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Contents

CIVIL LIABILITY:

Excessive Force; Claim that Officers Kicked Subject

Acosta v. Miami-Dade County, CA11, No. 22-11675, 3/28/24

Maria Acosta, sued six Miami-Dade officers involved in the arrest of her son, Maykel Barrera, who died after the encounter. Acosta alleged federal excessive-force claims and state wrongful-death claims. The district court granted summary judgment to the officers, and Acosta appealed. The United States Court of Appeals for the Eleventh Circuit held that the district court erred in granting summary judgment to five of the six officers on Acosta's excessive-force claims.

The Court of Appeals found that, viewing the facts in the light most favorable to Acosta, the officers used excessive force when they tased and kicked Barrera while he was subdued, on the ground, and no longer resisting arrest, violating clearly established Fourth Amendment rights.

Furthermore, the court vacated the summary judgment on Acosta's wrongful-death claim, concluding that there was enough evidence for the case to go to trial.

READ THE COURT OPINION HERE:
https://media.ca11.uscourts.gov/opinions/pub/files/202211675.pdf

CIVIL LIABILITY: Excessive Force; Claim that Officers Firing Shots 5 and 6 Were Excessive

In re estate of Hernandez v. City of Los Angeles, CA9, No. 21-55994, 2/21/24

During the late afternoon of April 22, 2020, uniformed officers Toni McBride and Shuhei Fuchigami came upon a multi-vehicle accident at the intersection of San Pedro Street and East 32nd Street in Los Angeles. They decided to stop and investigate the situation. Video footage from the patrol car and from McBride's body camera captured much of what then transpired. As the officers arrived near the intersection, they observed multiple seriously damaged vehicles, some with people still inside, and at least two dozen people gathered at the sides of the road.

As the officers exited their patrol car, the car's police radio stated that the "suspect's vehicle" was "black" and that the suspect was a "male armed with a knife." A bystander immediately told the officers about someone trying to "hurt himself," and Fuchigami stated loudly, "Where is he? Where's he at?" In response, several bystanders pointed to a black pickup truck with a heavily damaged front end that was facing in the wrong direction near two parked vehicles on the southbound side of San Pedro Street. The officers instructed the crowd to get back, and McBride drew her weapon. One nearby driver, who was sitting in her stopped sedan, told McBride through her open car window that "he has a knife." McBride asked her, "Why does he want to hurt himself?" and the bystander responded, "We don't know. He's the one who caused the accident." McBride instructed that bystander to exit her car and go to the sidewalk, which she promptly did. McBride then shouted to the bystanders in both English and Spanish that they needed to get away. At the same time, the police radio announced that the suspect was "cutting himself" and was "inside his vehicle." McBride then asked her partner, "Do we have less lethal?" Referencing the smashed pickup truck, McBride said, "Is there anybody in there?" She then stated, "Hey, partner, he might be running."

As McBride faced the passenger side of the truck, which was down the street, she then saw someone climb out of the driver's side window. McBride yelled out, "Hey man, let me see your hands. Let me see your hands man," while a bystander yelled, "He's coming out!" Daniel Hernandez then emerged shirtless from behind the smashed black pickup truck, holding a weapon in his right hand. As he did so, Officer McBride held her left hand out towards Hernandez and shouted, "Stay right there!" Hernandez nonetheless advanced towards McBride in the street, and he continued to do so as McBride yelled three times, "Drop the knife!" While Hernandez was coming towards her, McBride backed up several steps, until she was standing in front of the patrol car.

Hernandez began yelling as he continued approaching McBride, and he raised his arms out by his sides to about a 45-degree angle. McBride again shouted, "Drop it!" As Hernandez continued yelling and advancing with his arms out at a 45-degree angle, Officer McBride fired an initial volley of two shots, causing Hernandez to fall to the ground on his right side, with the weapon still in his right hand. At the point that McBride fired at Hernandez, he was between 41–44 feet away from her.

Still shouting, Hernandez rolled over and leaned his weight on his hands, which were pressed against the pavement. He began pushing himself up, and he managed to get his knees off the pavement. As Hernandez started shifting his weight to his feet to stand up, McBride again

yelled "Drop it!" and fired a second volley of two shots, causing Hernandez to fall on his back with his legs bent in the air, pointing away from McBride. Hernandez began to roll over onto his left side, and as he did this, McBride fired a fifth shot. Hernandez then continued to roll over, so that he was again facing McBride. His bent left knee was pressed against the ground, and he placed his left elbow on the street, as if to push himself upwards. But Hernandez started to collapse to the ground, and just as he did so, McBride fired a sixth shot. Hernandez then lay still, face-down on the street, as McBride and other officers approached him with their pistols drawn. McBride's body camera clearly shows that the weapon was still in Hernandez's right hand as an officer approached and took it out of his hand. The weapon turned out not to be a knife, but a box cutter with two short blades at the end. Starting from the point at which Hernandez came out from behind the truck until he collapsed on the ground, the entire confrontation lasted no more than 20 seconds. All six shots were fired within eight seconds.

Hernandez's estate and family members filed a lawsuit against McBride, the LAPD, and the City of Los Angeles, alleging violations of Hernandez's Fourth Amendment rights,

Upon review, the Ninth Circuit Court of appeals found in part as follows:

"In evaluating whether a particular use of force against a person is objectively reasonable under the Fourth Amendment, 'the trier of fact should consider all relevant circumstances,' including, as applicable, the following illustrative but non-exhaustive factors: 'the relationship between the need for the use of force and the amount of force used; the extent of the plaintiff's injury; any effort made by the officer to temper or to limit the amount of force; the severity of the security problem at issue; the threat reasonably perceived by the officer; and whether the plaintiff was actively resisting.' *Demarest v. City of Vallejo*, 44 F.4th 1209, 1225 (9th Cir. 2022) (quoting *Kingsley v. Hendrickson*, 576 U.S. 389, 397 (2015)). The overall assessment of these competing factors must be undertaken with two key principles in mind. First, the reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. *Kisela*, 584 U.S. at 103. Second, the calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation.

"Accordingly, even though McBride's first volley of shots was reasonable as a matter of law, we must still consider whether she 'acted unreasonably in firing a total of six shots.' *Plumhoff*, 572 U.S. at 777. On that score, Plumhoff holds that, if police officers are justified in firing at a suspect in order to end a severe threat to public safety, the officers need not stop shooting until the threat has ended. We have cautioned, though, that terminating a threat doesn't necessarily mean terminating a suspect. *Zion v. County of Orange*, 874 F.3d 1072, 1076 (9th Cir. 2017). Thus, if an initial volley of shots has succeeded in disabling the suspect and placing him in a position where he could not easily harm anyone or flee, a reasonable officer would reassess the situation rather than continue shooting. Applying these principles to this case, we agree with the district court that the undisputed video evidence confirms that, at the time McBride fired the second volley of shots, the 'threat' that Hernandez posed had not yet 'ended.' *Plumhoff,* 572 U.S. at 777. Despite

falling down after having been hit by two bullets, Hernandez immediately rolled over, pressed his hands against the ground, and began shifting his weight to his feet in order to stand up. All the while, he continued shouting, and he still held his weapon in his hand despite yet another instruction by McBride to drop it. McBride's third and fourth shots were thus reasonable as a matter of law.

"However, McBride's final volley of shots—i.e., shots five and six—present a much closer question. Under these circumstances, a reasonable trier of fact could find that, at the time McBride fired these two additional shots, the threat from Hernandez—who was still on the ground—had sufficiently been halted to warrant reassessing the situation rather than continuing shooting. A reasonable jury could find that, at the time of the fifth and sixth shots, Hernandez was no longer an immediate threat. The reasonableness of the fifth and sixth shots was thus a question for the trier of fact, and the district court erred in granting summary judgment on that issue.

"Even granting that McBride's fifth and sixth shots may have been unreasonable, this is not an obvious situation in which every reasonable officer would have understood that the law forbade firing additional shots at the already wounded Hernandez as he plainly appeared to continue to try to get up. Because McBride did not violate clearly established law in firing her third volley of shots, we conclude that she is entitled to qualified immunity. We affirm the grant of summary judgment to McBride on Plaintiffs' Fourth Amendment excessive force claim."

READ THE COURT OPINION HERE:
https://cdn.ca9.uscourts.gov/datastore/opinions/2024/03/21/21-55994.pdf

CIVIL LIABILITY: Excessive Force; Split Second Response to Threat

Flores v. Henderson, CA10, No. 23-1049, 5/14/24

The parents of Shamikle Jackson filed a lawsuit against four police officers for using unconstitutionally excessive force. Jackson had called 911, claiming that two people were dead inside an apartment and that he was holding others hostage. When the police arrived, they encountered Jackson's sister who informed them that Jackson was alone, unarmed, and might have mental health problems. However, as the officers proceeded to search the apartment, Jackson emerged from a bedroom with a machete and was shot and killed by the officers.

The U.S. District Court for the District of Colorado denied the officers' motion for summary judgment based on qualified immunity. The court concluded that a reasonable jury could find that the officers recklessly created the need to use deadly force, thereby unreasonably violating Jackson's constitutional rights under clearly established law.

The U.S. Tenth Circuit Court of Appeals reversed the lower court's decision. The appellate court found that the officers had a split second to respond to a deadly threat posed by Jackson. Under these circumstances, it was not clearly established that the officers recklessly created a situation where the use of deadly force was necessary. Therefore, the officers were entitled to qualified immunity. The court also rejected the claim that the other officers failed to intervene to prevent the violation of Jackson's rights, as there was no underlying constitutional violation.

READ THE COURT OPINION HERE:
https://www.ca10.uscourts.gov/sites/ca10/files/opinions/010111049241.pdf

CIVIL LIABILITY: Failure to Identify; Probable Cause to Arrest

Bustillos v. City of Artesia, CA10, No. 22-2046, 4/17/24

Albert Bustillos, an independent journalist, was filming content for his YouTube channel outside the Navajo oil refinery in Artesia, New Mexico. He was approached by refinery security and later by officers from the Artesia Police Department, including Corporal David Bailey. Despite Bustillos asserting he was on public property and had not broken any laws, Bailey arrested him for failure to identify himself.

Bustillos sued Bailey and the City of Artesia, alleging violations of his First and Fourth Amendment rights and New Mexico law. The defendants moved for summary judgment, arguing that Bailey was entitled to qualified immunity. The district court denied the motion.

The United States Court of Appeals for the Tenth Circuit affirmed the district court's denial of qualified immunity. The court found that Bailey lacked reasonable suspicion of a predicate crime, which is required to lawfully arrest someone for concealing identity. The court also found that Bustillos had met his burden to show that Bailey violated his clearly established Fourth Amendment rights.

READ THE COURT OPINION HERE:
https://www.ca10.uscourts.gov/sites/ca10/files/opinions/010111033725.pdf

CIVIL LIABILITY: First Amendment; Restrictions on Speech

Meinecke v. City of Seattle, CA9, No. 23-35481, 4/18/24

Matthew Meinecke, a devout Christian, was arrested twice by Seattle police for refusing to move from public locations where he was reading Bible passages. The first incident occurred at an abortion rally and the second at an LGBTQ pride event. In both instances, Meinecke was asked to move after attendees began to physically assault him. Instead of dealing with the perpetrators, the police arrested Meinecke for obstruction.

Meinecke sued the City of Seattle and certain Seattle police officers, seeking to prevent them from enforcing "time, place, and manner" restrictions and applying the City's obstruction ordinance to eliminate protected speech in traditional public fora whenever they believe individuals opposing the speech will act hostile toward it.

The United States District Court for the Western District of Washington denied Meinecke's motion for preliminary injunctive relief, reasoning that the officers' actions were content neutral and did not aim to silence Meinecke.

On appeal, the United States Court of Appeals for the Ninth Circuit reversed the district court's decision.

"The appellate court held that Meinecke has standing to pursue prospective injunctive relief, given that the City has twice enforced its obstruction ordinance against him, he has stated that he will continue his evangelizing efforts at future public events, and the City has communicated that it may file charges against him for doing so. The court found that Meinecke

established a likelihood of success on the merits of his First Amendment claim. The restrictions on his speech were content-based heckler's vetoes, where officers curbed his speech once the audience's hostile reaction manifested. Applying strict scrutiny, the court held that there were several less speech-restrictive alternatives to achieve public safety, such as requiring protesters to take a step back, calling for more officers, or arresting the individuals who ultimately assaulted Meinecke.

"The court also held that Meineke established irreparable harm because a loss of First Amendment freedoms constitutes an irreparable injury, and the balance of equities and public interest favors Meinecke. The case was remanded with instructions to enter a preliminary injunction consistent with this opinion in favor of Meinecke."

READ THE COURT OPINION HERE:
https://cdn.ca9.uscourts.gov/datastore/opinions/2024/04/18/23-35481.pdf

CIVIL LIABILITY: Investigators Misidentification of Suspect

Harris v. Hixon, CA11, No. 22-12493, 5/17/24

This case involves a mistaken identification by two sheriff's office investigators, Joseph Bultman and Jon Hixon, who identified George Angel Harris as the individual captured on security camera footage using a stolen debit card. Based on this identification, Hixon obtained two arrest warrants for Harris for financial transaction card fraud. Harris was arrested and held in jail for a few hours before being released. The criminal case against him was eventually dismissed.

Harris filed a lawsuit against the investigators under 42 U.S.C. § 1983, alleging they violated his Fourth Amendment rights by causing him to be falsely arrested and unlawfully detained without probable cause. The district court granted summary judgment in favor of the investigators.

In the United States Court of Appeals for the Eleventh Circuit, Harris argued that the investigation leading to his arrest was inadequate, and that Hixon's arrest affidavit was based on conclusory statements without supporting facts, making the warrants for his arrest constitutionally inadequate.

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

"It held that the investigators' mistaken identification of Harris was a reasonable mistake and did not violate Harris' Fourth Amendment rights. the arrest warrant application was insufficient, the investigators had probable cause to arrest Harris based on their own knowledge and the brief period of Harris' detention."

READ THE COURT OPINION HERE:
https://media.ca11.uscourts.gov/opinions/pub/files/202212493.pdf

CIVIL LIABILITY: Probable Cause Overcomes Claim of False Arrest

Madero v. McGinnes, CA7, No. 23-2574, 4/1/24

At 4 a.m. on a snowy morning in Rockford, Illinois, Officer Owen McGuinness responded to a call that drivers involved in a hit-and-run accident were fighting. When he arrived at the scene, Officer McGuinness was faced with two different stories of the events that had transpired. Three witnesses insisted that Daniel Madero had been the driver of the hit-and-run vehicle and that, after a confrontation, Mr. Madero had struck Brandon

Philbee, the hit-and-run victim, in the face with a key. For his part, Mr. Madero asserted his innocence, denying that he was the driver of the hit-and-run car. He maintained that he had acted in self-defense against Philbee. It was, essentially, three against one. Confronted with the decision of whose story to credit, Officer McGuinness believed the three witnesses. He arrested Mr. Madero for aggravated battery for his fight with Philbee and issued him traffic citations for his role in the hit-and-run accident.

An investigation later in the day concluded that Mr. Madero's vehicle was likely not involved in the hit-and-run accident. Mr. Madero was released from jail that evening. He then filed a complaint in federal district court setting forth claims of false arrest in violation of the Fourth and Fourteenth Amendments.

The district court granted summary judgment to Officer McGuinness because it determined that he had probable cause to arrest Mr. Madero. The Seventh Circuit held that the district court correctly concluded that Officer McGuinness had probable cause to arrest Mr. Madero based on the information available to him at the time of the arrest. Accordingly, the judgment of the district court is affirmed.

READ THE COURT OPINION HERE:
https://media.ca7.uscourts.gov/cgi-bin/OpinionsWeb/processWebInputExternal.pl?Submit=Display&Path=Y2024/D04-01/C%3A23-2574%3AJ%3ARipple%3Aaut%3AT%3AfnOp%3AN%3A3189426%3AS%3A0

CIVIL LIABILITY: Shooting of a Dog

Plowright v. Miami Dade County, CA11, No. 23-10425, 6/5/24

Sylvian Plowright, a resident of Miami-Dade County, called 911 to report someone trespassing in the vacant property near his home. Miami-Dade police officers Leordanis Rondon and Sergio Cordova responded to the call, approaching Plowright's front door through a dimly lit driveway.

As Plowright came out to greet the officers, they drew their guns and "immediately began shouting" at Plowright to show them his hands. When Plowright's dog Niles, an American Bulldog weighing less than 40 pounds, entered the scene, the officers ordered Plowright to get control of him. Before Plowright did so, Rondon fired his taser at Niles, sending him into shock. Then, after the dog was already down from the taser, Cordova fired at least two shots from his gun, killing the dog for no reason. The officers then ordered the "emotionally devastated" Plowright to the ground as Niles laid dying.

The Court of Appeals for the Eleventh Circuit held that the use of deadly force against a domestic animal constitutes a seizure of its owner's property subject to the Fourth Amendment's reasonableness requirement. Because, under the facts alleged in the complaint, no reasonable officer in Cordova's position could have believed that Niles posed an imminent danger, his decision to shoot Niles falls short of that requirement.

"Most circuits have acknowledged a general principle that a police officer may justify shooting a dog only when it presents an objectively legitimate and imminent threat to him or others. *LeMay v. Mays,* 18 F.4th 283, 287 (8th Cir. 2021). Today, we join our sister circuits in holding that

an officer may not use deadly force against a domestic animal unless that officer reasonably believes that the animal poses an imminent threat to himself or others."

READ THE COURT OPINION HERE:
https://media.ca11.uscourts.gov/opinions/pub/files/202310425.pdf

CIVIL LIABILITY: Totality of Circumstances Do Not Justify Deadly Force

Calonge v. City of San Jose
CA9, No. 22-16495, 6/7/24

Several officers responded to 911 calls reporting a man with a gun. They located the man, thirty-three-year-old Francis Calonge, who had what appeared to be a gun in his waistband. They followed him for about one minute as he walked down a street. Officer Edward Carboni then shot and killed Calonge. Calonge's mother, Rosalina Calonge, sued Officer Carboni for violating her son's Fourth Amendment right to be free from excessive force.

This case is unusual in that other officers on the scene contradict key facts asserted by the officer who used deadly force. The court concluded that the relevant law was clearly established at the time, so Officer Carboni was not entitled to qualified immunity. The court resolved three disputed facts in the plaintiff's favor for purposes of the appeal: Calonge was not drawing his gun or making a threatening gesture when Officer Carboni shot him; there were no bystanders in Calonge's vicinity when he was shot; and officers did not instruct Calonge to get on the ground or otherwise stop. The court held that the totality of the circumstances did not justify deadly force.

"It would have been clear to a reasonable officer in Carboni's position at the time that shooting Calonge was unlawful. It was clearly established that when a man is walking down the street carrying a gun in his waistband, posing no immediate threat, police officers may not shout conflicting commands at him and then kill him."

READ THE COURT OPINION HERE:
https://cdn.ca9.uscourts.gov/datastore/opinions/2024/06/07/22-16495.pdf

CIVIL LIABILITY:

Use of Force; Officer Defends Himself

Brumitt v. Smith, CA7, No. 23-1321, 5/20/24

Sam Smith, a sergeant with the Evansville Police Department, encountered Charles Brumitt around 3 am while patrolling in his police car. Smith entered the parking lot of a bar and spotted Brumitt lying down on a utility box. He left his car to check on Brumitt's wellbeing and to see if there were any warrants for Brumitt's arrest. Assuming that Brumitt (who was lying on his side) was drunk, Smith asked if he was okay. Brumitt mumbled, "No," and stopped talking. Smith told Brumitt to talk to him, that he was a police officer, and that he wanted to make sure Brumitt was okay. Still in a muffled voice, Brumitt said he could be "passed out wherever he wants." Smith disagreed, saying he could "take him to jail." Brumitt challenged Smith, "Take me, m*@*#*r. Take me." Smith responded, "Take you to jail?"

Because of the angling of the parties' bodies in front of the camera, the recording did not fully capture what happened next. Smith testified that, because he thought he saw a debit card sticking out of Brumitt's pocket (which might have had information needed to check for warrants), he said, "Let's see your ID," and reached for the card.

Brumitt began to rise and snarled, "Don't you reach in my butt, damn it. God damn it, don't reach in my butt." Smith responded, "I'll tell you what," and Brumitt insisted, "Damn it, don't do this shit." The clash turned physical. While seated, Brumitt swung his arm at Smith, and his open hand hit Smith's face in a roundhouse swing. Brumitt then slurred, "Get the f*@k off me, m*@*#*r."

Having never been hit while on duty, the attack startled but did not injure Smith. Smith grabbed Brumitt's shirt and punched Brumitt's face four times over (at most) four seconds, later saying, "You don't hit me." He described his response as "purely instinctual" and likely based on his training as a competitive fighter. (Smith holds several black belts.)

Sometime during the four seconds, Brumitt lost consciousness. Smith did not realize or process that Brumitt was unconscious until after the fourth punch. Brumitt lay still for several minutes while Smith called an ambulance and handcuffed Brumitt, who suffered an acute fracture of his eye socket, a broken nose, and lacerations that required surgery. Brumitt later pleaded guilty to misdemeanor battery and public intoxication.

Brumitt sued Smith and the City of Evansville alleging that Smith violated his Fourth Amendment rights. Smith sought summary judgment, arguing that his use of force was objectively reasonable and that he was entitled to qualified immunity.

The district court denied Smith's motion for summary judgment. It concluded that there were factual disputes that prevented it from determining whether the force used by Smith was reasonable and whether Smith was entitled to qualified immunity. The court stated that the right Brumitt asserted—"to be free from force once subdued"—was clearly established. Smith appealed this decision.

The United States Court of Appeals for the Seventh Circuit reversed the district court's decision. The appellate court concluded that Brumitt had not met his burden of showing that Smith violated a clearly established right. The court found that no case clearly established that a reasonable officer must reassess his use of force within less than four seconds. Therefore, Smith was entitled to qualified immunity. The court remanded the case with instructions to enter judgment in Smith's favor on the Fourth Amendment claim.

READ THE COURT OPINION HERE:
https://media.ca7.uscourts.gov/cgi-bin/OpinionsWeb/processWebInputExternal.pl?Submit=Display&Path=Y2024/D05-20/C:23-1321:J:Kirsch:aut:T:fnOp:N:3213062:S:0

DNA: Additional Testing to Demonstrate Innocence

Echols v. State
ASC, No. CR-22-670, 2024 Ark. 61, 4/18/24

This case involves Damien Echols, one of the "West Memphis Three," who was convicted for the murder of three eight-year-old boys in 1993. Echols, along with Jason Baldwin and Jessie Misskelley, were found guilty, with Echols receiving a death sentence. In 2011, Echols entered an Alford plea, maintaining his innocence but acknowledging the prosecution's evidence, and was released from prison. Echols sought further DNA testing of the evidence to potentially identify the true perpetrator(s) of the crime.

Previously, the Crittenden County Circuit Court denied Echols's petition for additional DNA testing under Act 1780, ruling that the court lacked jurisdiction as Echols was not in State custody. Echols appealed this decision, arguing that Act 1780 allows any person convicted of a crime to petition for additional DNA testing to demonstrate actual innocence, regardless of their custody status.

The Supreme Court of Arkansas reversed and remanded the lower court's decision. The court found that the plain language of Act 1780 unambiguously permits "a person convicted of a crime" to petition for additional DNA testing to demonstrate actual innocence. The court held that the lower court had misinterpreted the plain language of Act 1780 by imposing a requirement that a petitioner must be in State custody to seek relief under the Act. The court concluded that Echols, as a person convicted of a crime, was entitled to seek relief under Act 1780, regardless of his custody status.

READ THE COURT OPINION HERE:
https://opinions.arcourts.gov/ark/supremecourt/en/522720/1/document.do

EVIDENCE:

Cell Phone Video; Snapchat Photograph
State of Iowa v. Canady, ISC, No. 22-0397, 3/22/24

Lawrence George Canady III had been charged with voluntary manslaughter, willful injury causing bodily injury, and assault causing bodily injury due to his involvement in a fatal nighttime shooting incident. He was not the shooter, but the State alleged that he was beating the victim while another person shot the victim. Canady challenged the admission of a cell phone video recorded prior to the shooting where he and the shooter were seen singing a rap song containing lyrics that seemed to reference the victim. The district court allowed the video, but the court of appeals reversed the decision.

Upon further review by the Supreme Court of Iowa, the court found that the district court did not abuse its discretion in admitting the video. It was relevant to the case as it showed Canady and the shooter jointly voicing a threat, which could counter his claim that he was unaware of the shooter's intention. The court also found no error in the admission of a Snapchat photo, as it was relevant to showing that the appellant may have been aware that the shooter had a gun and was willing to use it.

READ THE COURT OPINION HERE:
https://www.iowacourts.gov/courtcases/18510/briefs/6407/embedBrief

EVIDENCE: Seizure of Clothing from Arrested Individual; Admission of Map Showing Location Information from AT&T

Scarbrough v. State, ASC, No. CR-23-574, 2024 Ark. 71, 5/2/24

Daryl Jason Scarbrough appeals a Pulaski County Circuit Court order convicting him of capital murder and aggravated robbery and sentencing him to a term of life imprisonment with a consecutive term of forty-years' imprisonment, respectively.

Law enforcement located Scarbrough hiding in a flower bed on property belonging to homeowners on Highline Road. When the officers pulled him out of the flower bed, Scarbrough stated, "You guys are pretty rough on a hitchhiker out here, huh?" Scarbrough had active outstanding full-extradition warrants from Missouri and California,

and the police arrested him on an active parole-absconder warrant.

Detective Jeff Allison of the Pulaski County Sheriff's Office transported Scarbrough to the Pulaski County jail and escorted him to an interview room, which was monitored on closed-circuit television. Detective Allison instructed him to take off his civilian clothing, put it in an evidence bag, and put on jail clothing. The detective stepped out of the interview room and watched the closed-caption television as Scarbrough changed clothes. According to the detective, Scarbrough took off his jeans, "held them up and looked at them from front to back and from the waist to the ankles and shook his head and then folded them like he was trying to maybe hide something. The detective retrieved the jeans, saw stains that he believed to be blood, secured and sealed them, and sent them to the crime lab for DNA testing.

At trial, AT&T legal-department employee Julio Melendez testified that AT&T received exigent phone-data ping requests from Sergeant Jeff King of the Pulaski County Sheriff's Office requesting cell-phone-ping data on Dunn's cell phone. According to Melendez, that location data, which included longitude and latitude coordinates, was collected and emailed to investigators shortly after the murder. During Melendez's testimony, State's exhibit 10, which contained AT&T's email notifications of those pings on September 9, 2021, was received into evidence. On cross-examination, Melendez testified that the accuracy of the ping data and its longitude and latitude location was approximately 90 percent.

Detective Allison also testified at trial. He stated affirmatively that he had made a request to AT&T for the exigent phone data in an effort to locate Dunn's truck. He testified that he plotted the location data from AT&T onto a map using the longitude and latitude data from pings of Dunn's cell phone. The map also included locations where various witnesses had seen Scarbrough during the investigatory search. State's exhibit 11A showed a wider view of the area, while State's exhibit 11B depicted a closer view of the same area. Scarbrough objected to the admissibility of the map because, he claimed, it was inaccurate and prejudicial. The circuit court overruled Scarbrough's objection and ruled that the map would be admitted into evidence because it presented cumulative evidence of the AT&T evidence already admitted during Melendez's testimony.

The Arkansas Supreme Court first held that after Scarbrough's arrest, Detective Allison requested that Scarbrough remove his jeans in a custodial-interview room, became suspicious when Scarbrough thoroughly inspected them, noticed stains on the jeans that appeared to be blood, and sent those jeans for laboratory testing. Although Scarbrough had been arrested to serve a parole warrant, Detective Allison was authorized to seize his jeans because he was simultaneously under investigation for Dunn's murder. See *Holmes*, 262 Ark. at 688, 561 S.W.2d at 58. Thus, either as a search incidental to the arrest, or as an inventory, only a short time after his arrest, Scarbrough's jeans were properly seized and could be tested and used as evidence.

Scarbrough also argues that the circuit court abused its discretion by allowing into evidence a map made by AT&T that showed the location of cell-phone pings made from Dunn's cell phone shortly after his murder. Scarbrough contends that the circuit court committed prejudicial error because he considered this map of the ping locations to be inaccurate. Challenges to the admissibility of evidence are left to the sound

discretion of the circuit court, and a judge's ruling on these matters will not be reversed absent an abuse of discretion. *Neal v. State*, 2024 Ark. 16, at 12–13, 682 S.W.3d 672, 680. Abuse of discretion is a high threshold that does not simply require error in the circuit court's decision but requires that the circuit court acted improvidently, thoughtlessly, or without due consideration.

Scarbrough has failed to demonstrate that the circuit court abused its discretion by admitting the map into evidence because the map was cumulative to State's exhibit 10 admitted at trial through Melendez's testimony. Thus, based on our well-established standard of review, we hold that the circuit court did not abuse its discretion by admitting the map into evidence.

READ THE COURT OPINION HERE:
https://opinions.arcourts.gov/ark/supremecourt/en/item/522758/index.do?q=Scarbrough+v.+State

EVIDENCE: Testimony of Officer Identifying Shooter from Surveillance Video

United States v. Daniels
CA11, No. 22-13590, 3/29/24

On a February evening in 2020, Thomas Daniels entered a tow yard, pointed his gun at two people living on the property, and demanded their possessions. Daniels then shot both victims, took their jewelry, car keys, and five dollars, and used the keys to unlock and drive off in the couple's Honda Civic. Shot, robbed, bleeding, and left for dead, the victims were eventually airlifted to the hospital and survived.

While Roman and Perez received treatment in the hospital, law enforcement began to investigate the crime. Law enforcement officers reviewed surveillance footage from the tow yard, and upon his review, Detective Christopher Wilson "immediately identified" Daniels as the shooter. The video was clear as day and showed the shooter running with the firearm and approaching the camera so the viewer could clearly see his facial features, his entire face on video.

Detective Wilson, in fact, had great familiarity with Daniels, whom Wilson had met through "community involvement" efforts he had engaged in as a patrol officer. Wilson explained that there were numerous occasions where Daniels would be a part of those groups where "I get out of my patrol vehicle and, you know, throw around the football, shoot hoops, and just converse with them." Detective Wilson had known Daniels "for a number of years," knew Daniels' nickname, knew Daniels' brother, and had watched Daniels' "appearance change throughout the years." He had seen Daniels "over ten times" in the community without speaking to him, had spoken to Daniels one-on-one "seven to ten times," and knew "what area Daniels frequented" and "where he kind of hung out."

Daniels claims that the district court abused its discretion when it allowed Detective Wilson to testify that he had "immediately identified" Daniels as the shooter upon review of the surveillance footage. Daniels offers that Detective Wilson's testimony identifying Daniels as the shooter in the video footage would not be "helpful" to the jury because the jury was just as capable to identify Daniels in the video.

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

"Detective Wilson's identification of Daniels was 'helpful' because Detective Wilson had 'greater appreciation' of Daniels' appearance and was more likely to correctly identify Daniels in the

video surveillance footage than was the jury. As we've already observed, due to his years of community involvement, Detective Wilson knew Daniels, Daniels' brother, and other people with whom they hung out. Moreover, Detective Wilson demonstrated his familiarity with Daniels when he was tasked with obtaining an updated photograph of Daniels for the photo array -- Detective Wilson knew where Daniels was likely to hang out, and, from his patrol vehicle, he identified Daniels on the street in a 'hoodie with his head slightly down' upon seeing only the side of his facial features walking inside of the store.

"At bottom, Detective Wilson's testimony and conduct thoroughly reflected his 'familiarity' with Daniels. Although the jurors were free to observe Daniels for themselves in the 'sterile, one-dimensional atmosphere of the courtroom,' *United States v. Contreras*, 536 F.3d 1167, 1171 (10th Cir. 2008), and then to compare his appearance to the shooter in the video footage, record evidence suggested that Daniels had changed his appearance over the years, and even between the time of the crime and his arrest. Thus, as we see it, Detective Wilson's years of interactions with Daniels likely placed the detective in a better position to make an identification, and the district court did not abuse its discretion in admitting this testimony.

READ THE COURT OPINION HERE:
https://media.ca11.uscourts.gov/opinions/pub/files/202213590.pdf

FEDERAL FREEDOM OF INFORMATION ACT: Interference with Law Enforcement Proceedings

Zaid v. Department of Justice
CA4, No. 23-1821, 3/25/24

The United States Court of Appeals for the Fourth Circuit affirmed the district court's decision that the Federal Bureau of Investigation (FBI) could withhold records relating to a criminal investigation based on Exemption 7(A) of the Freedom of Information Act (FOIA). This exemption allows federal agencies to withhold records if their release could reasonably be expected to interfere with law enforcement proceedings.

In the case, Mark Zaid, an attorney, requested records related to the FBI's criminal investigation into one of his clients, Zackary Sanders, who had been charged with production and possession of child pornography. The FBI refused to release the requested records, citing Exemption 7(A) of FOIA. Zaid then sued the FBI to release the records.

The appeals court agreed with the district court's decision that the records were exempt stating that the disclosure of these records could reasonably be expected to interfere with ongoing or future investigations and prosecutions of child pornography cases. The court also noted that forcing the FBI to disclose information exchanged between law enforcement agencies could make those agencies hesitant to share information in the future, which would harm FBI investigations.

READ THE COURT OPINION HERE:
https://www.ca4.uscourts.gov/opinions/231821.p.pdf

FIFTH AMENDMENT:

Privilege Against Self-Incrimination

United States v. Payne
CA9, No. 22-50262, 4/17/24

California Highway Patrol (CHP) officers did not violate the Fourth Amendment in their search, during a traffic stop, of Jeremy Travis Payne's cell phone, made possible by the officers' forced use of his thumb to unlock the device. Despite the language of a special search condition of Payne's parole, requiring him to surrender any electronic device and provide a pass key or code to unlock the device, the panel held that the search was authorized under a general search condition, mandated by California law.

The CHP officers did not violate Payne's Fifth Amendment privilege against self- incrimination when they compelled him to unlock his cell phone using his fingerprint. They held that the compelled use of a biometric to unlock an electronic device was not testimonial because it required no cognitive exertion, placing it in the same category as a blood draw or a fingerprint taken at booking, and merely provided the CHP with access to a source of potential information. Accordingly, the Fifth Amendment did not apply.

READ THE COURT OPINION HERE:
https://cases.justia.com/federal/appellate-courts/ca9/22-50262/22-50262-2024-04-17.pdf?ts=1713371468

FORFEITURE: Timely Forfeiture Proceeding Affords Due Process

Culley v. Marshall
USSC, No. 22-585, 601 U.S. _____, 5/9/24

Halima Culley and Lena Sutton loaned their cars to others who were subsequently arrested for drug-related offenses. The cars were seized under Alabama's civil forfeiture law, which allowed for the seizure of a car "incident to an arrest" as long as the state promptly initiated a forfeiture case. The State of Alabama filed forfeiture complaints against the cars 10 and 13 days after their seizure, respectively. While the forfeiture proceedings were pending, Culley and Sutton each filed complaints in federal court, claiming that state officials violated their due process rights by retaining their cars during the forfeiture process without holding preliminary hearings.

The Eleventh Circuit affirmed the dismissal of their claims, holding that a timely forfeiture hearing affords claimants due process and that no separate preliminary hearing is constitutionally required. The petitioners argued that the Due Process Clause requires a separate preliminary hearing before the forfeiture hearing.

The U.S. Supreme Court affirmed. The Court held that in civil forfeiture cases involving personal property, the Due Process Clause requires a timely forfeiture hearing but does not require a separate preliminary hearing. The Court's decision was based on its precedents, which established that a timely forfeiture hearing satisfies due process in civil forfeiture cases. The Court also noted that historical practice reinforces its conclusion that due process does not require preliminary hearings in civil forfeiture cases.

READ THE COURT OPINION HERE:
https://www.supremecourt.gov/opinions/23pdf/22-585_k5fm.pdf

MIRANDA: Questions Attendant to Arrest

United States v. Lester, CA6, No. 22-6076, 4/16/24

Travis Lester was arrested on outstanding warrant at a motel. While patting Lester down, an officer found a plastic baggie containing a rocklike substance (later determined to be 4.9 grams of crack cocaine) and $869 in his pockets. The officer then asked, "Is there anything else on you, any other drugs, anything that would stick or harm me?" Lester responded, "No, just some weed in the room." Meanwhile, other officers performed a protective sweep of the motel room to ensure nobody else was hiding. They didn't find anyone. But the officers did see a digital scale on the nightstand.

The officers field-tested the rocklike substance, which came back positive for crack cocaine. Based on the crack cocaine, the scale, and Lester's marijuana admission, the officers secured a warrant to search the room. Their search uncovered a stolen .40 caliber pistol loaded with a high-capacity magazine, a small bag of marijuana, and the scale they'd seen earlier.

Lester argues that this unwarned admission and the fruits of that admission—most importantly, the .40 caliber pistol in the motel room—should be suppressed.

The Court of Appeals for the Sixth Circuit stated that Miranda doesn't apply.

"That's because Miranda only governs 'interrogations.' *Rhode Island v. Innis*, 446 U.S. 291, 297–98 (1980). And police questioning isn't an 'interrogation' when an officer asks about information 'he was already entitled to know' through a search incident to arrest. *United States v. Woods*, 711 F.3d 737, 740–42 (6th Cir. 2013). That's exactly what happened here. Since the officer had just arrested Lester, the officer inevitably would have discovered any items on Lester's person. See *United States v. Robinson*, 414 U.S. 218, 235 (1973). Thus, the officer was entitled to ask about those items. *Woods*, 711 F.3d at 741 ('To say that Officer Mardigian had the right to physically go through Woods's pockets but could not simply ask him *What is in your pocket?* would be illogical.').

"To be sure, Lester responded to the officer's question with self-incriminating evidence about something that wasn't on his person. But an interaction doesn't transform into an 'interrogation' merely because a suspect voluntarily offers an 'unexpected and unresponsive' answer. Thus, the officer's question wasn't an interrogation, and Miranda doesn't apply.

"Under Supreme Court precedent, questions asked 'normally attendant to arrest' aren't 'interrogations' subject to Miranda—even if they might yield an incriminating answer. Applying this rule, our court in Woods held that questions about what's on an arrestee's person are 'normally attendant to arrest' and thus outside Miranda's scope."

READ THE COURT OPINION HERE:
https://www.opn.ca6.uscourts.gov/opinions.pdf/24a0087p-06.pdf

SEARCH AND SEIZURE:

Abandonment in Flight From Police

United States v. Frazer, CA4, No. 23-4179, 4/9/24

Darryl Colton Frazer was convicted of drug and firearm offenses in 2023 in the District of Maryland. The charges stemmed from an incident in 2019 when Frazer was stopped by police officers who had reasonable suspicion to conduct an investigatory stop. Frazer had thrown away a black bag just before he was apprehended, which was later found to contain a firearm and approximately 100 grams of marijuana. Frazer unsuccessfully moved to suppress this evidence, arguing that the officers lacked reasonable suspicion to stop him and that they needed a warrant to search the bag.

The District Court rejected Frazer's suppression effort ruling that the police could constitutionally search the bag that Frazer had discarded. Frazer was subsequently convicted and appealed the denial of his suppression motion.

The United States Court of Appeals for the Fourth Circuit affirmed the lower court's decision.

The court found that the officers had reasonable suspicion to stop Frazer, based on his headlong flight and noncompliance with the officers' commands. The court also ruled that Frazer had voluntarily abandoned his bag, and thus lacked Fourth Amendment standing to challenge the search.

READ THE COURT OPINION HERE:
https://www.ca4.uscourts.gov/opinions/234179.p.pdf

SEARCH AND SEIZURE: Backpack Search After Subject has Been Released

United States v. Sapalasan
CA9, No. 21-30251, 4/1/24

Markanthony Sapalasan was arrested and his backpack was taken and searched. Sapalasan was then taken to the police station for questioning for potential involvement in a murder. After questioning, Sapalasan was released from detention. Around six hours later, at the end of his shift, Officer Tae Yoon conducted a routine inventory search of Sapalasan's backpack, which he had retained in his squad car. Officer Yoon found methamphetamine in the backpack. Sapalasan, convicted of two drug felonies, appeals the district court's denial of his motion to suppress the methamphetamine found during the search.

"When an individual is lawfully brought to a police station for booking into jail, the police may conduct an inventory search of that individual's belongings as part of the booking process. Illinois v. Lafayette, 462 U.S. 640, 643 (1983). The Supreme Court explained that a standardized inventory search process not only deters false claims but also inhibits theft or careless handling of articles taken from the arrested person."

The Ninth Circuit held that the police may constitutionally conduct an inventory search of belongings when the property is lawfully retained and the search is done in compliance with police regulations, even after the individual has been released. Distinguishing *Illinois v. Lafayette*, 462 U.S. 640 (1983), the panel wrote that because Sapalasan conceded that he was validly separated from his property, government custody of the backpack lawfully emerged. That separate custody allowed the government to conduct an inventory search of the backpack, and because

that search was done in substantial compliance with police department policy, suppression of the evidence is unwarranted.

READ THE COURT OPINION HERE:
https://cdn.ca9.uscourts.gov/datastore/memoranda/2024/09/18/21-30251.pdf

SEARCH AND SEIZURE: Border Searches

United States v. Mendez
CA7, No. 23-1460, 6/10/24

Marcos Mendez was stopped for inspection at O'Hare International Airport after returning from a trip abroad. Customs agents, who had been alerted to Mendez due to his arrest record and travel history, searched his cell phone and found child pornography. Mendez was subsequently indicted on multiple counts related to child pornography. He moved to suppress the evidence found on his phone, arguing that the search violated his Fourth Amendment rights.

The district court denied Mendez's motion to suppress the evidence, ruling that the search did not violate the Fourth Amendment. In the United States Court of Appeals for the Seventh Circuit, Mendez argued that probable cause or at least reasonable suspicion was required for the searches of his phone. The Court of Appeals disagreed, noting that searches at borders do not require a warrant or probable cause. The court held that the routine, manual search of Mendez's phone required no individualized suspicion. The court affirmed the district court's decision, joining the uniform view of other circuits that searches of electronics at the border do not require a warrant or probable cause.

READ THE COURT OPINION HERE:
https://media.ca7.uscourts.gov/cgi-bin/OpinionsWeb/processWebInputExternal.pl?Submit=Display&Path=Y2024/D06-10/C:23-1460:J:St__Eve:aut:T:fnOp:N:3221376:S:0

SEARCH AND SEIZURE:

Child Pornography; Probable Cause

United States v. Pena, CA10, No. 22-2154, 5/20/24

The Department of Energy's Office of the Inspector General ("OIG") began to investigate Bobby Pena for allegedly submitting fraudulent claims to his employer, Sandia National Laboratories. The OIG obtained a valid federal warrant to seize and to search Pena's electronic devices for evidence of fraudulent claims. In December 2017, law enforcement officers executed the warrant on Pena's laptop, seven external hard drives, and two thumb drives.

Prior to searching Pena's devices, officers asked Pena what they would find. Pena told officers that the devices contained family photos and "porn." Officers followed up by asking Pena whether the devices contained any child pornography. Pena replied "no," but caveated his denial, saying that he "rips" pornography from "torrent" files to keep on his devices. Officers interpreted "torrent" to refer to internet peer-to-peer file-sharing software.

While executing the first warrant, Agent Matthew A. Kucenski, a Special Agent with the OIG, made digital forensic copies of Pena's devices to facilitate his search. In the course of copying Pena's devices, Agent Kucenski monitored the copying software to ensure it copied files and folders correctly, and to screen for encrypted files. He also conducted a high-level review of the device to determine which devices might

have information most relevant to his warrant. During this process, Agent Kucenski observed large quantities of files and folders with explicit and sexually suggestive names. names included "HotYoungDoll," "HotYoungThing," "hotyoungthing-nude_xvid.avi," "Casting Couch Teens Site Rip," "Teens Do Porn SiteRip," "teensx," "DblTemedTens," "Teens Obedience Lesson Site Rip," and "Teen Sex Mania SiteRip." Agent Kucenski documented what he observed, including these file and directory names, but he did not open or view any of the suspicious files or folders.

Agent Kucenski applied for a second search warrant for Pena's devices; this time, for child pornography or evidence of material involving the sexual exploitation of minors. The warrant application detailed the facts above. In the warrant application, Agent Kucenski also provided the magistrate judge with background information relevant to the warrant sought, including his extensive experience with child exploitation investigations. Based on such experience, Agent Kucenski explained in detail why he believed that Pena was likely a collector or distributor of child pornography. Agent Kucenski described how peer-to-peer networks work, and how they are used routinely to upload and to download child pornography. Agent Kucenski also explained why Pena's possession of numerous large-capacity digital storage devices was consistent with the behavior of a child pornography collector.

Based on Agent Kucenski's warrant application, United States Magistrate Judge Jerry H. Ritter issued a warrant to search Pena's electronic devices for evidence of child pornography and child exploitation. Agent Kucenski executed the second warrant on Pena's electronic devices. Agent Kucenski spent about seventy-five percent of his working hours for one year reviewing data on Pena's devices. But the material was so voluminous that, in one year, Agent Kucenski was able to review only three percent of the data on Pena's devices. And in that three percent, Agent Kucenski located about four thousand videos and images that were confirmed or suspected to be child pornography, spread across five or six of Pena's devices.

A grand jury indicted Pena in October 2019 on one count of Possession of Visual Depictions of Minors Engaged in Sexually Explicit Conduct. Pena was also indicted on twenty-eight counts of False Claims Against the Government. Pena filed an unsuccessful motion to suppress evidence of child pornography uncovered pursuant to the second warrant. Pena argued that there was no probable cause upon which to issue the second warrant. The district court conducted an evidentiary hearing, and thereafter denied Pena's motion.

The district court found that the file and folder names observed by Agent Kucenski indicated the presence of child pornography. The district court reasoned that the word 'teen' indicates a person aged between thirteen and nineteen, and that because there are more minor teens than adult teens, the court found it likely that the word 'teen' indicates pornography involving a minor child aged thirteen through seventeen. The district court also found that the file name "DblTemedTens" indicated pornography involving ten-year-old children and that it strongly indicated the presence of child pornography.

The district court also concluded that, given the totality of the circumstances, Pena's suspicious statements to officers supported a finding of probable cause. The court found that Pena made suspicious statements about what officers would find on his devices. Namely, the district court found that Pena's response about "torrent" files

"suggests to the hearer that he knew that his computer contained child pornography and was moving towards an explanation. The district court reasoned that Pena's "mind jumped to a defense, mentally and subconsciously conceding – despite his verbal denial – that the computer contained child pornography." The court also found that Pena's immediate concession that his devices contained "porn" indicated "that he was concerned at the outset for what the officers might find."

Finally, the district court concluded that Pena's practices with his digital devices and Agent Kucenski's declarations regarding the practices of child pornography collectors supported a finding of probable cause. The district court noted Pena's admitted use of peer-to-peer software, possession of torrent files, and high volume of digital storage devices. The court concluded that those facts, when examined in light of Agent Kucenski's affidavit and the other facts, supported a finding of probable cause.

After reviewing Agent Kucenski's affidavit, determining that the district court did not clearly err in its factual findings, and considering the deference due to the issuing magistrate judge, the Tenth Circuit agreed that the issuing judge had a substantial basis for determining that probable cause existed. The suspicious file names, Pena's hedging when questioned by officers, and his use of peer-to-peer software and numerous digital storage devices, when taken together, would have led a reasonable person to believe that evidence of child pornography would be recovered from Pena's devices.

READ THE COURT OPINION HERE:
https://www.ca10.uscourts.gov/sites/ca10/files/opinions/010111052156.pdf

SEARCH AND SEIZURE:

Description of Place to be Searched

United States v. Kirtdoll, CA6, No. 23-1585, 5/8/24

Police searched Tommy Kirtdoll's house with a warrant that was largely accurate. Nonetheless, Kirtdoll argues the warrant's few mistakes rendered the search unconstitutional. The district court disagreed, and the Court of Appeals for the Sixth Circuit affirmed the district court.

The warrant application contained a detailed physical and geographic description. It explained that the house was the first one on the north side of Lizzi Street—a light blue, single-story home with white trim, bordering Carberry Road to the west. The front door faced south, and the driveway extended in the same direction toward Lizzi Street. A red star decorated the house's west side. The detective also explained that the house was "commonly referred to as 893 Carberry Road," and he included the house's tax identification number. Finally, the application noted the property owner's name was Ruthie Cross.

Kirtdoll moved to suppress the evidence, citing three errors in the warrant. First, Kirtdoll's address was not 893 Carberry Road. That address belonged to a house adjacent to Kirtdoll's. Second, the tax identification number in the warrant transposed two digits. That mistaken number corresponded to the actual 893 Carberry Road. And third, Ruthie Cross owned the property at 893 Carberry Road, not Kirtdoll's house. In Kirtdoll's view, those mistakes created an unreasonably high likelihood that 893 Carberry would be searched instead of his own property. Thus, he argued, the warrant lacked particularity.

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

"The Fourth Amendment requires search warrants to particularly describe the place to be searched. That means they need enough detail for the executing officer to ascertain and identify the place intended with 'reasonable effort.' *Steele v. United States*, 267 U.S. 498, 503 (1925). This requirement doesn't mandate perfection. See *Groh v. Ramirez*, 540 U.S. 551, 558 (2004). Instead, we ask whether the warrant was so flawed that it created a reasonable probability officers would search the wrong premises. See *United States v. Abdalla*, 972 F.3d 838, 846–47 (6th Cir. 2020) (stating that the mere possibility of a mistaken search doesn't violate the Fourth Amendment). That will almost never be the case when the warrant contains some information that indisputably applies only to the target premises, even if many descriptors in the warrant are inaccurate.

"First, the warrant unambiguously described the house's geographic location. It explained that the house was 'the first structure on the north side of Lizzi Street' and was on the 'east side of Carberry Road.' The warrant also noted that Kirtdoll's front door faced south, and his driveway ran the same direction from the house to Lizzi Street. As Kirtdoll himself pointed out, that description couldn't have applied to 893 Carberry. That's because 893 Carberry does not have a driveway accessible off Lizzi Street. Thus, the warrant contained detailed directions to Kirtdoll's house that couldn't have led officers anywhere else.

"Second, the warrant gave a detailed description of Kirtdoll's house. It described the house as a 'one-story, single-family dwelling' painted light blue with white trim. We've repeatedly pointed to layout and color when upholding otherwise faulty search warrants. See, e.g., *Abdalla*, 972 F.3d at 846 ('white double wide trailer with a green front porch and a black shingle roof"); *United States v. Pelayo-Landero*, 285 F.3d 491, 497 (6th Cir. 2002) ('The warrant describes the particular trailer by color, by a certain exterior trim, and by a wooden deck.'); *Bucio-Cabrales*, 635 F. App'x at 332–33 ('single-family, two-story residence with tan brick and tan siding'). As in those cases, the warrant's inclusion of layout and color gave officers on the ground a clear picture of the target house. That's especially true here, as the only incorrect house Kirtdoll thinks officers could've searched—893 Carberry—is white, not blue. Thus, the warrant's description of Kirtdoll's house rendered the likelihood that officers would mistakenly search 893 Carberry practically nil.

"Finally, the warrant included a unique, unmistakable identifier. It stated that Kirtdoll's house had a red star affixed to its west side. Unique identifiers like decorations are especially informative; geographic directions can be unclear, and multiple houses in a neighborhood might look similar. But a unique decoration or lawn feature sets otherwise similar houses apart. *United States v. Durk*, 149 F.3d 464, 466 (6th Cir. 1998) That's why, for example, we upheld the warrant in *Durk*. There, the warrant both misstated the target's address and gave the wrong geographic location. The warrant did describe the house as a 'single family red brick ranch home,' but 'brick, ranch style homes' were 'common' in the neighborhood. Despite those inaccuracies and ambiguities—far more severe than the ones here—the property's unique metal storage shed left executing officers no doubt about which property to search. Id. at 466; see also *Abdalla*, 972 F.3d at 846 (explaining that a 'unique sign' helped distinguish the target property). Just so here. The red star identified Kirtdoll's house with pinpoint precision.

"The warrant for Kirtdoll's house was amply specific to clear the Fourth Amendment's particularity hurdle. Accordingly, the district court properly denied Kirtdoll's motion to suppress."

READ THE COURT OPINION HERE:
https://www.opn.ca6.uscourts.gov/opinions.pdf/24a0106p-06.pdf

SEARCH AND SEIZURE: Eviction from Motal Room; Subsequent Search of the Room by Law Enforcement

United States v. Winder, CA8, No. 23-1829, 4/4/24

Jeffrey A. Winder and Heather Durbin rented a room at a motel in March, 2021. During check-in, the motel manager, Gary McCullough, warned Winder that any illegal activity would result in eviction. The next day, McCullough entered the room for cleaning and discovered a backpack containing what appeared to be methamphetamine. He immediately called 911 and informed the responding officers about his discovery. Upon the officers' arrival, McCullough granted them permission to enter the room, which led to them finding more drugs and a handgun. Winder and Durbin were later arrested when they returned to the motel; another gun and more drugs were found in their vehicle.

Before trial, Winder moved to suppress all the evidence obtained from the warrantless search of the motel room, arguing that his Fourth Amendment rights were violated. The district court ruled that Winder had been evicted at the time of the search and that the officers had probable cause to search the backpack based on McCullough's account. Winder appealed.

The United States Court of Appeals for the Eighth Circuit affirmed the district court's denial of the motion to suppress. The court found that Winder was lawfully ejected from the motel room prior to the officers' entry, thus eliminating his expectation of privacy. The court also ruled that the officers' search of the backpack did not violate the Fourth Amendment as it did not exceed the scope of McCullough's private search. Consequently, the use of a drug dog and the subsequent seizure of evidence did not violate Winder's Fourth Amendment rights. Therefore, the judgment of the district court was affirmed.

READ THE COURT OPINION HERE:
https://ecf.ca8.uscourts.gov/opndir/24/04/231829P.pdf

SEARCH AND SEIZURE:

Inventory Search; Reasonableness

Gilbert v. State of Nevada
140 Nev Ad Op No. 33, 5/9/24

Jesse Calvin Gilbert was pulled over by a law enforcement deputy due to a non-operating license plate light. Gilbert was arrested on an active warrant, and the deputy conducted a warrantless search of the vehicle. During the search, the deputy found a handgun under the driver's seat. Gilbert, an ex-felon, was charged with possession of a firearm and moved to suppress the evidence, arguing that the search was not a true inventory search but a ruse to conduct an investigatory search.

The district court denied Gilbert's motion, finding that the deputy appropriately impounded the vehicle and the inventory search was reasonable. Gilbert appealed his subsequent conviction based on the search and the unsuppressed evidence.

The Supreme Court of Nevada affirmed the district court's decision.

The court clarified that an investigatory motive does not necessarily invalidate an inventory search as long as the search that occurred is the same as the inventory-based search that would have happened absent any such motivation. The court also stated that a court deciding a suppression motion must determine the search's reasonableness under the totality of the circumstances by evaluating the extent to which law enforcement departed from the standardized procedures, whether the scope of the search was as expected in light of the underlying justifications for inventory searches, and whether the inventory produced served the purposes of an inventory search. The court concluded that the search was reasonable and denied Gilbert's motion to suppress.

READ THE COURT OPINION HERE:
https://scholars.law.unlv.edu/cgi/viewcontent.cgi?article=2634&context=nvscs

SEARCH AND SEIZURE: Legitimate Expectation of Privacy in a Vehicle
United States v. Rogers, CA6, No. 22-1432, 4/10/24

Officers from the Grand Rapids Police Department responded to a reported domestic assault in Grand Rapids on January 27, 2020. Upon arrival, Officer Peter Thompson was told that the suspected assailant had fled south. To the south, he saw a running Chevy Cruze parked by the road. Officer Kenneth Nawrocki checked to see if the assailant was inside. Instead of the assailant, Officer Nawrocki found Rogers alone in the passenger seat without a driver's license. When asked, Rogers explained that the car belonged to his girlfriend who was nearby and emphasized that he "wasn't even driving."

Officer Nawrocki checked Rogers's identity in a database, discovering that he had an outstanding felony warrant for carrying a concealed weapon. He then arrested Rogers, finding car keys and $785 in cash on him. After confirming that Rogers's girlfriend was the car's sole registered owner and seeing she was nowhere to be found, Officer Nawrocki decided to impound the Chevy Cruze and conduct an inventory search. He found two digital scales, plastic baggies, a large bag of marijuana, and a loaded pistol. Two days later, Rogers's girlfriend called the police to report that she had let Rogers use her car on the day of the incident while she was at work and school.

Rogers plead not guilty and moved to suppress the fruits of his January arrest. The court held that Rogers lacked Fourth Amendment "standing" to object to the search because he lacked a legitimate expectation of privacy in the interior of the vehicle. Rogers was neither the owner nor the driver of the car and failed to show that he had permission to occupy it. The court also determined, in the alternative, that the search was a valid inventory search. Rogers appealed.

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

"To establish that police violated his Fourth Amendment rights, Rogers must show that he had 'a legitimate expectation of privacy' in his girlfriend's car. *Hicks v. Scott*, 958 F.3d 421, 431 (6th Cir. 2020) (quoting *Rakas v. Illinois*, 439 U.S. 128, 144 (1978)). A legitimate expectation of privacy comes in two parts. First, Rogers must have exhibited an actual subjective expectation of privacy. Second, that expectation must also be one that society is prepared to recognize as reasonable.

"Rogers failed to meet his 'burden of establishing his standing' to challenge the search, *United States v. Smith*, 263 F.3d 571, 582 (6th Cir. 2001), because he never exhibited a subjective expectation of privacy. He was neither owner nor driver of the vehicle. Police found Rogers—without a driver's license—in the passenger seat of his girlfriend's car. And he never showed he had 'complete dominion and control' over the car. *Rakas*, 439 U.S. at 149.

"Rogers cannot establish that police violated his Fourth Amendment rights. He had no legitimate expectation of privacy because he exhibited no subjective expectation of privacy in his girlfriend's car."

READ THE COURT OPINION HERE:
https://www.opn.ca6.uscourts.gov/opinions.pdf/24a0080p-06.pdf

SEARCH AND SEIZURE: Probable Cause; Arrest and Vehicle Search
United States v. Britton, CA8, No. 23-1700, 5/2/24

A jury convicted Antjuan Dante Britton of possession with intent to distribute a controlled substance and conspiracy to possess with intent to distribute a controlled substance.

Prior to his arrest, law enforcement received information from a tipster and two women arrested for possession of methamphetamine, all of whom identified Britton as their source of the drug. The information provided by these individuals was corroborated by law enforcement, including details about Britton's rental vehicle and his stays at a local hotel. A controlled buy was arranged with Britton, but the deal fell through. However, Britton was arrested at the location of the planned deal, and his vehicle was searched, leading to the discovery of a pound of methamphetamine.

Britton argued that his arrest and the subsequent search of his vehicle were not supported by probable cause. The United States District Court for the District of North Dakota denied his motion to suppress the evidence obtained from the search. The court found that the corroborated information from the tipster and the two women, along with Britton's arrival at the planned drug deal, provided probable cause for his arrest and the search of his vehicle.

On appeal, the United States Court of Appeals for the Eighth Circuit affirmed the lower court's decision. The appellate court agreed that the totality of the circumstances, including the corroborated information and Britton's actions, provided probable cause for his arrest and the search of his vehicle. The court noted that a warrantless arrest and a vehicle search under the automobile exception are permissible if supported by probable cause.

READ THE COURT OPINION HERE:
https://ecf.ca8.uscourts.gov/opndir/24/05/231700P.pdf

SEARCH AND SEIZURE: Probable Cause; Smell of Marijuana in State Where Some Usage of Marijuana is Legal
United States v. Jackson, CA7, No. 23-1721, 6/4/24

A police officer in Urbana, Illinois, pulled over a car driven by Prentiss Jackson due to unlit head and taillights. Upon approaching the vehicle, the officer smelled unburnt marijuana. Jackson was asked to exit the car and was informed that he and the vehicle would be searched. However, Jackson fled the scene, and during his escape, a

gun fell from his waistband. Jackson, a felon, was subsequently indicted for possessing a firearm. He moved to suppress the evidence of the gun, arguing that it was the product of an unlawful search.

On appeal to the United States Court of Appeals for the Seventh Circuit, Jackson argued that the officer did not have probable cause to search him or the car, contending that the smell of unburnt marijuana does not provide probable cause under Illinois law. The court disagreed, affirming the district court's decision. It held that the officer had probable cause to search Jackson and the vehicle, based on the totality of the circumstances, including the smell of unburnt marijuana. The court also noted that while possession of marijuana is legal in Illinois under certain circumstances, the state retains laws restricting the packaging and use of marijuana. The smell of unburnt marijuana, therefore, provided probable cause for a violation of state law.

READ THE COURT OPINION HERE:
https://media.ca7.uscourts.gov/cgi-bin/OpinionsWeb/processWebInputExternal.pl?Submit=Display&Path=Y2024/D06-04/C:23-1721:J:Brennan:aut:T:fnOp:N:3219129:S:0

SEARCH AND SEIZURE: Probationer; Warrantless Search; Legal Standard of Reasonable Suspicion
State v. Bailey, ASC, No. CR-23-697, 2024 Ark. 87, 5/16/24

Raymond Bailey, a probationer, signed a waiver allowing law enforcement to conduct warrantless searches of his person, residence, and vehicle. In June 2020, North Little Rock Police observed Bailey engaging in suspicious activities indicative of illegal drug transactions. They discovered that Bailey was on probation and had signed a search waiver. Upon detaining Bailey, they found a key to a motel room, which they subsequently searched, finding heroin and drug paraphernalia. Bailey was charged, but he moved to suppress the evidence, arguing that the police did not have probable cause to believe that the motel room was his residence.

The Pulaski County Circuit Court granted Bailey's motion to suppress, ruling that law enforcement must have probable cause to believe that the place to be searched is the probationer's residence. The court found that the police did not have probable cause to believe that the motel room was Bailey's residence, and therefore, the warrantless search violated the Fourth Amendment. The State of Arkansas appealed this decision.

The Supreme Court of Arkansas disagreed with the lower court's ruling. The Supreme Court held that the correct legal standard requires law enforcement to have a reasonable suspicion, based on the totality of the circumstances, to believe the place to be searched is the probationer's residence if conducting a search under that provision. The court found that the police had a reasonable suspicion that Bailey was residing in the motel room, making the search permissible under the statute and consistent with the Fourth Amendment. Therefore, the Supreme Court reversed the decision to suppress the evidence and remanded the case back to the circuit court.

READ THE COURT OPINION HERE:
https://opinions.arcourts.gov/ark/supremecourt/en/item/522802/index.do?q=State+v.+Bailey

SEARCH AND SEIZURE: Search Affidavit; Attachment of Images Flagged as Child Pornography

Commonwealth of Massachusetts v. Dunn
MSJC, SJC-13454, 5/9/24

Warren W. Dunn was charged with two counts of possession of child pornography. The charges were based on evidence found in his apartment during a search conducted under a warrant. The warrant was issued based on an affidavit by a state trooper, who had received a report from the National Center for Missing and Exploited Children (NCMEC) about two images flagged as potential child pornography by Microsoft. The trooper described the images in his affidavit but did not attach them.

In the Superior Court, the defendant filed motions to suppress the evidence and for a hearing on the affidavit supporting the search warrant. The court denied both motions. The defendant then pleaded guilty to all charges, preserving his right to appeal the denials of his motions.

The Supreme Judicial Court of Massachusetts affirmed the lower court's decisions. The court held that, although attaching the photographs or providing a more detailed description would have been preferable, the affidavit as a whole was sufficient to establish probable cause for the search warrant.

READ THE COURT OPINION HERE:
https://cases.justia.com/massachusetts/supreme-court/2024-sjc-13454.pdf?ts=1715342801

SEARCH AND SEIZURE: Seizure of Cell Phone for Five Days Before Obtaining a Search Warrant

United States v. Thomas
CA8, No. 23-2179, 4/5/24

Darion Lemont Thomas Thomas contends law enforcement's seizure of the cell phone for five days without obtaining a search warrant was unreasonable.

On September 3, 2021, law enforcement learned that Thomas, who had outstanding arrest warrants, was at a hospital in Bettendorf, Iowa, with his sick child and the child's mother, Tyliyah Parrow. Surveillance video showed Thomas and Parrow arriving at the hospital, with Parrow carrying a child's backpack and Thomas carrying a child and a cell phone. Later, the video captured Thomas entering and exiting the hospital using the phone while carrying the backpack.

Detective Joseph Dorton learned from the child's treating doctor that the child would be discharged that morning. After Thomas's son finished receiving treatment, six plain-clothed officers and one uniformed officer approached the hospital room to arrest Thomas. Several officers entered the room, quickly brought Thomas to the floor, removed a gun from Thomas's waistband, handcuffed him, and moved him to the hallway. The entire process took three minutes from the time the first officer entered the room.

After Thomas was taken from the room, Detective Dorton spoke with Parrow who was sitting on the hospital bed with her son. He introduced himself in a conversational tone and explained to Parrow that Thomas was being arrested for outstanding warrants. He asked Parrow if she knew whose backpack was on the table at the foot of the bed that was within arms-reach of where Thomas had

been sitting. Parrow motioned to herself. Detective Dorton followed up and asked Parrow, "Is that yours?" Parrow nodded and responded, "Yeah." Detective Dorton then asked, "Is it okay if I search it to make sure there's nothing illegal in there?" Parrow said, "Yeah." Detective Dorton asked one more time, "Is that okay with you?" and Parrow again responded, "Yeah." She then asked for her phone back which officers had taken from Thomas.

Detective Emily Rasche offered to find Parrow's phone and Detective Dorton asked Rasche to remain in the hospital room. When Detective Dorton placed his hand on the backpack, he asked Parrow a third time if she was okay with him searching the backpack, and she responded, "Yeah." Just as Detective Dorton started opening the backpack, he heard what sounded like a scuffle in the hallway. Detective Dorton went into the hallway where Thomas was apparently resisting arrest. When Parrow stood up, Detective Rasche told Parrow to have a seat. Detective Rasche then walked over to the backpack and asked Parrow one more time if she had any issues with the officers searching it. The district court specifically found that "Parrow's response is inaudible, but she appeared to answer in the negative[.]" Detective Rasche then began pulling items out of the backpack, including children's clothing, children's personal care items, and Parrow's purse. Detective Rasche's search of the backpack also yielded 66 pills, which tested positive for methamphetamine, and a small amount of marijuana.

Detective Dorton returned to the room holding Parrow's phone and explained that it might contain evidence of crimes since Thomas was using it. He proposed two options: (1) law enforcement could keep the phone and apply for a search warrant, or (2) Parrow could consent to a download of the phone's contents, which would be quicker and probably result in Parrow getting the phone back that day. Parrow agreed to a download. Detective Dorton tried to help Parrow recover numbers from her phone and offered to arrange for an officer to give her and her son a ride home.

When Parrow asked to hear the options regarding her phone again, the district court found the audio was "somewhat unclear" but "Parrow apparently revoked consent for Dorton to download the contents of the phone." A Bettendorf police officer then drove Parrow and her son home, and law enforcement retained the phone. A search warrant was issued five days later on Wednesday, September 8, 2021. The Monday of that week had been Labor Day, a federal holiday.

One of Thomas' arguments was that the evidence must be suppressed because law enforcement took an unreasonable amount of time to apply for the warrant after seizing the phone. Following a hearing, the district court denied his motion.

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

"The duration of a seizure pending the issuance of a search warrant must be reasonable. *United States v. Mays*, 993 F.3d 607, 616 (8th Cir. 2021). We measure reasonableness objectively based on the totality of the circumstances, balancing the privacy-related concerns against law enforcement's concerns.

"As an initial matter, since Fourth Amendment rights 'may not be asserted vicariously,' Thomas has to show that he has an expectation of privacy in the cell phone. *United States v. Barragan*, 379 F.3d 524, 529 (8th Cir. 2004). Relevant factors include ownership of the property, possession and/or control, historical use, ability to regulate access, the totality of circumstances surrounding

the search, any subjective expectation of privacy, and the objective reasonableness of that expectation of privacy. *United States v. Pierson*, 219 F.3d 803, 806 (8th Cir. 2000). While the hospital's surveillance video showed Thomas holding the phone and he regularly used it, the phone belonged to Parrow. Parrow permitted law enforcement to seize it and worked with the detectives to retrieve numbers she needed prior to the seizure. It is questionable whether Thomas has standing to challenge the seizure.

"Even assuming Thomas has standing, Thomas has failed to show a Fourth Amendment violation. The seizure did not meaningfully interfere with Thomas's possessory interests because he was in custody during the relevant period. *United States v. Clutter*, 674 F.3d 980, 984 (8th Cir. 2012). There is also no evidence that Thomas ever requested its return, which further weakens any Fourth Amendment claim. *United States v. Johns*, 469 U.S. 478, 487 (1985). In addition, smartphones retain data for long periods of time, so any delay between the seizure and search was unlikely to cause the loss of any personal data. *United States v. Bragg*, 44 F.4th 1067, 1071 (8th Cir. 2022)

"In contrast, the government had probable cause to believe the cell phone contained evidence of Thomas's crimes and thus had a strong interest for seizing it. *Mays*, 993 F.3d at 617. Thomas was being arrested on outstanding warrants, he was a known felon in possession of a firearm, and law enforcement discovered drugs in the backpack in his possession. The district court found that the phone, while in law enforcement's possession for five days before the issuance of the search warrant, was held for only two business days due to the holiday weekend. While we are uncertain that the holiday weekend is legally significant in the analysis, under the facts of this case, including Thomas's questionable standing, his incarceration during the entire time the phone was retained, that the phone was being shared by Thomas with Parrow, and the lack of a clear expectation of privacy, we have little difficulty concluding that Thomas has failed to show the delay was unreasonable."

READ THE COURT OPINION HERE:
https://ecf.ca8.uscourts.gov/opndir/24/04/232179P.pdf

SEARCH AND SEIZURE:

Stolen Vehicle; Automobile Exception

United States v. Ostrum
CA7, No. 23-1364, 4/25/24

During a search of Dylan Ostrum's home, pursuant to a search warrant for firearms and narcotics, Ostrum revealed that he had moved his belongings, including his car, to his father's house two hours away. It turns out the car was not at his father's (officers found it nearby) and was not even Ostrum's—a rental company had reported it stolen. But Ostrum's belongings were inside: a search of the stolen car revealed a gun, methamphetamine, and marijuana, all stashed in two safes.

The first issue on appeal is whether Ostrum has standing to challenge the search of the stolen car, and if he does, whether that search violated his Fourth Amendment rights.

Upon review, the Seventh Circuit Court of Appeal found as follows:

"The Chrysler here was stolen. This makes one thing certain under our caselaw: if Ostrum stole the car or otherwise knew it was stolen, he would have no reasonable expectation of privacy in it or its contents, and thus no standing to object to

its search. See *Byrd*, 584 U.S. at 409 ('A person present in a stolen automobile at the time of the search may not object to the lawfulness of the search of the automobile.') The wrinkle here is that Ostrum denies knowing the car was stolen. This raises the question: does the unwitting driver of a stolen vehicle stand in the same Fourth Amendment position as a car thief? That, however, is a question we need not reach today. Even if a defendant's knowledge of the stolen nature of the vehicle has some bearing on his standing to challenge its search, the defendant bears the burden of showing that he had a legitimate expectation of privacy. So, if Ostrum wanted to show that he was innocently driving the stolen Chrysler, he needed to offer evidence to that effect. He has not.

"The searches of the car and safes fall squarely within the automobile exception. Warrantless searches are per se unreasonable under the Fourth Amendment, subject to only certain exceptions. One of those is the automobile exception, which allows law enforcement to conduct a 'warrantless search of a vehicle… so long as there is probable cause to believe it contains contraband or evidence of illegal activity.' *United States v. Washburn*, 383 F.3d 638, 641 (7th Cir. 2004) (citing *Carroll v. United States*, 267 U.S. 132 (1925)). Authority to search the vehicle extends to all containers inside where there exists probable cause to believe they contain contraband or evidence. That is, 'if probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle and its contents that may conceal the object of the search.' *Wyoming v. Houghton*, 526 U.S. 295, 301 (1999).

"Law enforcement had ample probable cause to believe the Chrysler contained contraband. The same wealth of evidence that allowed law enforcement to lawfully search Ostrum's residence for guns and drugs in the first place, coupled with Ostrum's statements during the search, gave law enforcement probable cause to search the Chrysler. Indeed, during the search Ostrum himself admitted to getting 'rid of' of his guns and drugs and moving 'everything,' Chrysler and safes included, to his father's house.

"Under the totality of circumstances—which here includes the evidence of Ostrum's past narcotics dealing and firearm possession, his statements to law enforcement, and the officers' experience—there was ample probable cause to believe the Chrysler contained contraband. The searches of the Chrysler and safes thus safely fall within the automobile exception."

READ THE COURT OPINION HERE:
https://media.ca7.uscourts.gov/cgi-bin/OpinionsWeb/processWebInputExternal.pl?Submit=Display&Path=Y2024/D04-25/C:23-1364:J:St__Eve:aut:T:fnOp:N:3201887:S:0

SEARCH AND SEIZURE: Stop and Frisk; Observation from Pole Camera
United States v. Dameron
CA7, No. 22-3291, 5/31/24

Emanuel Dameron was charged with possessing a firearm as a felon after police officers spotted him on a live video feed from a pole camera, observed an "L-shaped object" resembling a gun in his waistband, and subsequently found a gun on him during a frisk search on a public bus in Chicago. Dameron moved to suppress the firearm and other evidence gathered during the stop, arguing that the police's search violated the Fourth Amendment and the standards set in *Terry v. Ohio*. The district court denied Dameron's motion, and he was found guilty at trial.

The district court held an evidentiary hearing, during which the officer operating the pole camera testified about his familiarity with the neighborhood, its history of gang and narcotic activity, and his observation of the "L-shaped object" in Dameron's waistband. The court concluded that the visible bulge in Dameron's waistband and his presence in a high-crime area generated reasonable suspicion to justify the Terry stop. Dameron was subsequently found guilty.

On appeal to the United States Court of Appeals for the Seventh Circuit, Dameron renewed his contention that the search violated the Fourth Amendment. He argued that Illinois permits the concealed carrying of firearms and that the police had no way of knowing whether he was an authorized license holder. The court declined to address this argument as it was not presented to the district court. Instead, the court focused on the fact that Dameron was on a public bus when the search occurred, noting that the Illinois Concealed Carry Act prohibits carrying a firearm on public transportation. The court concluded that the officers had reasonable suspicion to believe Dameron had violated the law and that their pat-down search did not violate the Fourth Amendment. The court affirmed the lower court's decision.

READ THE COURT OPINION HERE:
https://media.ca7.uscourts.gov/cgi-bin/OpinionsWeb/processWebInputExternal.pl?Submit=Display&Path=Y2024/D05-31/C:22-3291:J:Scudder:aut:T:fnOp:N:3218146:S:0

SEARCH AND SEIZURE:

Stop and Frisk; Reasonable Suspicion

United States v. McMillon
CA8, No. 23-2720, 5/13/24

At 4:40 a.m. on September 25, 2022, a security guard at the Oakridge Neighborhoods apartment complex called the Des Moines Police Department to report that a white Buick was parked in a restricted area near Oakridge's maintenance shop and that one of the occupants of the Buick had a gun. Oakridge had recently added security guards as part of a suite of measures designed to alleviate the significant amount of violent crime at the complex, which had been the scene of over three hundred calls to the police in the six months preceding September 25.

Officers were dispatched to the complex. By the time they arrived, the white Buick had moved from the maintenance shop to a tenant parking spot. Officer Escobar was the first on the scene and met one of the Oakridge security guards in the parking lot near the Buick. The security guard informed Officer Escobar that "one of the male individuals" in the Buick "had a gun in his hand and was swinging it around." While Officer Escobar was speaking to the Oakridge security guard, the Buick turned on its lights and began to back out, at which point Officer Escobar drove closer and turned on his bright "takedown" lights. The car stopped, and Officer Escobar, along with the just-arrived Officer Purcell, walked up to it. As they approached, they noticed a man in the back seat who matched the previous description of the man who had been swinging a gun around. They also noticed the man's furtive movements that appeared to be designed to conceal something from view. The man identified himself as Mykel McMillion, a name Officer Purcell recognized from an officer-safety bulletin concerning gang- and firearm-related activity. Officer Purcell and two

Oakridge security guards then removed McMillion from the white Buick, handcuffed him, patted him down, and located a handgun concealed in McMillion's pants.

The district court determined that these circumstances were insufficient to create reasonable suspicion and granted McMillion's motion to suppress. The Government appeals, arguing that reasonable suspicion existed at the time Officer Escobar stopped the white Buick.

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

"A police officer may conduct an investigative stop, a so-called Terry stop, if he has a reasonable suspicion supported by articulable facts that criminal activity may be afoot. see generally *Terry v. Ohio*, 392 U.S. 1, (1968). To establish that a Terry stop was supported by reasonable suspicion, the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion. The concept of reasonable suspicion is not readily, or even usefully, reduced to a neat set of legal rules. Instead, in evaluating the validity of a Terry stop, we must consider the totality of the circumstances. Reasonable suspicion must be supported by more than a mere hunch, but the likelihood of criminal activity need not rise to the level required for probable cause, and it falls considerably short of satisfying the preponderance of the evidence standard. This analysis requires us to consider that officers may draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them. We view the officers' observations as a whole, rather than as discrete and disconnected occurrences. *United States v. Hightower,* 716 F.3d 1117, 1121 (8th Cir. 2013).

"After a suspect is lawfully stopped, an officer may in some circumstances conduct a pat-down search for weapons. To justify the search, the officer must have reasonable, articulable suspicion that the suspect is armed and dangerous. The officer need not know for certain that the suspect is armed; instead, a search is permitted if a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger.

"Factors that may reasonably lead an experienced officer to investigate include time of day or night, location of the suspect parties, and the parties' behavior when they become aware of the officer's presence. Additional factors include whether the suspect parties are located in a high-crime area or an area where crimes have recently been committed. That someone has previously observed a pistol in defendant's hand further indicates that the officers have a reasonable suspicion of criminal activity. *United States v. Houston,* 920 F.3d 1168, 1172 (8th Cir. 2019). Unprovoked flight at the sight of an officer can contribute to reasonable, articulable suspicion. *United States v. Horton*, 611 F.3d 936, 940 (8th Cir. 2010). Importantly, even if all of defendant's conduct was by itself lawful, reasonable suspicion may still exist—if conduct is 'ambiguous and susceptible of an innocent explanation' as well as a criminal one, officers can detain the individuals to resolve the ambiguity.

"Here, Officers Escobar and Purcell responded to a 4:40 a.m. call from the security guards at a notoriously high-crime apartment complex. They learned that an unknown car was moving about the complex, including in areas where personal cars were not allowed, and that one of the occupants of the car had a gun and was swinging it around. When the officers got close to the car, it attempted to leave the area. McMillion

argues that this was merely the behavior of an individual exercising his right to openly carry a gun in a dangerous neighborhood. Perhaps. But while the mere presence of a firearm in an open carry jurisdiction does not itself create reasonable suspicion of criminal activity, the presence of a firearm taken together with the "high-crime area," the "time of night, the report that Oakridge security had previously observed a pistol in McMillion's hand, the "location of the suspect parties, and their behavior when they became aware of the officers' presence" may be indicative of criminal activity such as trespass, assault, or burglary. Officers Escobar and Purcell were allowed to detain McMillion to resolve the ambiguity. And given that Officers Escobar and Purcell were told that one of the car's occupants was armed, they were justified in conducting a pat-down search for weapons, on the man in the backseat of the Buick who matched the previous description of the man who had been swinging a gun around and who appeared to be trying to conceal something from view.

"Evaluating the officers' observations as a whole, we find that articulable facts support the existence of reasonable suspicion sufficient for a Terry stop. Thus, the district court erred in granting the motion to suppress."

READ THE COURT OPINION HERE:
https://ecf.ca8.uscourts.gov/opndir/24/05/232720P.pdf

SEARCH AND SEIZURE: Stop and Frisk; Voluntary Conversations and Observations

United States v. Goerig, CA3, No. 23-1582, 6/20/24

Police in Ridley Township, Pennsylvania, got a 911 call one Friday morning. The caller had seen a man in a black pickup truck with Connecticut plates parked in the high-school parking lot. The man, who appeared roughly thirty years old, looked out of place and seemed very nervous.

A few minutes later, Corporal Leo Doyle, who specializes in investigating crimes against children, checked out the tip. He saw the pickup truck, pulled up next to it, got out, and walked over to it. Goerig was in the driver's seat with the window rolled down. As Doyle approached, he saw Goerig lean over the console as if he were hiding something, then straighten up. Doyle asked why he was there; Goerig replied that he was meeting a friend. Doyle then asked for his driver's license. When Goerig turned to get it, Doyle could see that his shorts were down, exposing his buttock. He also saw a towel spread out over the truck's back seat. As Doyle kept questioning him, Goerig started sweating and grew increasingly nervous and annoyed.

Soon, a second officer arrived, parking nearby but not boxing the truck in. Doyle asked Goerig to step out of the truck. When he did, Doyle noticed a "penis pump" sticking out of a gym bag on the driver's seat. He saw condensation in the pump, suggesting that it had been used recently. But Goerig denied that it was his. Next, Doyle briefly searched the truck to make sure there were no weapons inside. He found none. And though he did find Goerig's cellphone, wallet, and two tiny bottles of whiskey, he left them in the truck.

When Doyle again asked Goerig why he was in the parking lot, he repeated that he was meeting a friend. But this time, he also said she was eighteen, gave her name, and claimed that she was not a student at the school. Then Doyle called his supervisor, who told him that there was an open criminal case against Goerig for sexting a fifteen-year-old girl with the same first name. (Though police had probable cause to arrest him

for that crime, they had instead referred the case to the FBI.)

Doyle arrested Goerig and put him in the back of his patrol car. Doyle asked him if he wanted his keys, phone, and wallet. When he said yes, Doyle got them from the truck before driving him down to the police station. Police towed the truck, impounded and inventoried it, then got a warrant to search it. They also got a search warrant for Goerig's phone and iCloud account; those searches revealed sexually explicit photos and videos of Goerig and the girl, including ones of Goerig using the pump. Goerig was charged with possessing, receiving, and making child pornography as well as traveling in interstate commerce with the intent to have sexual contact with a minor. He moved to suppress the evidence from the truck, his statements to the arresting officers, and all evidence recovered from his phone and iCloud account.

After a hearing, the District Court denied the motion. It held that Doyle had not seized Goerig until he told him to get out of the truck. By then, he had reasonable suspicion. It also ruled that police had validly seized all the evidence: the penis pump had been in plain view; the keys, cellphone, and wallet were seized incident to arrest; the towel, whiskey bottles, and digital evidence were seized under the search warrants; and police would inevitably have discovered it all. Goerig pleaded guilty but reserved his right to appeal the denial of the motion to suppress.

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

"To be seized, a defendant must either submit to an officer's assertion of authority or be restrained by an officer applying physical force. *California v. Hodari* D., 499 U.S. 621, 626 (1991). Thus, it is not a seizure if an officer just asks questions or asks to see a driver's license so long as a reasonable person would understand that he or she is free to refuse to answer questions or be searched. *United States v. Drayton*, 536 U.S. 194, 197 (2002).

"Doyle did not seize Goerig until he ordered him to step out of the truck. Until then, Doyle was just asking him questions. He did not touch Goerig, order him around, or stop him from leaving. And a reasonable person in Goerig's shoes would have felt free to refuse to answer.

"Doyle never conveyed a message that compliance with his requests was required. He never told Goerig to roll down his window nor said he was detaining him. Though Goerig answered Doyle's questions, he could have refused to do so and gone on his way. And Doyle gave no orders until he told Goerig to get out of the truck. By then, Doyle had reasonable suspicion for a Terry stop. He was an experienced investigator of crimes against children, responding to a 911 call about a nervous man with out-of-state plates parked at a high school. When he approached, he saw that Goerig was nervous and seemed to be hiding something. He could also see Goerig's exposed buttock and a towel across the back seat. Taken together, these facts cleared the low threshold of reasonable suspicion by suggesting that Goerig was there for illicit reasons. Thus, Doyle could lawfully order him out of the truck.

"The arrest was proper too. Once Goerig opened the truck door, Doyle saw the penis pump, which looked like it had just been used, and heard Goerig implausibly deny that it was his. He also learned that the police had evidence that Goerig had sexted a minor with the same first name as the one he claimed to be meeting. Based on all these facts, Doyle had probable cause to arrest him for attempting to have sex with a minor.

"Doyle properly seized the pump. When Goerig opened the door, Doyle saw in plain view a sex device that looked like it had just been used. Doyle testified that it was sticking out of a gym bag, he saw condensation in it, and he recognized it as a penis pump immediately. Given that Doyle had just caught Goerig with his pants down in a high-school parking lot, it was "immediately apparent" that the pump was incriminating.

"Doyle properly checked the inside of the truck too. As part of the Terry stop, he could do a protective search of its passenger compartment for weapons. See *Michigan v. Long*, 463 U.S. 1032, 1049 (1983). Apart from looking for weapons, he did not touch anything inside the truck until Goerig asked for his keys, wallet, and phone. The Terry stop, search for weapons, and arrest were constitutional, so they do not taint the later search incident to arrest or search warrants.

"Though police need a reason to physically restrain someone or induce his submission, they do not need a reason to ask him questions or ask for ID. By the time Corporal Doyle asserted his authority, Goerig's demeanor, his location in a school parking lot, and his answers to questions provided reasonable suspicion. And once Doyle learned about the sexting investigation and saw the penis pump in plain view, he had probable cause to arrest Goerig and get search warrants. Because the Terry stop, arrest, and searches and seizures were proper, we will affirm the District Court's judgment."

READ THE COURT OPINION HERE:
https://www2.ca3.uscourts.gov/opinarch/231582pa.pdf

SEARCH AND SEIZURE: Trash Pull

United States v. McGhee
CA7, No. 23-1615, 4/11/24

Agents conducted a trash pull at the LaSalle Street house of Harold McGhee. Two large garbage cans were set out for that day's collection in the alley fifty feet behind the house and outside its fenced-in yard. The garbage and garbage cans were covered in snow. Three kitchen size bags were sitting in the cans on top of the snow. Officers opened the bags and found rubber gloves and baggies with a white powdery residue, which tested positive for cocaine.

Based on all of this evidence, law enforcement obtained a search warrant for the LaSalle Street house, the Chevy Malibu, McGhee's person, and his electronic devices. The affidavit supporting the warrant recounted details of the investigation and included statements by confidential sources, McGhee's history of drug trafficking convictions, and his affiliation with the LaSalle Street house.

McGhee sought to suppress the evidence recovered at the LaSalle Street house and moved for a hearing to challenge the validity of the search warrant.

Upon review, the Seventh Circuit found, in part, as follows:

"A person does not possess a reasonable expectation of privacy in the inculpatory items that he discarded in plastic garbage bags left on or at the side of a public street. *California v. Greenwood*, 486 U.S. 35, 40, 41 (1988). That principal rings truer when the bags are left in this manner for trash pickup. In that case, the person leaves the bags for the express purpose of having strangers take and sort through the items within. As to homes more generally, the lack of a warrant

prevents the physical occupation of private property for the purpose of obtaining information. *United States v. Jones*, 565 U.S. 400, 404 (2012). But the shield of the Fourth Amendment ends at the boundary of a home's curtilage. See *Florida v. Jardines,* 569 U.S. 1, 5–6 (2013).

"The evidence McGhee seeks to suppress was recovered from garbage bags, found in garbage cans, sitting in an alley outside the curtilage of the LaSalle house, awaiting trash pickup. Therefore, the search occurred outside the reach of McGhee's reasonable expectation of privacy and comported with Greenwood. 'What a person knowingly exposes to the public…is not a subject of Fourth Amendment protection." *Katz v. United States*, 389 U.S. 347, 351 (1967). The search complied with the Fourth Amendment, so McGhee's motion to suppress was properly denied."

READ THE COURT OPINION HERE:
https://media.ca7.uscourts.gov/cgi-bin/OpinionsWeb/processWebInputExternal.pl?Submit=Display&Path=Y2024/D04-11/C:23-1615:J:Brennan:aut:T:fnOp:N:3194422:S:0

SECOND AMENDMENT: Rule Classifying Bump Stocks as Machine Guns
Garland v. Cargill, USSC, No. 22-976, 6/14/24

The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) had long held that semi-automatic rifles equipped with bump stocks were not machine guns under the statute. However, following a mass shooting in Las Vegas, Nevada, where the shooter used bump stocks, the ATF reversed its position and issued a rule classifying bump stocks as machine guns.

Michael Cargill, who had surrendered two bump stocks to the ATF under protest, challenged the rule. Cargill argued that the ATF lacked statutory authority to classify bump stocks as machine guns because they did not meet the definition of a machine gun. The District Court ruled in favor of the ATF, concluding that a bump stock fits the statutory definition of a machine gun.

The case was then taken to the Court of Appeals. The majority of the Court of Appeals agreed the statute was ambiguous as to whether a semi-automatic rifle equipped with a bump stock fits the statutory definition of a machine gun. They concluded that the rule of lenity required resolving that ambiguity in Cargill's favor.

The Supreme Court of the United States affirmed the decision of the Court of Appeals. The Court held that a semi-automatic rifle equipped with a bump stock is not a machine gun because it cannot fire more than one shot by a single function of the trigger. Furthermore, even if it could, it would not do so automatically. Therefore, the ATF exceeded its statutory authority by issuing a rule that classifies bump stocks as machine guns.

READ THE COURT OPINION HERE:
https://www.supremecourt.gov/opinions/23pdf/22-976_e29g.pdf

SECOND AMENDMENT: Attorneys Authorized to Possess Handguns in Courthouses; Arkansas Supreme Court Administrative Order
Corbitt v. Pulaski County Circuit Court
ASC, No. CV-23-477, 2024 Ark. 65, 4/18/24

Arkansas lawyer Chris Corbitt attempted to bring a firearm into the Pulaski County District Court and the Juvenile Justice Complex. Mr. Corbitt's initial complaint seeking permission to carry firearms in courthouses was dismissed by the circuit court, a decision later affirmed by a majority of this

court. Subsequently, after encountering firearm restrictions in a different courthouse, Mr. Corbitt and other plaintiffs filed another complaint, which was also dismissed.

He sought a declaration from the court that Act 1087 of 2017, codified in Arkansas Code Annotated section 5-73-122(b), allows attorneys as "officers of the court" to carry firearms in any courtroom or courthouse in the state.

Upon review, the Arkansas Supreme Court found as follows:

"Ark. Code Ann. § 5-73-122(b) (Supp. 2021) provides that a law enforcement officer, either on-duty or off-duty, officer of the court, bailiff, or other person authorized by the court is permitted to possess a handgun in the courtroom of any court or a courthouse of this state. As a result, attorneys, as officers of the court, are recognized under the statute as individuals authorized to possess handguns in courthouses within the state.

"The Court stated further that the legislation did not consider courthouses and courtrooms as the same. A decision on a challenge to the courtroom provision will be considered when it is before the court, and it will not be addressed now.

Pursuant to Amendment 80, section 4 of the Arkansas Constitution, the Supreme Court of Arkansas establishes Administrative Order No. 23 to clarify the inherent authority of judges to control security in their courtrooms.

Administrative Order No. 23 — Courtroom Security

"All judges shall have the inherent authority to control security in their courtrooms. This includes the authority to establish rules for the safety of all who are present in the courtroom. All judges may promulgate orders regulating, restricting, or prohibiting the possession of firearms within their courtrooms and other rooms in which the court and/or its staff routinely conducts business. These areas include, but are not limited to, judicial chambers, trial court assistants' offices, law clerks' offices, jury rooms, jury-assembly rooms, witness rooms, court reporters' offices, coordinators' offices, and juvenile officers' rooms. The judge shall contact local law enforcement to assist with the implementation of any plans or orders pursuant to Administrative Order No. 23."

READ THE COURT OPINION HERE:
https://opinions.arcourts.gov/ark/supremecourt/en/522723/1/document.do

SECOND AMENDMENT:

False Statements on ATF Forms

United States v. Scheidt, CA7, No. 23-2567, 6/7/24

Between February 6 and April 5, 2022, Echo Scheidt purchased five handguns from two Indiana gun stores in five separate transactions. Each time she completed ATF Form 4473 and each time provided false addresses. Even though she resided in Fort Wayne, she listed home addresses in Marion and Upland, Indiana.

The firearms dealers did not immediately catch the false statements, leading to Scheidt acquiring five handguns. She then resold each of them and, following two shootings, including a murder in Elwood, Indiana, the authorities traced all five handguns back to her.

While investigating the shootings, the officers went to both the Upland and Marion addresses Scheidt listed on Form 4473. They learned that she did not live at either address. The Upland address was

the site of an abandoned home, and the resident at the Marion address stated that Scheidt had not lived there for several years.

The Marion County Police Department eventually located Scheidt and asked her to submit to an interview about the two shootings. Scheidt lied about her current address during the interview, while also telling the police that she sold the guns at a yard sale and did not know who was responsible for the shootings. But the next day Scheidt changed course, called the police, and admitted to providing false answers in the interview. She then acknowledged that she purchased all five firearms using fictious addresses, only later to sell them to a man she believed was affiliated with a Mexican drug cartel.

The Court of Appeals for the Seventh Circuit stated that many federal statutes make it a crime to knowingly provide false statements to the government and to obstruct justice. This is true when it comes to interviews with law enforcement agents, filing tax returns, and applying for federal licenses. And it is also true when it comes to buying a firearm from a licensed dealer, as 18 U.S.C. § 922(a)(6) prohibits any person from knowingly making a false oral or written statement on a fact material to a transaction.

Echo Scheidt did just that: she knowingly included false information in a Firearms Transaction Record, or ATF Form 4473, in five separate gun purchases. The false statements concerned law enforcement because it turned out Scheidt resold the firearms, with two of the guns then being used in two shootings, including a murder.

The Seventh Circuit affirmed her conviction concluding that the Second Amendment does not immunize purchasers from knowingly providing misstatements on ATF forms.

READ THE COURT OPINION HERE:
https://media.ca7.uscourts.gov/cgi-bin/OpinionsWeb/processWebInputExternal.pl?Submit=Display&Path=Y2024/D06-07/C:23-2567:J:Scudder:aut:T:fnOp:N:3220554:S:0

SECOND AMENDMENT: Individual Involuntarily Committed to a Mental Institution; Owning and Possessing a Firearm in Arkansas

Sagley v. Hutchinson, ASC, No. CV-23-349, 2024 Ark. 37, 3/28/24

The Supreme Court of Arkansas affirmed a lower court's decision dismissing Floyd Sagely's claim that Arkansas Code Annotated section 5-73-103, which prohibits a person who has been involuntarily committed to a mental institution from owning or possessing a firearm, is unconstitutional. Sagely was involuntarily committed to a mental health treatment facility in 2010, and in 2019, was charged with a misdemeanor for possessing a firearm in his car due to his previous commitment.

Sagely argued that the statute violated both the Equal Protection Clause of the Fourteenth Amendment and the precedent set by the Supreme Court in *New York State Rifle & Pistol Ass'n v. Bruen*. He contended that the law treated felons and persons involuntarily committed to a mental health facility differently, as felons could petition to have their gun rights reinstated, while those individuals who were involuntarily committed could not.

The Supreme Court of Arkansas found that Sagely's equal protection claim failed because he could not demonstrate that he and persons convicted of a felony offense were similarly situated. The court stated that civil litigants like Sagely are not

similarly situated to criminal defendants for equal-protection purposes. The court further held that the statute is presumptively constitutional under Supreme Court precedent. Therefore, the court affirmed the lower court's dismissal of Sagely's complaint.

READ THE COURT OPINION HERE:
https://opinions.arcourts.gov/ark/supremecourt/en/item/522640/index.do

SECOND AMENDMENT: Possession of Firearms by Convicted Felons
United States v. Cameron
CA8, No. 23-2839, 4/18/24

The Court of Appeals for the Eighth Circuit stated that the Supreme Court's decision in New York State Rifle & Pistol Ass'n, Inc. v. Bruen did not cast doubt on longstanding prohibitions on the possession of firearms by felons.

READ THE COURT OPINION HERE:
https://ecf.ca8.uscourts.gov/opndir/24/04/232839P.pdf

SUBSTANTIVE LAW: Retention of Seized Property by the State
Benedict v. State of Wyoming
WSC, 2024 Wy 55, 5/23/24

Russell Patrick Benedict was convicted of sexually abusing his sixteen-year-old daughter, AB. During the investigation, Benedict's cellphone was seized, and a warrant was obtained to search its contents. However, the phone's contents were never searched as Benedict claimed he could not remember the passcode. After his conviction, Benedict filed a motion for the return of his and AB's cellphones. The State objected to the return of Benedict's phone, suspecting it contained nude photos of AB, which would constitute child pornography. The district court denied Benedict's motion finding that the State had an interest in preventing the dissemination of child pornography and in preventing further trauma to AB. It concluded that the State had an interest in retaining Benedict's phone and denied Benedict's motion for its return. Benedict appealed this decision.

The Supreme Court of Wyoming affirmed the district court's decision, finding that the district court did not abuse its discretion in concluding that the State had met its burden of proving an interest in retaining Benedict's cellphone.

READ THE COURT OPINION HERE:
https://documents.courts.state.wy.us/Opinions/S-23-0226%20Benedict.pdf

SUBSTANTIVE LAW:
Replica of a Gun; Dangerous Weapon
United States v. Chandler
CA3, No. 22-1787, 6/11/24

James Chandler was convicted for twice robbing on-duty United States Postal Service employees using a fake gun. Chandler appealed arguing that the judge erred in holding that a replica of a gun constitutes a dangerous weapon.

The United States Court of Appeals for the Third Circuit affirmed the District Court's decision. The Court of Appeals found that the term "dangerous weapon" is genuinely ambiguous and can include a replica firearm.

READ THE COURT OPINION HERE:
https://www2.ca3.uscourts.gov/opinarch/221786p.pdf

TRAFFIC ENFORCEMENT:

Stop of Vehicle with Hazardous Waste

State of Idaho v. Van Zanten, ISC, No. 48808, 4/1/24

In September 2020, an Idaho State Police Trooper observed a 2005 Kenworth truck driven by Kevin James Van Zanten. The Trooper noted several violations, including an improperly displayed DOT number, unsecured hazardous material, and other items on the truck. The truck was stopped, and the driver was identified as Van Zanten, whose driving privileges were found to be suspended. A subsequent search of the truck resulted in the finding of drugs, leading to Van Zanten's arrest.

At the trial court, Van Zanten moved to suppress the evidence, arguing that the Trooper had no legal basis to stop him. He asserted that the Trooper initiated the stop to investigate state regulations that were unenforceable because the statutes authorizing those regulations unconstitutionally delegated legislative power. The district court denied his motion.

The Supreme Court of the State of Idaho affirmed the district court's judgment. It held that the Trooper had reasonable suspicion to stop Van Zanten due to specific, articulable facts, thus justifying the stop. The court noted that the inherent danger associated with unsecured hazardous waste and other violations fell within the community caretaking function of law enforcement, and given the nature of the vehicle Van Zanten was driving, the public interest in safety outweighed the limited intrusion of stopping the vehicle. Consequently, the court did not need to address the constitutionality of the statutes in question. The court affirmed Van Zanten's judgment of conviction.

READ THE COURT OPINION HERE:
https://isc.idaho.gov/opinions/48808.pdf