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## Contents



## CIVIL LIABILITY: Accidental Shooting of Law Enforcement Officer by Another Law Enforcement Officer

*Green v. City of St. Louis*, CA8, No. 23-2087, 4/8/25

At approximately 10 PM on the evening of June 21, 2017, officers of the St. Louis Metropolitan Police Department (SLMPD), including Officer Christopher Tanner, were surveilling and covertly following a suspected stolen vehicle. The vehicle occupants detected the police and fled, with the officers in pursuit. The police deployed spike strips to puncture the vehicle's tires; the occupants began shooting at the pursuing officers. The vehicle soon crashed near the home of Officer Green, an off-duty fifteen-year SLMPD officer who was with his neighbor in the driveway.

Officer Green saw the stolen vehicle crash. Two individuals exited the vehicle and ran to his neighbor's gangway. A police vehicle arrived and two officers began chasing the suspects. Officer Green saw a third individual exit the crashed vehicle. Hearing gunfire, Officer Green and his neighbor hid behind a car in the driveway. The third individual dropped to the ground, then got up, picked up his firearm, and continued through Officer Green's yard. He pointed the firearm at the car where Officer Green and his neighbor were hiding. Officer Green raised his department-issued firearm and commanded, "Police, put the gun down." The individual instead ran toward an alley with his gun still pointed at Officer Green.

From behind, Officer Green heard the command, "Put the gun down." Assuming this was a direction from another officer, Officer Green dropped his firearm and lay on the ground. Gunfire from the direction of the fleeing suspects had ceased. Officers at the scene did not hear any shots fired in the two

to three minute period between the time Officer Green dropped to the ground and when Officer Tanner shot Officer Green.

Detective Carlson, at the scene, identified Officer Green and yelled, "There's an off-duty police officer here, don't shoot. His name is Milton Green. He lives here. Don't shoot." Detective Carlson instructed Officer Green to come to him. Officer Green stood up, picked up his firearm with his right hand, pointed the muzzle toward the ground, and extended his left hand with his metal police badge visible surrounding officers to see. It is undisputed that Officer Green then took a few steps toward Detective Carlson. He saw another officer approaching but continued to move toward Detective Carlson. There is no evidence Officer Tanner heard Detective Carlson's alert or knew the person approaching Carlson was Officer Green until after the shooting.

Officer Tanner and his partner, Officer Burle, arrived at the scene after the officers who pursued the first two suspects and joined the pursuit. Officers Tanner and Burle were approximately 30-50 feet away from Officer Green as he approached Detective Carlson. Officer Tanner testified that, as they approached, he saw a black male, whom he presumed to be a suspect from the crashed vehicle, on the ground with a gun next to him. The individual was wearing clothing that appeared similar to the clothing worn by the armed suspects that Tanner and Burle were pursuing. Officer Tanner testified that he did not see Detective Carlson as Tanner approached.

Both Officer Tanner and Detective Carlson had their flashlights directed toward Officer Green. Officer Green testified that, as he turned and approached Detective Carlson, he took off his badge and put it out in front of him with his left hand extended so people could see it, with the badge facing in the direction of Officer Tanner or any other officer. Officer Tanner testified that he saw Officer Green stand up, pick up the firearm with his right hand while facing away from Officer Tanner, turn toward Tanner, and begin to move toward officers. It looked like a nickel-plated gun in Officer Green's raised hand. Officer Tanner commanded Officer Green to drop the firearm. Green testified he heard one command to drop the gun but Officer Tanner fired without allowing sufficient time to comply. The shot hit Officer Green in the elbow, causing permanent injuries. As Officer Green fell, Detective Carlson yelled at Officer Tanner, "You shot Milton. I told you not to shoot him. I told you not to shoot him."

Green filed a lawsuit under 42 U.S.C. § 1983 against Tanner and the City of St. Louis, alleging Fourth and Fourteenth Amendment violations and state law claims. The district court granted summary judgment in favor of the defendants, concluding that Tanner did not violate Green's constitutional rights and that official immunity barred the state-law claims. The United States District Court for the Eastern District of Missouri granted summary judgment to the defendants, finding that Tanner's actions were reasonable under the circumstances and that there was no constitutional violation. The court also ruled that Green's Monell claim against the City failed due to the lack of an underlying constitutional violation.

The United States Court of Appeals for the Eighth Circuit reviewed the and affirmed the district court's decision. The appellate court held that Tanner's use of force was objectively reasonable given the circumstances, which involved a rapidly evolving and dangerous situation. The court also upheld the dismissal of the Monell claims against the City, as there was no constitutional violation by Tanner.

**READ THE COURT OPINION HERE:**
https://ecf.ca8.uscourts.gov/opndir/25/04/232087P.pdf

## CIVIL LIABILITY: Concealed Carry Permit and Firearm in Vehicle; Use of Force

*Jones v. Ceinski*, CA11, No. 23-12178, 5/8/25

At about 11:30 PM on August 8, 2020, Officer David Ceinski saw a car driven by Jeremy Jones arrive at an intersection in Sarasota, Florida. While the car was stopped at the intersection, passenger John Thomas opened the door and leaned out of the car. After the traffic light turned green, Jones made a left turn with the passenger door open and Thomas's body still partially out of the car.

Concerned that someone was trying to exit or being prevented from exiting the car, Ceinski initiated a traffic stop for careless driving of a vehicle. The parties' agreement on the facts ends there. Because this appeal comes to the court on summary judgment, the remaining discussion states the facts in the light most favorable to Jones as is required by law.

Jones saw Ceinski's overhead lights behind him as he pulled into a restaurant parking lot. He parked and remained in the car until Ceinski approached the driver's side door and asked him to exit the car. Jones complied with the officer's instructions, but because of a severe hand deformity, it took him longer to exit the car than it would for an average person.

Jones was born with "severe osteoporosis" that causes his hands and feet to remain in a flexed position. So ordinary hand tasks like opening a car door take him much longer than someone without his handicap. Jones also stands five-feet-four-inches tall and weighs slightly over 100 pounds. Jones did not inform Ceinski about his disability, but he asserts that it would have been clearly obvious to Ceinski as soon as he stepped out of the car that he was handicapped. When Jones exited the car, Ceinski asked for his driver's license and vehicle registration. Jones provided both and volunteered his concealed carry permit. After inspecting the permit, Ceinski asked Jones whether there were any weapons in the vehicle." Jones replied, "Yes, sir" but refused to tell Ceinski the firearm's specific location. At some point, Ceinski called for backup.

Ceinski eventually saw the firearm under the driver's seat while Jones stood in front of the car while the driver's side door was open. In response, Ceinski grabbed Jones's wrist, twisted his arm, and pushed him against the car. Jones asserts that he did not reach back toward the car or firearm before Ceinski used force against him.

While pressing Jones against the car, Ceinski put his arms around Jones's neck and choked him to the point that he was unable to breathe. Ceinski told Jones to stop resisting, and Jones responded, "I'm not resisting. You're choking me. I can't breathe. Let me go." Ceinski then punched Jones on the top of the head with a closed fist while he held him in a chokehold.

At some point, Thomas exited the passenger side of the car and started screaming at Ceinski to stop choking Jones. He also told Ceinski that Jones was handicapped and could not breathe. Ceinski then released Jones and retrieved the firearm from under the driver's seat. He returned to his police vehicle with the firearm and prepared a traffic citation until backup arrived.

Jones asserts that Ceinski used racial epithets during this incident. In his affidavit, Jones asserts that Ceinski "repeatedly" called him a

"handicapped n***a." And he alleges that Ceinski told Thomas to "back up n***a or I'll kill you." In his deposition, Jones asserted that Ceinski "kept saying," "handicapped n****r, you are going to die today." He also alleged that Ceinski told Thomas, "You shut up, boy. You wait your turn. You're going to get yours next." And Jones alleged that Ceinski told Thomas, "After I get done beating your handicapped brother, I'm going to beat you next." Ceinski denies making these statements or being verbally hostile toward Jones or Thomas.

When backup arrived, Jones asked for medical assistance because he was experiencing "difficulty breathing and pain in the ribs." Lieutenant Michael Dumer instructed a different deputy to "get an ambulance dispatched right away." When paramedics arrived, Jones complained that "he had neck pain, that the deputy had put him in a choke hold, and that he wanted to go to the hospital to get evaluated."

Paramedics transported Jones to Sarasota Memorial Hospital. Jones asserts that he was evaluated for a head contusion, neck pain, rib pain and a possible wrist fracture. He alleges that he was discharged with instructions for a possible fractured wrist and that he sustained lasting emotional damages, including "post-traumatic stress, anxiety, and night terrors." Jones also asserts that he "later found out that the incident caused an umbilical hernia."

Jones sued Ceinski and alleged that Ceinski violated his Fourth Amendment right to be free from excessive force. 42 U.S.C. § 1983. The parties consented to proceed before a magistrate judge, who granted Ceinski summary judgment based on qualified immunity and ruled that Ceinski's conduct did not violate any clearly established federal right.

The United States Court of Appeals for the Eleventh Circuit reviewed the case. The court held that a reasonable jury could find that Ceinski used excessive force when he choked and punched Jones after he was subdued and could not access his firearm. The court noted that Jones's right to be free from excessive force was clearly established, since controlling case law placed the illegality of Ceinski's actions beyond debate. Consequently, the court reversed the summary judgment in favor of Ceinski and remanded the case for further proceedings.

**READ THE COURT OPINION HERE:**
https://media.ca11.uscourts.gov/opinions/pub/files/202312178.pdf

## CIVIL LIABILITY: Defense of Illegality

*Harris v. Howard*, SCV, No. 240378, 4/3/25

Dennis Christopher Howard sued Spotsylvania County Sheriff Roger L. Harris and Deputy David Setlock for injuries from a self-inflicted gunshot wound while detained in a law enforcement vehicle. Howard claimed Harris was responsible for Setlock's actions, which he argued constituted gross negligence. The incident began when Howard, a convicted felon, was found with a suicide note and missing shotgun. After being detained and searched, Howard maneuvered his handcuffs, accessed a handgun left in the vehicle, and shot himself.

The Circuit Court of Spotsylvania County granted summary judgment for the defendants, ruling that Howard's gross negligence claim failed as a matter of law and that the defense of illegality barred his claims. The court found that Setlock's actions did not amount to gross negligence and that Howard's injuries resulted from his illegal act of possessing a firearm as a convicted felon.

The Court of Appeals of Virginia reversed the circuit court's decision, holding that Howard had stated a viable gross negligence claim and that his claim was not barred by the illegality defense.

The Supreme Court of Virginia reviewed the case and concluded that Howard's claim was barred by the defense of illegality. His violation of Virginia law, which prohibits convicted felons from possessing firearms, was a proximate cause of his injuries. The court reversed and entered final judgment for the defendants, finding that Howard's allegation of an "unsound mind" did not negate the strict liability offense of possessing a firearm as a convicted felon.

**READ THE COURT OPINION HERE:**
https://cases.justia.com/virginia/supreme-court/2025-240378.pdf?ts=1743682465

**CIVIL LIABILITY: First Amendment Retaliation; Excessive Force**
*Brady v. City of Myrtle Beach*, CA4, No. 23-1874, 5/16/25

The City of Myrtle Beach had a surge in violent crime in an area known as "the Superblock." Between 2015 and 2016, eleven people were shot, and dozens more were sexually assaulted, battered, or robbed, primarily around a small cluster of bars. The City increased police presence and investigated these establishments for compliance with safety regulations. Despite these measures, crime persisted, leading the City to shut down two bars for repeated legal violations, while a third bar closed due to lack of business. Years later, the bars and the landlord sued the City and the City Manager, alleging violations of the Takings Clause, Due Process Clause, and Equal Protection Clause, claiming the City unlawfully targeted them because their owners and clientele were predominantly racial minorities.

The United States District Court for the District of South Carolina granted directed verdicts for the City on all claims during a jury trial. The court held that the appellants did not have a constitutionally protected property interest in the right to conduct their business. It found that the City's enforcement actions were within the legitimate bounds of state police power.

The United States Court of Appeals for the Fourth Circuit affirmed the district court's decision. The court held that the City acted within its lawful authority to address serious public safety threats and enforce compliance with state and local regulations. The appellants' claims were deemed speculative and unsupported by the evidence presented at trial. The court found no discriminatory intent or violation of due process.

**READ THE COURT OPINION HERE:**
https://www.ca4.uscourts.gov/opinions/231874.p.pdf

**CIVIL LIABILITY: Excessive Force; District Court Questions Number of Shots Fired**
*Estevis v. United States*, CA5, Vo. 24-40277, 4/16/25

Around three in the morning on April 9, 2020, LPD Officer Karla Pruneda noticed Alejandro Estevis slumped over inside his pickup truck on the side of the road. Intending to perform a welfare check, she parked her patrol car behind the truck and activated her bar lights. Estevis fled.

For the next two hours, police chased Estevis through the city and surrounding area, with Estevis running stop signs and traffic lights and, at times, reaching speeds over 100 mph. At some point, LPD officers were ordered to disengage, but some, including Officer Guajardo, eventually rejoined the pursuit. Meanwhile, officers from

other agencies—the Texas Department of Public Safety and the United States Border Patrol—placed spike strips in Estevis's path. By around 5 a.m., officers had succeeded in deflating some of Estevis's tires.

Yet Estevis continued to flee, albeit at a low speed. At this point, responding to a request by LPD Sergeant Lozano, Officer Cantu used his Crown Victoria to slowly force Estevis off the road and onto a grassy area past the shoulder. That maneuver and what follows were captured on several dash-cam and body-cam videos from multiple angles.

Officer Guajardo positioned his vehicle directly behind Estevis's stopped truck. Both officers then exited their vehicles, Officer Cantu drawing his gun. Estevis immediately threw his truck into reverse and, smoke billowing from his wheels, rammed Guajardo's vehicle. Guajardo screamed "Stop!" and warned advancing officers, "Watch the crossfire!"

Seconds after hitting Guajardo's car, Estevis's truck lurched forward and Guajardo fired three shots at the truck's cabin (shots 1–3). Estevis hopped the right-hand curb and collided with a fence, engine revving. During the next four-to-five seconds, Guajardo advanced and, just as the engine stopped revving, fired three more times (shots 4–6). One-to-two seconds after that, Cantu also fired three times (shots 7–9).

Estevis was struck by at least two of the nine bullets. One hit his upper back and lodged in his spine, likely paralyzing him permanently. After the shooting stopped, the officers waited for ballistic shields before apprehending Estevis because they did not know whether he had a weapon. Emergency medical personnel later arrived and extracted Estevis from the vehicle.

In 2022, Estevis sued Officers Cantu and Guajardo in federal district court for using excessive force in violation of the Fourth Amendment. He also brought municipal liability claims against the City of Laredo. All defendants moved for summary judgment, which the court granted in part. It dismissed the claims against the City and ruled the officers were protected by qualified immunity as to shots 1–3. As to shots 4–9, however, the court denied qualified immunity.

The United States Court of Appeals for the Fifth Circuit reversed the decision of the district court and rendered judgment granting the officers qualified immunity for all shots fired. At a minimum, the officers did not violate clearly established law by firing those additional shots under the dangerous and unpredictable circumstances facing them.

**READ THE COURT OPINION HERE:**
https://www.ca5.uscourts.gov/opinions/pub/24/24-40277-CV0.pdf

**CIVIL LIABILITY: Excessive Force; 911 Call; Dispute of Facts Leading to Injury**
*Ledbetter v. Helmers*, CA8, No, 24-1427, 4/3/25

In the afternoon of December 16, 2020, Ledbetter and three others were drinking whiskey in a tent in Springfield, Missouri in the afternoon of December 16, 2020. The tent, which was part of a homeless community, was in a wooded area near an apartment complex and some local businesses. At some point, two of the occupants left to get water and firewood, leaving Ledbetter in the tent with a woman named Jamie.

That day, Officer Helmers and his partner, Gilbert Correa, were on duty with the Springfield Police Department. Around 4:00 that afternoon, they

were notified of a 911 call reporting that the caller's girlfriend was being held captive in a tent by a man armed with a knife. Helmers and Correa responded, meeting the caller at a nearby parking lot. After telling the officers that he believed his girlfriend was "in harm or being kidnapped or held against her will," the caller led Helmers and Correa to Ledbetter's tent. With dusk setting in, the caller identified the tent for the officers, who then directed the caller to stay back at a distance.

What happened next is disputed. According to the officers, Helmers approached the tent and identified himself as a police officer. A male voice from the tent responded, "Fuck you," followed by a female voice saying, "Don't hurt them." Ledbetter then ripped open the tent while holding a knife and stumbled out towards Helmers, who drew his firearm and retreated. Both Helmers and Correa—who had also drawn his firearm—began ordering Ledbetter to drop the knife. Ledbetter did not immediately comply, but eventually he dropped the knife after multiple warnings. Correa then turned his attention to the tent, while Helmers ordered Ledbetter to move away from the knife. Ledbetter did not move, so after two or three more commands, Helmers holstered his weapon and approached to escort Ledbetter away from the knife. Helmers grabbed Ledbetter's left wrist, but he felt Ledbetter tense up. Fearing that Ledbetter might become combative, Helmers grabbed Ledbetter's collar for a second point of contact and began ordering Ledbetter to get on the ground. When Ledbetter did not move, Helmers took a step backwards and pulled Ledbetter to the ground in front of him. Helmers then cuffed him and searched him for weapons. Not finding anything, Helmers sat Ledbetter up and asked if he had been injured. Ledbetter replied that he had fallen earlier in the day, but the injury felt worse, and he was in pain. So Helmers called an ambulance, which arrived and took Ledbetter to the hospital. From start to finish, the interaction lasted less than two minutes.

Ledbetter tells a far different story. While sitting in the tent with Jamie, Ledbetter heard voices approaching the tent. Assuming his campmate had returned with firewood, Ledbetter grabbed a knife with a serrated blade that he used for chopping wood and exited the tent. When he got out, he looked up and saw Correa, gun drawn and standing 15 to 20 feet away. Ledbetter immediately dropped the knife and put his hands in the air without prompting. When the officers ordered him to get on the ground, Ledbetter tried to comply. As Ledbetter was doing so, Helmers grabbed him, carried him several feet, flipped him upside down and body-slammed him onto a concrete slab like he was "spiking a football." Ledbetter began seeing black spots, and his leg had twisted around. The officers tried to pick him up, but Ledbetter yelled out that something was wrong. Helmers initially doubted the severity of Ledbetter's injuries, but Correa called an ambulance. On the ride to the hospital, Ledbetter was in such pain that the paramedics gave him multiple shots of Fentanyl. Ledbetter had never suffered a previous hip injury, and he complied with all of the officers' orders.

The United States District Court for the Western District of Missouri denied Helmers's motion for summary judgment based on qualified immunity, noting disputed facts about the threat Ledbetter posed and the amount of force used.

The United States Court of Appeals for the Eighth Circuit held that a reasonable jury could find Helmers used excessive force, given the evidence. However, the court also held that it was not clearly established that Helmers's use of force was excessive under the circumstances, as existing

case law did not provide sufficient guidance for the specific situation Helmers faced. Therefore, the court affirmed the district court's judgment granting Helmers qualified immunity.

**READ THE COURT OPINION HERE:**
https://ecf.ca8.uscourts.gov/opndir/25/04/241427P.pdf

**CIVIL LIABILITY: Hostage Situation; Temporary Detention of Hostages by Law Enforcement**
*Moderson v. City of Neenah*, CA7, No, 23-2643, 5/9/25

Police officers responded to a hostage situation at Eagle Nation Cycles in Neenah, Wisconsin. Initial reports indicated a lone gunman had fired a shot and was threatening to kill hostages. When officers attempted to enter the shop, they were met with gunfire and heavy smoke, leading them to suspect an ambush. Several hostages escaped, and the officers detained and questioned them, transporting two to the police station. Three of these hostages later sued the City of Neenah and multiple officers, claiming their Fourth Amendment rights against unreasonable seizures were violated.

The United States District Court for the Eastern District of Wisconsin found the plaintiffs' detention reasonable and ruled that no constitutional violation occurred.

The United States Court of Appeals for the Seventh Circuit affirmed the district court's decision, holding that the officers' actions were reasonable under the circumstances of a violent hostage situation. The court found that the officers were justified in temporarily detaining the plaintiffs to ascertain their identities and ensure safety. The court did not address the issue of qualified immunity, as it concluded that no constitutional violation occurred.

**READ THE COURT OPINION HERE:**
https://media.ca7.uscourts.gov/cgi-bin/OpinionsWeb/processWebInputExternal.pl?Submit=Display&Path=Y2025/D05-09/C:23-2843:J:Jackson-Akiwumi:aut:T:fnOp:N:3370912:S:0

**CIVIL LIABILITY: Journalist; Buffer Zone Law**
**Nicodemus v. City of South Bend**, CA7, No. 24-1099, 5/15/25

A citizen-journalist from South Bend, Indiana, challenged the constitutionality of Indiana's "buffer law," which makes it a crime to knowingly or intentionally approach a law enforcement officer within 25 feet after being ordered to stop approaching. The journalist, who records and livestreams police activity, argued that the law violated his First Amendment right to record the police in public spaces. The incident leading to the challenge occurred when the journalist was ordered by police to move back while recording a crime scene, which he complied with under threat of arrest.

The United States District Court for the Northern District of Indiana found the buffer law constitutional, ruling that it only had an incidental effect on the public's First Amendment rights and served legitimate public safety interests.

The United States Court of Appeals for the Seventh Circuit held that Indiana's buffer law is a content-neutral regulation of the time, place, and manner of expression. It found that the law is narrowly tailored to serve significant government interests, such as officer and bystander safety

and the integrity of police investigations, without burdening substantially more speech than necessary. The court also determined that the law leaves open ample alternative channels for communication, as it does not prevent individuals from recording police activity from a reasonable distance. The Seventh Circuit affirmed the district court's judgment, upholding the constitutionality of Indiana's buffer law.

**READ THE COURT OPINION HERE:**
https://media.ca7.uscourts.gov/cgi-bin/OpinionsWeb/processWebInputExternal.pl?Submit=Display&Path=Y2025/D05-15/C:24-1099:J:Pryor:aut:T:fnOp:N:3373530:S:0

## CIVIL LIABILITY: Law Enforcement Officer Shooting of a Dog

*Love v. Grashorn*, CA10, No. 23-1397, 4/22/25

Officer Mathew Grashorn shot a dog named Herkimer after responding to a business owner's call about a truck in a parking lot after hours. Upon arrival, Officer Grashorn saw the truck and two dogs, Bubba and Herkimer. Bubba initially ran towards the officer but returned to his owner when called. Herkimer then emerged and ran towards the officer, who shot the dog when it was a few feet away. Herkimer was later euthanized due to the injuries.

The plaintiffs, Wendy Love and Jay Hamm, sued Officer Grashorn for violating the Fourth Amendment. The United States District Court for the District of Colorado denied the officer's motion for summary judgment based on qualified immunity, concluding that a jury could reasonably find that Herkimer did not pose an immediate danger, and thus the shooting could be a clearly established violation of the Fourth Amendment.

The United States Court of Appeals for the Tenth Circuit the court upheld the district court's denial of summary judgment, agreeing that a jury could find no immediate danger and that the officer had time to consider non-lethal options. The court emphasized that common sense and case law clearly establish that shooting a pet dog without an immediate threat constitutes a Fourth Amendment violation. The court also rejected the officer's argument that a reasonable mistake about the danger would grant him qualified immunity, as the district court's factual conclusions suggested the mistake was unreasonable. The Tenth Circuit affirmed the district court's decision, denying qualified immunity to Officer Grashorn.

**READ THE COURT OPINION HERE:**
https://www.ca10.uscourts.gov/sites/ca10/files/opinions/010111223552.pdf

## CIVIL LIABILITY: Moment of Threat Rule

*Barnes v. Felix*, USSC, No. 23-1239, 5/15/25

Roberto Felix, Jr., a law enforcement officer, stopped Ashtian Barnes for suspected toll violations. During the stop, Barnes began to drive away, prompting Felix to jump onto the car's doorsill and fire two shots, fatally wounding Barnes. Barnes's mother sued Felix, alleging a violation of Barnes's Fourth Amendment right against excessive force.

The District Court granted summary judgment to Felix, applying the Fifth Circuit's "moment-of-threat" rule, which focuses solely on whether the officer was in danger at the precise moment deadly force was used. The court found that Felix could have reasonably believed he was in danger during the two seconds he was on the doorsill of the moving car. The Court of Appeals affirmed,

adhering to the same rule and limiting its analysis to the final moments before the shooting.

The Supreme Court of the United States reviewed the case and held that the "moment-of-threat" rule improperly narrows the Fourth Amendment analysis. The Court emphasized that the reasonableness of police force must be assessed based on the "totality of the circumstances," which includes events leading up to the use of force. The Court vacated the judgment of the Court of Appeals and remanded the case for further proceedings, instructing the lower courts to consider the entire context of the incident, not just the final moments.

**Editor's Note:** *This is an important use of force case from the United States Supreme Court. All use of force will now be analyzed under a totality of circumstances approach. There is now no time constraint on the totality of circumstances. An emphasis is now placed on the importance of considering the broad constraints leading up to the use of deadly force.*

**READ THE COURT OPINION HERE:**
https://www.supremecourt.gov/opinions/24pdf/23-1239_onjq.pdf

**CIVIL LIABILITY: Pain Compliance Techniques on Passively Resisting Protester Can Constitute Excessive Force**
Linton v. Zorn, CA2, No. 22-2954, 4/24/25

Ms. Shela Linton participated in a sit-in protest at the Vermont statehouse on January 8, 2015, against the governor's perceived lack of support for universal healthcare. When the statehouse closed at 8 p.m., law enforcement warned the demonstrators to leave or face arrest. Linton and others remained, linking arms and singing. During her arrest, Sergeant Jacob Zorn used a "rear wristlock" pain compliance technique, causing Linton to cry out in pain and suffer permanent injuries to her left wrist and shoulder. Linton later alleged that she was diagnosed with PTSD, depression, and anxiety due to the incident.

The United States District Court for the District of Vermont granted summary judgment in favor of Sergeant Zorn, concluding that he was entitled to qualified immunity. The court found that no clearly established law put Zorn on notice that his actions might violate Linton's Fourth Amendment rights.

The United States Court of Appeals for the Second Circuit disagreed with the district court's decision. The appellate court held that the gratuitous use of pain compliance techniques on a passively resisting protestor constitutes excessive force. The court found that genuine issues of material fact existed regarding the degree of Linton's resistance and the appropriateness of Zorn's use of force. Consequently, the Second Circuit vacated the district court's judgment and remanded the case for further proceedings to resolve these factual disputes.

**READ THE COURT OPINION HERE:**
https://ww3.ca2.uscourts.gov/decisions/isysquery/cd8742bd-b02f-4f0b-b042-65b8f3f13801/1/doc/22-2954_complete_opn.pdf#xml=https://ww3.ca2.uscourts.gov/decisions/isysquery/cd8742bd-b02f-4f0b-b042-65b8f3f13801/1/hilite/

**CIVIL LIABILITY: Shooting of Individual Authorized to Carry During an Active Shooter Situation**

*Pipkins v. City of Hoover, Alabama*, CA11, No. 23-0814, 4/17/25

On Thanksgiving night in 2018, Officer David Alexander, a policeman with the City of Hoover, was on foot patrol at the Galleria Mall in Birmingham, Alabama. During a suspected active shooting situation, Officer Alexander saw Emantic "E.J." Fitzgerald Bradford moving towards two men with a gun in his hand. Without issuing a verbal warning, Officer Alexander shot and killed Mr. Bradford, who was legally authorized to carry his gun and was attempting to provide assistance.

April Pipkins, Mr. Bradford's mother and representative of his estate, filed a lawsuit against Officer Alexander, the City of Hoover, and other defendants, asserting Fourth Amendment claims under 42 U.S.C. § 1983 and state law claims for negligence and wantonness. The United States District Court for the Northern District of Alabama dismissed the state law claims and granted summary judgment on the § 1983 claims, ruling that Officer Alexander's use of deadly force was reasonable under the Fourth Amendment and that a verbal warning was not feasible under the circumstances.

The United States Court of Appeals for the Eleventh Circuit reviewed the case and affirmed the district court's decisions. The court held that Officer Alexander acted reasonably under the Fourth Amendment given the circumstances, which included a crowded mall, the sound of gunshots, and Mr. Bradford running with a gun towards two men. The court also found that a verbal warning was not feasible due to the immediate threat perceived by Officer Alexander.

**READ THE COURT OPINION HERE:**
https://media.ca11.uscourts.gov/opinions/pub/files/202310814.pdf

**CIVIL LIABILITY:**

**Subject Refuses to Show His Hands**

*Salinas v. City of Houston*, CA5, No. 23-20617, 5/23/25

Houston police officers Manual Salazar and Nestor Garcia, members of the Gang Division Crime Reduction Unit, fatally shot David Anthony Salinas on July 14, 2021, following a pursuit in a sting operation during which Salinas wrecked the vehicle he was driving. His widow, Brittany Salinas, filed a lawsuit against Officers Salazar and Garcia and the City of Houston.

The United States District Court for the Southern District of Texas concluded that the officers were entitled to qualified immunity and that the claims against the City of Houston were meritless. Brittany Salinas timely appealed the decision.

The officers were on patrol when they received a dispatch call with vehicle information, including vehicle type and plate number. Upon locating the vehicle, a Nissan, the officers turned on their lights. When Salinas did not pull over, a high-speed chase ensued, ending when Salinas crashed into a cement pillar of a freeway underpass. The Nissan was disabled with significant front-end damage, a cracked windshield, and a deployed airbag.

The officers parked their cruiser next to Salinas' driver-side door, preventing Salinas from exiting the car, jumped from the cruiser, and surrounded Salinas' car with their weapons drawn and pointed at Salinas. Salinas, at this point, appeared to be in the passenger seat. Officer Salazar stood

by the driver-side door of Salinas' vehicle while Officer Garcia stood near the passenger-side door.

Officer Salazar shouted commands for Salinas to show his hands, yelling: "Let me see your hands! Let me see your hands! Let me see your hands! Hey! Hands! Hands! Hands! Hands! Let me see your hands!" Officer Garcia also shouted at Salinas: "Hey let me see your hands! Hands! Hands!" Officer Garcia knocked on the windshield several times as he was shouting the commands. Officer Salazar then radioed in for assistance.

During this interaction, as Salinas moved around from side to side and raised and lowered his hands intermittently, Officer Salazar shouted: "Hey! Stop reaching! Stop reaching! Stop reaching!", and shouted to Officer Garcia: "Hey, watch the crossfire!" before again shouting at Salinas to "stop reaching." At the same time, Officer Garcia yelled: "He's reaching, he's reaching!" Officer Garcia then shouted at Salinas: "Let me see your hands! Stop reaching motherf--ker! Stop—your hands! Hands! Hands! Against the door! Against the door! Stop your f--king hands!"

Officer Salazar shouted at Salinas: "Hey! Let me see your hands! Hands! Hands! Hands! Hands! Hands! Keep them up! Keep them up!" When Salinas again began reaching, with his hands disappearing from the Officers' view, Officer Salazar shouted: "Keep—he's reaching! He's reaching! Hey! He's reaching!" De La Cruz, who was still on the phone with Salinas at the time, stated that he heard Salinas telling the Officers: "Don't shoot, I am looking for my phone."

As Salinas appeared to reach for something behind the driver's seat of his vehicle, leaning over the center console, Officer Salazar took a few steps back before firing at Salinas. Officer Garcia similarly stepped back from the car and fired through the passenger-side of the windshield. The officers fired 11-12 rounds at Salinas. At no point did the Officers see Salinas wield a gun. After firing, Officer Salazar radioed: "Shots fired. Shots fired," and reported the incident. When backup arrived, medical aid was rendered.

In sum, both officers shouted multiple warnings at Salinas to comply before firing their weapons. In total, Officer Salazar yelled "show me your hands" or "hands" to Salinas at least fourteen times and shouted "stop reaching" to Salinas at least four times. Officer Garcia shouted "let me see your hands" or "hands" to Salinas at least fifteen times and yelled "stop reaching" or "he's reaching" at least three times. It signifies that from the moment the Officers jumped out of their cruiser to the first firing of shots, 38 seconds had elapsed.

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

"Viewing the facts in the light most favorable to Brittany Salinas we find that she has not alleged a plausible claim of excessive force. As we explained, Salinas was 'attempting to evade arrest by flight.' And Brittany's pleadings and the Officers' BWC footage provide sufficient support for a
reasonable officer's belief that Salinas posed an immediate threat of harm when the Officers fired their weapons.

"First, it is undisputed that the Officers did not deploy deadly force immediately, but only after Salinas continually disregarded their commands and began continuously reaching within his vehicle. The Officer's BWC footage shows that the Officers—in total—commanded Salinas to show his hands at least 30 times and to stop reaching at least seven times. Though Brittany asserts that Salinas was injured and disoriented after crashing

his car and likely did not hear the Officers' commands, these details, at best, are speculation upon Salinas' state of mind.

"Second, the Officers did not shoot at Salinas until after he began reaching within his vehicle. Brittany argues that the Officers did not see Salinas with a gun, and that he reached within his vehicle to find his cell phone. Perhaps, but officers use lethal force justifiably if they reasonably believe the individual is reaching for a gun even in cases when officers had not yet seen a gun when they fired, or when no gun was ever found at the scene. The Officers did not violate Salinas' Fourth Amendment right to be free from excessive force."

**READ THE COURT OPINION HERE:**
https://www.ca5.uscourts.gov/opinions/pub/23/23-20617-CV0.pdf

## CIVIL LIABILITY: Traffic Stop of Individual Who Communicated Through American Sign Language; Americans with Disability Act

*Mayfield v. City of Mesa*, CA9, No. 23-3222, 3/24/25

Alison Mayfield, who is deaf and communicates primarily through American Sign Language (ASL), was pulled over by officers from the City of Mesa's Police Department (MPD) for suspected reckless driving. During the traffic stop and subsequent DUI processing, Mayfield requested an ASL interpreter but was not provided one. Instead, officers used a combination of written notes, lip-reading, and gestures to communicate with her. Mayfield was ultimately charged with DUI but pleaded guilty to reckless driving.

The United States District Court for the District of Arizona dismissed Mayfield's claims under Title II of the Americans with Disabilities Act (ADA) and the Rehabilitation Act (RA), holding nd that she failed to state a claim for which relief could be granted. Mayfield appealed the dismissal.

The United States Court of Appeals for the Ninth Circuit reviewed the case. On the merits, the Ninth Circuit held that the relevant question was whether the means of communication used by the officers were sufficient to allow Mayfield to effectively exchange information during the stop and arrest. The court concluded that Mayfield failed to plead sufficient facts to establish that MPD discriminated against her by not providing a reasonable accommodation. The court affirmed the district court's dismissal of Mayfield's complaint.

**READ THE COURT OPINION HERE:**
https://cdn.ca9.uscourts.gov/datastore/opinions/2025/03/24/23-3222.pdf

## CIVIL LIABILITY: Unlawful Entry; Excessive Force

*Luethje v. Kyle*, CA10, No. 24-1257, 3/19/25

Tyler Luethje filed a § 1983 complaint against Defendants Travis Kyle and Scott Kelly, both employed by the Douglas County Sheriff's Office. On February 11, 2022, the deputies responded to a 911 call about a broken window at Luethje's residence. Upon arrival, they sent a police canine, Sig, into the house without announcing themselves. Sig bit Luethje, who was in bed, and continued to bite him while the deputies questioned him. Luethje was then handcuffed and taken to the hospital. He was not charged.

The United States District Court for the District of Colorado reviewed the case and denied the deputies' motion to dismiss based on qualified immunity. The court held that the deputies

violated Luethje's Fourth Amendment rights regarding unlawful entry and search, unlawful arrest, and excessive force. The court found that the law clearly established these rights.

The United States Court of Appeals for the Tenth Circuit reviewed the case. The court affirmed the district court's decision, agreeing that the deputies were not entitled to qualified immunity. The court held that the deputies' actions violated Luethje's constitutional rights and that these rights were clearly established. The court found that the deputies lacked an objectively reasonable belief in an ongoing emergency to justify the warrantless entry, did not have probable cause for the arrest, and used excessive force by allowing the canine to continue biting Luethje after he was subdued.

**READ THE COURT OPINION HERE:**
https://www.ca10.uscourts.gov/sites/ca10/files/opinions/010111206481.pdf

**EVIDENCE: Firearm Possession at Time of Arrest; Flight as Evidence of Guilt**
*Smith v. State*, ASC, no. CR-24-26. 2025 Ark. 26, 4/3/25

Bryant Smith was convicted in the Jefferson County Circuit Court of two counts of capital murder, one count of attempted capital murder, five counts of first-degree unlawful discharge of a firearm from a vehicle, one count of second-degree unlawful discharge of a firearm from a vehicle, six counts of terroristic act, and one count of unauthorized use of property to facilitate a crime. These charges stemmed from the deaths of a seventeen-year-old and a twenty-year-old, and the injury of another individual on September 3, 2020. Smith received a life sentence without the possibility of parole.

The Jefferson County Circuit Court admitted evidence that Smith possessed a firearm when he was arrested. Additionally, the court gave a non-model jury instruction that evidence of Smith's flight could be considered as evidence of guilt.

The Arkansas Supreme Court affirmed the lower court's decisions. The court found no abuse of discretion in admitting evidence of Smith's firearm possession, as it was relevant to the context of his flight and confession. The court also found the non-model jury instruction on flight to be appropriate.

**READ THE COURT OPINION HERE:**
https://opinions.arcourts.gov/ark/supremecourt/en/523460/1/document.do

**EVIDENCE:**
**Crime Scene Photographs; Purpose**
*Haynie v. State of Arkansas*, ASC, Np. CR-24-157, 2025 Ark. 46, 4/24/25

On September 6. 2021, Ouachita County Sheriff Deputy Derrick Aplin responded to a call at a house on Highway 24. At the house, Deputy Aplin first encountered a male child in the carport who informed him that his father had been shot. He then encountered a hysterical Haynie who stated that her husband needed an ambulance. Deputy Aplin found Jerome lying dead on the floor in the back bedroom. A Glock handgun was lying near the body. When asked what happened, Haynie said, "We were arguing. We keep a gun there on the gun cabinet. And he was pushing me. We were arguing. And I grabbed it and he pushed me and it went off."

At trial, Haynie pursued a justification defense. She adduced evidence that she suffered physical abuse from Jerome throughout their marriage.

Haynie explained that on the night of the murder, she and Jerome began fighting after she refused to perform a sexual act. Jerome hit her in the face and started choking her. He then threatened to kill Haynie and their children. She added that she grabbed a handgun before Jerome could get it, the two fought, and then the gun went off twice.

Through the testimony of Captain David Pennington, the State moved to introduce two photographs of a suitcase located in the closet where one of the shell casings was found. Haynie objected to the introduction of these photographs, arguing that they were irrelevant and potentially misleading. The State responded, asserting that the photographs were relevant to Haynie's motive. The prosecuting attorney explained that evidence of the packed suitcase indicated Jerome was planning to leave Haynie. The circuit court admitted the photographs over Haynie's objection.

Haynie was subsequently convicted of first-degree murder and sentenced to life imprisonment plus fifteen years with a firearm enhancement. Haynie appeals arguing that the circuit court erred by admitting the suitcase photographs.

The Arkansas Supreme Court found as follows:

"The admission of photographs is a matter left to the circuit court's sound discretion, and we will not be reversed absent an abuse of that discretion. *Collins v. State*, 2020 Ark. 371. Evidence is relevant if it has the tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. Photographs may be admissible if they assist the trier of fact by shedding light on some issue, or by proving a necessary element of the case. See *Smith v. State*, 2024 Ark. 161.

"The State sought to introduce the photographs as evidence of state of mind and intent. In particular, the State asserted that the packed suitcase indicated Jerome was planning to leave and that Haynie shot and killed him in response. This evidence goes to the State's burden of proving a necessary element of first-degree murder—purpose, Accordingly, the circuit court did not abuse its discretion by admitting the photographs."

**READ THE COURT OPINION HERE:**
https://opinions.arcourts.gov/ark/supremecourt/en/523539/1/document.do

## EVIDENCE:

**Therapist-Client; Mandatory Reporter**
*State of Minnesota v. Martens*, SCS, No. A22-1249

Martens met with a marriage and family therapist in June 2021for an intake session. He disclosed to the therapist that he had been "having a relationship" with his children's babysitter ("the victim"). The victim had been watching Martens's children at his home in Mora since she was 15. Martens told the therapist that, over time, "flirting" escalated to "sexual contact."

Based on this conversation, the therapist believed that Martens first engaged in sexual contact with the victim when she was 17 years old. The therapist asked Martens to clarify what he meant by "sexual contact," and Martens replied, "what didn't we do?" Martens told the therapist that "he knew it was illegal and the victim knew it was illegal." When the therapist told Martens that she was a mandated reporter and his disclosure would need to be reported to Kanabec County authorities, Martens "backpedaled" and said that he did not have sexual intercourse with the victim until 3 days after she turned 18.

Following the session, the therapist made a verbal and written maltreatment report to Kanabec County authorities. In response to the maltreatment report, law enforcement contacted the victim, who stated that sexual intercourse with Martens first occurred on April 12, 2020. It is undisputed that on that date, the victim was 17 years old and Martens was more than 48 months older than the victim.

The State charged Martens with third-degree criminal sexual conduct which criminalizes sexual penetration where the complainant is at least 16 years old but less than 18 years old, the perpetrator is more than 48 months older than the complainant, and the perpetrator is in a current or recent position of authority over the complainant. Before trial, Martens filed a motion to prohibit the State from offering the therapist's report and testimony as evidence at trial on the grounds that any statements made by Martens to the therapist were protected by the therapist-client privilege.

The district court denied Martens's motion to exclude the therapist's report and testimony, ruling that the therapist-client privilege did not apply because the report was mandatory under the mandated-reporter statute. A jury found Martens guilty, and the court of appeals affirmed the conviction.

The Minnesota Supreme Court held that the statute mandates a report if the reporter knows or has reason to believe that a child has been maltreated within the preceding three years, even if the child reaches adulthood before the disclosure. Consequently, the court affirmed the lower court's decision, ruling that the district court did not err in admitting the therapist's report and testimony.

**READ THE COURT OPINION HERE:**
https://cases.justia.com/minnesota/supreme-court/2025-a22-1349.pdf?ts=1743775474

## EYEWITNESS IDENTIFICATION:

### Unduly Suggestive Photo Array

*Blackmon v. Jones*, CA7, No. 23-3288, 3/20/25

Eric Blackmon was arrested in 2002 and charged with murder, leading to his conviction in 2004 after a bench trial. Despite multiple attempts, state judges in Illinois upheld his conviction. However, the United States Court of Appeals for the Seventh Circuit directed a district court to hold an evidentiary hearing regarding the failure of Blackmon's lawyer to interview potential alibi witnesses, which resulted in the district court ordering his release unless retried. The state chose to release him rather than retry him.

Blackmon then turned the tables and filed this suit under 42 U.S.C. §1983 against three of the police officers who investigated the crime. Two eyewitnesses to the murder identified Blackmon as an assailant. Police showed these witnesses a photo array containing pictures of Blackmon plus several other persons, and the witnesses also viewed Blackmon and others in a lineup. Both witnesses identified him at trial. He asserts in this suit that the photo array and lineup were unconstitutionally suggestive because he was the only person who wore his hair in braids—and both witnesses had described braids as one of the shooter's characteristics. The Constitution forbids the use at trial of identifications obtained by unduly suggestive procedures when those procedures pose a risk of "irreparable misidentification." *Simmons v. United States*, 390 U.S. 377, 384 (1968). See also, e.g., *Manson v. Brathwaite*, 432 U.S. 98 (1977); *United States v. Johnson*, 745 F.3d 227 (7th Cir. 2014)

The United States District Court for the Northern District of Illinois denied the officers' motion for judgment on the ground of qualified immunity, concluding that it is clearly established that the results of unduly suggestive photo arrays and lineups must not be used at trial. The officers appealed.

The United States Court of Appeals for the Seventh Circuit reviewed the case and held that the police do not violate a suspect's constitutional rights by conducting a suggestive photo array or lineup. The court emphasized that the introduction of evidence at trial is the responsibility of prosecutors and judges, who have absolute immunity. The court concluded that the appropriate remedy for suggestive identification procedures is the exclusion of evidence at trial, not damages. The court also noted that it was not clearly established in 2002 that officers could be personally liable under §1983 for conducting a suggestive lineup. Therefore, the officers were entitled to qualified immunity. The decision of the district court was reversed.

**READ THE COURT OPINION HERE:**
https://media.ca7.uscourts.gov/cgi-bin/OpinionsWeb/processWebInputExternal.pl?Submit=Display&Path=Y2025/D03-20/C:23-3288:J:Easterbrook:aut:T:fnOp:N:3348521:S:0

## GUN CONTROL ACT OF 1968:

### Weapons Parts Kits

*Bondi v. Vanderstock*, USSC, No. 23-852, 3/26/25

This case involves the interpretation of the Gun Control Act of 1968 (GCA) in relation to weapon parts kits and unfinished frames or receivers. The GCA mandates that those involved in the import, manufacture, or sale of firearms must obtain federal licenses, keep sales records, conduct background checks, and mark their products with serial numbers. The Act defines a "firearm" to include any weapon that can expel a projectile by explosive action and the frame or receiver of such a weapon. With the rise of weapon parts kits that can be assembled into functional firearms, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) adopted a rule in 2022 to include these kits under the GCA's regulations.

The District Court vacated the ATF's rule, agreeing with the plaintiffs that the GCA does not cover weapon parts kits or unfinished frames or receivers. The Fifth Circuit affirmed this decision, holding that the GCA's definition of "firearm" does not extend to weapon parts kits or unfinished frames and receivers, regardless of their completeness or ease of assembly.

The Supreme Court of the United States reviewed the case and reversed the Fifth Circuit's decision. The Court held that the ATF's rule is not facially inconsistent with the GCA. The Court found that some weapon parts kits, like Polymer80's "Buy Build Shoot" kit, qualify as "weapons" under the GCA because they can be readily converted into functional firearms. Additionally, the Court held that the GCA's definition of "frame or receiver" includes some partially complete frames or receivers that can be easily finished using common tools. The Court concluded that the ATF has the authority to regulate these items under the GCA. The case was remanded for further proceedings consistent with this opinion.

**READ THE COURT OPINION HERE:**
https://www.supremecourt.gov/opinions/24pdf/23-852_o7jp.pdf

## MIRANDA: Custodial Interrogation

*United States v. Maytubby*, CA10, No. 23-7084, 3/18/25

Lance Maytubby was called to the police station by Officer T.J. White to answer questions regarding accusations of sexual abuse made by his nieces, R.L. and Z.L. During the interview, Officer White informed Maytubby that he was not under arrest and could leave at any time. The interview, which was recorded, took place in a non-coercive environment, and Officer White maintained a friendly tone. Despite initially denying the accusations, Maytubby eventually confessed after Officer White suggested that mitigating circumstances, such as Maytubby being a pastor and a family man, could be included in the report to the district attorney.

The United States District Court for the Eastern District of Oklahoma held a pretrial suppression hearing where Officer White testified. The district court denied Maytubby's motion to suppress his confession, finding that the interrogation was not coercive and that Maytubby's statements were voluntary. The court noted factors such as the short duration of the interview, the non-coercive environment, and the absence of physical abuse or aggressive behavior by Officer White. A jury later convicted Maytubby on several counts of aggravated sexual abuse and abusive sexual contact, leading to a life sentence.

The United States Court of Appeals for the Tenth Circuit reviewed the case and affirmed the district court's decision. The appellate court held that Officer White's statements during the interview were not coercive and did not overbear Maytubby's will. The court found that the interview was conducted in a non-coercive manner, and Officer White's comments about including mitigating factors in the report were proper and did not imply control over sentencing. The court concluded that Maytubby's confession was voluntary and upheld the conviction.

**READ THE COURT OPINION HERE:**
https://www.ca10.uscourts.gov/sites/ca10/files/opinions/010111205661.pdf

## SEARCH AND SEIZURE:

### Delay in Seeking Search Warrant

*United States v. Jackson*, CA7, No. 23-3205, 3/28/25

Jaron Jackson pleaded guilty to sex trafficking of a minor and transportation of child pornography. He was sentenced to 240 months in prison. Jackson appealed, arguing that the district court should have suppressed evidence found on his cell phone, claiming the police took too long (40 days) to seek a search warrant after his arrest.

The United States District Court for the Eastern District of Wisconsin denied Jackson's motion to suppress, concluding that the delay did not allow the police to obtain any evidence they would not have received had they sought a warrant immediately.

The United States Court of Appeals for the Seventh Circuit reviewed the case and affirmed the district court's decision. The court held that the 40-day delay in seeking the warrant did not make the search unreasonable, as the phone had been in official custody since Jackson's arrest, and there was no risk of evidence being altered or destroyed. The court also noted that Jackson did not attempt to regain possession of the phone or express concern about the delay. Therefore, the district court properly denied the motion to suppress the evidence recovered from the phone.

**READ THE COURT OPINION HERE:**
https://media.ca7.uscourts.gov/cgi-bin/OpinionsWeb/processWebInputExternal.pl?Submit=Display&Path=Y2025/D03-28/C:23-3205:J:Easterbrook:aut:T:fnOp:N:3352124:S:0

**SEARCH AND SEIZURE: Fourth Amendment Special Needs Doctrine**
*United States v. Poole*, CA2, No. 24-1201, 4/7/25

While Isaac Poole was on supervised release following his conviction for drug offenses, he tested positive for cocaine, and probation officers found drugs and drug paraphernalia in his home. The United States District Court for the Northern District of New York revoked Poole's term of supervised release and sentenced him to eight months of imprisonment followed by ninety-six months of supervised release. As a condition of his supervised release, the district court required Poole to submit to suspicionless searches by probation officers or law enforcement officers assisting them. On appeal, Poole argues that the search condition is unsupported by the record and involves a greater deprivation of liberty than is reasonably necessary.

The United States Court of Appeals for the Second Circuit stated that this case calls for application of a recent holding that a sentencing court may constitutionally subject a defendant to suspicionless searches as a condition of supervised release if that condition is sufficiently supported by the record. *United States v. Oliveras*, 96 F.4th 298, 311 (2d Cir. 2024).

"In *Oliveras*, we explained that a convicted person serving a court-imposed term of federal supervised release has a diminished expectation of privacy during his period of supervision. Recognizing this diminished privacy expectation, as well as the special needs of probation officers to fulfill their supervisory roles, we held that the Fourth Amendment permits, when sufficiently supported by the record, the imposition of a special condition of supervised release by the district court that allows the probation officer conducting the supervision to search the defendant's person, property, vehicle, place of residence or any other property under his control, without any level of suspicion. In other words, a district court may impose a special condition of supervised release that allows for searches without individualized suspicion if the condition is sufficiently supported by the record."

**READ THE COURT OPINION HERE:**
https://ww3.ca2.uscourts.gov/decisions/isysquery/806b83b5-60ed-4b2b-9c34-89349c115ff6/1/doc/24-1201_opn.pdf#xml=https://ww3.ca2.uscourts.gov/decisions/isysquery/806b83b5-60ed-4b2b-9c34-89349c115ff6/1/hilite/

**SEARCH AND SEIZURE:**
**Geofence Warrant to Obtain Location Data and Identification of a Device**
*Wells v. State of Texas*, TCCA, No. PD-0669-23, 4/2/25

Jimmy Giddings was a drug dealer. He lived with his girlfriend, Nikita Dickerson, at a house at 4923 Veterans Drive in Dallas, across the street from Carver Heights Baptist Church. Dickerson and Giddings had a routine. When he returned home in the early morning hours, she would unlock the gate at their front door and greet him in the driveway. She would carry a .40 caliber Glock pistol because, while they lived in a nice house, she felt the neighborhood was unsafe.

At around 3 a.m. on the morning of the offense, June 24, 2018, Dickerson exited the gate outside the front door, as captured on the home's front-door security camera, pursuant to her and Giddings' routine. Security cameras from the church across the street recorded four men who had been loitering in the parking lot on the far side of the church from Veteran's Drive "for some hours" before the offense. When Giddings arrived home, the four men, wearing masks over their lower faces, rushed across the street toward Giddings and Dickerson brandishing pistols and a rifle.

In the melee that followed, Dickerson sustained five non-life-threatening gunshot wounds. She also dropped her pistol, and it was retrieved by one of the masked men. At the same time, Giddings fled into the house. Two of the assailants rushed in after him, and a third assailant marched the wounded Dickerson into the house at gunpoint. The fourth man, who turned out to be Appellant, quickly followed them.

All the men except for Appellant had visibly distinctive tattoos. Once inside, during the robbery, one of the assailants—the record does not definitively establish which one—shot Giddings in the neck, severing his spine. As a result of this gunshot wound, Giddings died. Afterwards, the assailants fled back across the street to their vehicle in the church parking lot and drove off. As described by the court of appeals:

> *Based on the security camera recording timestamp and footage showing that the men were in the area of the church immediately before and after the offense. Police obtained a warrant to search Google's records for information on devices located within a rectangular geofence encompassing [Giddings and Dickerson's] house and the portion of the church directly across the street between 2:45 a.m. and 3:10 a.m. on June 24. Ultimately, a cellular phone associated with Appellant was identified as being at the scene. Through Appellant's phone records and a search of social media, police were able to identify Milton Prentice, Brian Groom, and Kiante Watkins as the other three men involved in the offense.*

Appellant was charged with and convicted of the capital murder—during the course of a robbery—of Jimmy Giddings. Appellant received an automatic sentence of life without parole.

## BACKGROUND

### The Geofence Warrant

The warrant at issue in this case was directed to "Google LLC." It ordered Google to turn over to the police "GPS, WiFi or Bluetooth sourced location history data" corresponding to "Initial Search Parameters" generated from devices that Google's electronic records showed to have been within certain, particularly circumscribed time and location specifications.

The warrant required disclosure in three steps. In Step One, the warrant commanded, "for each location point within the 'Initial Search Parameters', Google shall produce anonymized information specifying the corresponding unique device ID, timestamp, coordinates, display radius, and data source, if available (the 'Anonymized List')." Police were then to "analyze this location data to identify users who may have witnessed or participated" in the capital offense and "seek any additional information regarding these devices from Google."

In Step Two, the warrant provided that, "for those accounts identified as relevant to the ongoing investigation through analysis of" the Anonymized List, Google "shall provide additional location history outside of the predefined area for those relevant accounts to determine path of travel." It then specified that, "this additional location history shall not exceed 60 minutes plus or minus the first and last timestamp associated with the account in the initial dataset." This step was intended to aid the police in ruling out any devices flagged by the Anonymized List so that the identity of obvious non-witnesses and non-participants would not be revealed.

Finally, in Step Three, the warrant ordered that, "for those accounts identified as relevant to the ongoing investigation through an analysis of provided records, and upon demand," Google "shall provide the subscriber's information for those relevant accounts to include, subscriber's name, email address, services subscribed to, last 6 months of IP history, SMS account number, and registration IP." In other words, only in the last step was sufficient information revealed permitting law enforcement to identify witnesses to, or participants in, the capital offense under investigation. At no point during this three-step process were police required to return to the magistrate for incremental authorization.

### The Warrant Affidavit

The warrant affidavit started out by providing the "Initial Search Parameters": a "geographical area identified as a polygon defined by" four "latitude/longitude coordinates and connected by straight lines," as specified. The affidavit sought "GPS, WiFi or Bluetooth sourced location history data from devices that reported a location" within the described polygon at a window of time within which the capital murder occurred, namely: "June 24, 2018 0245 hrs (2:45 a.m.) to June 24, 2018 0310 hrs (3:10 a.m.) Central Time Zone." Thus, the affidavit sought location history data for an area that encompassed no more than a part of the church and the church grounds, including the parking lot where the assailants waited, a small segment of Veterans Drive between the church and the house at 4923 Veterans Drive, and the house itself, including front and back yards, for a twenty-five minute interval corresponding to the approximate time of the offense.

In a portion of the warrant affidavit explaining "Google Location Services and Relevant Technology," the affiant, Detective Jeffrey Loeb, explained:

> *Google has developed an operating system for mobile devices, including cellular phones, known as Android, that has a proprietary operating system. Nearly every cellular phone using the Android operating system has an associated Google account, and users are prompted to add a Google account when they first turn on a new Android device. Based on my training and experience, I have learned that Google collects and retains location data from Android-enabled mobile devices when a Google account user has enabled Google location services. Google can also collect location data from non-Android devices if the device is registered to a Google account and the user has location services enabled. The company uses this information for location-based advertising and location-based search results. This location information is derived from GPS data, cell site/cell tower information, and Wi-Fi access points, location-based advertising and location-based search results. This location information is derived from GPS data, cell site/cell tower information, and Wi-Fi access points.*

In a portion of the affidavit styled "Probable Cause Statement," Loeb next narrated the facts of the offense essentially as described above, concluding with the assertion that:

> *it is likely that at least one of the four suspects who committed this offense had an Android device on him during the commission of this offense. It is common practice that home invasion robbery suspects keep an open line with someone outside of the residence while committing this type of offense to keep an eye out for responding police officers.*

Loeb also averred that he was:

> *also familiar with Android based cellular devices reporting detailed location information to Google where the electronic data is then stored. This information is captured and recorded even when the user is not doing any specific action on the device. As a result, Affiant is requesting a list of any Google devices in a geographic area around the address of 4923 Veterans Drive, Dallas, Texas 75241 in Dallas County, Texas to help identify the suspects in this capital murder investigation.*

The warrant affidavit concluded with a description of the three-step process by which Google releases information in response to geofence warrants, as depicted in the warrant itself and as described above.

### Execution of the Warrant

The warrant was signed by a district court judge on December 7, 2018.Pursuant to Step One of the procedure, as outlined in both the warrant and the warrant affidavit, Google identified three devices within the geofence. Once the search was expanded via Step Two, Leo was able to determine that one of those three devices belonged to an individual who was involved in the offense. Step Three revealed that Appellant was that individual. From there, by separate warrants, Loeb was able to obtain Appellant's Google account information plus additional cell phone records to confirm his presence at the crime scene.

### In the Trial Court

Appellant filed a pretrial motion to suppress evidence obtained pursuant to the geofence warrant. He argued that it constituted an unconstitutional general warrant in that it failed to identify a particular suspect and would thus only serve to invade the privacy of any number of individuals who had nothing to do with the capital murder in this case.

He also argued that the warrant affidavit lacked probable cause to believe any of the assailants were carrying a cell phone with a Google account.

The State responded that, under the circumstances in this case, the Initial Search Parameters were so narrow that "every single device operating in the area," would have to have been possessed by "either a suspect or a witness." The prosecutor argued that the geofence warrant was specifically limited in order to maximize the possibility of returning evidence of a crime and minimize the possibility of intrusion on innocent people." The trial court ultimately ruled that the warrant affidavit and the warrant itself presented "sufficient particularity to be valid.

### In the Court of Appeals

After canvassing the limited authorities (mostly federal cases)that have addressed geofence warrants, the court of appeals concluded:

*The geofence warrant cases to date can generally be divided into two categories—those in which the geofence search warrant was found constitutionally infirm because it was not sufficiently limited as to time and place so as to restrict the executing officer's discretion and minimize the danger of searching uninvolved persons, and those in which the warrant satisfied the Fourth Amendment because it established probable cause to search every person found within the geofence area.*

Because "the geofence warrant [in this case] was as narrowly tailored as possible to capture only location data for suspects and potential witnesses," the court of appeals concluded that "the warrant here falls into the second category" as identified in the cases.

Addressing Appellant's argument that the warrant affidavit failed to establish probable cause to believe that any of the suspects were carrying a device with enabled Google location services, the court of appeals invoked the well-known ubiquity of cell phones in modern society. The court of appeals observed that, "although it is possible the suspects were not carrying cell phones with enabled Google location services during the offense, probable cause is about 'fair probabilities,' not near certainties." We agree.

## APPLICABLE LAW

### Probable Cause and Particularity

The Fourth Amendment provides that:

*The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.*

As the court of appeals did, we will assume (without deciding) that for law enforcement to obtain Google cell phone location history data for a particular area at a particular time constitutes a search" within the parameters of the Fourth Amendment.

The United States Supreme Court has said that, generally, when law enforcement officers undertake a search for evidence of criminality, before that search may be deemed "reasonable" under the Fourth Amendment, they must first obtain a warrant. *Carpenter v. United States*, 585 U.S. 296, 316 (2018). Here, a warrant was obtained. The search pursuant to the geofence warrant was therefore reasonable so long as the warrant affidavit supplied probable cause to justify the search, and the warrant itself set out the place to be searched and the things to be seized with sufficient particularity to avoid granting the officers unguided discretion in conducting the search.

### The Cases Addressing Geofence Warrants

Geofence warrants are a relatively new phenomenon, having only come into use since 2016. The few cases so far that have addressed their legitimacy have tended to emanate from lower federal courts and intermediate state appellate courts. And, as the court of appeals observed, those cases can generally be divided into two categories. Which category a given case falls into upon the size of the area covered by the requested geofence, the length of time specified, and the circumstances of the offense under investigation. Geofence warrants that are confined, covering a relatively small space over a relatively short time, in a remote or rural area, or at a time of day when only the perpetrators of the

offense or witnesses would be likely to be present, have generally been found to pass constitutional muster. But warrants that cover larger or more congested urban areas over a longer span of time generally have not, since they are much more likely to infringe upon a greater number of innocent, uninvolved bystanders.

Indeed, the issue is often not so much whether there is probable cause to believe the search will uncover evidence of the offense as it is whether the warrant is "overbroad"—that is, whether the search it authorizes outstrips the probable cause that justifies it by casting too wide a net and thereby impacting an unacceptable number of people who cannot possibly have any connection to the offense.

## ANALYSIS

In this case, the geofence warrant affidavit supplied ample probable cause to believe both that an offense had occurred and that evidence of the identity of one or more of the perpetrators could be discovered by searching the Google database. Moreover, the warrant itself was framed narrowly enough that almost any device found to have been present within its parameters would have belonged to one of the perpetrators, or potentially to a witness who might identify the perpetrators or testify about the offense, but not merely an innocent bystander.

**Editor's Note:** *Only a portion of the analysis of Geofence warrants by the Court of Criminal Appeals of Texas is set forth. A law enforcement officer considering a geofence warrant should review this case at length. The case has extensive footnotes and further analysis which will assist in understanding and drafting the geofence search warrant.*

**READ THE COURT OPINION HERE:**
https://cases.justia.com/texas/court-of-criminal-appeals/2025-pd-0669-23-0.pdf?ts=1743599796

## SEARCH AND SEIZURE: Hot Pursuit

*Newman v. Underhill*, CA9, No. 24-1493, 4/23/25

Deputy Todd Underhill of the San Bernardino County Sheriff's Department gave chase when the driver of a truck feloniously failed to heed Underhill's instruction to stop. The suspect eventually parked near Plaintiff Michael Newman's home, got out of the truck, and ran. Underhill followed on foot but lost sight of the suspect somewhere near the rear of the house. While waiting for backup, he searched the surrounding area but did not find the suspect. When another officer arrived, Underhill explained that he thought the suspect could be inside the house and that the house's backdoor was unlocked.

Deputy Jonathan Barmer arrived roughly two minutes later. Underhill told Barmer that Delacruz had gone "somewhere over to the rear of the residence." Underhill also stated that he "thought," but did not "know," that Delacruz "may" have entered Plaintiff's home.

Underhill and Barmer searched the backyard for Delacruz with their flashlights, while deputies in a Sheriff's Department helicopter looked for heat signatures from overhead. The deputies neither saw any sign of Delacruz nor heard any noises—such as the rattling of a fence—to suggest that he had left the backyard. For their part, the deputies in the helicopter detected heat coming from Plaintiff's home but could not confirm who or what was emitting it.

During or shortly after inspecting the backyard, Underhill noticed something about Plaintiff's backdoor. Underhill stated "We got an unlocked rear door." About seven minutes after Delacruz fled his truck on foot, Underhill began announcing the Sheriff's Department's presence and ordering any occupants of the home to exit. Underhill continued to make those announcements for another two minutes. During that period Underhill heard at least one voice coming from inside the house, and Deputy Lauren Laidlaw arrived at the scene.

Roughly nine minutes after last seeing Delacruz, Underhill—accompanied by Laidlaw and Barmer—entered Plaintiff's home through the backdoor. Hearing Plaintiff's voice coming from elsewhere in the house, Underhill found Plaintiff's room and discovered that Plaintiff is "a quadriplegic in a wheelchair." During their ensuing conversation, which grew contentious at times, Plaintiff told Underhill that his roommate drove a black Chevy Silverado. About eight minutes after Underhill entered the house, Sergeant James Blankenship joined Underhill and Plaintiff.

After another four minutes of conversation, Plaintiff gave the officers consent to look for his roommate in a different part of the house. The officers quickly found and arrested Delacruz, who was later convicted of a felony.

Plaintiff sued Defendants Underhill, Laidlaw, and Blankenship, asserting a claim under 42 U.S.C. § 1983 for unreasonable search in violation of the Fourth Amendment.

The United States District Court for the Central District of California granted summary judgment in favor of the defendants, ruling that the deputies did not violate the Fourth Amendment because the hot-pursuit exception to the warrant requirement applied. The court found that the deputies had probable cause to believe Delacruz was inside the house and that the pursuit was immediate and continuous.

The United States Court of Appeals for the Ninth Circuit affirmed the district court's decision. The appellate court held that the deputies had probable cause to enter the home, as a reasonable person would believe there was a fair probability that Delacruz was inside. The court also determined that the pursuit was immediate and continuous, despite a nine-minute delay between losing sight of Delacruz and entering the home. The court concluded that the hot-pursuit exception justified the warrantless entry, as the deputies were in immediate and continuous pursuit of a fleeing suspect who had committed a felony. The Ninth Circuit affirmed the summary judgment in favor of the defendants.

**READ THE COURT OPINION HERE:**
https://cdn.ca9.uscourts.gov/datastore/opinions/2025/04/23/24-1493.pdf

## SEARCH AND SEIZURE: Information From Law Enforcement in a Foreign Country; Probable Cause for a Search Warrant

*United States v. Dugan*, CA4, No. 22-4642, 5/1/25

Raymond Dugan pursues this appeal from his conviction and sentence in the Southern District of West Virginia on a child pornography charge. He maintains that his motion to compel discovery with respect to a foreign law enforcement agency's related investigation was erroneously denied.

In August 2019, a foreign agency known to the FBI, and with a history of providing reliable and accurate information, informed the FBI that, on

May 25, 2019, a specific Internet Protocol address (the "IP address") had accessed a website on the so-called "dark web" that was known to share child sexual abuse and exploitation material (sometimes called "CSAM"). That website was identified to the FBI by the foreign agency as the "TARGET WEBSITE." The FBI referred the foreign agency's tip about child sexual abuse and exploitation material to the Department of Homeland Security, and one of its Agents named Fleener primarily handled the investigation. In November 2019, Agent Fleener tracked the IP address provided by the foreign agency to Dugan's home in Logan, West Virginia, where Dugan lived with his wife and adult son.

On June 8, 2020, based on the foreign agency's tip and his own investigation, Agent Fleener applied for a search warrant for Dugan's residence. On June 11, 2020, agents of the Department of Homeland Security and the West Virginia State Police executed the search warrant at Dugan's residence. While executing the warrant, Agent Fleener interviewed Dugan. Dugan admitted having used the TORnetwork to search for and visit multiple child pornography sites on the "dark web," and acknowledged that he was curious about child pornography. A forensic analysis made by a West Virginia police laboratory of a hard drive seized from Dugan's "home office" during the execution of the search warrant revealed — and resulted in the seizure of — 1237 images of child pornography contained on the hard drive and 1543 TOR network websites visited.

Agent Fleener's affidavit explained that all TOR hidden websites, such as the TARGET WEBSITE, are globally accessible and can be located anywhere in the world. Due to the anonymity provided by the TOR network, determining the physical location of the website and its users is often challenging at the outset of a criminal investigation. As a result, law enforcement agencies often collaborate internationally to address such crimes, sharing information in compliance with the laws of several countries. The foreign agency, a national law enforcement agency of a friendly country with established rules of law, had shared the information underlying the reliable "tip" with U.S. law enforcement, emphasizing that this investigation had been conducted independently and lawfully within its own country, in accordance with its national laws. The foreign agency clarified that it had not accessed, searched, or seized any data from any computer in the United States to obtain the IP address information, and that law enforcement in this country had not participated in the investigation that led to identifying the IP address. The longstanding history of cooperation between U.S. law enforcement and international law enforcement agencies, particularly in investigating crimes against children, led to the FBI's involvement in this prosecution, based on the reliable tip provided to the FBI by the foreign agency.

The Court of Appeals for the Fourth Circuit first examined the district court's denial of Dugan's motion to compel.

"Dugan contends that the court erred in denying his motion to compel because the discovery he was seeking was material to his motion to suppress, in that it was information about the foreign agency's investigative techniques and its cooperation with the FBI. Dugan asserts that the requested discovery was crucial to his motion to suppress for two reasons. First, he maintains that his discovery of information relating to agreements and cooperation between the FBI and the foreign agency would have permitted him to show that the foreign agency was acting in a joint venture with the FBI, rendering the Fourth Amendment applicable to the foreign agency itself.

Second, Dugan contends that his discovery of investigatory techniques used to obtain Dugan's IP address was also material because it would show that the foreign agency had conducted a warrantless search of his computer, in violation of the Fourth Amendment.

"Dugan's assertion that the foreign agency acted in a joint venture with the FBI has no evidentiary support. It rests primarily on speculative conclusions drawn by his counsel, including a generalized 'understanding of how the TOR networks operate.' Based on such speculation, Dugan alleged that the foreign agency must have conducted an unlawful search of his personal computer, in violation of the Fourth Amendment. He further speculates that the foreign agency was acting as an agent of the FBI. And that assertion is not based on expert analysis or any other evidence, but rather on his counsel's independent investigation and reading of past international sting operations. Notably, Dugan's lawyer conceded to the district court that he had no evidence demonstrating that the only way to get Dugan's IP address was by unlawful means. And Dugan acknowledged that he had shared his IP address with the first relay computer in the TOR network, and that his IP address could be lawfully retrieved from that first relay.

"Although Dugan relied on Agent Fleener's reference in his affidavit to general cooperation between the FBI and foreign governments in similar investigations, such cooperation — standing alone — does not establish an agency relationship. Fleener's affidavit states that the foreign Fleener's affidavit states that the foreign agency obtained Dugan's IP address through an 'independent investigation,' and explains that it had not 'interfered with, accessed, searched or seized any data from any computer in the United States.' At the motions hearing, Agent Fleener testified that the foreign agency did not disclose the details of its investigation to the FBI. He also confirmed that the FBI had no additional information regarding how Dugan's IP address had been obtained, beyond what had already been disclosed in discovery. Put simply, Dugan's joint venture theory is unsupported by any evidence, and it fails to undermine the legitimacy of the foreign agency's tip to the FBI.

"The district court denied Dugan's motion to compel discovery because his request was grounded in speculation and unsupported by evidence. We agree with the district court on the motion to compel."

**READ THE COURT OPINION HERE:**
https://www.ca4.uscourts.gov/opinions/224642.p.pdf

## SEARCH AND SEIZURE:

### Judge Fails to Sign Search Warrant

*United States v. Whiteside*, CA6, No. 24-1173, 5/19/25

Malgum Whiteside, Jr. was charged with being a felon in possession of firearms after police found the weapons during a search of his residence. The search was conducted while officers were looking for evidence related to stalking charges against Whiteside. Whiteside moved to suppress the firearms, arguing that the search warrant was invalid and no warrant exception applied. The district court denied the motion, and Whiteside pleaded guilty while reserving the right to appeal the suppression ruling.

The United States District Court for the Western District of Michigan denied Whiteside's motion to suppress, finding that the warrant was valid despite the judge not signing the warrant.

The United States Court of Appeals for the Sixth Circuit held that the warrant was validly issued despite the lack of a signature on the warrant as there was clear evidence that the judge made the necessary probable cause determination as reflected by the signed affidavit.

**READ THE COURT OPINION HERE:**
https://www.opn.ca6.uscourts.gov/opinions.pdf/25a0133p-06.pdf

## SEARCH AND SEIZURE:

### Probable Cause; Medical Marijuana or Illegally Possessed Marijuana

*United States v. Whitlow*, CA6, No. 24-3114, 4/16/26

Around 2:30 in the morning, Andre Whitlow was driving his mother's car. Officer Thomas Kazimer observed Whitlow driving and decided to run a registration check on his vehicle. The officer learned that the car's license plate was expired and pulled Whitlow over.

As Whitlow was gathering his license, registration, and insurance, Officer Kazimer asked if Whitlow had anything illegal in the vehicle. Whitlow said, "no." But Officer Kazimer observed loose bits of marijuana scattered across the gear shifter in the center console of the car. So, he followed up his first question by asking Whitlow if he had any marijuana. Whitlow shook his head no.

Based on his observations, Officer Kazimer decided to search the car. But before he started searching, he ordered Whitlow out of the car and patted him down. While searching Whitlow, Officer Kazimer found a bag of marijuana. Whitlow then acknowledged that there was marijuana in the car, but he told Officer Kazimer that he had a "weed license."

After a backup officer arrived, the two officers searched the car. As one officer was searching the front glove compartment, the compartment suddenly fell out. Two firearms were hidden in a cavity behind the glove compartment: a tan Glock handgun with an extended magazine and a Ruger handgun. The officers then arrested Whitlow.

Because Whitlow had two previous felonies, the government charged him with being a felon in possession. After a two-day trial, a jury found him guilty. The court sentenced Whitlow to 120 months in prison.

At the time of the stop, marijuana was illegal under Ohio law, "save for stringently regulated medical usage." Whitlow argues that he had a license to carry medical marijuana, so Officer Kazimer could not have known whether the marijuana he saw was illegal.

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

"First, the marijuana residue itself suggested illegal use. To Officer Kazimer, the substance looked like dried marijuana that often falls from drug paraphernalia or when people are rolling marijuana blunts or using it inside vehicles. And officers can have probable cause that a suspect's possession of marijuana is illegal even if marijuana may be legal in some instances.

"In *United States v. Pointer*, for example, the 'sight of marijuana in the car' contributed to a finding of probable cause. There, the marijuana contributed to probable cause that the suspect was driving under the influence. Here, the loose, scattered marijuana suggested illegal drug use. It therefore wasn't unreasonable for Officer Kazimer to conclude that the marijuana was evidence of a crime.

"Ohio courts agree that evidence of marijuana that could be legal medical marijuana can still provide probable cause of a state-law violation. See *State v. Wright*, 243 N.E.3d 782, (Ohio Ct. App. 2024) (holding that a dog sniff can contribute to probable cause even though Ohio legalized forms of marijuana); see also *State v. Burke*, No. 29256, 2022 WL 2286933, at *6–7 (Ohio Ct. App. June 24, 2022) (emphasizing that officer's observation of marijuana contributed to probable-cause determination despite legalization). To be sure, Ohio courts' probable-cause determinations don't bind us. But they're relevant to determining whether the sight of marijuana in Whitlow's vehicle created probable cause of a state-law violation. In addition, Whitlow appeared to be violating Ohio's administrative regulations on the possession of medical marijuana, which further supports Officer Kazimer's determination that Whitlow possessed contraband. Ohio requires patients to store medical marijuana in the original dispensing package with an unaltered dispensary label or in the container provided by a dispensary. But the smattering of marijuana on the car's center console suggested that Whitlow hadn't obtained his marijuana legally; if he had, it would've been in the proper packaging. Ohio also mandates that patients store medical marijuana in a "secure location" to prevent unauthorized access. Whitlow's failure to comply with this regulation also suggests that he didn't possess the marijuana legally.

"Whitlow, for his part, responds that violations of Ohio's medical marijuana regime aren't criminal and therefore he couldn't have possessed contraband. But the fact that Whitlow seemed to be disobeying Ohio regulations could've factored into Officer Kazimer's assessment that the vehicle had a 'fair probability' of containing something illegal. See *United States vs. Jackson*, 103 F.4th at 489, (7th Cir. 2024) (finding that lack of compliance with state laws on packaging and use of marijuana provided probable cause).

"Further, Whitlow lied to Officer Kazimer when the officer asked whether Whitlow had marijuana in the car. Since the officer had already seen the marijuana, this apparent lie contributed to the probable cause calculation. Indeed, we have held that a 'false answer in response to questions by the police based on the police officer's personal knowledge may constitute probable cause.' *United States v. Anderson*, 923 F.2d 450, (6th Cir. 1991).

"In the end, the totality of the circumstances indicated a fair probability that Whitlow had contraband in violation of Ohio law. *Florida v. Harris*, 568 U.S. 237, 244 (2013). Officer Kazimer saw marijuana, which was illegal in most cases, in Whitlow's car. The marijuana was also in a form that suggested illegal use. And when Whitlow indicated that he didn't have any marijuana, Officer Kazimer knew Whitlow lied. In sum, the facts known to Officer Kazimer at the time created a 'fair probability' of contraband in Whitlow's vehicle under Ohio law. Thus, the court below correctly denied Whitlow's motion to suppress the evidence found from that search."

**READ THE COURT OPINION HERE:**
https://www.opn.ca6.uscourts.gov/opinions.pdf/25a0094p-06.pdf

## SEARCH AND SEIZURE: Protective Sweep

*United States v. August*, CA5, No. 24-30457, 5/8/25

The Lake Charles Police Department responded to a call about gunshots on N. Lyons Street. Officers approached Kirk August's home and found him in his backyard. A neighbor informed the officers that she had seen August firing a handgun. The officers conducted a protective sweep of the

backyard, finding shell casings and a sign with bullet holes. They then conducted a protective sweep of the home, using keys retrieved from a car in the driveway, where they also found methamphetamine and ammunition. A search warrant was later obtained, leading to the discovery of firearms and more ammunition in the home.

August was charged federally with possession of a firearm by a convicted felon. The district court denied his motion to suppress the evidence obtained from the searches.

The United States Court of Appeals for the Fifth Circuit held that the protective sweeps of the backyard and home were justified by exigent circumstances, as the officers had reasonable suspicion of danger. The court also held the search warrant was supported by probable cause independent of any potentially tainted evidence. The court affirmed the district court's decision, allowing the evidence obtained from the searches to be used against August

**READ THE COURT OPINION HERE:**
https://www.ca5.uscourts.gov/opinions/pub/24/24-30457-CR0.pdf

## SEARCH AND SEIZURE:

**Stop and Frisk; Reasonable Suspicion**

*United States v. Williams*, CA8, No. 24-1582, 3/18/25

St. Cloud police officers, investigating a reported assault with a firearm and attempted robbery, on July 31, 2020, stopped a car the victim reported being at the scene. Williams was in the passenger seat; his fiancée, Bianca Ellison, was in the driver's seat. A search uncovered a 9mm Smith & Wesson handgun, a magazine, and ammunition in the glove compartment.

Williams argues that the July 2020 stop of the SUV violated his Fourth Amendment right to be secure against unreasonable searches and seizures. The district court concluded that the stop was supported by reasonable suspicion of criminal activity.

The Court of Appeals for the Eight Circuit stated that a traffic stop for a suspected violation of law is a 'seizure' of the occupants of the vehicle.

"To justify this type of seizure, officers need only 'reasonable suspicion' -- that is, a particularized and objective basis for suspecting the particular person stopped of breaking the law. An officer has reasonable suspicion when he is aware of particularized, objective facts which, taken together with rational inferences from those facts, reasonably warrant suspicion that a crime is being committed. The Fourth Amendment only requires that police articulate some minimal, objective justification for an investigatory stop.

"Williams argues the district court erred because the sole basis for Sergeant Baumann's stop was Bah's statement to Officer Eckberg that there were potential witnesses to the assault in the SUV. Williams asserts that seizing witnesses to a crime is a clearly established constitutional violation.

"Here, the officers did not stop the SUV solely because its occupants were witnesses. The district court credited Officer Eckberg's testimony that victim Bah, in his initial, frenetic recount of a terrifying assault, communicated that there were either 'witnesses or other involved parties' inside the SUV. We agree this gave Officer Eckberg reasonable suspicion to order Sergeant Baumann to make an investigatory stop of a vehicle whose occupants had been linked to a criminal incident. Reviewing courts "must look at the totality of the circumstances" and must allow officers to draw on their own experience and specialized training to

make inferences from and deductions about the cumulative information available to them.

"The district court credited Officer Eckberg's testimony. We give great deference to a lower court's credibility determinations because the assessment of a witness's credibility is the province of the trial court. The suppression hearing record contains no extrinsic evidence that contradicts Officer Eckberg's story, nor is the story so internally inconsistent or implausible on its face that a reasonable fact-finder would not credit it. The district court did not err in concluding that Eckberg had reasonable suspicion to order the traffic stop."

**READ THE COURT OPINION HERE:**
https://cases.justia.com/federal/appellate-courts/ca8/24-1582/24-1582-2025-03-18.pdf?ts=1742311820

## SEARCH AND SEIZURE:

**Reasonable Suspicion to Stop; Flight and Actions Provided Probable Cause for Arrest**
*United States v. Hamilton*
CA9, No. 22-10161, 3/24/25

Law enforcement had specific information connecting Robert Hamilton to an unlawful shooting. When officers located him two weeks after the incident, he fled. During the chase, officers observed Hamilton reaching for his waistband, leading them to believe he was armed. After tackling and arresting him, officers found a gun, marijuana, scales, and cash on Hamilton.

The United States District Court for the Northern District of California denied Hamilton's motion to suppress the evidence obtained from his arrest, concluding that the officers had reasonable suspicion to stop him and that his flight and actions during the chase provided probable cause for arrest.

The United States Court of Appeals for the Ninth Circuit affirmed the district court's decisions. The court held that the officers' initial attempt to stop Hamilton did not constitute a seizure under the Fourth Amendment because he fled before they could do anything other than order him to stop. The court also found that the officers had reasonable suspicion to stop Hamilton and that his flight and reaching for his waistband provided probable cause for arrest.

**READ THE COURT OPINION HERE:**
https://cdn.ca9.uscourts.gov/datastore/opinions/2025/03/24/22-10161.pdf

## SEARCH AND SEIZURE: Traffic Stop Extension; Drug Dog Contact with Vehicle

*United States v. Chacon*, CA8, No. 24-1670, 4/15/25

Suspecting drug trafficking, an officer stopped Ashley Chacon for speeding. The officer asked about her rental car, travel plans, and the traffic violation. Chacon joined the officer in his patrol car, where he asked more questions while typing on his computer. Within about five minutes and twenty seconds, another officer arrived. His drug-detection dog performed an open-air sniff. The dog alerted at the rear of the car. The dog made brief contact with the car's exterior. While the first officer completed the write-up, the second officer informed Chacon of the alert. She responded that the car contained a "little bit" of cocaine. The officers searched the car, finding over 50,000 grams of meth.

Chacon challenges the district court's denial of her motion to suppress evidence from the car search.

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

"The district court's findings of fact is reviewed under the clearly erroneous standard, and the ultimate conclusion of whether the Fourth Amendment was violated. A reversely of a finding of fact for clear error only if, despite evidence supporting the finding, the evidence as a whole leaves us with a definite and firm conviction that the finding is a mistake.

"Chacon argues the traffic stop was impermissibly extended. An officer may make 'ordinary inquiries incident to the traffic stop,' such as 'checking the driver's license, determining whether there are outstanding warrants against the driver, and inspecting the automobile's registration and proof of insurance.' *Rodriguez v. United States*, 575 U.S. 348, (2015). An officer also may request that the driver sit in the patrol car to answer questions and may ask questions about his itinerary. *United States v. Englehart*, 811 F.3d 1034, (8th Cir.) (2016). But 'law enforcement cannot unlawfully extend a traffic stop to allow a drug-sniffing dog to check for narcotics after the traffic violation has already been addressed.' *United States v. Mosley*, 878 F.3d 246, 253 (8th Cir. 2017).

"Authority for the seizure thus ends when tasks tied to the traffic infraction are—or reasonably should have been—completed. The officer's questions here were 'ordinary inquiries.' He worked to address the traffic violation before and during the sniff, taking a reasonable time to complete the related tasks. The district court did not clearly err by finding 'the traffic stop was not prolonged beyond the time reasonably required to complete the original purpose of the stop.' Because the stop was not impermissibly extended, it did not violate the Fourth Amendment.

"Chacon argues the dog's contact with the car was an unlawful trespass, thus an unreasonable search. The use of a well-trained narcotics-detection dog during a lawful traffic stop, generally does not implicate legitimate privacy interests. Absent police misconduct, the instinctive actions of a trained canine do not violate the Fourth Amendment. *United States v. Lyons,* 486 F.3d 367, 373 (8th Cir. 2007) (holding a drug dog sticking his head through an open window was not a search because the dog did so 'on his own' and 'was not directed' to do so).

"The district court did not clearly err by finding 'no convincing evidence to show that the trooper directed the drug dog to make any physical contact with the vehicle.' 'Video footage instead supports the Government's position that the drug dog acted instinctively when the points of contact were made.' Because the dog acted instinctively, his contact with the car did not violate the Fourth Amendment.

"True, since Lyons, this court has cast doubt on the dog-instinct versus officer-conduct distinction because 'the subjective intent of police officers is almost always irrelevant to whether an action violates the Fourth Amendment.' *United States v. Pulido-Ayala*, 892 F.3d 315 (8th Cir. 2018). Nevertheless, when, as here, 'the dog's alert alone, without' the instinctive act would have given officers probable cause to search, the inevitable discovery doctrine justifies admitting evidence."

**READ THE COURT OPINION HERE:**
https://cases.justia.com/federal/appellate-courts/ca8/24-1574/24-1574-2025-04-15.pdf?ts=1744731023

## SEARCH AND SEIZURE:

### Voluntary Consent to Search; "Go Check" was Considered Consent

*United States v. Dubon*, CA4, No. 24-4076, 4/30/25

Three officers knocked on the door of a house in Richmond, Virginia, in July 2022. The officers were looking for a man named Rolman Balcarcel, who a tipster said had "an AR-15 and other big weapons" and may have been planning to shoot up "schools, events, etc." Alvarado Dubon answered the door and allowed the officers to enter the house's small front room.

Once inside, the officers saw a handgun magazine on a mantle. Another man (later identified as Balcarcel) soon entered the front room from a room further back in the house. An officer asked the men in Spanish whether they recognized Balcarcel's name and picture, but both said no. The Spanish-speaking officer also asked Alvarado Dubon if there were other people or any firearms in the house. Alvarado Dubon claimed no one else was in the home but "did not respond regarding whether firearms were in the residence."

The Spanish-speaking officer then told Alvarado Dubon in Spanish that the officers were going to "check to see if there is anyone else here in the house." Alvarado Dubon responded in Spanish: "Go check,…there's no one else." As he spoke, Alvarado Dubon nodded and, with an upturned palm, gestured forward toward the rooms in the rear of the residence. Another officer immediately left the front room to check the rest of the house.

A few seconds after the searching officer left the front room, Alvarado Dubon made the following statement in Spanish before trailing off and shrugging his shoulders: "Well, I understand you can't get into my house without a warrant, then. But…" The Spanish-speaking officer did not translate that statement to the other officers and instead replied in Spanish: "We are going to check that nobody's there." Less than 20 seconds after leaving the room, the searching officer returned and said he had found "the rifle." The officers seized two long rifles, a handgun, magazines, and other ammunition from the house.

A grand jury charged Alvarado Dubon with illegal possession of firearms. Alvarado Dubon moved to suppress all evidence obtained from the house. The district court denied that motion. Alvarado Dubon then entered a conditional guilty plea that preserved his ability to challenge the denial of his suppression motion.

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

"Alvarado Dubon does not challenge anything that happened until the searching officer left the front room. To be sure, the officers did not have a warrant, and Alvarado Dubon could have declined to let them inside the home. But 'it is not a Fourth Amendment search to approach a home in order to speak with the occupant, because all are invited to do that.' *Florida v. Jardines*, 569 U.S. 1, 9 n.4 (2013). And once Alvarado Dubon 'allowed the officers into' his home, the officers could enter without violating the Fourth Amendment. See *Fernandez v. California*, 571 U.S. 292, 298 (2014).

"The district court's finding that Alvarado Dubon 'freely and voluntarily consented to the protective sweep of the residence' is not clearly erroneous. As directed by the Supreme Court, the district court considered Alvarado Dubon's 'actions, his age, and the conditions under which he gave consent.' See *Schneckloth v. Bustamonte*, 412 U.S.218, (1973) (courts should consider 'both the characteristics of the accused and the details of' the interaction). In doing so, the court interpreted Alvarado Dubon's statement, 'Go check,…there's no one else' as 'verbally consenting to the search.'

That consent 'was bolstered by Alvarado Dubon's body language as he nodded and gestured towards the area to be searched with an upturned hand.' See *United States v. Hylton*, 349 F.3d 781, 786 (4th Cir. 2003) ('Consent may be inferred from actions as well as words.')

"Alvarado Dubon's contrary arguments do not move the needle. True, the officers initially told him that they were 'going to check to see if anyone else was in the residence' rather than asking permission to do so. But those statements were made before Alvarado Dubon gave consent, and the Government need not demonstrate that the defendant knew of his right to refuse consent to prove that the consent was voluntary. And here the district court carefully explained why the conditions under which Alvarado Dubon consented do not suggest he was operating under any coercion or duress, including that the officers never displayed force or raised their voice during the interaction.

"Alvarado Dubon also argues that his inability to speak fluent English amplified the concern regarding consent. No doubt, language barriers may affect the voluntariness of consent. The Spanish-speaking officer told Alvarado Dubon in Spanish that they were going to see if anyone else was in the house, and Alvarado Dubon responded in Spanish that they should 'go check.' The district court permissibly viewed that exchange as confirming that Alvarado Dubon understood the officers' intentions and consented to their proposed action.

"The district court also permissibly concluded that Alvarado Dubon did not withdraw his consent before the rifle was found.

"Alvarado Dubon's revocation argument rests on his statement: 'Well, I understand you can't get into my house without a warrant, then. But…' The district court carefully considered that statement and explained why a reasonable officer would not have understood it to be a withdrawal of consent. The court explained that the words Alvarado Dubon used before trailing off and shrugging his shoulders are 'readily' susceptible to different meanings and suggest that he could have finished his comment by saying 'I'm allowing you to search anyway.' See *United States v. $304,980.00 in U.S. Currency*, 732 F.3d 812, 820 (7th Cir. 2023) ('Police officers do not act unreasonably by failing to halt their search every time a consenting suspect equivocates.') The court also noted that neither Alvarado Dubon's 'affect' nor his 'actions suggest he leaned toward withdrawing consent' because Alvarado Dubon neither 'protested' the officers' actions nor 'told the officers to stop or get out of his home.'

"Alvarado Dubon asserts that the officers 'seemingly ignored' his statement about the need for a warrant, the officers did not have to tell Alvarado Dubon that he had the right to revoke his consent to the search. See *United States v. Mendenhall*, 446 U.S. 544, 558 (1980) ('The Constitution does not require proof of knowledge of a right to refuse as an effective consent to a search).' The district court thus did not err in concluding that Alvarado Dubon did not revoke his consent before the rifle was found.

**READ THE COURT OPINION HERE:**
https://www.ca4.uscourts.gov/opinions/244076.P.pdf

## SECOND AMENDMENT:

### Domestic Violence; Possessing Firearms

*United States v. Nutter,* CA4, No. 21-4541, 5/14/25

David Nutter was indicted in August 2021 for violating 18 U.S.C. § 922(g)(9), which prohibits individuals with convictions for misdemeanor crimes of domestic violence from possessing firearms or ammunition. Nutter had three prior convictions in Ohio for domestic violence and child endangerment. He acknowledged possessing firearms and did not dispute his prior convictions but moved to dismiss the indictment. He argued that § 922(g)(9) violated the Second Amendment. The United States District Court for the Southern District of West Virginia denied Nutter's motion, concluding that § 922(g)(9) was consistent with the Nation's history and tradition of disarming individuals deemed a threat to public safety.

The United States Court of Appeals for the Fourth Circuit held that § 922(g)(9) is facially constitutional, finding that it fits within the historical tradition of disarming individuals who pose a credible threat to the physical safety of others. The court noted that the statute's purpose and method align with historical analogues, such as surety and going armed laws, which were designed to mitigate demonstrated threats of physical violence. The court affirmed the district court's denial of Nutter's motion to dismiss the indictment and upheld his conviction.

**READ THE COURT OPINION HERE:**
https://www.ca4.uscourts.gov/opinions/224541.P.pdf

## SECOND AMENDMENT:

### Large Capacity Magazine Devices

Capen v. Campbell, No. 1, No. 24-1061, 4/17/25

A Massachusetts law prohibits the sale, transfer, or possession of assault weapons and large capacity feeding devices. Joseph R. Capen, a Massachusetts resident, and the National Association for Gun Rights challenged the law, claiming it violates the Second Amendment.

The U.S. District Court for the District of Massachusetts found that the law is consistent with the nation's historical tradition of regulating dangerous and unusual weapons, which are not typically used for self-defense. The court also found that the law's restrictions on large capacity magazines are supported by historical precedents of regulating items that pose a significant public safety threat.

The United States Court of Appeals for the First Circuit reviewed the case and affirmed the district court's decision. The appellate court held that the Massachusetts law's restrictions on assault weapons, specifically the AR-15, are consistent with historical regulations that aimed to protect public safety by restricting particularly dangerous weapons. The court also found that the law's restrictions on large capacity magazines are supported by historical analogues and do not impose a significant burden on the right to self-defense.

**READ THE COURT OPINION HERE:**
https://www.mass.gov/doc/capen-opinion-first-circuit-court-of-appeals/download

**SECOND AMENDMENT: Purchase and Acquisition of weapons are protected by the Second Amendment**

*Yukutake v. Lopez*, CA9, No. 21-16756, 3/14/25

Two plaintiffs, Todd Yukutake and David Kikukawa, challenged two provisions of Hawaii's firearms laws, arguing they violated the Second Amendment. The first provision required that a handgun be acquired within a narrow time window (originally 10 days, later amended to 30 days) after obtaining a permit. The second provision mandated that gun owners physically bring their firearms to a police station for inspection within five days of acquisition as part of the registration process.

The United States District Court for the District of Hawaii granted summary judgment in favor of the plaintiffs, ruling that both provisions were facially unconstitutional under the Second Amendment.

The Ninth Circuit Court of Appeals affirmed the district court's judgment. The court held that the short timeframe for completing a firearms purchase after obtaining a permit was unconstitutional under the Second Amendment. The court reasoned that the purchase and acquisition of firearms are protected by the Second Amendment, and the State failed to justify the short temporal limit on firearms acquisition permits. The court also affirmed the district court's conclusion that the in-person inspection requirement violated the Second Amendment, noting that the government did not provide sufficient evidence that the requirement materially advanced the objectives of the registration system. The case was remanded to the district court to revise its permanent injunction in light of the recent amendments to the challenged provisions.

**READ THE COURT OPINION HERE:**
https://cdn.ca9.uscourts.gov/datastore/opinions/2025/03/14/21-16756.pdf

**SECOND AMENDMENT:**
**Violent Criminal Histories**

*United States v. Schnur*
CA5, No. 23-60621, 3/26/25

Jeremy Jason Schnur, previously convicted of multiple felonies including aggravated battery, burglary, and robbery, was indicted for unlawfully possessing a firearm as a convicted felon. Schnur was apprehended by law enforcement at the Hard Rock Casino in Biloxi, Mississippi, where he was found in possession of a loaded Canik 9mm semiautomatic pistol. Schnur moved to dismiss the indictment, arguing that firearms statutes violated his Second Amendment rights as applied to him.

The United States District Court for the Southern District of Mississippi found Schnur guilty. Schnur appealed the decision.

The United States Court of Appeals held that the Second Amendment's plain text covers Schnur's conduct, but the government demonstrated that disarming Schnur is consistent with the Nation's historical tradition of firearm regulation. The court cited precedents indicating that individuals with violent criminal histories, like Schnur's aggravated battery conviction, can be constitutionally disarmed. The Fifth Circuit affirmed the district court's judgment.

**READ THE COURT OPINION HERE:**
https://cases.justia.com/federal/appellate-courts/ca5/23-60621/23-60621-2025-03-26.pdf?ts=1743031813

**SUBSTANTIVE LAW: Double Jeopardy**

*Waterman v. State of Arkansas*, ASC, No. CR-24-776, 2025 Ark. 62, 5/8/25

Amber Dawn Waterman was charged in Benton County on November 10, 2022, with two counts of premeditated and deliberated capital murder stemming from the deaths of Ashley Bush and her unborn child, Valkyrie Grace Willis. On July 30, 2024, Waterman pleaded guilty in the United States District Court for the Western District of Missouri to one count of kidnapping that resulted in death and one count of kidnapping that resulted in the death of an unborn child.
Waterman argues that her prosecution is barred by the double-jeopardy provisions of Ark. Code Ann. § 5-1-114.

The Arkansas capital-murder charges clearly require proof that Waterman had the premeditated and deliberated purpose to cause the death of another person, however, premeditated and deliberated purpose is not required by the federal statutes. Likewise, the federal convictions required proof of facts not required under the capital-murder statute in Arkansas. Specifically, kidnapping, which was required for both federal convictions, requires proof of an unlawful seizure, confinement, abduction, or holding of a person. Additionally, kidnapping requires that the person be willfully transported in interstate commerce. The Arkansas capital-murder statute requires no such unlawful holding or transport via interstate commerce.

The Arkansas Supreme Court stated that the federal and state statutes at issue here are intended to prevent substantially different harm or evils. Accordingly, under Ark. Code Ann. § 5-1-114(1)(A), Waterman's federal convictions do not prevent her prosecution in Arkansas.

**READ THE COURT OPINION HERE:**
https://opinions.arcourts.gov/ark/supremecourt/en/523589/1/document.do

**SUBSTANTIVE LAW-CHILD PORNOGRAPHY: Possession of Materials Depicting Sexual Explicit Conduct Involving a Child**

*Gregory v. State*, ACA, No. CR-24-180, 2025 Ark. App. 164, 3/12/25

The Arkansas Court of Appeals affirmed convictions involving child pornography where defendant secretly photographs minors in a restroom. The Court was unimpressed by arguments that because they did not show "suggestive" poses, this should result in acquittal. Gregory contends that the State failed to establish that the images depicted sexually explicit conduct. He argues that the videos and images in this case are simply images of young women going about routine tasks one would expect to occur in a bathroom and do not constitute a "lewd exhibition." Whether an image constitutes a "lewd exhibition" is a factual question for the jury. Our supreme court has noted that "lewd" is a common word with an ordinary meaning and that Black's Law Dictionary defines "lewd" as obscene or indecent; tending to moral impurity or wantonness.

Having reviewed the record, including the videos and images presented at trial, we conclude that the circuit court did not err in denying Gregory's motion for directed verdict. The images in this case depict female children changing clothes, showering, shaving their legs and pubic area, and using the bathroom. The breasts and genitals of the children are on full display. In addition, Gregory took three "screen grabs"—or photographs from a video—of MV6, which consist of close-up images of her breasts, buttocks, and genitals. In one

image, MV6's legs are spread, and her genitals are the focal point.

The images in the videos and the "screen grabs" depict the breasts and genitals of children, and they were secretly obtained. This constitutes substantial evidence supporting the jury verdicts that the images in Gregory's possession were at the very least indecent and therefore lewd.

**READ THE COURT OPINION HERE:**
https://opinions.arcourts.gov/ark/courtofappeals/en/item/523413/index.do

## SUBSTANTIVE LAW:

**Enticement of a Minor; Substantial Step**
*United States v. Harcrow*, CA8, No. 24-1096, 4/29/25

An investigator from the Faulkner County Sheriff's Office, posing as a 15-year-old named "Connor," responded to a Craigslist ad posted by Christopher Harcrow seeking young boys interested in spanking. After initially breaking off contact upon learning "Connor" was 15, Harcrow resumed communication 12 days later, discussing sexual activities and planning a meeting. When Harcrow arrived at the meeting location, he was arrested, and a search of his vehicle revealed personal lubricant purchased just before the meeting. Harcrow was charged with one count of enticement of a minor.

A jury in the United States District Court for the Eastern District of Arkansas found Harcrow guilty, and he was sentenced to 120 months' imprisonment followed by 10 years of supervised release. Harcrow appealed.

The United States Court of Appeals for the Eighth Circuit held that sufficient evidence supported the conviction, since Harcrow's communications and actions demonstrated intent to entice a minor for illegal sexual activity and constituted a substantial step toward committing the offense. The Eighth Circuit affirmed Harcrow's conviction and sentence.

**READ THE COURT OPINION HERE:**
https://cases.justia.com/federal/appellate-courts/ca8/24-1096/24-1096-2025-04-29.pdf?ts=1745940624