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Contents

CIVIL FORFEITURE:

Subject's Vague Answer About How He Obtained Funds

United States v. $1,106,775.00 in U.S. Currency
CA9, No. 22-16499, 3/11/25

In November 2019, Oak Porcelli embarked on a cross-country road trip with a passenger, Gina Pennock, in a black Chevy Tahoe with Florida license plates. While headed west on Interstate 80 near Reno, Nevada, Porcelli tailgated the car in front of him. A highway patrol officer saw this and pulled him over.

During the traffic stop that followed, Porcelli's trip west took a sharp turn south. The highway patrol officer noticed that Porcelli's SUV smelled like marijuana. He also saw that the backseat was full of luggage. The officer asked for Porcelli's license and registration, and Porcelli handed over an Oregon license and a rental car agreement from North Carolina.

Porcelli explained that he and Pennock were headed to Porcelli's home in Portland after skiing in Colorado. The officer found this odd, as no ordinary route from Colorado to Oregon would pass through Reno. And that was not all the officer found strange. When the officer asked Pennock whether she had been snowboarding in Colorado, she said she did not know. And Porcelli said he and Pennock had started driving west from Buffalo, New York, but their car was rented in North Carolina.

The officer next asked Porcelli whether his SUV contained any "weapons, humans, drugs, illicit currency," "marijuana," "large amounts of U.S. currency," or anything else noteworthy. Porcelli said that it did not, but the officer heard Porcelli's

voice change when talking about marijuana and currency. Pennock agreed that there were no drugs or currency in the SUV.

A different officer walked his drug-detection canine around the vehicle. When the canine alerted the officer of potential drugs in the car, Porcelli said the dog might have smelled food inside the vehicle. When the officer explained that the dog would not respond to the smell of food, Porcelli admitted that he had a marijuana vape pen in the SUV.

Based on Porcelli's admission and the dog alert, the officers searched the SUV. Inside, they found a suitcase containing women's clothing and vacuum-sealed plastic bags of U.S. currency. When officers asked how much money Porcelli was transporting, he said it was "quite a bit." When the officers asked why Porcelli was transporting so much cash, he explained that he was a movie producer. He said his employer did not like to use a bank and that the "cash flow" came from "Wall Street." As the officers continued to search the vehicle, they found additional bags of currency, primarily rubber-banded $20 bills, vacuum-sealed and zip-tied between snowboards. Pennock "guessed" that the packaging may have been meant to "block odors.

Suspicious that the money was involved in the illegal drug trade, the officers seized the currency and called the Drug Enforcement Agency (DEA). During questioning by a DEA agent, Porcelli's story shifted. He now said that he had traveled from Portland to New York City to work on a movie, and he was returning to Portland to work on another movie. The agent asked what the movies were called, and Porcelli said they were untitled. Porcelli also said he was transporting the currency on behalf of his employer, 401Productions, and that it was "petty cash" meant for "miscellaneous expenses on the movie set." Porcelli disclaimed ownership of all but $2,000 or $3,000, which he said his employer gave him to cover travel expenses.

While the DEA interviewed Porcelli and Pennock, an officer laid out the bags of currency and walked a second drug detection canine past them. The dog alerted to the smell of drugs, and the DEA seized the currency. In total, Porcelli was carrying $1,106,775. Over $700,000 of that was in $5, $10, and $20 bills.

After seizing the currency, the government investigated Porcelli's story, but it could not corroborate it. The government did, however, find that in 2012, a package containing over eleven pounds of marijuana was delivered to Porcelli while he was staying at a hotel in Buffalo. And in 2016, Porcelli was caught trying to ship thousands of dollars wrapped in Mylar (a polyester film) through FedEx. That money was seized, and Porcelli never produced any proof that it was legitimately his.

The government also sent out forfeiture notices to every business called "401 Productions" it could find. Only one—a production company in New York—responded. It denied ownership of the currency, so the government filed a complaint for civil forfeiture against the defendant currency, alleging that it was the proceeds of an illegal drug trade.

After the government filed its civil forfeiture complaint, Porcelli changed his story again and filed a claim asserting that he was the sole owner and possessor of the currency. As the claimed owner, Porcelli challenged the government's authority to seize the currency and demanded that it be returned to him.

Once Porcelli filed his claim, the government served him with a set of interrogatories. The interrogatories asked Porcelli to identify himself, describe "the nature and extent of [his] interest(s) in the property," explain "how [he] acquired [his] interest(s) in the property," and identify "every document" related to a transaction involving the property.

In response, Porcelli identified himself, then said, "I own all of the Defendant currency seized from the vehicle I rented and had just been driving, and consequently I had and have a right to possess it and otherwise exercise dominion and control over it." The district court struck his claim and granted the government default judgment of forfeiture.

The United States Court of Appeals for the Ninth Circuit held that his vague responses to the interrogatories were insufficient. The court ruled that the district court did not abuse its discretion in striking Porcelli's claim for failing to comply with discovery orders. The court emphasized that while the government has the burden to prove the money is subject to forfeiture, claimants must still provide some evidence of their standing. The Ninth Circuit affirmed the district court's orders upholding the default judgment of forfeiture against the currency.

READ THE COURT OPINION HERE:
https://cdn.ca9.uscourts.gov/datastore/opinions/2025/03/11/22-16499.pdf

CIVIL LIABILITY: Deadly Force Justified

Napouk v. Las Vegas Metropolitan Police Department, CA9, No. 23-15726, 12/10/24

Lloyd Gerald Napouk was fatally shot by two Las Vegas Metropolitan Police Department officers after they responded to reports of a man behaving suspiciously in a residential neighborhood with what appeared to be a long, bladed weapon. The officers attempted to engage Napouk, who refused to follow their commands and advanced towards them multiple times. When Napouk came within nine feet of one of the officers, both officers fired their weapons, killing him. The weapon turned out to be a plastic toy fashioned to look like a blade.

Napouk's parents and estate sued the officers and the Las Vegas Metropolitan Police Department, alleging excessive force in violation of the Fourth Amendment, deprivation of familial relations in violation of the Fourteenth Amendment, municipal liability based on Monell v. Department of Social Services, and Nevada state law claims. The United States District Court for the District of Nevada granted summary judgment for the defendants, determining that the officers' use of force was reasonable as a matter of law.

The United States Court of Appeals for the Ninth Circuit affirmed the district court's summary judgment.

The court held that the officers were entitled to qualified immunity from the Fourth Amendment excessive force claim because Napouk posed an immediate threat to the officers, and no rational jury could find the officers' mistake of fact regarding the weapon unreasonable. The court also held that the plaintiffs' Fourteenth Amendment claim failed because there was no evidence that the officers acted with anything other than legitimate law enforcement objectives. Additionally, the plaintiffs' Monell claims failed due to the absence of a constitutional violation, and the state law claims failed because the officers were entitled to discretionary-function immunity under Nevada law.

READ THE COURT OPINION HERE:
https://cdn.ca9.uscourts.gov/datastore/opinions/2024/12/10/23-15726.pdf

CIVIL LIABILITY: First Amendment Retaliation; Excessive Force
Stearns v. Dean, CA8, No. 23-3448, 12/4/24

After the death of George Floyd, large-scale protests occurred in Kansas City, Missouri. On May 30, 2020, the Kansas City Police Department requested assistance from the Missouri State Highway Patrol to manage the protests, which turned violent. Law enforcement used tear gas and other munitions to disperse the crowd. Sergeant Jeffrey Spire deployed various crowd control measures, including smoke grenades and projectiles. Around 11:47 p.m., Spire fired projectiles indiscriminately into the crowd, one of which allegedly struck Sean Stearns, causing him to lose vision in his left eye.

Stearns sued Sergeant Spire under 42 U.S.C. § 1983 for First Amendment retaliation and excessive force under the Fourth and Fourteenth Amendments. He also brought claims under Missouri law and a Monell claim against the Board of Police Commissioners. The United States District Court for the Western District of Missouri granted summary judgment for the defendants, finding that Spire was entitled to qualified immunity and that Stearns could not establish a Monell claim.

The United States Court of Appeals for the Eighth Circuit held that Spire was entitled to qualified immunity on the First Amendment retaliation claim because Stearns failed to demonstrate a causal connection between his injury and retaliatory animus. The court also found that Stearns waived his Fourth Amendment claim by not providing a meaningful argument. Regarding the Fourteenth Amendment claim, the court concluded that Spire's actions did not shock the conscience and thus did not constitute a substantive due process violation. Consequently, the Monell claim failed due to the absence of a constitutional violation. The court affirmed the district court's decision to dismiss the state law claims without prejudice, finding no abuse of discretion. The judgment of the district court was affirmed.

READ THE COURT OPINION HERE:
https://ecf.ca8.uscourts.gov/opndir/24/12/233448P.pdf

CIVIL LIABILITY: Excessive Force; Officers Actions Reasonable Under the Circumstances
Puente v. City of Phoenix, CA9, No. 22-15344

Two organizations and four individuals brought an action under 42 U.S.C. § 1983 against the City of Phoenix and several police officers, alleging violations of their constitutional rights during a protest outside a rally held by then-President Trump at the Phoenix Convention Center on August 22, 2017. The plaintiffs claimed that the police used excessive force and violated their First, Fourth, and Fourteenth Amendment rights by dispersing the protesters with tear gas, chemical irritants, and flash-bang grenades.

The United States District Court for the District of Arizona certified two classes and granted summary judgment to the defendants on all claims except for the individual Fourth Amendment excessive-force claims asserted by three plaintiffs against certain officers. The court found that there was no "seizure" of the class members under the Fourth Amendment and evaluated the excessive-force claims

under the Fourteenth Amendment's "shocks-the-conscience" test. The court also granted summary judgment to the defendants on the First Amendment claims, finding no evidence of retaliatory intent.

The United States Court of Appeals for the Ninth Circuit reviewed the case and affirmed the district court's summary judgment for the defendants on the class claims. The Ninth Circuit agreed that the use of airborne and auditory irritants did not constitute a "seizure" under the Fourth Amendment and that the Fourteenth Amendment's "purpose to harm" standard applied. The court found no evidence of an improper purpose to harm by the officers.

The Ninth Circuit reversed the district court's denial of summary judgment to the individual defendants on the excessive-force claims asserted by the three plaintiffs, holding that the officers were entitled to qualified immunity. The court found that the officers acted reasonably under the circumstances or did not violate clearly established law. The court also affirmed the district court's summary judgment for the individual defendants on the First Amendment claims, finding that the officers had objectively reasonable grounds to disperse the crowd due to a clear and present danger.

Finally, the Ninth Circuit affirmed the district court's summary judgment for Police Chief Williams and the City of Phoenix, concluding that there was no evidence that Williams caused or ratified the use of excessive force or that the City was deliberately indifferent to the plaintiffs' constitutional rights.

READ THE COURT OPINION HERE:
https://cdn.ca9.uscourts.gov/datastore/opinions/2024/12/19/22-15344.pdf

CIVIL LIABILITY: Excessive Force—Two Police Shootings; The Tenth Circuit Court's Approach to Two Fact Situations

Baca v. Cosper, CA10, No. 23-2154, 2/24/25
Alcala v. Ortega, CA10, No. 24-2027, 2/24/25

The *Baca v. Cosper* case arises from the fatal shooting of Amelia Baca, a 75-year-old, mentally diminished woman in Las Cruces, New Mexico. The Estate filed a complaint alleging that the police officer who shot her acted with excessive force in violation of the Fourth Amendment. The district court granted the officer summary judgment on qualified-immunity grounds, reasoning that the Estate had not raised a genuine dispute of material fact about the officer's claim that he in fact perceived that Ms. Baca presented an immediate danger of serious bodily harm to himself and others. The Tenth Circuit concluded that the district court erred and reversed the district court.

On April 16, 2022, one of Amelia Baca's daughters called 911, reporting that Ms. Baca, her 75-year-old mother who was suffering from dementia, had become aggressive and threatened to kill her and her daughter. Officer Jared Cosper, who was less than one-minute away, heard the dispatcher's description of the scene, and seeing how close he was to the Bacas' home, responded to the call. He testified that he learned the following information while he was driving to the Bacas' home: (1) that the 911 call concerned a domestic "behavioral issue"; (2) that Ms. Baca had a history of behavioral issues; (3) that Ms. Baca had threatened to kill the caller; (4) that the caller had barricaded herself and a child in a bedroom; (5) that Ms. Baca had been making stabbing motions at the floor with a knife; (6) that during the call, the caller had gone silent; and (7) that the 911 operator had at some point heard a child crying in the background.

Officer Cosper arrived at the residence's "front" door on his right and saw into the living room through the screen door. Peering through the screen door, he saw two women standing beside Ms. Baca in the living room and talking calmly with her. By then, he had already unholstered his firearm and was holding it down along his right-hand side.

Officer Cosper announced himself in an ordinary tone and told the two women to step outside. As they passed by him, the first woman said something to Officer Cosper that he didn't hear clearly, and the second said to him, "Please be very careful with her." Now alone in the living room, Ms. Baca came more fully into Officer Cosper's view. Ms. Baca stood stationary about ten feet from Officer Cosper. Ms. Baca held a knife pointed toward the floor.

After Officer Cosper saw Ms. Baca, the calm scene he encountered ended. Officer Cosper immediately pointed his firearm at Ms. Baca and began yelling at her to drop the knives. The flashlight attached to Officer Cosper's firearm was turned on, shining light on Ms. Baca's chest and face. The women who had left the house hovered nearby and became frantic at the deteriorating situation. One of the women stressed to him that Ms. Baca "was mentally sick" to which Officer Cosper responded, "Okay." Officer Cosper continued to yell at Ms. Baca to drop the knives. After being told that Ms. Baca was "mentally sick," Officer Cosper yelled at the two frantic women to back away, while keeping his eyes and firearm on Ms. Baca.

About then another Las Cruces police officer, Officer Fierro, arrived and moved the two women out past the tarp-lined entryway and into the open driveway. That left Officer Cosper an unobstructed retreat to the same area. About thirty seconds after Officer Cosper started yelling at Ms. Baca, she moved the knife in her left hand to her right hand, so that both knives were in her right hand. Amid the now-intense scene, Ms. Baca lifted her right arm toward the inside of the house, removing the knives from Officer Cosper's view, and then turned her head that way too. While keeping her right arm extended, she turned back to Officer Cosper, raised her empty left hand to shoulder level toward him and pointed her hand toward the floor, and then lowered her head. Throughout the encounter, Ms. Baca was speaking to Officer Cosper, but he later reported in a declaration he submitted once the litigation began, that he was unable to tell what language she was speaking.

Officer Cosper continued to yell at her to put the knives down, and Ms. Baca lowered her right arm so the knives in her hand were again pointing to the floor and visible to him. After this, she made eye contact with Officer Cosper, and with the two knives in her right hand still pointing at the floor, she tilted her head back some and took two slow steps toward Officer Cosper. As her foot landed on the second step, when she was about six feet from Officer Cosper, he shot her twice in the chest, and she fell to the floor. As her face lay in the collecting pool of blood, Officer Cosper ordered another officer to pull her out into the pathway and handcuff her. Only 45 seconds elapsed from Officer Cosper's arriving at her doorway to his firing the fatal shots.

Upon review, the Tenth Circuit stated:

"We review Fourth Amendment claims of excessive force under a standard of objective reasonableness, judged from the perspective of a reasonable officer on the scene. *Graham v. Connor,* 490 U.S. 386, 396–97 (1989). 'The reasonableness of an officer's actions depends

both on whether the officers were in danger at the precise moment that they used force and on whether the officer's own reckless or deliberate conduct during the seizure unreasonably created the need to use such force.'

"We ask whether Ms. Baca posed an immediate threat of serious physical harm to Officer Cosper or others. That means Officer Cosper's use of deadly force was unreasonable unless at the instant he fired his shots, a reasonable officer on the scene would have believed that Ms. Baca posed an immediate threat of serious physical harm to himself or others.

"Our case law answers that question. We have held that it is unreasonable for an officer to use deadly force where the officer had reason to believe that a suspect was only holding a knife, not a gun, and the suspect was not charging the officer and had made no slicing or stabbing motions toward him. Here, it is undisputed that Ms. Baca was holding only knives and that she made no slicing or stabbing motions toward Officer Cosper. And we agree with the district court that a jury could conclude that Ms. Baca was not charging Officer Cosper.

"The district court's analysis credited Officer Cosper's argument that he had no realistic option to retreat because if he stepped to his right, he'd lose sight of Ms. Baca and put the other people in the home at risk. This overstates the risks that Officer Cosper faced. If Ms. Baca moved toward him, he could step to his right and back down the pathway and into the driveway. If she followed, she would pose no risk to the people inside the home and Officer Cosper would not lose sight of her. Indeed, he would lead her down the driveway, where another officer with a taser would be waiting. If she did not follow him, he would still have an angle to see whether she crossed the room toward the area of the house in which the daughter and granddaughter were barricaded in the bedroom. And Officer Cosper wasn't without additional backup; less than three minutes after the shooting, there were at least six additional police cruisers at the Bacas' home. He or other officers could then intervene with less-than-lethal force while outside her knife-striking distance.

"Taking the facts in the light most favorable to the Estate, a reasonable, jury could conclude that Officer Cosper violated Ms. Baca's clearly established constitutional rights by shooting her. As a result, we conclude the district court erred in finding Officer Cosper was entitled to summary judgment based on qualified immunity."

In another recent case, *Alcala v. Ortga*, Eguino-Alcala drove a car that was involved in an accident in Las Cruces, New Mexico, on October 4, 2020. At about 10:04 a.m., a bystander called 911 to report the crash. Around the same time, several other bystanders tried to assist Eguino-Alcala, who was knocked unconscious by the automobile crash. About then, another caller advised that a "male" had retrieved a rifle from the back of his trunk and pointed it at the crowd. But by 10:10 a.m., a caller reported losing sight of the driver (later determined to be Eguino-Alcala), who had regained consciousness and fled on foot. A minute later, dispatch radioed that "the subject with a firearm went north on main wearing white pants and a black shirt." And at 10:12 a.m., dispatch radioed that another caller had said that the shotgun was in a silver vehicle. Dispatch then radioed yet another caller's report that a male had a firearm. Moments later, a 911 caller stated that a "male in a] white shirt with blue jeans had brandished a gun.

Deputy Ortega heard the report of a car crash when he was home for lunch. He immediately drove to the accident location, where "an older gentleman" standing on South Main Street hurriedly approached the deputy's patrol car while pointing and shouting about the incident. He told Deputy Ortega the following:

- A man has a gun
- The man had pointed the gun at people
- The man ran "that way" (gesturing toward S. Main St.)
- The man wore a white shirt

Other bystanders yelled, "He's running that way, he has a gun."

Deputy Ortega turned his car around and drove to Bell Avenue. He turned onto Oak Street, where he turned again and drove to a ditch bank on East Union Street. There, Deputy Ortega spotted a man matching the description (later determined to be Eguino-Alcala) running west toward Oak Street. In pursuit, Deputy Ortega drove back to Oak Street. He parked his vehicle at the dead-end of Oak Street and got out to look for the running man. While standing on Oak Street, Deputy Ortega saw Eguino-Alcala "run across Oak and onto Manso Avenue." He returned to his patrol car to pursue Eguino-Alcala.

Deputy Ortega drove a block down Oak Street and turned right onto Manso Avenue. After completing the turn, his forward-fastened dashcam video shows Eguino-Alcala in the shadow of a parked ambulance and running away from it. As Deputy Ortega neared the ambulance, its driver stepped out of it and excitedly gestured toward the fleeing Eguino-Alcala.

Deputy Ortega pulled alongside Eguino-Alcala, stepped out of the patrol car, aimed his firearm at Eguino-Alcala, and commanded him to halt. Eguino-Alcala stopped but turned his body sideways to the deputy and hunched over with his left hand on his knee and his right arm and hand blocked by his body from the deputy's view. Deputy Ortega repeatedly commanded Eguino-Alcala to "get on the ground" and "put your hands up." Eguino-Alcala failed to comply. After about six seconds, Eguino-Alcala quickly twisted to his left and swung his right hand up with his index finger pointing, as if drawing a gun.

Upon review, the Tenth Circuit stated:

"Deputy Ortega fired nine shots, and his dashcam video shows all nine cartridges ejecting. This enables us to see exactly what Eguino-Alcala was doing at the deputy's first shot. We note that the video shows Eguino-Alcala beginning to twist his body upward toward Deputy Ortega before the deputy fired his first shot. From that shot, the ejected cartridge soon crosses the video screen Of Deputy Ortega's nine shots, three struck Eguino-Alcala. He died from his wounds. With Eguino-Alcala no longer posing a threat, law enforcement officers were able to safely determine that Eguino-Alcala had no firearm."

The Tenth Circuit stated after a discussion of reasonable force and qualified immunity that they held that qualified immunity bars the Estate's claims under § 1983.

"The undeniably tragic events make any ruling a difficult and unsatisfactory one. But the Constitution simply does not require police to gamble with their lives in the face of a serious threat of harm. We will not force officers to "wait until they see the gun's barrel" before using deadly force."

READ THE COURT OPINIONS HERE:
https://www.ca10.uscourts.gov/sites/ca10/files/opinions/010111193016.pdf

https://www.ca10.uscourts.gov/sites/ca10/files/opinions/010111192993.pdf

CIVIL LIABILITY: Exigent Circumstances Justify Warrantless Entry into Motel Room; Shooting of Armed and Suicidal Suspect
Langiano v. City of Fort Worth, CA5, No. 10974, 3/11/25

Tracy Langiano alleged that he was shot and injured by Officer Landon Rollins in violation of the Fourth Amendment and that the City of Fort Worth's policies contributed to this violation. Langiano was accused of sexually abusing his step-granddaughters and left his home after writing a suicide note. He checked into a motel with a loaded handgun, intending to kill himself. His son informed the police about the suicide note and the handgun.

Police located Langiano at the motel, and Officer Rollins, without knocking, entered the room. Rollins claimed Langiano pointed a gun at him, prompting Rollins to shoot Langiano multiple times. Langiano disputed pointing the gun at Rollins but admitted holding it.

The United States District Court for the Northern District of Texas granted summary judgment in favor of Officer Rollins and the City of Fort Worth, dismissing Langiano's civil suit. Langiano appealed.

The Court of Appeals for the Fifth Circuit affirmed the summary judgment in favor of Officer Rollins, finding that Rollins' use of force was reasonable given the circumstances and that Langiano's Fourth Amendment rights were not violated. Additionally, the court held that the warrantless entry into the motel room was justified due to the exigent circumstances of Langiano being armed and suicidal. The court also affirmed the summary judgment in favor of the City, as there was no constitutional violation to support a Monell claim. The district court's judgment was affirmed.

READ THE COURT OPINION HERE:
https://www.ca5.uscourts.gov/opinions/pub/22/22-10974-CV0.pdf

MIRANDA: Questions Part of Routine On-Scene Investigation
Coello v. State of Delaware, DSC, No. 50 2024, 12/13/24

In the early morning of June 22, 2022, Luis Coello called 911 after a vehicle crash. When officers arrived, they found Coello in pain and lying on the ground. Officer Miller asked Coello to sit down for medical reasons and requested his license as part of the accident investigation. Coello, still in pain, began to walk away, prompting Miller to ask him to stay. Officers Braun and Strickland arrived and questioned Coello, who indicated he only spoke Spanish. Coello admitted to driving the vehicle involved in the crash. He was not arrested at the scene but was later indicted on charges of Vehicular Homicide, Vehicular Assault, and Unreasonable Speed.

The Superior Court of Delaware denied Coello's motion to suppress his statements made at the crash scene, ruling that he was not in custody for Miranda purposes and thus not entitled to Miranda warnings. The court found that the questioning was part of a routine, on-scene investigation and that Coello's statements were voluntary. Coello was subsequently convicted of all charges.

On appeal, Coello argued that his statements should have been suppressed as they were obtained in violation of the Fifth Amendment and the Delaware Constitution. The Supreme Court of Delaware reviewed the case and held that Coello was not in Miranda custody during the on-scene questioning. The court emphasized that the questioning was part of a routine investigation and that Coello was not physically restrained or arrested at the scene. The court affirmed the Superior Court's decision to deny the motion to suppress and upheld Coello's conviction.

READ THE COURT OPINION HERE:
https://courts.delaware.gov/supreme/oralarguments/download.aspx?id=5074

SEARCH AND SEIZURE:

Consent Search; Claimed Coercion

United States v. Barber, CA5, No. 24-40069, 12/23/24

Johnell Lavell Barber opened fire on two passing vehicles, striking Eric Escalara in the arm and his ten-year-old daughter in the head. Barber was subsequently convicted of felony possession of a firearm. On appeal, he challenges his conviction on the grounds that his wife did not validly consent to the search of her home, so any evidence obtained from that search should have been suppressed.

Upon review, the Fifth Circuit Court of Appeals stated:

"Barber argues that the police lacked consent to search the home because Wilson's consent was involuntary. He theorizes that Wilson's consent was secured through 'subtle coercion.'

"When a challenge to the denial of a motion to suppress is made, we review the evidence in the light most favorable to the party who prevailed in district court, and the district court's ruling will be upheld if there is any reasonable view of the evidence to support doing so. We use a six-factor test to determine whether consent was voluntary in this context. These factors are: (1) the voluntariness of the defendant's custodial status; (2) the presence of coercive police procedures; (3) the extent and level of the defendant's cooperation with the police; (4) the defendant's awareness of his right to refuse to consent; (5) the defendant's education and intelligence; and (6) the defendant's belief that no incriminating evidence will be found. Although all six factors are relevant, no single factor is dispositive.

"Barber focuses his challenge on factors two and four. First, he argues that the police used subtle coercion to gain consent. He points to three facts to support his position: Wilson saw Barber's arrest; investigators told her that a ten-year-old child had been shot and might die and officers obtained consent several hours after an initial request was rejected.

"To be sure, police may not obtain consent as the product of duress or coercion, express or implied. But that did not happen here. Nothing in the record suggests that police officers weaponized Barber's arrest against Wilson. Officers did not threaten arrest or take any other action against Barber to secure Wilson's consent. To the contrary, they engaged in respectful dialogue with Wilson and explained the situation to her. Investigators testified that they would have stopped talking to Wilson and sought a search warrant had she denied consent. Nor are we troubled that the officers informed Wilson that a ten-year-old girl had been shot and that the girl might die. There's nothing wrong with police officers truthfully informing citizens about ongoing dangers.

"Moreover, it was Wilson who took the initiative to ask the officers what was going on. The officers simply responded by telling her what had happened and what they were looking for. At no point did investigators ever use this information to threaten or blame Wilson. They simply told Wilson that the shooting of the ten-year-old girl was their reason for wanting to search the home. Transparency is not coercion.

"Finally, it was not coercive to ask Wilson for her consent several hours after she had initially refused. To the contrary, we have held that asking for consent undercuts the argument that the police were coercive. In sum, law enforcement did not use subtle coercion to obtain Wilson's consent."

READ THE COURT OPINION HERE:
https://www.ca5.uscourts.gov/opinions/pub/24/24-40069-CR0.pdf

SEARCH AND SEIZURE:

Curtilage; Exigent Circumstances

United States v. McGhee, CA8, No. 23-3674, 2/28/25

In Davenport, Iowa, Jaylyn McGhee was shot at while sitting with his six-year-old son in a parked vehicle outside of his house. McGhee's son suffered gunshot wounds to his left hand and right wrist, so McGhee drove him to the hospital for treatment. Pursuant to shots-fired 911 calls, law enforcement responded to the scene, not knowing whether any injuries had resulted.

Officers arrived at the scene to find eight shell casings, "a bag of suspected narcotics" that was later identified as heroin and fentanyl, and a loose $5 and $1 bill on the street outside McGhee's house. Neighbors and the 911 callers informed law enforcement that a vehicle had arrived at the house and parked on the side of the street for a brief period. Shortly after, another vehicle pulled up next to it. Witnesses reported that they heard eight shots fired, and then saw both vehicles quickly drive away. The hospital in which the child was treated reported that the child had arrived in a vehicle that had "eight spots of damage suspected from being from gunfire." This information led law enforcement to believe the injured child at the hospital might be connected to the shots-fired call at McGhee's house.

Some of the investigators walked up the paved path leading to the front door of McGhee's house and knocked. Meanwhile, another officer, Davenport Police Department Corporal Murphy Simms, noticed a second door on the right side of the house. He stood in the front yard outside a chain-link fence separating the front and side yards and watched the side door "just for perimeter security to ensure nobody tried to sneak out or run or any of that matter." Just below the side door were three steps, which led down to an elevated wooden deck that was a step off of ground level. The fence gate had been left open and the side yard, deck, stairs, and side door were visible through and over the fence.

While observing the side door, the officer noticed "several spots of blood spatter as well as an unknown white or brown powdery substance" on the deck. Corporal Simms then walked through the gate and noticed the blood spatter extended up the stairs and onto the door and its handle, along with the side of the house. He further noted the powdery substance looked consistent "in its makeup" with illegal narcotics and with the substance found in the street amongst the shell casings. Based on the blood spatter and reports from witnesses that no one had gotten out of the victim vehicle, he was concerned there could

be a victim in the house or in the backyard who was bleeding. Corporal Simms also learned that another investigator had entered the side yard after Corporal Simms and had peeked through the window and seen a large amount of blood spatter in the kitchen.

In an attempt to determine whether exigent circumstances such as a medical emergency required entry into the home, Corporal Simms called Detective Farra, who was at the hospital with the victim and McGhee. Detective Farra told Corporal Simms that according to McGhee, McGhee had tried to carry his son inside through the side door following the shooting, but the door was locked so he had returned to his vehicle and rushed to the emergency room. In light of this new information, Corporal Simms grew less concerned that someone was inside the house and in immediate need of medical assistance and instead started to think McGhee may have been lying about going inside steps, which led down to an elevated wooden deck that was a step off of ground level. The fence gate had been left open and the side yard, deck, stairs, and side door were visible through and over the fence. While observing the side door, the officer noticed "several spots of blood spatter as well as an unknown white or brown powdery substance" on the deck.

Corporal Simms then walked through the gate and noticed the blood spatter extended up the stairs and onto the door and its handle, along with the side of the house. He further noted the powdery substance looked consistent "in its makeup" with illegal narcotics and with the substance found in the street amongst the shell casings. Based on the blood spatter and reports from witnesses that no one had gotten out of the victim vehicle, he was concerned there could be a victim in the house or in the backyard who was bleeding. Corporal Simms also learned that another investigator had entered the side yard after Corporal Simms and had peeked through the window and seen a large amount of blood spatter in the kitchen.

Corporal Simms then sought a search warrant for the home. In his search warrant application, Corporal Simms described what he had seen on the deck in the side yard, saying:

> *On the porch leading to the side door was a large amount of blood spatter leading from the opening in the fence to the door. The same blood spatter was also visible on the door, the house next to the door, the door handle, as well as just inside the door on the floor which was visible through a window. Near the fresh blood spatter on the porch was an additional white chalky/powdery substance on the ground.*

A search warrant was issued. Upon its execution, law enforcement found a plastic baggie containing 5.48 grams of cocaine base and 17.96 grams of heroin and fentanyl in McGhee's kitchen. The trail of blood extended through the kitchen and into the nearby master bedroom, where two firearms were found.

McGhee moved to suppress the drugs and guns found in his house. In relevant part, he argued that the search warrant application was based on evidence that was illegally obtained. The only evidence linking McGhee's home to the crime, McGhee argued, was the blood spatter and powdery substance, and the officers would never have seen either the blood or the powder had they not impermissibly entered McGhee's yard and peered through his window in violation of the Fourth Amendment.

Upon review, the Court of Appeals for the Eight Circuit stated as follows:

"The first dispute is whether the officers entered the curtilage of McGhee's home. Determining whether a particular area is part of the curtilage of an individual's residence requires consideration of factors that bear upon whether an individual reasonably may expect that the area in question should be treated as the home itself. Those factors (the Dunn factors) include: (1) the proximity of the area claimed to be curtilage to the home, (2) whether the area is included within an enclosure surrounding the home, (3) the nature of the uses to which the area is put, and (4) the steps taken by the resident to protect the area from observation by people passing by. *United States v. Dunn*, 480 U.S. 294, 301 (1987)).

"Here, two distinct areas are at issue: (1) the front yard, and (2) the side yard containing the deck and stairs to the side door. Though the front yard was close in proximity to the home, it was not protected by a fence or any other enclosure, and no efforts were taken to shield the yard from public observation or entry—unlike other parts of McGhee's yard. The yard contained a paved walkway to the front door, where the mailbox was located. Images of the house show an apparent worn path through the grass from the front door to the chain-link fence separating the front yard from the side yard. Considering the Dunn factors, we conclude the district court did not err in determining that the front yard was not within the curtilage of McGhee's home. The side yard, however, was directly adjacent to McGhee's home, was enclosed by a fence, contained items like a grill that suggested it was for family use, and was partially obstructed from further view by trees and a back fence. Thus, McGhee's side yard is part of his home's curtilage.

"The second dispute is whether the officers violated the Fourth Amendment by entering McGhee's side yard curtilage. As a threshold matter, simply viewing the blood spatter and powdery substance while standing in the front yard did not violate the Fourth Amendment. Though the blood spatter and powdery substance were in the side yard, which is curtilage, Corporal Simms first saw it when he was standing in the front yard, which is not part of the home's curtilage. That the area is within the curtilage does not itself bar all police observation. Even within the curtilage of a home, there is no reasonable expectation of privacy with respect to police observation of what is plainly visible from a vantage point where the police officer has a right to be. Because the officers first viewed the blood spatter and powdery substance from the front yard—a place where they had the right to be—they did not violate the Fourth Amendment in doing so.

"The officers' entry into the side yard following observation of the blood spatter and powdery substance was then justified by the exigent circumstances exception to the warrant requirement. Such circumstances exist if a reasonable law enforcement officer could believe that a person is in need of immediate aid. Here, officers arrived on scene in response to shots-fired calls, they found eight shell casings in front of the house, and they had reason to believe there was at least one victim. Furthermore, Corporal Simms testified that the ultimate reason that they followed that blood trail was to see if there were any victims that potentially could have ran into the house or ran to the backyard who were obviously bleeding. The evidence here was sufficient to lead a reasonable officer to believe that a person is in need of immediate aid, thus triggering the exigent circumstances exception. have believed someone's life was in danger).

Therefore, the district court did not err in denying the motion to suppress."

READ THE COURT OPINION HERE:
https://ecf.ca8.uscourts.gov/opndir/25/02/233674P.pdf

SEARCH AND SEIZURE: Landlords' Entry to Apartment Due to Emergency Entry Clause in Lease; Police Present to Provide Protection
Crite v. Commonwealth of Kentucky, KSC, No. 2022-SC-0541-DG, 12/19/24

James Javonte Crite lived in an apartment that he rented from Century Property Management (Century) which was part of a four-plex. Apartment Manager Beth Roberts oversaw these apartments with help from her employee Lisha Reynolds.

Under the terms of the lease, Century and Crite both had duties and responsibilities. As a tenant, Crite was obligated to "keep the dwelling unit and all parts of the Property safe," and "not engage in criminal activities." He was required to report to Century "any malfunction of or damage to electrical, plumbing, HVAC systems, smoke detectors, and any occurrence that may cause damage to the property."

Century agreed "to make repairs and do what is necessary to keep premises in a fit and habitable condition" and to "maintain in reasonably good and safe working condition, all electrical, gas, plumbing, sanitary, HVAC, smoke detectors…and other facilities supplied by landlord." Pursuant to the "Right to Access" clause, the parties granted the landlord a right to enter in certain, specified circumstances.

This clause provided: *The Tenant shall not unreasonably withhold consent to the landlord to enter into the dwelling unit in order to inspect the premises; make necessary or agreed repairs…; [or] supply necessary or agreed services…The Landlord or Landlord's agent may enter the dwelling unit without consent of the Tenant in case of emergency.*

On July 9, 2019, Crite's brother, William, called Century to inform them that Crite, who was a schizophrenic, had stopped taking his medication and William was taking Crite to the hospital. William also informed Century that the apartment had no electricity or air conditioning, it was very hot inside the apartment, and there was damage to the apartment caused by wires having been pulled out from receptacles, the breaker box, and the water heater. William requested that repairs be made while Crite was in the hospital.

In response, Robertson sent Reynolds to assess the damage. Reynolds inspected the premise to look for electrical damage and observed that wires were pulled from the hot water heater and the HVAC, there was "black" around the breaker, and the temperature inside the apartment was about 100 degrees. Reynolds took photographs of the damage and saw what appeared to be a handgun on a coffee table. Reynolds reported the damage and the presence of the handgun to Robertson.

Due to the exposed wires and apparent damage to the breaker box, Robertson was concerned about the safety of the tenants in the four-plex and scheduled an electrician, Pete Goodman, to make repairs. On July 10, 2019, before going to meet the electrician, Robertson contacted the Owensboro Police Department via Central Dispatch to request officers meet her and the electrician before entering the apartment. The

phone call was recorded. Robertson explained her reason for wanting officers to meet her as follows:

> *There is a tenant there, apparently, I just found out he's schizophrenic, they did not admit him to the hospital last night. We have pictures that the, all the wires in the HVAC are all pulled out, the breaker box, there's no electric in the, in the apartment. I want, I've called for an electrician to come down as well, and I want to make sure the apartment is safe for the other tenants that live there. And then the reason for the officer is because I think this guy may be a felon, possibly, and that got by me because we don't rent to felons and when we went down to investigate yesterday, 'cause he was supposed to be in the hospital, one of my coworkers when she went in and saw the damage, she saw a gun in there, and so if he is a felon and he's, and now I know he's schizophrenic if he's not on his medicine, you know, I don't feel safe…And I don't know if he's there, I have no idea, but I know they did not admit him to the hospital.*

No one from Century attempted to contact Crite or William prior to going to the apartment.

Officers Logan Nevitt and Michael Matthews were dispatched to meet Robertson and the electrician. Officer Matthews testified he was dispatched to assist the apartment manager and was there for the safety of the electrician and the property manager as there was a handgun present, Crite had mental issues, and the property manager did not feel safe going into the apartment.

Both officers were aware that Crite was wanted on a warrant, and Officer Matthews had knowledge that Crite was a convicted felon. Robertson and then the officers knocked and announced their presence, but no one came to the door. Despite no one answering, Robertson still wanted the officers to accompany her and the electrician inside the apartment. Officer Nevitt testified that he and Officer Matthews "had no reason to go inside" the apartment as there were no exigent circumstances but eventually acquiesced to Robertson's request that they go in to check the safety of the apartment.

Robertson unlocked the door with her manager's key and the officers entered first to make sure it was safe for Robertson and the electrician to enter. Officer Matthews testified they were in the apartment a very short time, just long enough to "clear" it and make sure no one was hiding inside. While "clearing" the apartment, the officers saw the supposed handgun on the coffee table and in another room noticed what appeared to be the buttstock of a rifle and a magazine sticking out from a couch. Officer Nevitt testified "it was clear to me what the rifle was based on my knowledge of firearms." The officers also noted there was extensive damage to the apartment, including scorch marks around the breaker box.

Once the officer determined it was safe for them to enter, Robertson and the electrician entered. Robertson observed major damage: things everywhere were torn apart, the thermostat was off the wall with wires exposed, the HVAC had a full panel pulled off with all the wires out, the TV was "disconstructed," the water heater had wires pulled out, the fuse box had a black soot-like stain coming from it (like it had sparked or exploded) and some kind of tool had been used to try to pop that off the wall, the main breaker was tripped, and everything was shut off.

The officers investigated the supposed handgun and determined it was an air pistol (a bb-gun) rather than a handgun. They retrieved the rifle

and determined it was an AR-15. The AR-15 had a magazine and a round chambered. They seized it because they knew Crite was a convicted felon.

The electrician proceeded to make repairs. Before the electrician was finished and while Robertson and the police were still present outside the apartment, Crite returned to the apartment parking lot with his brother. The officers arrested Crite for being a felon in possession of a firearm and he was later indicted for this crime.

Crite filed a motion to suppress evidence of the AR-15, arguing that the officers illegally searched his apartment without any legal justification as they did not possess a warrant or have his consent, and there were no exigent circumstances or any emergency. Crite's motion to suppress the evidence was denied.

Upon review, The Supreme Court of Kentucky found that the landlord and her agent, the electrician, had a right to enter because Crite had consented to such entry pursuant to the "emergency entry" clause of his lease. Pursuant to such consent and where Crite's presence could pose a danger to the landlord and the electrician, the landlord could reasonably ask police officers to enter to provide protection if Crite was present.

"Entry by the police officers was objectively reasonable as it was needed to facilitate the landlord and her agent the electrician being able to safely effect emergency electrical repairs. The police officers properly limited their actions to ensuring the safety of the landlord and the electrician from the specific threat that Crite posed (based on the information that he was a schizophrenic who was not taking his medication, had recently acted irrationally in ripping out the electrical wiring in his apartment, there was a gun in the apartment, and he was a felon). The officers properly limited the scope of their search to ensure he was not present in the apartment rather than engaging in a broader search for investigatory purposes. The suppression of the AR-15 rifle was not required because the officers observed the rifle in plain view."

READ THE COURT OPINION HERE:
https://cases.justia.com/kentucky/supreme-court/2024-2022-sc-0541-dg.pdf?ts=1734620780

SEARCH AND SEIZURE:

No Knock Warrant; Exigent Circumstances
United States v. Williams
CA4, No. 23-4595, 3/4/25

This case arose from an investigation into the disappearance of a suspected drug dealer, Noah Smothers, and a large stash of his narcotics. Smothers was the primary marijuana supplier to Scott Williams and his son, Taeyan, who in turn operated a large-scale enterprise selling drugs to college students. Smothers had plans to meet Scott and Taeyan to resolve a dispute about money they owed him for drugs. But sometime after that scheduled meeting, Smothers disappeared, and his drug storage facility was left empty.

Investigating these events, local law enforcement began tracking his last known locations, inspecting the area around the storage facility and looking into Scott and Taeyan's potential roles in his disappearance. Consistent with that, a Maryland State Police corporal obtained a warrant to search Scott's residence in Prince George's County, Maryland for evidence related to "Smothers, his remains, or his personal property." Although Smothers' body was never found, the execution of the search warrant yielded around $213,000, four firearms, 72.93

pounds of marijuana, 245.83 grams of cocaine, 546.93 grams of methamphetamine and a drug ledger found under the mattress in Scott's room.

Scott Williams moved to suppress all evidence seized from law enforcement's search of his house. According to Scott, law enforcement failed to "knock and announce" their presence before executing the search warrant. As a result, he claims the Fourth Amendment and 18 U.S.C. § 3109 require suppression of the evidence obtained during the search.

The government admitted the police did not knock and announce before executing the warrant. But it advanced two arguments in opposing Scott's motion. First, the government maintained that exigent circumstances permitted a no-knock entry. Second, it insisted that, even if the police should have knocked and announced before entering, suppression of evidence was not the appropriate remedy.

The district court denied Scott's motion to suppress, adopting the government's second argument. It held that suppression is not the remedy for a violation of the knock and announce rule based on the Supreme Court's decision in *Hudson v. Michigan*, 547 U.S. 586 (2006). Scott had argued that Hudson at most applied to his Fourth Amendment argument, not his § 3109 argument. But the district court disagreed, concluding that the Fourth Amendment's reasonableness requirement is reflected in § 3109 and that *Hudson* counsels the same outcome in both instances.

On appeal, Scott contends that evidence should be suppressed when law enforcement violates the statutory knock and announce rule under § 3109, even if *Hudson* holds that suppression is not the appropriate remedy for a Fourth Amendment violation. And because the district court's order did not address exigent circumstances, he alternatively argues the Fourth Circuit Court of Appeals should remand to the district court to resolve that issue.

Upon review, the Court found as follows:

"The warrant was executed in a no-knock manner, we conclude the record shows exigent circumstances that justified law enforcement's actions. We thus need not decide whether the exclusionary rule applies to a violation of § 3109's statutory command.

"The Fourth Amendment guards the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures" and provides that no Warrants shall issue, but upon probable cause. U.S. Const. amend. IV. It is, of course, well understood that 'the Fourth Amendment generally prohibits the warrantless entry of a person's home, whether to make an arrest or to search for specific objects. One element of the reasonableness inquiry is the requirement that law enforcement announce their presence and authority prior to entering to execute a search or an arrest warrant. See *Wilson v. Arkansas*, 514 U.S. 927, 931 (1995).

"For that reason, the knock-and-announce requirement has long been a fixture in law. The knock-and-announce requirement is also reflected in 18 U.S.C. § 3109, which provides that an officer may break open any outer or inner door or window of a house, or any part of a house, or anything therein, to execute a search warrant, if, after notice of his authority and purpose, he is refused admittance or when necessary to liberate himself or a person aiding him in the execution of the warrant. 18 U.S.C. § 3109. Thus, the statute

encompasses the constitutional requirements of the fourth amendment.

"Under both the Fourth Amendment and § 3109, an officer need not knock and announce when circumstances present a threat of physical violence, or if there is reason to believe that evidence would likely be destroyed if advance notice were given, or if knocking and announcing would be futile. The bar for exigent circumstances is not high. Police must have only a reasonable suspicion under the particular circumstances that one of the grounds justifying a no-knock entry exists.

"Based on the information, Corporal Simms requested a search and seizure warrant for the premises to locate Smothers, his remains, or his personal property. The information not only justified the warrant; it also established exigent circumstances—the need for law enforcement to pursue Smothers' potential kidnappers and prevent the potential destruction of a large amount of stolen drugs. Because of these circumstances, the officers did not need to knock and announce before searching Scott's house. As a result, we affirm the district court's denial of Scott's motion to suppress. Law enforcement did not violate the Fourth Amendment or § 3109."

EDITOR'S NOTE: *The recommended procedure when law enforcement seeks a No Knock Warrant is to set forth the circumstance in the affidavit justifying the exigent circumstances which allow dispensing with knock and announce. The affidavit should fully inform the judge who authorizes the search that law enforcement will dispense with knock and announce in this particular situation and that he authorizes this action on the part of law enforcement.*

READ THE COURT OPINION HERE:
https://www.ca4.uscourts.gov/opinions/234568.p.pdf

SEARCH AND SEIZURE:

Reasonable Basis to Extend Traffic Stop

United States v. Urraca, CA6, No. 24-5014, 12/18/24

During a regulatory inspection on May 9, 2022, Sergeant Jeff Fuller of the Tennessee Highway Patrol stopped a semitrailer. The truck's driver, Euclide Aquino Urraca, exhibited suspicious behavior, and the truck's paperwork and cargo had numerous irregularities. Fuller noticed that the truck's cargo did not match the bill of lading, and the driver and his co-driver were evasive when asked about a heavily taped box found under the bunk. A dog sniff of the truck led to the discovery of 20 kilograms of cocaine.

The United States District Court for the Western District of Tennessee held an evidentiary hearing and found that Fuller lacked reasonable suspicion to extend the stop for the dog sniff. The court largely credited Fuller's testimony but rejected his claim that he believed the box contained narcotics at the time of the search. Consequently, the district court granted Urraca's motion to suppress the cocaine found in the truck.

The United States Court of Appeals for the Sixth Circuit reviewed the case and determined that the objective facts known to Fuller at the time of the dog sniff justified the investigation. The court held that the combination of the drivers' suspicious behavior, the irregularities in the truck's paperwork and cargo, and the evasive responses about the box provided reasonable suspicion to extend the stop. The court concluded that the dog sniff was permissible, and the subsequent search, which

uncovered the cocaine, was lawful under the automobile exception. Therefore, the Sixth Circuit reversed the district court's decision to suppress the evidence.

READ THE COURT OPINION HERE:
https://www.opn.ca6.uscourts.gov/opinions.pdf/24a0270p-06.pdf

SEARCH AND SEIZURE:

Traffic Stop and Pat Down of Individual Suspect in Drug Transaction

United States v. Williams, CA6, No. 24-5507, 3/3/25

Following his conviction for possessing a firearm as a felon, Jatally Williams claims on appeal that the district court erroneously declined to suppress evidence discovered during a traffic stop and subsequent pat down under *Terry v. Ohio*, 392 U.S. 1 (1968).

Investigator William Saulsbury of the Johnson City, Tennessee, Police Department was surveilling an apartment for drug-trafficking activity following several tips from confidential informants. There he observed a black Nissan Rogue SUV pull into the parking spot in front of the apartment. As soon as it pulled up, a man came out of the apartment carrying a luggage bag, put the bag in the trunk of the SUV, and returned to the apartment (along with the SUV's passenger, who was later identified as Williams). Defendant was inside for about ten minutes before departing in the SUV. These events rose Saulsbury's suspicions that he had just observed a drug deal.

Saulsbury tailed the SUV, observed it speeding, and activated his lights and siren to initiate a stop. The SUV "continued on" (evading another law enforcement vehicle in pursuit) for about a minute until it was "boxed in" by other traffic at a red light. Officers approached the SUV with weapons drawn and ordered the occupants to exit the SUV. As officers escorted Williams from the vehicle and handcuffed him, one officer asked is there "anything on you that's going to poke, stick, or cut me?" Williams replied that he had "a gun." A pat down of his waistband confirmed Williams's admission.

Upon review, the Court of Appeals for the Sixth Circuit stated:

"The Fourth Amendment protects against unreasonable searches and seizures. This protection extends to brief investigatory stops of persons or vehicles that fall short of traditional arrest. In conducting these Terry stops, an officer may temporarily detain an individual so long as there is a reasonable suspicion supported by articulable facts that criminal activity may be afoot. And following a lawful Terry stop, officers may frisk a stopped individual where there is reasonable suspicion that the person searched may be armed and dangerous. For both a detention and frisk under Terry, reasonable suspicion requires more than a mere hunch but less than probable cause. This is an objective, totality-of-the-circumstances inquiry.

"The district court concluded that law enforcement's detention and pat down of defendant did not violate the Fourth Amendment, reasoning that Saulsbury's observation of a suspected drug transaction, the SUV's failure to immediately stop, and Williams's admission of possessing a firearm together justified the officers' actions.

"Traffic stops are fraught with danger. Law enforcement officials are of course entitled to

take reasonable protective measures for their safety, and it is well-established that, during a traffic stop, an officer may order passengers out of the vehicle pending the completion of the stop. Before pulling over the vehicle and demanding Williams exit, officers: (1) suspected the SUV's occupants (including Williams, who went inside the apartment) had completed a drug-trafficking transaction—which are often accompanied with firearms—and knew a coconspirator was arrested with firearms; and (2) observed the speeding SUV fail to immediately pull over. The failure to immediately pull over and any attempts to evade officers can support a reasonable suspicion.

"These facts, in their totality, give rise to at least a 'moderate chance' that Williams was both engaged in criminal activity and that he was armed and dangerous."

READ THE COURT OPINION HERE:
https://www.opn.ca6.uscourts.gov/opinions.pdf/25a0122n-06.pdf

SEARCH AND SEIZURE:

Stop and Frisk; Extending the Stop

United States v. Hamber, CA8, No. 24-1967, 2/5/25

St. Louis County police officer William Ware was on patrol in Jennings, Missouri on January 30, 2021. Around 2:06 a.m., he received a call from dispatch for a welfare check at a gas station in an area known for "heavy narcotic use." Officer Ware was informed that a truck had been idling at a gas pump for over two hours, despite the gas station closing at midnight. Upon arrival, Officer Ware located a tan Chevrolet Silverado parked and running with its headlights on at a gas pump. The truck also had an open-bed trailer attached to it which contained construction tools and materials. Officer Ware approached the vehicle, used a flashlight to peer inside, and located an individual "passed out" in the driver's seat. After Officer Ware knocked on the window, the individual awoke and identified himself as Hamber.

Officer Ware directed Hamber to turn off the vehicle and began asking him questions. Aside from appearing "as if he had just been woken up," Hamber responded appropriately to Officer Ware's questions and told him that he "probably" was asleep because he had been "working all day, since 5:30 in the morning." Officer Ware asked if there were any firearms in the car, and Hamber said no. Hamber then handed Officer Ware his driver's license, and Officer Ware went back to his vehicle to run a license check.

In running the license, Officer Ware learned that Hamber potentially was a convicted felon. Officer Ware then returned to Hamber's truck and asked him to step out of the vehicle "to see whether he was able to drive or not," as Hamber was still "part of an ongoing investigation." Hamber complied and Officer Ware then directed him to the back of the truck and asked if he had any weapons on him. Hamber informed him that he had a knife. Officer Ware asked Hamber, "Do you mind if I search you then real quick?" Hamber asked Officer Ware to repeat the question then answered, "Do what you gotta do." Officer Ware proceeded to pat down Hamber, finding not only the knife but also a loaded pistol. Officer Ware seized the pistol and knife and placed Hamber in handcuffs while he contacted the St. Louis County records center, which confirmed Hamber was a convicted felon. Officer Ware then placed Hamber under arrest.

Hamber moved to suppress the pistol, claiming it was obtained during a warrantless pat-down search conducted without his voluntary consent

in violation of his Fourth Amendment rights, citing Terry. After a hearing, the magistrate judge issued a report and recommendation recommending that the district court deny the motion because Officer Ware had reasonable suspicion to search Hamber under Terry and Hamber had voluntarily consented to the pat down search that revealed the pistol. The district court adopted the report and recommendation in full, and Hamber was ultimately convicted following a jury trial. Hamber now appeals.

The only issue on appeal is whether Officer Ware impermissibly extended the stop in violation of Hamber's Fourth Amendment rights after initially speaking with Hamber, running his license, and determining the license was valid.

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

"The Fourth Amendment protects against unreasonable searches and seizures. Traffic stops are reasonable seizures if they are supported by either reasonable suspicion or probable cause. After a lawful stop has occurred, such as in this case, an officer may order the occupants to leave their car as a matter of course. Here, Hamber does not dispute the initial stop; he argues instead that Officer Ware impermissibly extended that stop beyond what was necessary to achieve its objective. A constitutionally permissible traffic stop becomes unlawful when its length exceeds the time needed to attend to the stop's mission' and related safety concerns. Officers do not impermissibly extend a stop by taking actions to ensure that vehicles on the road are operated safely and responsibly, which includes completing tasks related to the stop, such as checking the vehicle's registration and insurance, checking the occupants' names and criminal histories, preparing the citation, and asking routine questions. It is only when an officer extends the stop beyond completion of tasks related to the stop that he must do so on the basis of reasonable suspicion of criminal activity.

"Hamber argues that Officer Ware impermissibly extended the stop by ordering him out of his vehicle after running his license, and that, under the totality of the circumstances, Officer Ware did not have the required reasonable suspicion of criminal activity to extend the stop. In his view, the initial stop concluded once Officer Ware determined his license was valid. We disagree. Officer Ware had an objectively reasonable suspicion that Hamber was unfit to drive sufficient to extend his investigation under Terry. Officer Ware discovered Hamber asleep at the wheel of his running vehicle at a gas station in an area known for 'heavy narcotic use' around 2:06 a.m., two hours after the gas station had closed. It is also worth noting that Hamber was discovered because of a request for a welfare check. While Hamber responded appropriately when questioned, it was objectively reasonable for Officer Ware to ask Hamber to step out of the vehicle to confirm that Hamber (1) was not under the influence of any drugs or alcohol and (2) could safely operate the vehicle and not injure a member of the public in doing so. The entire purpose of the stop was to address safety-related concerns, and Officer Ware ordering Hamber out of his vehicle to assess whether he could drive was directly and reasonably related in scope to the circumstances which justified the interference in the first place. Ordering Hamber out of the car was within the scope of the initial stop, which did not conclude until after Hamber consented to the pat-down search and Officer Ware discovered the pistol.

"Hamber argues Officer Ware continued to question him solely because Officer Ware thought

he was a convicted felon, and any other reason is pure pretext. This argument is without merit. Subjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis, a much higher bar than the reasonable suspicion required under Terry. Hamber concedes that Officer Ware had probable cause supporting the initial stop, and we have already determined that the initial stop did not end until after Hamber consented to the pat-down search. Thus, Hamber's pretext argument fails."

READ THE COURT OPINION HERE:
https://ecf.ca8.uscourts.gov/opndir/25/02/241967P.pdf

SEARCH AND SEIZURE: Seizure of Bullet from Defendant's Leg

United States v. Gaye, CA10, No. 23-1240, 3/10/25

Joseph Gaye called 911 from his office, claiming he had been shot by a masked intruder. When officers arrived, they found no signs of forced entry or another person, but did find a bullet casing on Gaye's desk. Suspecting Gaye had shot himself, they obtained a search warrant and found a handgun in a locked drawer, with one bullet missing. The bullet removed from Gaye's leg at the hospital matched the handgun. Gaye, a felon, was indicted and convicted for being a felon in possession of a firearm. He appealed, seeking to suppress the bullet removed from his leg.

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

"We consider the suppression of the bullet taken from Mr. Gaye's leg. After Mr. Gaye was found in his office, paramedics took him to the hospital, where surgeons removed the bullet, and later transferred it to police investigators. The bullet was matched to the handgun found in Mr. Gaye's office and was presented at trial as evidence against him. Although no one sought or a received a warrant for the bullet, it was properly seized, and Mr. Gaye has not shown a privacy interest in the bullet sufficient to invoke the Fourth Amendment.

"The Fourth Amendment protects people—and not simply 'areas'—against unreasonable searches and seizures. *Katz v. United States*, 389 U.S. 346, 353 (1967). Under *Katz*, what one seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected. That expectation of privacy cannot be violated without a warrant, so long as it is an expectation that society is prepared to recognize as reasonable. So those seeking to invoke the Fourth Amendment to suppress the results of a warrantless seizure must show that their subjective expectation of privacy would be accepted by the public as objectively reasonable.

"The parties have vastly different views on the proper legal framework of this case. Mr. Gaye equates the bullet—taken from his body—with sensitive, personal information, or bodily material, such as urine or blood, which is private and not disclosable to law enforcement in the medical context. But the government characterizes the bullet—once removed with consent—as relinquished property in plain view of officials with "probable cause to associate the property with criminal activity.

"The government's view is more convincing. To understand why, two concessions are key. First, the government concedes that the staff at the hospital were government actors. The government concedes for this case that the hospital staff acted on behalf of or in coordination with law enforcement when they removed the

bullet and bagged it as evidence. Second, Mr. Gaye concedes that he consented to treatment and removal of the bullet. He admits that his 911 call and request for aid was consent to the surgical removal of the bullet. So the precise dispute is over what rights or interests Mr. Gaye had in the bullet once it was removed from his leg. While on the phone with the 911 operator, he had requested emergency medical assistance, and never limited or conditioned that request. True, he was never told that the bullet would be given to law enforcement investigators, but neither did he ever claim an ownership or privacy interest in the bullet.

"Mr. Gaye's consent to have the bullet removed covers its surgical extraction from his body. He cannot—and does not—object to that intrusion on Fourth Amendment grounds. A search and seizure, of course, may be made without a warrant or probable cause if the suspect voluntarily consents. Mr. Gaye attempts to limit his consent only to the bullet's removal, not its seizure by law enforcement. But seizure occurs when there is some meaningful interference with an individual's possessory interests in that property.

"In other words, the bullet must have been seized the moment that hospital staff (stipulated public officials) took the bullet from Mr. Gaye's leg. That seizure cannot be disaggregated from the transfer to police. Because he had consented to the bullet's seizure by government officials, Mr. Gaye had no continuing interest to prevent their transferring custody of the bullet to law enforcement. Mr. Gaye also abandoned any privacy interest in the bullet after its removal by reporting that he had been shot. As far as anyone at the hospital knew, the bullet was evidence of a shooting, and Mr. Gaye had no claim to it. We have repeatedly held that a person who falsely disclaims ownership of a space or item cannot later assert a Fourth Amendment interest to satisfy suppression.

"Mr. Gaye's story to first responders that a masked intruder fired the bullet abandoned his own interest in the bullet, dooming his argument that a warrant was necessary to seize the bullet once it was removed. A warrantless search and seizure of abandoned property is not unreasonable under the Fourth Amendment. Considering the circumstances, the bullet was also seized properly under the plain view exception. Where there is probable cause to associate the property with criminal activity that is immediately apparent, property in plain view may be seized reasonably, without a warrant. The bullet, once removed with consent, was in plain view of officials, and it was immediately apparent that there was probable cause to associate the bullet with the crime—either the shooting or false reporting.

"Consent, abandonment, plain view—any one of these exceptions alone would be enough to validate the search. Together, they are overwhelming. Because the bullet was reasonably seized, the evidence used against Mr. Gaye was not subject to the exclusionary rule, and the suppression was properly denied."

READ THE COURT OPINION HERE:
https://www.ca10.uscourts.gov/sites/ca10/files/opinions/010111200402.pdf

SEARCH AND SEIZURE: Warrantless Use of a Pole Camera for 50 Days

United States v. Harry, CA2, No. 23-7106, 3/7/25

Kenston Harry raises a question of first impression in this Circuit: whether the government's warrantless use of a stationary pole camera

situated outside an individual's business for approximately 50 days qualifies as a Fourth Amendment search.

The events relevant to this appeal center on the Action Audio Store, an automotive business in Hartford, Connecticut, that Harry owned and operated. The exterior of Action Audio and its adjoining parking lot are situated in a "triangle" bordered by two streets. On one side of the parking lot, there is a low fence with railings spaced far enough apart to view the parking lot clearly through them. In addition, that fence bore, at the time of the captured pole-camera footage, colorful signs and advertisements. These signs also did not visually obstruct the view of the premises.

In April 2021, as part of their investigation, DEA agents affixed a video surveillance camera to a utility pole on a lot across the street from Action Audio. The camera was connected to the internet and fed footage to DEA investigators, who could remotely tilt, pan, and zoom the camera. The camera recorded 24 hours per day for approximately 50 days. Its feed captured Action Audio's exterior, the outdoor parking lot, and, occasionally, a slice of the interior of the business's garage bay whenever the garage door was raised.

In June 2021, Harry was arrested. Investigators searched Action Audio, the Bloomfield residence, his vehicles, and his cell phone. They found narcotics and firearms in both Action Audio and the Bloomfield residence.

The district court denied Harry's motion to suppress the pole-camera evidence. The government introduced 28 minutes' worth of footage at trial, which showed Wiley, Harry, and another co-defendant transferring bags of what the government adduced to be controlled substances to their vehicles. A jury convicted Harry of possession with intent to distribute fentanyl, cocaine, and marijuana, respectively; and of conspiracy to accomplish the same. Harry appealed, raising the admissibility of the pole-camera footage at his trial.

Upon review, the Second Circuit Court of Appeals found:

"The Fourth Amendment protects against unreasonable searches and seizures. But not all law enforcement-initiated surveillance qualifies as a 'search'. Rather, a Fourth Amendment search occurs only if the target had a reasonable expectation of privacy in the area searched. *Katz v. United States*, 389 U.S. 347, 360 (1967), That standard, in turn, is defined by a two-part, conjunctive test: first, has the individual manifested a subjective expectation of privacy in the object of the challenged search? Second, is society willing to recognize that expectation as reasonable?" Put differently, to benefit from the exclusionary rule, Harry had to show that he maintained both a subjective and an objectively reasonable expectation of privacy in Action Audio's exterior and parking lot.

"We now hold that the use of a stationary pole camera, at least as deployed here—to monitor the publicly visible exterior of a target's business for a period of 50 days—does not constitute a search under the Fourth Amendment.

"Harry made little to no effort to conceal the goings-on outside of Action Audio. Here, only a very low fence borders one side of the Action Audio parking lot. Through it, the parking lot and the exterior of Action Audio—and the activities therein—remained clearly visible. Harry has thus manifested no "subjective expectation of privacy

in the object of the challenged search. Action Audio's parking lot and storefront were open—and more importantly, visible—to the public. Generally, the police are free to observe whatever may be seen from a place where they are entitled to be.

"We conclude that here, the DEA's warrantless collection of footage of activities in public view at Harry's business, for a period of 50 days, using a stationary pole camera, did not violate the Fourth Amendment. Accordingly, the district court did not err in admitting video from the camera's feed at Harry's trial."

READ THE COURT OPINION HERE:
https://ww3.ca2.uscourts.gov/decisions/isysquery/c97a7782-ef52-458d-8dfe-6426ad90caea/1/doc/23-7106.pdf#xml=https://ww3.ca2.uscourts.gov/decisions/isysquery/c97a7782-ef52-458d-8dfe-6426ad90caea/1/hilite/

SECOND AMENDMENT: Possession of an AR-15 with a 7.5 Inch Barrell

United States v. Rush, CA7, No. 23-3256, 3/10/25

Jamond Rush was charged with possessing an unregistered firearm, specifically an AR-15 rifle with a 7.5-inch barrel, in violation of the National Firearms Act (NFA). Rush moved to dismiss the indictment, arguing that the statute under which he was charged was unconstitutional based on the Supreme Court's decision in *N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen.* The government opposed, citing the Supreme Court's earlier decision in *United States v. Miller*, which upheld similar regulations. The district court denied Rush's motion, holding that Bruen did not affect the constitutionality of regulating unregistered short-barreled rifles.

The U.S. District Court for the Southern District of Illinois reviewed the case and denied Rush's motion to dismiss. The court held that Rush's conduct was not protected by the Second Amendment's plain text or historical understanding. The U.S. Court of Appeals for the Seventh Circuit affirmed the district court's decision, holding that the NFA's requirement to register certain firearms, including short-barreled rifles, is constitutional. The court relied on the precedent set by *United States v. Miller*, which upheld similar regulations, and found that the NFA's provisions are consistent with the historical tradition of firearm regulation. The court concluded that the regulation of short-barreled rifles does not violate the Second Amendment, as these weapons are not typically possessed by law-abiding citizens for lawful purposes like self-defense. The court affirmed Rush's conviction and the denial of his motion to dismiss.

READ THE COURT OPINION HERE:
https://media.ca7.uscourts.gov/cgi-bin/OpinionsWeb/processWebInputExternal.pl?Submit=Display&Path=Y2025/D03-10/C:23-3256:J:Kolar:aut:T:fnOp:N:3343444:S:0

SECOND AMENDMENT:

Serious Threat to Public Safety

United States v. Morton, CA6, No, 24-5022, 12/16/24

Jaylin Morton was indicted for possessing a firearm as a felon, in violation of 18 U.S.C. § 922(g)(1). Morton moved to dismiss the indictment, arguing that the prosecution violated his Second Amendment rights. The district court denied his motion, and Morton conditionally pleaded guilty, retaining the right to appeal the denial of his motion to dismiss.

The United States District Court for the Eastern District of Kentucky denied Morton's motion to dismiss, reasoning that his prior felonies demonstrated that he was a serious and direct threat to public safety. The court concluded that § 922(g)(1) constitutionally applied to him. Morton then appealed the district court's decision.

The United States Court of Appeals for the Sixth Circuit reviewed the case. The court held that Morton's criminal history, which included multiple violent offenses such as shooting at his ex-girlfriend and her family, and assaulting his then-girlfriend, demonstrated his dangerousness. The court applied the framework established in *United States v. Williams*, which allows for disarming individuals who are deemed dangerous based on their criminal history. The court concluded that Morton's conviction was consistent with the Second Amendment as interpreted in *Williams* and affirmed the district court's denial of Morton's motion to dismiss the indictment.

READ THE COURT OPINION HERE:
https://www.opn.ca6.uscourts.gov/opinions.pdf/24a0269p-06.pdf

SUBSTANTIVE LAW: Knowing Possession

United States v. Ellis, CA8, No. 24-1421, 2/7/25, On July 28, 2019

Arkansas State Trooper Dean Pitchford stopped Derrick Daniel's truck in a high-traffic area of Little Rock, Arkansas, for a hanging taillight. Ellis, the front seat passenger, fled from the vehicle during the stop, prompting Trooper Pitchford to radio for assistance. Trooper Cleyton McDonald responded to the call and located Ellis running through an alleyway next to an apartment building. As Trooper McDonald pursued him, Ellis jumped and tossed an object over an adjacent fence. Trooper McDonald subdued Ellis and placed him under arrest. Trooper McDonald then asked Ellis what he had thrown over the fence. Troopers Quincy Harris and Dwight Roam arrived at the scene shortly thereafter and, at Trooper McDonald's direction, searched the area beyond the fence. They recovered a hat and a 9mm handgun from a parking lot on the other side of the fence.

Ellis was charged with being a felon in possession of a firearm. At trial, Troopers Pitchford, McDonald, Harris, and Roam testified about the traffic stop and Ellis' arrest. The government also introduced testimony from an agent with the Bureau of Alcohol, Tobacco, Firearms, and Explosives who confirmed that the 9mm handgun had been manufactured in Florida and transported across state lines to Arkansas. Dashboard camera footage from Trooper Pitchford's and McDonald's vehicles was also admitted into evidence. In the footage, Ellis appears to jump and toss an object over the fence during the chase. Ellis' defense, on the other hand, focused on disputing his connection to the handgun. Daniel testified that he had spent the day with Ellis and did not see him with a handgun. The jury found Ellis guilty.

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

"To convict Ellis the government was required to prove: (1) Ellis had a prior conviction for a crime punishable by imprisonment exceeding one year; (2) he knowingly possessed a firearm; and (3) the firearm had been in or affected interstate commerce. On appeal, Ellis challenges only the second element—knowing possession.

"Knowing possession may be actual or constructive. Constructive possession requires proof that the defendant knew of the object, had the ability to control it, and intended to do

so. Although constructive possession may be established through circumstantial evidence, the government must demonstrate a 'sufficient nexus' between the defendant and the firearm. Mere physical proximity to the firearm is not enough.

"Ellis, relying on *United States v. Parker*, 871 F.3d 590, 604 (8th Cir. 2017), contends that the government failed to prove more than physical proximity. In *Parker,* the government attempted to rely on a co-defendant's movements in the vehicle before the chase to establish possession, but this Court found that evidence insufficient because Black's movements were not directly connected to the gun's location. Here, the evidence establishes a clearer connection. Dashboard camera footage shows Ellis jumping and tossing an object over the fence as Trooper McDonald pursued him. Other officers recovered the firearm in the area where Ellis appeared to have thrown something. Although, as Ellis points out, the footage does not clearly show what was thrown, a reasonable jury could infer that Ellis threw the firearm recovered on the other side of the fence. In doing so, Ellis exercised dominion and control over the firearm. The evidence presented at trial demonstrates more than mere proximity and was sufficient to establish Ellis knowingly possessed a firearm. We affirm Ellis' conviction."

READ THE COURT OPINION HERE:
https://ecf.ca8.uscourts.gov/opndir/25/02/241421P.pdf