficking' is not as unrestrained as Palms suggests. It is defined as 'modern-day slavery that includes, but is not limited to, extreme exploitation and the denial of freedom or liberty of an individual for purposes of deriving benefit from that individual's commercial sex act or labor.'

"Because Oklahoma law labels the crime as 'human trafficking,' and there is no separate 'sex trafficking' crime, it is difficult to imagine how the warrant could have been phrased more specifically. *United States v. Le*, 173 F.3d 1258, 1275 (10th Cir. 1999). Indeed, the Oklahoma state judge who issued the warrant and the Tulsa police officers who executed it would have understood human trafficking to be a specific crime. And most importantly, the existence of a statutory definition of 'human trafficking' would have enabled the executing Tulsa police officers to understand what evidence the warrant permitted them to search and seize. Therefore, the warrant's limitation to evidence of the crime of human trafficking satisfied the Fourth Amendment's particularity requirement.

READ THE COURT OPINION HERE:
https://www.ca10.uscourts.gov/sites/ca10/files/opinions/010110622035.pdf

SEARCH AND SEIZURE:
Private Search Doctrine
United States v. Meals
CA5, No. 20-40752, 12/30/21

Stephen Meals, then thirty-seven years old, used a Facebook messaging application to discuss with A.A., a fifteen-year-old, their previous sexual encounters and their plans for future encounters. Facebook discovered these conversations and forwarded a cyber tip to the National Center for Missing and Exploited Children (NCMEC). NCMEC reported to local law enforcement, which then obtained a warrant for Meals's electronic devices and found child pornography.

Meals, charged with several counts relating to his child exploitation, moved to suppress the evidence on the ground that Facebook and NCMEC are government agents. The district court denied his motion, and Meals pled guilty to production and possession of child pornography. On appeal, Meals persists in his contention that the court should suppress the messages and images.

The Court of Appeals for the Fifth Circuit found as follows:

"Under the private search doctrine, when a private actor finds evidence of criminal conduct after searching someone else's person, house, papers, and effects without a warrant, the government can use the evidence, privacy expectations notwithstanding. *United States v. Jacobsen*, 466 U.S. 109, 117, 104 S. Ct. 1652, 1658 (1984). In other words, if a non-government entity violates a person's privacy, finds evidence of a crime, and turns over the evidence to the government, the evidence can be used to obtain warrants or to prosecute. The rationale for this doctrine is obvious. The Fourth Amendment

restrains the government, not private citizens. *Burdeau v. McDowell*, 256 U.S. 465, 475, 41 S. Ct. 574, 576 (1921).

"There are two exceptions to the private search doctrine. First, the doctrine does not apply if the 'private actor' who conducted the search was actually an agent or instrument of the government when the search was conducted. See *Coolidge v. New Hampshire*, 403 U.S. 443, 487, 91 S. Ct. 2022, 2048, 2049 (1971). If the private actor was such an agent or instrument, a warrant is required to authorize the search. Second, if the government, without a warrant, exceeds the scope of the private actor's original search and thus discovers new evidence that it was not substantially certain to discover, the private search doctrine does not apply to the new evidence, and the new evidence may be suppressed. See *Walter v. United States*, 447 U.S. 649 (1980).

"Since Meals has not carried his burden to show that Facebook is a government agent or instrument, the private search doctrine applies. The district court correctly denied Meals's motion to suppress, and the conviction is affirmed."

READ THE COURT OPINION HERE:
https://www.ca5.uscourts.gov/opinions/pub/20/20-40752-CR0.pdf

SEARCH AND SEIZURE: Search Warrant; Container Inside Residence

Ex Parte Nancy Powers, SCA, No.1200764, 1/21/22

Pursuant to a premises search warrant, police in Mobile, Alabama searched the residence of Joshua Moyers, seeking evidence of drug activity. Although Moyers was referenced in the affidavit supporting the issuance of the warrant, no individuals were named in the warrant itself.

Police entered Moyers's house and discovered Nancy Powers sleeping on a couch in the first room of the house. Powers's purse was sitting on a table next to the couch. After confirming with Powers that the purse belonged to her, police searched the purse and discovered methamphetamine, a digital scale, and cash. Relevant to these proceedings, Powers was charged with possession of methamphetamine with intent to distribute.

The circuit court denied Powers's motion to suppress the evidence found in her purse. Thereafter, Powers pleaded guilty and appealed. The Alabama Supreme Court granted Powers's petition for a writ of certiorari to consider a question of first impression: whether police improperly searched Powers' purse, or whether, as the State argued, the purse was simply a container in the House that fit within the scope of the premises warrant.

The Supreme Court agreed with the State that the purse was a container that came within the scope of the warrant, and that Powers' right to privacy was not violated.

READ THE COURT OPINION HERE:
https://acis.alabama.gov/displaydocs.cfm?no=1116688&event=68V0MEYK2

SEARCH AND SEIZURE: Smelling Marijuana when Traveling Behind a Vehicle

United States v. Shumaker
CA7, No. 20-3467, 12/29/21

Special Enforcement Team Officers Ryan Steinkamp, Brian Minnehan, and Ryan Garrett are familiar with the smell of marijuana because they encounter it frequently. According to Officer Minnehan, when an officer encounters a marijuana odor while driving, the officer attempts to identify the odor's source by following the vehicle believed to be the odor's source and observing whether the odor remains constant. If the odor dissipates, then the officer does not stop the vehicle.

On October 5, 2019, the officers were on patrol in a marked squad car. Officer Steinkamp drove the car, Officer Garrett sat in the front seat, and Officer Minnehan sat in the back seat. The squad car's front windows were up, but its back windows were down. At 5:49 p.m., the officers were driving westbound on a city street behind a black sedan that had its windows up. According to weather records, the wind was traveling between 13 and 17 miles per hour. The officers did not smell marijuana while driving behind the black sedan.

As the officers approached a four-way intersection, they saw a red Chevrolet Impala traveling eastbound abruptly turn left in front of the oncoming black sedan. The Impala's passenger side window was down. At the intersection, the officers turned right and started driving northbound on the same street as the Impala.

Shortly after making the right turn, the officers started smelling the odor of marijuana, and that's what drew their attention to the Impala. The squad car was approximately 100 meters behind the Impala when the officers first smelled the odor. The Impala was in the left lane, while the squad car was directly behind the black sedan in the right lane. The officers did not believe that the black sedan was the odor's source because its windows were up and they never smelled marijuana while following the black sedan before turning right.

Officer Steinkamp testified that the marijuana odor was "burnt marijuana" based on his "training and experience." Officer Minnehan likewise testified that he believed he "was smelling burnt marijuana." Officer Garrett's statements captured on video footage "indicate that he too believed he smelled burnt marijuana."

The officers changed lanes and sped up to position the squad car close behind the Impala in the left lane. A black truck was immediately in front of the Impala. An SUV was farther ahead in the right lane. The road was busy at that time. The officers drove directly behind the Impala "for several blocks"—approximately 30 seconds—to "make sure that they knew for certain without a shadow of a doubt that it was the vehicle that has the odor of marijuana emitting from it. The odor of marijuana remained constant after the officers followed the Impala for several more blocks. The officers could see inside the Impala while following behind it and never saw smoke inside the car or coming out of the car. Nonetheless, based on the smell of "burnt marijuana," the officers believed that somebody in the car was actively smoking marijuana. As a result, the officers decided to conduct a traffic stop of the Impala and activated the squad car's lights. The Impala pulled over to the side of the road.

The officers continued to smell marijuana emanating from the Impala after the stop. Officer Steinkamp, while preparing to exit the squad car,

commented that "it still reeks of weed." Officer Steinkamp testified that the marijuana odor grew stronger" as he approached the Impala. Officer Minnehan testified that "when he got close to the vehicle, he could clearly detect the smell of marijuana coming strongly from inside the vehicle. Officer Garrett testified that "as he approached the passenger's side of the vehicle, he could still smell the odor of marijuana. Officers Steinkamp and Minnehan went to the Impala's driver's side.

Officer Garrett went to the Impala's passenger's side where he saw a digital scale in the pouch behind the passenger's seat. Officer Steinkamp directed Vernon Shumaker to step out of the car. Officer Minnehan asked Shumaker, "Do you got a bunch of weed in here, or were you just smoking and driving?" Shumaker responded, "Nah, just smoking. Not too long ago though." Officer Steinkamp then asked, "Smoking weed?" Officer Minnehan commented, "As we were behind you, it reeks like weed." Shumaker denied smoking marijuana in the car. Officer Minnehan then stated, "I can still smell it." Shumaker responded, "Yeah." Officer Minnehan inquired if there was anything illegal in the car. Shumaker answered that his girlfriend's gun was in the vehicle.

Officer Steinkamp handcuffed Shumaker and moved him to the squad car, while Officers Garrett and Minnehan searched the Impala. They found several partially smoked marijuana cigarettes and ash. In addition to the marijuana cigarettes, the officers also recovered a digital scale with trace amounts of marijuana residue on it and a loaded nine-millimeter pistol in the center console.

Based on the firearm found in the Impala, Shumaker was charged with one count of being a felon and drug user in possession of a firearm. Shumaker moved to suppress all evidence derived from the traffic stop.

Dr. Richard L. Doty, the Director of the Smell and Taste Center at the University of Pennsylvania Medical Center testified as Shumaker's expert. Dr. Doty testified about his research projects concerning raw marijuana. Thereafter, he testified that, based on his review of the evidence and his experience, the officers would have been unable to smell the marijuana in Shumaker's ashtray while driving behind him. Dr. Doty reached his conclusion based on the "very small amount of marijuana" recovered, the marijuana's placement "inside a closed container inside an automobile," "the barriers inside a patrol car, the distances between the vehicles, traffic," "the turbulence of the other cars, and the wind direction.

In rebuttal, David. L. Frye testified for the government. Frye is a former Nebraska state trooper, a part-time deputy with the Seward County Sheriff's Office in Nebraska, and also a director of training for a law enforcement training program called Desert Snow. Desert Snow, Frye explained, is the largest private provider of criminal interdiction training in the United States. As the director of training, Frye assembles training materials used by the instructors. Desert Snow conducts approximately 60 to 70 classes a year in over 40 different states, and Frye teaches several of those" classes. Frye is also involved in teaching federal agencies.

Frye described his personal experience as an officer following vehicles and detecting the smell of marijuana. As a patrol officer, Frye testified that he has made over 500 stops over the years. According to Frye, he has personally interdicted marijuana, among other drugs. He testified that, to identify the marijuana odor's source, he would follow cars and observe whether the odor stayed consistent. If it did, then he would conclude that the odor was coming from the vehicle in front of him. Id. He would confirm his conclusion by

stopping the vehicle. Additionally, in his role as director of training for Desert Snow, Frye has polled officers across the United States and learned that there are hundreds of officers that have smelled marijuana when traveling behind a car.

Having reviewed the video and other evidence in the case, Frye testified that based upon his training and experience it would have been possible for the officers to smell marijuana that was coming from Shumaker's vehicle.

The Eighth Circuit Court of Appeals affirmed the district court's denial of the suppression motion.

READ THE COURT OPINION HERE:
https://ecf.ca8.uscourts.gov/opndir/21/12/203467P.pdf

SEARCH AND SEIZURE: Stop and Frisk; Blocking Vehicle was Seizure

United States v. Shaffers
CA7, No. 21-1134, 1/5/22

On the night of October 15, 2016, Shaffers attended a party in Chicago. He left around midnight with three people: Talieta Fulton, Cornell Westberry, and Shirley Butler. They all got into his car—with Shaffers in the driver's seat and Fulton in the passenger's seat—and began smoking cigarettes and listening to music while parked.

Meanwhile, Chicago Police Officers Jason Streeper and Brendan Bruno were patrolling nearby in an unmarked police car. As they drove down an alley, they heard loud music coming from Shaffers' car and smelled marijuana. They stopped directly behind the car, blocking it from pulling out. The officers then approached the car, identified themselves, and instructed the occupants to put their hands in the air. Officer Streeper had his gun drawn. He testified that Shaffers initially failed to comply with his directions and instead was "making furtive movements with his hands below the [driver's] seat." Shaffers eventually put his hands on the steering wheel, but he then fled before the officers could detain him. While Officer Bruno unsuccessfully gave chase, Officer Streeper recovered a gun from the floorboard between the driver's seat and the console. Several months later, Shaffers was taken into custody when he appeared in state court for a traffic infraction, and he was eventually charged in federal court with being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1).

Denying Shaffers' motion to suppress, the court concluded that the officers' approach was a seizure because Shaffers could not move his car and a reasonable person would not have felt free to leave but that the seizure was permissible under "Terry" because the officers had reasonable suspicion.

The Seventh Circuit upheld his convictions, rejecting arguments that the gun should have been suppressed.

READ THE COURT OPINION HERE:
https://media.ca7.uscourts.gov/cgi-bin/rssExec.pl?Submit=Display&Path=Y2022/D01-05/C:21-1134:J:Hamilton:aut:T:fnOp:N:2814505:S:0

SEARCH AND SEIZURE: Stop and Frisk; Blocking Vehicle and Shouting Instructions; Safety Precautions
United States v. Patterson
CA2, No. 19-4332, 2/4/22

Police detained the vehicle that Justin Patterson was driving at a gas station because it fit the description of a car whose occupants had reportedly menaced a woman with a firearm in a nearby supermarket parking lot. After discovering a gun, Patterson was charged as a felon in possession of a firearm.

The district court granted Patterson's motion to suppress the firearm, stating that the degree of force used in detaining Patterson's vehicle and its occupants—pointing firearms at, shouting orders toward, and blocking an exit route for the vehicle—exceeded that permissible for a reasonable investigatory stop and had to be viewed as a de facto arrest. Further, the arrest was unlawful because, when first effected, it was not supported by probable cause. Accordingly, the firearm seized from the car's glove compartment after Patterson fled the scene had to be suppressed as a fruit of the unlawful arrest.

The Second Circuit reversed: "Patterson's initial detention in the vehicle was not an arrest but an investigatory stop supported by the requisite reasonable suspicion. Pointing firearms at, shouting toward, and blocking an exit route for the vehicle driven by Patterson, were reasonable safety precautions given that the officers were investigating a report of menacing with a firearm."

READ THE COURT OPINION HERE:
https://www.ca2.uscourts.gov/decisions/isysquery/87c84bb0-77db-4ddb-9782-c74568f6bf20/1/doc/19-4332_opn.pdf#xml=https://www.ca2.uscourts.gov/decisions/isysquery/87c84bb0-77db-4ddb-9782-c74568f6bf20/1/hilite/

SEARCH AND SEIZURE: Vehicle Stop; Officer Work on Ticket Continuously; Consent Not Needed for Dog Sniff if it Does Not Prolong Stop
United States v. Goodwill
CA7, No. 20-3188, 1/21/22

Detectives Roseman and Hunt stopped William Goodwill for a window tint violation. After asking Goodwill to sit in the squad car, Roseman began the paperwork while both detectives asked Goodwill questions. A canine unit arrived minutes later, before Roseman finished the warning form. The dog alerted to the presence of drugs. A search revealed two kilograms of cocaine.

Goodwill, charged with possession of cocaine with intent to distribute, moved to suppress the drugs, arguing that the officers unlawfully prolonged the search by asking unrelated questions and conducted the dog sniff without his consent. The district court found that the questioning did not extend the stop and denied the motion.

The Seventh Circuit affirmed: "Roseman needed to check the driver's license and vehicle information—which involved typing in the motorist's name and date of birth or driver's license number plus the vehicle's registration information—then complete, by hand, the warning—which included the date, time, vehicle information, driver's information, and the location. Roseman's testimony at the suppression hearing and the traffic-stop video indicated that he worked expeditiously on the ticket continuously without any breaks. An officer does not need a driver's consent to conduct a dog sniff during a lawful traffic stop, if it does not prolong the stop."

READ THE COURT OPINION HERE:
https://media.ca7.uscourts.gov/cgi-bin/rssExec.pl?Submit=Display&Path=Y2022/D01-21/C:20-3188:J:St__Eve:aut:T:fnOp:N:2823002:S:0

SEARCH AND SEIZURE: Vehicle Stop; Traffic Plan Questions Fall Within the Mission of a Traffic Stop
United States v. Cole
CA7, No. 20-2015, 12/17/21

An Illinois state trooper stopped Janhoi Cole for following too closely behind another car. At the time, Cole was traveling on an Illinois interstate with an Arizona driver's license and a California registration. During the brief roadside detention that followed, the trooper questioned Cole about his license, registration, and travel plans. Cole's answers struck the trooper as evasive, inconsistent, and improbable. Many of the trooper's questions were follow-up questions to Cole's answers and volunteered information. Combined with other factors, they led the trooper to suspect that Cole was trafficking drugs. The trooper called for a K-9 unit to meet him and Cole at a nearby gas station. The dog alerted, and officers found large quantities of methamphetamine and heroin in Cole's car.

Facing federal charges, Cole moved to suppress the drugs as well as his statements during the stop. The Court of Appeals for the Seventh Circuit felt it must decide whether travel-plan questions are part of the "mission" of a traffic stop under *Rodriguez v. United States*, 575 U.S. 348 (2015).

"In keeping with the consensus of other circuits, we hold that travel-plan questions ordinarily fall within the mission of a traffic stop. Travel-plan questions, however, like other police inquiries during a traffic stop, must be reasonable under the circumstances. And here they were. The trooper inquired about the basic details of Cole's travel, and his follow-up questions were justified given Cole's less-than-forthright answers. The stop itself was lawfully initiated, and the trooper developed reasonable suspicion of other criminal activity before moving the initial stop to the gas station for the dog sniff."

READ THE COURT OPINION HERE:
https://media.ca7.uscourts.gov/cgi-bin/rssExec.pl?Submit=Display&Path=Y2021/D12-17/C:20-2105:J:St__Eve:aut:T:fnOp:N:2807811:S:0

SECOND AMENDMENT: Unlawful Possession of a Firearm
United States v. Williams
CA8, No. 20-3311, 2/1/22

The Eighth Circuit affirmed Jackson Williams' conviction for unlawful possession of a firearm as a convicted felon, concluding that application of the federal firearms statute did not violate his rights under the Second Amendment.

READ THE COURT OPINION HERE:
https://ecf.ca8.uscourts.gov/opndir/22/02/203311P.pdf

SEX OFFENDER REGISTRATION ACT; MENTAL DISEASE OR DEFECT
State v. Scott, ASC, No. CR-21-347, 2022 Ark. 8, 1/20/22

The State of Arkansas appeals from an order of the Pulaski County Circuit Court acquitting Darrell Scott by reason of mental disease or defect of one count of theft of property and two counts each of kidnapping and first-degree false imprisonment of minors C.A. and E.M. The State's sole point on appeal is that the circuit court erred by failing to require Scott to register as a sex offender pursuant to the Sex Offender Registration Act of 1997. The Arkansas Supreme Court reversed the order of the Pulaski County Circuit Court on the issue of registration as a sex offender.

The Arkansas Supreme Court stated that the Act's express language requires a person to register if he or she has been acquitted of a sex offense on the grounds of mental disease or defect. The Act further specifies that kidnapping and false imprisonment are deemed sex offenses if the victim is a minor and the offender is not the victim's parent. It is undisputed that Scott is not the parent of the minor victims. Thus, Scott's acquittal by reason of mental disease or defect of two counts each of kidnapping and first-degree false imprisonment of minors who are not his children requires him to register as a sex offender.

READ THE COURT OPINION HERE:
https://opinions.arcourts.gov/ark/supremecourt/en/519731/1/document.do