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The Informer – August 2019

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CASE SUMMARIES

Circuit Courts of Appeal

Second Circuit

United States v. Williams, 2019 U.S. App. LEXIS 20262 (2d Cir. N.Y. July 9, 2019)

Officers with the New York City Police Department (NYPD) arrested Williams for speeding, reckless driving, and unauthorized use of a rental car. At the police station, Detectives Fichter and Latorre conducted an inventory search of Williams' car in accordance with the NYPD's standardized procedures for inventory searches as described in the department's Patrol Guide. After finding several items of a non-criminal nature, the detectives went into the station where Williams asked Detective Latorre what was going to happen to the rental car. Detective Latorre told Williams the car was probably going to be towed back to the rental agency. Seemingly concerned with this development, Williams requested that he be allowed to make a telephone call. Williams proceeded to call someone and while standing two to three feet away from him, Detective Latorre overheard Williams tell the other person to "come get the car right now" because the police were "looking to tow it." Concerned that they had missed something during their initial search, Detectives Latorre, Fichter and Breton went back to the rental car to conduct a second inventory search.

During the second inventory search, Detective Breton opened the car's center console, which had not previously been searched. Although the center console was not designed to open, Detective Breton knew that it could be easily opened without the need for special tools or force by unsnapping three plastic pieces that could be snapped back into place to close the console. Detective Breton testified that he usually checks inside car consoles during inventory searches because he has located contraband there in the past. Inside the console, Detective Breton found a loaded handgun. The government subsequently charged Williams with being a felon in possession of a firearm.

Williams filed a motion to suppress the handgun. Williams argued that the second inventory search, which was conducted only after Detective Latorre overheard Williams' comments during his phone call was an improper investigative search for criminal evidence and not a valid inventory search.

When police take a vehicle into custody they may search the vehicle and make an inventory of its contents without first obtaining a search warrant and without regard to whether there is probable cause to suspect that the vehicle contains contraband or criminal evidence. Inventory searches are considered reasonable under the Fourth Amendment because they are conducted by police officers as part of a community caretaking function that officers must perform separate from their responsibility to detect crime. The objectives of inventory searches are to: (1) protect the owner's property while it is in police custody, (2) protect the police against false claims of lost or stolen property, and (3) protect the police from potential dangerous items located in the vehicle.

To balance the potential danger to privacy interests posed by allowing officers to conduct warrantless searches, the Supreme Court has required that inventory searches be performed using

“standardized criteria or established routine.” Consequently, inventory searches conducted pursuant to standard police procedures are reasonable.

Here, the court found it was reasonable for the detectives to conclude that Williams’ comments during his phone call suggested a need to go back and check his car for an item of value the officers had not discovered in their first search. The court held that the import of the community caretaking function, i.e. to secure property, protect police from claims of theft, and locate potentially dangerous items, remained even when a piece of property may have been missed in the initial search. The court added that even if the officers might have expected to find evidence of a crime during their second search, that fact alone did not render the second search unreasonable.

The court further held that it was reasonable for Detective Breton to remove the center console’s paneling in order to discover the handgun. First, the NYPD’s Patrol Guide specifically says that officers can force open the “trunk, glove compartment, etc.” if only minimal damage will be done. Second, Detective Breton testified that it was common for police to search center consoles during inventory searches. Third, Detective Breton testified that he did not have to use a special tool to remove the console’s paneling. Finally, Detective Breton testified no damage was done to the car and the console’s paneling snapped back into place after he removed it.

For the court’s opinion: <https://cases.justia.com/federal/appellate-courts/ca2/17-3741/17-3741-2019-07-09.pdf?ts=1562684405>

Fifth Circuit

United States v. Daniels, 2019 U.S. App. LEXIS 20449 (5th Cir. LA July 10, 2019)

Agents with the Drug Enforcement Administration (DEA) decided to conduct a knock and talk interview at a motel room during a surveillance operation. When an agent knocked on the door, one of the occupants, Craig James, came to the door but did not open it. The agent identified himself as a police officer and asked James to open the door so they could talk. After knocking for two minutes, the agent heard another agent, who was standing to his left by the motel room’s window, say the he could hear the toilet flushing. Believing that James was destroying evidence, the agents kicked the door open and entered the room. Once inside, agents found Lazandy Daniels seated on the toilet, fully clothed, with the seat cover down. The agents searched the room and seized crack cocaine, a digital scale, and a large quantity of cash.

The government charged Daniels with several drug-related offenses. Daniels filed a motion to suppress the evidence seized from the motel room. Daniels argued that the warrantless entry and search of the room was not supported by exigent circumstances.

While warrantless searches are presumed to be unreasonable, a police officer may search a person’s property if “the exigencies of the situation make the needs of law enforcement so compelling that a warrantless search is objectively reasonable.” A valid exigency exists when an officer believes that evidence is being destroyed; however, an officer “may not rely on the need to prevent the destruction of evidence when that exigency was created or manufactured by the conduct of the police.”

The court held that an exigency existed which justified the agents warrantless search of the motel room. First, after knocking, the agent heard the sound of someone running back and forth inside the room. Second, the agent testified that there were times when James' voice was very close to the door and other times when it was much further from the door, indicating that James was running back and forth. Third, the agent identified himself as a police officer, so James knew that police likely suspected he was involved in criminal activity. Fourth, an agent heard the sound of the toilet flushing and knew that it was common for drug dealers to flush narcotics down the toilet. The court concluded that these facts reasonably led the agents to believe that the room's occupants might have been attempting to destroy evidence.

The court further held that the agents did not create the exigency that justified their entry and search of the motel room. While the agents knocked vigorously, the knocking was relatively brief, and the agents did not attempt to force entry until after they heard the toilet flush.

For the court's opinion: <https://cases.justia.com/federal/appellate-courts/ca5/18-30791/18-30791-2019-07-10.pdf?ts=1562779856>

Seventh Circuit

United States v. Sawyer, 2019 U.S. App. LEXIS 20299 (7th Cir. IL July 9, 2019)

Police officers responded to a report of a residential burglary in progress. While looking for signs of forced entry, a man arrived and identified himself as the homeowner. The owner told the officers that the house was rental property with no current tenants and that no one should be inside. While looking through a window, the officers saw several people inside the house and ordered them to come out. Sawyer and three other individuals exited the house and stood with the officers on the porch. The homeowner then asked the officers to go inside to check the house. In the basement, one of the officers found a backpack. The officer opened the backpack and discovered four guns and a cell phone. Sawyer eventually claimed ownership of the backpack and cell phone.

The government charged Sawyer with being a felon in possession of a firearm.

Sawyer filed a motion to suppress the guns seized from the backpack, arguing that the officer lacked probable cause or consent to search it.

The court disagreed, holding that Sawyer, as a trespasser, had no reasonable expectation of privacy in the backpack he brought in when he unlawfully entered the house. The Supreme Court has held that a person's "privacy interest is not reasonable when one's presence in a place is wrongful." In this case, the officers responded to a report of a residential break-in and learned from the owner that the house should be empty and unoccupied. After Sawyer and the other individuals emerged from the house, the owner asked the officers to search the house during which the officers discovered and searched the backpack. The court noted that Sawyer did not claim that his or his backpack's presence in the home was lawful or offer any basis for his privacy interest in the house. Because Sawyer did not establish that he had a reasonable expectation of privacy in the house, the court reasoned that he could not challenge the search of the backpack that he left inside the house. The court added that its holding was consistent with the holdings of the 1st, 6th, 7th, 9th, and D.C. Circuits, which have decided this issue.

For the court's opinion: <https://cases.justia.com/federal/appellate-courts/ca7/18-2923/18-2923-2019-07-09.pdf?ts=1562697030>

Eighth Circuit

United States v. Williams, 2019 U.S. App. LEXIS 19934 (8th Cir. MO July 3, 2019)

An undercover police officer investigating reports of stolen automobiles was patrolling a high-crime area when he saw a purple Dodge Challenger parked at an address that had been active in other recent crimes. The officer checked the department's "hot sheets," which listed vehicles reported stolen in the area, and discovered that the purple Challenger had been listed as stolen. The officer confirmed that the purple Challenger had been stolen from a car dealership and that a red Dodge Challenger had also been stolen from the same dealership. The undercover officer continued his patrol while a second officer conducted surveillance on the purple Challenger.

A short time later, the second officer reported that a red Challenger pulled next to the purple Challenger, stopped for a few seconds, and then drove away. While the second officer continued his surveillance, the undercover officer followed the red Challenger until it pulled into the driveway of a nearby residence. While the undercover officer waited for uniformed backup officers to arrive, he saw a man lean into the car toward the middle console. Once the backup officers arrived, they walked up the driveway and placed Williams and two other individuals, all of whom were standing near the red Challenger, in handcuffs.

The uniformed officers checked the VIN number and discovered that the red Challenger had not been reported stolen. The officers also ran a license plate check, which revealed that the car was not stolen but that it had temporary tags that had expired. The undercover officer soon discovered that he had misread the "hot sheets." The second stolen vehicle was a red Dodge Charger, not a red Dodge Challenger, as the officer mistakenly believed.

While the officers were running the checks on the red Challenger, they saw three small baggies on the ground near the men that contained substances that appeared to be marijuana and crack cocaine. In addition, the officers saw a handgun in plain view in the passenger seat of the vehicle. None of the men claimed ownership of the red Challenger and Williams told the officers that it had been parked in the driveway all day. The undercover officer knew Williams' statement to be untrue, as he had witnessed the red Challenger pull into the driveway. Based on the lack of clear information about the ownership of the vehicle, the officers decided to impound it and conducted an inventory search. During their search, the officers found a second handgun wedged between the driver's seat and the center console. After DNA testing connected Williams to the second handgun and the crack cocaine, the government charged him with being a felon in possession of a firearm.

Williams filed a motion to suppress the evidence seized from the red Challenger. First, Williams claimed that the undercover officer made an objectively unreasonable mistake in identifying the red Challenger as stolen.

The court disagreed. Although the undercover officer did not double check the hot sheets to verify that the red Challenger was listed as stolen before approaching Williams and the other individuals, the court concluded that the officer's mistake was reasonable because: (1) a Dodge Charger and

Dodge Challenger have similar names and share similar abbreviations on the hot sheets, (2) the red Challenger was observed stopping briefly next to the purple Challenger, which had been verified as stolen, (3) the officer learned that the purple Challenger had been stolen from a car dealership, increasing the likelihood that another car of the same make and model could also have been stolen, (4) both vehicles were spotted in a high-crime area where the undercover officer had previously located or recovered stolen vehicles, and (5) the red Challenger was in transit, not stationary like the purple Challenger, which provided less of an opportunity to verify the information on the hot sheets before starting to pursue it and conduct surveillance.

Second, Williams argued that once the officers determined the red Challenger was not stolen the investigatory stop should have terminated and that any extension of the stop beyond that point was unreasonable.

Again, the court disagreed. The court held that by the time the officers confirmed the red Challenger was not stolen the: (1) vehicle' expired temporary tags, (2) evasive answers of the people at the scene, (3) misrepresentations that the car had been parked at the house all day, and (4) unwillingness of anyone to identify the owner of the vehicle, provided the officers with reasonable suspicion that criminal activity, independent of vehicle theft, was afoot. Because the officers did not unreasonably extend the stop, the court concluded that the observation of the narcotics and the firearm, coupled with the inability to identify the vehicle's owner, provided the officers with probable cause to tow the vehicle and perform an inventory search, which led the discovery of the firearm that gave rise to the charge against Williams.

For the court's opinion: <https://cases.justia.com/federal/appellate-courts/ca8/18-2747/18-2747-2019-07-03.pdf?ts=1562167853>

United States v. Green, 2019 U.S. App. LEXIS 20729 (8th Cir. MO July 12, 2019)

A police officer found Michael Green asleep in the driver's seat of a 1996 Saturn sedan with its hood and trunk open. The car was parked in front of a stop sign near a busy residential intersection. When the officer ran the vehicle's license plate, it came back associated with a 1988 Oldsmobile registered to Katherine Gooch.

When Green awoke, he told the officer that the car had broken down the night before. When the officer asked Green for his driver's license, Green produced only an identification card. The officer confirmed with dispatch that Green did not have a valid driver's license. Dispatch also told the officer that Green was on supervision following convictions for burglary and drug possession and that Green was known to be armed. The officer asked Green for consent to search the car but Green declined, telling the officer that the car belonged to his girlfriend, Katherine Gooch. The officer then decided to have the car towed because it was disabled on a public roadway, blocking an intersection, with improper license plates, and Green did not have a valid driver's license.

Green wanted to remove some of his property from the car, but the officer would not release any property that was not clearly identifiable as belonging to Green. The officer issued Green two traffic citations and told him that he was free to go. Afterward, the officer conducted an inventory search of the car and found approximately 390 grams of methamphetamine.

The government charged Green with possession with intent to distribute methamphetamine.

Green filed a motion to suppress the evidence seized from the car. Green argued that the officer did not follow his department's tow policy and that the officer's real reason for towing the car was his suspicion that it might be stolen or contain stolen property.

Inventory searches of impounded vehicles are considered reasonable under the Fourth Amendment if they are "conducted according to standardized police procedures." Requiring officers to follow standardized procedures limits their discretion while conducting the search and reduces the likelihood that officers are conducting a general search for criminal evidence. Here, the court found that the officer's decision to impound and inventory Green's car was reasonable under the circumstances, that the officer followed his department's tow policy, and that the officer's purpose for impounding the vehicle was not to investigate criminal activity. Consequently, the court held that the inventory search was reasonable.

For the court's opinion: <https://cases.justia.com/federal/appellate-courts/ca8/18-1707/18-1707-2019-07-12.pdf?ts=1562945433>

Z.J. v. Kansas City Board of Police Commissioners, 2019 U.S. App. LEXIS 22205 (8th Cir. MO July 25, 2019)

While investigating a murder, detectives learned that the victim's cell phone was missing. The detectives obtained call records for the phone after the time of the murder as well as the GPS coordinates for those calls. Based on this information, the detectives learned that the victim's phone had been used to call a residence on Bristol Avenue. The detectives learned through law enforcement and motor vehicle databases that a person named Lee Charles lived at the Bristol Avenue residence.

The next day, the detectives learned the victim's phone was turned on and was within 80 meters of a particular intersection, an area including the Bristol Avenue residence and an apartment complex, which consisted of two buildings. While standing between the buildings, two detectives heard a phone ringing from somewhere in the apartment complex when a third officer called the victim's phone number, although they could not determine its exact location. When additional officers arrived they again tried to locate the phone but were unsuccessful.

The detectives arrested Charles a short time later and obtained a warrant to search the Bristol Avenue residence for the victim's cell phone, which had not yet been recovered. The warrant application omitted the fact the detectives had heard the victim's phone ringing in the apartment complex and not the Bristol Avenue residence in their earlier attempt to locate it.

The detectives contacted the Kansas City Police Department's Tactical Response Team (the SWAT team) to execute the search warrant. At a briefing, the detectives informed the SWAT team that Charles had already been taken into custody. Afterward, the SWAT team drove by the residence to confirm the address but did no other surveillance of the house to determine who lived there.

A short time later, the SWAT team approached the front door of the residence. The front entrance had an inside wooden door and an outside metal screen door. Both doors required a key to open from both the inside and the outside. Because the warrant did not authorize a "no knock entry," the SWAT team knocked on the door and announced, "Police, search warrant!" In response, Carla Brown grabbed the keys to the door and opened the inside door. According to Brown, when she

opened the inside door she saw through the screen door several people outside, yelling, which startled her. Brown held up the keys to the door and jingled them as an indication that she was going to open the screen door. However, before she had the opportunity to do so, the SWAT team knocked out the screen and threw a flash-bang grenade over Brown's head into the living room of the house. The SWAT team then pried the screen door open and entered the house.

The flash-bang grenade caught the living room drapes on fire. Consequently, the SWAT team had to remove them from the house and place them in the front yard before clearing the rest of the house. In addition to Brown, the SWAT team found two-year old Z.J. in the living room as well as two elderly women. After the SWAT team cleared the house, the detectives, who had been waiting a block away, took control of the house. At this point, the detectives learned that Charles no longer resided at the residence, as he had been kicked out several months earlier.

After the SWAT team entry, Z.J. suffered significant developmental regression and was diagnosed with post-traumatic stress disorder (PTSD). Subsequently, Z.J., through Je'taun Jones, sued the detectives, the SWAT team members, and the Board of Police Commissioners (Board) under 42 U.S.C. § 1983 for violations of the Fourth and Fourteenth Amendments.

First, Z.J. alleged that the detectives improperly omitted information on the search warrant application regarding having heard the victim's phone ringing inside the apartment complex. Second, Z.J. claimed that the detectives failed to conduct a sufficient investigation prior to executing the warrant and then unjustifiably chose to have the SWAT team execute the search. Third, Z.J. claimed that the members of the SWAT team used excessive force by throwing a flash-bang grenade into the residence. Finally, Z.J. claimed that the Board's policies and practices were deliberately indifferent to the unconstitutionally excessive use of flash-bang grenades by the Kansas City Police Department.

The district court denied the detectives and the SWAT team members qualified immunity and declined to dismiss the lawsuit as to the Board. All defendants appealed to the Eighth Circuit Court of Appeals.

First, the court agreed with the district court and held that the members of the SWAT team were not entitled to qualified immunity.

Next, the court examined whether the use of a flash-bang grenade in the execution of the search warrant was reasonable. To determine whether the use of flash-bang grenades during the execution of a search warrant is reasonable, the most important factor for a court to consider is whether the officers had reason to believe they would encounter a dangerous, violent suspect. The use of flash-bang grenades is more likely to be reasonable if the officers expect to encounter an individual who is known to be armed and dangerous or who has a history of violence. In addition, their use is more likely to be reasonable if the situation presents a need for the element of surprise in order to protect the safety of the officers or others. On the other hand, the use of flash-bang grenades is less likely to be reasonable if officers unreasonably fail to ascertain whether innocent bystanders will be present in the area when the flash-bang grenade is deployed.

In this case, the court found that use of the flash-bang grenade was clearly unreasonable and violated the Fourth Amendment. The SWAT team knew the suspect, Charles, was in custody, so they knew they would not encounter him at the residence. In addition, the SWAT team had no indication that any other people at the residence would pose a threat to them. This was largely because the SWAT team failed to do any investigation or surveillance of the residence to determine whether the residence contained any other occupants.

Further, the court found that the SWAT team's claim that the use flash-bang was reasonable because the "occupants of the residence knew [they] were there and that [the officers] no longer had the element of surprise" was not persuasive. The court held that because the search warrant did not authorize the SWAT team to conduct a "no knock" warrant the requirement to knock on the door and announce their presence "obviously defeated the element of surprise."

Next, the court reversed the district court and held that the detectives were entitled to qualified immunity.

The court stated that even if the detectives included the fact that they heard the victim's cell phone ringing in the apartment complex, the affidavit still would have established probable cause to support the issuance of a search warrant for the Bristol Avenue residence. First, the affidavit established, among other things: (1) that the phone was traced to an area that included the Bristol Avenue residence, (2) the phone had been used to call the Bristol Avenue residence, and (3) two separate sources indicated that Charles lived at the Bristol Avenue residence.

Next, without deciding whether the detective's decision to use the SWAT team to execute the search warrant violated the Fourth Amendment, the court held that the detectives did not violate clearly established law. The court found that at the time of the incident it was not clearly established that using the SWAT team to execute the search warrant under these circumstances violated the Constitution.

Finally, the court dismissed the Board's appeal finding that it lacked appellate jurisdiction to review the district court's decision to deny the Board's motion to dismiss Z.J.'s lawsuit.

For the court's opinion: <https://cases.justia.com/federal/appellate-courts/ca8/17-3365/17-3365-2019-07-25.pdf?ts=1564068639>

Ninth Circuit

United States v. Iwai, 2019 U.S. App. LEXIS 21899 (9th Cir. HI July 23, 2019)

A narcotic detection dog alerted to the presence of a controlled substance in a package addressed to Bryant Iwai. Federal agents obtained a search warrant, opened the package, and found approximately six pounds of methamphetamine. The next day, agents obtained a warrant to track a controlled delivery of the package to Iwai's condominium building. Agents removed a majority of the methamphetamine and replaced it with a non-narcotic substitute, leaving behind only a small representative sample of the drug. The agents also placed a GPS tracking device, which identified the location of the package and contained a sensor that would activate a rapid beeping signal on their monitoring equipment when the package was opened.

The agents learned that Iwai's residence was located in a multi-story condominium building that did not permit direct delivery of packages to a particular unit, but rather utilized a central location to which packages were delivered for its residents. Believing that they did not have probable cause that the package would actually end up in Iwai's unit, the agents did not seek an anticipatory search warrant to enter his residence in order to secure the box once the beeper was triggered. At this point in the investigation, the agents did not know whether the package would be retrieved from the central mailroom, removed from the property, or be taken somewhere else.

At approximately 11:48 a.m., an agent posing as a mail carrier went to the condominium building and from the lobby callbox telephoned Iwai to notify him that he had received a package. Iwai answered his cell phone and requested that the package be left at the front desk with the manager. The agent left the package at the front desk as requested.

Iwai returned to the condominium building at approximately 12:56 p.m. The agents saw Iwai pick up the package from the manager, bring it up the elevator, and into his unit. At 3:15 p.m., the beeper activated, signaling the package had been opened inside Iwai's unit. The agents went to Iwai's door, knocked and announced their presence. After receiving no response, one of the agents saw shadowy movements through the peephole, indicating that someone had come to the door. After announcing their presence again, the agent saw the figure walking away from the door. The agent knocked and announced a third time, but received no response. At this point, the agent heard noises from inside the apartment that sound like plastic and paper rustling. The agent interpreted these noises to mean that Iwai was destroying evidence so he forced entry into Iwai's apartment at 3:17 p.m..

When the agents entered, Iwai was in the kitchen area and the package was lying unopened on the floor in the living room, indicating that the signaling device had malfunctioned. While securing the residence, agents saw in plain view on a table in the living room a gun and zip-lock bags containing a substance that appeared to be methamphetamine. After obtaining Iwai's consent, agents search the condominium and found approximately 14 pounds of methamphetamine, cash, and drug paraphernalia.

The government charged Iwai with trafficking methamphetamine. Iwai filed a motion to suppress the evidence seized from his residence arguing that the agents' warrantless entry violated the Fourth Amendment.

The court held that the agents' warrantless entry into Iwai's residence was justified because the agents reasonably believed that exigent circumstances i.e. the destruction of evidence, existed. When the agents entered Iwai's condominium they knew: (1) six pounds of methamphetamine had been intercepted the day before in a package addressed to Iwai; (2) the multi-story condominium complex had a central mail room to which all packages had to be delivered, preventing the agents from sending the package on a sure course to Iwai's unit; (3) the agents observed Iwai take the package up to his unit; (4) the beeper thereafter signaled that the package had been opened; (5) the agents knew that drugs are easily destroyed or disposed of; (6) upon knocking on the door, an agent saw a shadowy figure approach the door and then retreat; and (7) an agent heard a suspicious rustling noise from inside, which in his experience as a highly trained narcotics investigator, indicated the destruction of evidence was occurring.

For the court's opinion: <https://cases.justia.com/federal/appellate-courts/ca9/18-10015/18-10015-2019-07-23.pdf?ts=1563901364>

Rodriguez v. City of San Jose, 2019 U.S. App. LEXIS 21897 (9th Cir. CA July 23, 2019)

Lori Rodriguez called 911 and requested that officers be dispatched to conduct a welfare check on her husband Edward at the couples' house. Officers had been to the Rodriguez home on prior occasions because of Edward's mental health problems and the responding officers knew that there were guns in the home.

Upon arrival, officers found Edward ranting about the CIA, the army, and people watching him. Edward also mentioned “shooting up schools” and that he had “gun safe full of guns.” When asked if he wanted to hurt himself, Edward attempted to break his own thumb.

The officers concluded that Edward was in the midst of an acute mental health crisis that made him a danger to himself and others. As a result, the officers decided to seize and detain Edwards for a mental health evaluation pursuant to California law. After removing Edward from the home, the officers confirmed that there were firearms in the home in a gun safe. Lori gave the officers the keys and the combination code to the safe where they found handguns, shotguns, and semi-automatic rifles. The officers confiscated 11 firearms that were either unregistered or registered to Edward as well as one firearm that was registered to Lori. Lori objected to the removal of her personal handgun, but the officers confiscated it along with the other 11 firearms.

One month later, the City of San Jose filed a petition in California state court seeking an order of forfeiture under California law based on a determination that the guns’ return would likely endanger Edward or others. Edward did not respond, but Lori asserted outright ownership of her personal handgun and community property ownership of the other firearms. Lori argued that the court had no authority to interfere with her Second Amendment right to keep and bear arms, and even if Edward was prohibited from possessing and owning firearms, she was not prohibited.

The California Superior Court granted the City’s petition. Lori appealed. The California Court of Appeal subsequently held that there was “substantial evidence supporting the superior court’s determination that returning the guns to the Rodriguez home would likely result in endangering Edward or others.” In addition, the court held that Lori had not demonstrated a viable Second Amendment claim under the United States Supreme Court’s case law.

Following the California Court of Appeals decision, Lori took the necessary steps under California law to become eligible for the City to return her the firearms. Lori changed the registration and ownership so that all 12 guns were in her name only and obtained gun release clearances from the California Department of Justice. Lori then asked the City to return the guns; however, the City denied her request.

Lori subsequently sued the City of San Jose and the officer who authorized the initial seizure of the guns under 42 U.S.C. § 1983. Lori sought a return the guns, compensatory damages, and an injunction to prevent future violations of her and other gun owner’s rights. After the district court dismissed the lawsuit, Lori appealed to the Ninth Circuit Court of Appeals.

First, the court recognized that the California state courts addressed Lori’s Second Amendment claim at both the trial and appellate levels. In both instances, the courts concluded that the seizure and retention of the firearms did not violate her right to keep and bear arms. Under the doctrine of issue preclusion, which prohibits the successive litigation of an issue that has already been litigated and resolved, the court held that it was barred from reconsidering Lori’s Second Amendment claim.

Second, the court held that warrantless seizure of the Rodriguezes’ firearms on the day of Edward’s hospitalization was reasonable. The Supreme Court has recognized a category of police activity relating to the protection of public health and safety commonly referred to as the “community caretaking function” that is unrelated to the detection, investigation, or acquisition of evidence related to criminal activity. Warrantless searches or seizures under the community caretaking function generally involve home entries to investigate safety or medical emergencies or the impoundment of vehicles. To determine the reasonableness of a warrantless search or

seizure under the community caretaking function in an emergency home entry or a vehicle impoundment a court will consider: (1) the public safety interest, (2) the urgency of that public interest, and (3) the individual property, liberty, and privacy interests. The court held that these factors should be considered to determine whether the warrantless seizure of a firearm to protect the gun owner or others is reasonable.

In this case, the court concluded that the seizure of the firearms did not affect a serious private interest the Rodriguezes had in their personal property but instead promoted a substantial public safety interest. First, police officers had been to the home in the past when Edward was acting erratically. Second, on this occasion, Edward was ranting about the CIA, the army, and other people watching him. Third, Edward mentioned “shooting up schools” while specifically referencing the guns in the safe. Finally, the officers did not know when Edward might return from the hospital. Based on these facts, the court held that a reasonable officer would have been extremely concerned by the prospect that Edward might have access to a firearm in the near future. Consequently, the court held that the urgency of the situation justified the seizure of the firearms.

For the court’s opinion: <https://cases.justia.com/federal/appellate-courts/ca9/17-17144/17-17144-2019-07-23.pdf?ts=1563901363>

Tenth Circuit

Colbruno v. Kessler, 2019 U.S. App. LEXIS 19768 (10th Cir. CO July 2, 2019)

Christopher Colbruno was incarcerated in a Denver County, Colorado jail awaiting trial. During an apparent psychotic episode, Colbruno swallowed metal components of an emergency call box in his jail cell. Sheriff’s Department deputies contacted a physician at approximately 10:00 p.m., and the physician told them to bring Colbruno to the hospital for treatment within one-hour. At 12:20 a.m., three deputies placed Colbruno in a van to go to the hospital. On the way there, Colbruno urinated and defecated on the smock he was wearing. At the hospital, the three transporting deputies were met by three additional deputies. The deputies removed the soiled smock and walked Colbruno into the hospital without any clothes on except for a pair of orange mittens. The deputies passed through the ambulance bay, entrance, atrium, and hallways before they chained Colbruno to a bed. Hospital staff witnessed this conduct and reported it to the hospital risk manager because they found it disturbing.

Colbruno filed suit against the six deputies under 42 U.S.C. § 1983 claiming that the public exposure of his naked body violated his Constitutional rights. The deputies responded by asserting that they were entitled to qualified immunity. The district court denied the deputies qualified immunity and they appealed.

The Tenth Circuit Court of Appeals agreed with the district court and denied the deputies qualified immunity. First, the court recognized that exposing a person’s naked body involuntarily is a severe invasion of personal privacy. The court added, “law enforcement officers in this circuit have been taught this lesson repeatedly,” and then cited several cases in which the court held that a suspect’s Constitutional rights had been violated by public exposure of a suspect’s nude body.

Second, the court held that the exposure of Colbruno’s body was not “rationally related to a legitimate governmental objective.” The deputies argued that Colbruno needed medical treatment urgently and that finding another covering for him before transporting him through the hospital

would have taken too much time and effort. However, Colbruno alleged that the deputies took more than two hours to transport him to the hospital after discovering his condition. In addition, Colbruno alleged that after walking him through the hospital, the deputies chained him to a bed instead of immediately seeking treatment. The court found that these allegations supported the inference that Colbruno's condition was not so urgent that the deputies could not have delayed walking into the hospital for the few minutes it would have likely taken to locate replacement clothing at the hospital.

The court further held that at the time of the incident it was clearly established in the Tenth Circuit that the deputies' conduct violated Colbruno's Constitutional rights.

For the court's opinion: <https://cases.justia.com/federal/appellate-courts/ca10/18-1056/18-1056-2019-07-02.pdf?ts=1562083232>

United States v. Gurule, 2019 U.S. App. LEXIS 20558 (10th Cir. UT July 11, 2019)

A police officer saw a sedan commit several traffic violations and conducted a traffic stop. The vehicle contained three occupants, none of whom possessed a valid driver's license. In addition, the driver had several outstanding warrants for her arrest. After obtaining the driver's consent to search the vehicle, a back-up officer asked the passengers to exit the vehicle. Upon exiting the vehicle, the front-seat passenger consented to a Terry frisk. The officer then asked the back-seat passenger, Tommy Gurule, for consent to search him. After Gurule twice told the officer he would not consent to a search, he was directed to sit at a nearby curb.

During the stop, Gurule volunteered information that a bottle of alcohol in the vehicle was his, so as not to incriminate the driver. As one officer asked repeatedly whether Gurule possessed any weapons, both officers became concerned that Gurule was responding deceptively. Unsatisfied with Gurule's responses, the officers ordered him to stand. As Gurule began to stand, one of the officers saw a visible bulge in Gurule's right-front pants pocket. When the officer grabbed Gurule's arm as a protective action, he saw a gun in Gurule's right-front pocket. The officers handcuffed Gurule and seized a pistol from his pocket.

The government subsequently charged Gurule with being a felon in possession of a firearm.

Gurule filed a motion to suppress the firearm. The district court granted Gurule's motion holding that Gurule should have been free to leave the scene on foot before the Terry frisk, but even if Gurule's detention had been lawful, the officers did not have reasonable suspicion to frisk him. The government appealed.

The Tenth Circuit Court of Appeals reversed the district court. First, the Supreme Court has held that passengers may be detained for the duration of a valid traffic stop. Normally, a traffic stop ends when the officers have no further need to control the scene. In this case, the court concluded that the officers were entitled to control the scene for the duration of the consent search of the vehicle. As a result, the court held that Gurule and the other occupants were lawfully detained prior to and during the search of the vehicle.

Additionally, the parties disagreed upon the precise moment at which the frisk began. Gurule argued that the frisk began when he was ordered to his feet and the officer grabbed his arm. The government claimed that the frisk did not begin until the officer physically manipulated Gurule's right-front pocket, at which point the officer had already seen the gun in Gurule's pocket. The

court agreed with the government and held that the frisk did not begin until after Gurule was standing and the officer saw the gun in his pocket.

Finally, the court held that the circumstances surrounding the stop along with the bulge in Gurule's right-front pocket supported a finding that Gurule was armed and therefore posed a threat to the officers' safety during the stop. Consequently, the court found that the officers established reasonable suspicion to support the frisk of Gurule.

For the court's opinion: <https://cases.justia.com/federal/appellate-courts/ca10/18-4039/18-4039-2019-07-11.pdf?ts=1562862657>
