Department of Homeland Security
Federal Law Enforcement Training Centers
Office of Chief Counsel
Legal Training Division

April 2022

The Federal Law Enforcement -Informer-

A MONTHLY LEGAL RESOURCE AND COMMENTARY FOR LAW ENFORCEMENT OFFICERS AND AGENTS

Welcome to this installment of *The Federal Law Enforcement Informer (The Informer)*. The Legal Training Division of the Federal Law Enforcement Training Centers' Office of Chief Counsel is dedicated to providing law enforcement officers with quality, useful and timely United States Supreme Court and federal Circuit Courts of Appeals reviews, interesting developments in the law, and legal articles written to clarify or highlight various issues. The views expressed in these articles are the opinions of the author and do not necessarily reflect the views of the Federal Law Enforcement Training Centers. *The Informer* is researched and written by members of the Legal Division. You can join *The Informer* Mailing List, and have *The Informer* delivered directly to you via e-mail by clicking on the link below.

This edition of *The Informer* may be cited as 4 INFORMER 22.

Get The Informer Free Every Month

Click HERE to Subscribe

THIS IS A SECURE SERVICE.
You will receive mailings from no one except the FLETC Legal Division.

The Informer – April 2022

Case Summaries

Circuit Courts of Appeals

Fifth Circuit

Sixth Circuit

Seventh Circuit

Eighth Circuit

Eleventh Circuit

♦

CASE SUMMARIES

Circuit Courts of Appeals

Fifth Circuit

Wilson v. City of Bastrop, 26 F.4th 709 (5th Cir. 2022)

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

As he approached the apartment complex, Officer Green saw a stationary red truck near an elementary school, which had been closed for a few months. Officer Green initiated a traffic stop. When Officer Green exited his car, Thomas Johnson stepped out of the stepped out of the truck's passenger side holding a semiautomatic pistol with an extended magazine.

Officer Green ordered Johnson to shut the door, but Johnson ignored him and ran toward the school. As vehicles passed nearby, Officer Green drew his firearm and yelled, "Drop the gun!" When Johnson failed to comply and continued to run, Officer Green fired at him but missed. Officer Green chased Johnson into the adjacent open field away from the road and reported, "Shots fired!" over his radio. Officer Green continued to chase Johnson across the field, ordering him to drop the gun and instructing onlookers to lie on the ground.

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

Johnson's brother, among others (Plaintiffs), sued Officers Green and McKinney under 42 U.S.C. §1983, alleging that the officers used excessive force in violation of the Fourth Amendment when they shot and killed Johnson. After the district court granted the officers qualified immunity and dismissed the case, the plaintiffs appealed.

In Tennessee v. Garner, the Supreme Court held that when an officer uses deadly force, its reasonableness turns primarily on whether "the officer ha[d] probable cause to believe the suspect pose[d] a threat of serious physical harm, either to the officer or to others."

Applying Garner to this case, the Fifth Circuit Court of Appeals held that Officer Green could have reasonably believed Johnson posed a serious physical threat to bystanders and to Officer Green himself. First, before the stop, Officer Green had reason to believe Johnson was brandishing a firearm at an apartment complex. Second, when Officer Green encountered

Johnson, he was by himself, and Johnson stepped out of the truck holding a pistol with an extended magazine. Third, instead of obeying Officer Green's orders, Johnson ran toward the school with the gun and ignored Officer Green's commands to drop the gun. Although the school had been closed for a few months, a school bus with students inside passed Officer Green's patrol car moments after the stop. Fourth, as Officer Green chased Johnson, he repeatedly ordered him to stop and drop the gun, yet Johnson disobeyed and ran toward Officer McKinney before disappearing from sight. Fifth, when Johnson emerged, he dropped his gun, but picked it up and ran toward the Eden neighborhood, while continuing to ignore Officer Green's commands to drop his weapon. Finally, Officer Green shot Johnson after Officer Green noticed nearby onlookers. Based on these facts, the court held that the district court properly granted Officer Green qualified immunity.

Next, the court held that, like Officer Green, Officer McKinney could have reasonably believed that Johnson threatened him and others with serious physical harm and, therefore, he was entitled to qualified immunity. First, Officer McKinney heard distant gunshots and a "shots fired!" call over his radio, leaving him unsure whether Officer Green or the suspect had fired. Second, when Officer McKinney arrived at the scene, Johnson was running at him holding a gun but changed direction toward a tree line bordering a neighborhood. Third, Johnson repeatedly ignored Officer McKinney's orders to stop and drop the gun. Fourth, even after Officer McKinney fired at Johnson, he kept his gun and continued to flee. Finally, during the chase, Officer McKinney saw Officer Green nearby.

The court rejected the Plaintiffs' argument that Johnson did not pose a threat because he never fired his weapon. The court commented that officers are not required to "wait until a defendant turns towards them, with weapon in hand, before applying deadly force to ensure their safety." Similarly, the court added, "officers need not wait until a fleeing suspect turns his weapon toward bystanders before using deadly force to protect them."

For the court's opinion: https://cases.justia.com/federal/appellate-courts/ca5/21-30204/21-30204-2022-02-21.pdf?ts=1645489822

*****

Sixth Circuit

Gambrel v. Knox County, 25 F.4th 391 (6th Cir. 2022)

Knox County Sheriff's Deputy Mikey Ashurst and Knox County Constable Brandon Bolton ("the Officers") received a call around 10:00 p.m. from dispatch that Jessie Mills had kidnapped his daughter from the grandparents who had custody of her. The officers located Mills carrying his daughter down the middle of an unlit road, with a passerby using a flashlight to alert passing motorists. When the Officers ordered Mills to stop, he ignored their commands. According to the Officers and several witnesses, at this point, Deputy Ashurst discharged his taser, striking Mills, who fell to the ground. Once on the ground, Constable Bolton took the child from Mills.

After retrieving the child, it was undisputed that the Officers engaged in a five-minute struggle with Mills. During this altercation, Deputy Ashurst tased Mills in drive-stun mode, struck Mills with his flashlight multiple times, kneed Mills in the face and head, and repeatedly hit Mills with his baton. While Deputy Ashurst landed these blows, Constable Bolton struck Mills with his flashlight several times, tased Mills in the neck, and hit Mills with his baton. According to the Officers, Mills showed no signs of pain at the end of their struggle, telling them that once he got

up, "I am going to hurt you." Next, as Mills got up, Deputy Ashurst transitioned from his baton to his firearm and backpedaled to put distance between them. According to the Officers and witnesses, Mills began to run toward Deputy Ashurst with clenched fists. Deputy Ashurst pointed his gun at Mills and warned that he would shoot if Mills kept approaching. Mills refused to stop, and Deputy Ashurst fired two rounds when Mills got within a few feet, killing him.

Mills's mother ("the Plaintiff") sued the Officers under 42 U.S.C. § 1983 and Kentucky law, alleging among other things that the Officers used excessive force in violation of the Fourth Amendment against Mills. The district court held that the officers were entitled to qualified immunity on the Plaintiff's Fourth Amendment claim. The Plaintiff appealed, arguing that the Officers used excessive force three times: (1) when they hit Mills to recover his child (the Plaintiff claimed that the Officers struck Mills with a flashlight or some other dark object); (2) when they struggled with Mills while allegedly attempting to arrest him; and (3) when Deputy Ashurst shot him.

The investigation that followed the shooting initially revealed a largely consistent story from the officers and bystanders: Mills had threatened to harm the officers, fought them with "super-human" strength, and charged at one of them just before the shooting. In this litigation, however, one of the bystanders, Ricky Hobbs, claimed for the first time that he lied to the police during that investigation. Hobbs claimed in a deposition that the officers brutally beat Mills even though Mills did not resist, that they could have easily handcuffed him, and that the shooting should not have happened.

Against this backdrop, the Sixth Circuit Court of Appeals had to determine if the district court improperly granted the Officers qualified immunity. The court noted that when deciding whether an officer is entitled to qualified immunity, it is required to "view genuine factual disagreements in the light most favorable to the plaintiff." If a reasonable jury could believe the plaintiff's version of events and if that version clearly shows an excessive use of force, the court cannot grant an officer qualified immunity.

First, the court analyzed the Officers first use of force designed to recover Mills's daughter. Under the Officers' version of events, Deputy Ashurst tased Mills in the back; under the Plaintiffs' version, Deputy Ashurst and perhaps Constable Bolton hit Mills in the back of the head with a flashlight or similar blunt object. Because it was required to view the facts in the light most favorable to the Plaintiff, the court assumed that the Officers struck Mills in the back of the head as opposed to tasing him in the back.

Even under the Plaintiff's version of events, the court concluded that the Officers' initial use of was reasonable. First, the Officers had probable cause to believe that Mills had kidnapped his daughter, a serious crime. Second, the officers could reasonably believe that Mills was putting his daughter's life at risk by carrying her in an obviously unsafe location, while engaging in bizarre, unpredictable behavior, potentially caused by drug use. Finally, Mills resisted arrest by refusing to comply with the Officers' commands to stop and, instead, fled in the other direction.

Next, the court considered the Officers' second use of force, when they struggled with Mills for five minutes. Under the Officers version of the events, their use of force was reasonable under the circumstances. Initially, several witnesses corroborated their account, even Hobbs who claimed in his initial police interview that Mills was "fighting all the time" while on the ground.

However, the Plaintiff claimed that the Officers brutally beat Mills, even though he was not resisting. This position was supported by testimony from Hobbs who now claimed that the Officers "repeatedly kept hitting Mills" even though he was "not fighting" back.

The officers asked the court to ignore Hobbs's testimony on the ground that it was "blatantly contradicted" by other witness testimony and evidence. The court commented that, "the Officers are correct that they will have plenty of evidence with which to impeach Hobbs. Their testimony—not to mention the testimony of other bystanders—starkly conflicts with the account Hobbs gave at his deposition. In his night-of-the-shooting interview, moreover, Hobbs himself corroborated the account told by the other witnesses. At the deposition, however, Hobbs changed his story and suggested that he had lied to the police during their investigation because he was afraid of them."

The court emphasized that, while the Plaintiff might struggle to convince a jury to believe Hobbs, it was ultimately up to the jury whether to believe Hobbs or not, as the court was not permitted to choose which story it found more believable. Consequently, the court held that if a jury believed the Plaintiff's account, it would show the type of "gratuitous" violence that violates the Fourth Amendment.

Finally, the court considered the fatal shooting of Mills by Deputy Ashurst. Under the Officers version of the events, which was corroborated by some witnesses, Deputy Ashurst's actions were reasonable. Under this version of events, Mills had just battled aggressively with the Officers as they tried but failed to arrest him. Mills then threatened the Officers that he was going to "hurt" them after he got off the ground. When Mills did so, he quickly charged at a backpedaling Deputy Ashurst. During this time, Deputy Ashurst repeatedly warned Mills to stop, or he would shoot, and he did not fire until Mills made it within an arm's reach. Given the ferocity that Mills had showed during the encounter and the threat that he had made, according to the Officers, the court concluded any reasonable officer would have decided to use deadly force to subdue the charging Mills despite his lack of a weapon.

Again, the court stated that this was not the version of events that it was bound to accept as true at this stage of the litigation. Instead, it was bound to accept the Plaintiff's version. Under the Plaintiff's version, supported by Hobbs's testimony, the court concluded that it could not find that Deputy Ashurst acted reasonably. According to the Plaintiff's version, the Officers had just brutally beaten a non-fighting Mills even though they could have handcuffed him at any time while he remained on the ground. Hobbs also indicated that, for some unknown reason, the Officers "riled" a nearly unconscious Mills "up" by standing over him and kicking him. According to Hobbs, after he got up, the unarmed Mills took only a step or two toward Deputy Ashurst at a walking pace when Deputy Ashurst fired. Although Deputy Ashurst shouted a warning, he waited only a second to fire. At that moment, Mills was not even looking at Ashurst and was six to eight feet or more away. As with the Officers' second use of force, the court held that it was up to the jury and not the court to decide which version of events to believe, which precluded the court from granting Deputy Ashurst qualified immunity. The court found that if a jury believed the Plaintiff's version, it was clearly established that Deputy Ashurst's shooting of Mills under these circumstances was unreasonable.

For the court's opinion: https://cases.justia.com/federal/appellate-courts/ca6/20-6027/20-6027-2022-02-08.pdf?ts=1644352216

*****

Seventh Circuit

United States v. Price, 28 F.4th 739 (7th Cir. 2022)

On October 10, 2018, Mark Price visited a gun store and ordered a Ruger rifle magazine. Consistent with store policy, an employee ran a background check which revealed that Price had prior felony convictions. After receiving this information, the employee contacted Special Agent Brian Clancy of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF).

On October 16, Price went to the gun store to pick up the Ruger rifle magazine. Unknown to Price, his order with the store's distributor had not been placed. Instead of an operable rifle magazine, the employee gave Price an inoperable magazine shell. While at the store, Price also purchased a box of .40 caliber ammunition and a holster. Price later called the store and complained that the magazine did not fit "his firearm," and he arranged to return to the store. The employee contacted SA Clancy and told him of Price's purchases and plan.

On October 17, Price arrived at the store driving a Ford Escape and accompanied by a friend. SA Clancy posed as store clerk while two other ATF agents hid in the back of the store. Price expressed irritation that the magazine he had picked up the day before did not work. He also stated that he and his friend wished to use the shooting range. Price added that he was interested in renting a firearm because "his 40 was too much" for his friend to wield. While examining rental firearms, Price took possession of one of the weapons, examined it, brought it up into a shooting position, and then handed it back. At that point SA Clancy escorted Price to a back room where ATF agents were waiting and arrested him.

Knowing that Price was on parole, SA Clancy contacted the Indiana Department of Correction and told them that Price was in custody. SA Clancy had previously informed parole officers that he was investigating Price, and they were aware of Price's attempt to purchase the rifle magazine. After contacting state authorities, three parole officers ("the officers") arrived at the gun store. As authorized by Price's parole agreement, the officer searched the Ford Escape that Price had driven to the store. In the center console, the officers found a loaded .40 caliber pistol, which they determined was stolen.

Following the search of the Ford Escape, the officers drove Price to his residence. The officers searched Price's home with Price while SA Clancy waited outside. During that search, the officers discovered ammunition. Based on this fact, SA Clancy obtained and then executed a warrant for Price's home and a van parked in the driveway. Pursuant to the search warrant, the officers found, among other things, additional ammunition in the house and a Ruger rifle in the van.

The government charged Price, a felon, with one count of possession of the .40 caliber ammunition he bought at gun store and two counts of unlawful possession of a firearm for the .40 caliber pistol found in the center console of the Ford Escape and the Ruger rifle discovered in the van. Price filed a motion to suppress the evidence seized from the Ford Escape and from both searches at his home. The district court denied the motion and upon conviction, Price appealed.

The Seventh Circuit Court of Appeals recognized that parolees had a reduced expectation of privacy and that the states have an "overwhelming" interest in supervising them, as parolees are more likely to commit future criminal offenses. Accordingly, Price's parole agreement included a provision that permitted parole officers to conduct searches of his "residence or property under his control" based on "reasonable cause" rather than the Fourth Amendment's "probable cause standard."

In this case, when the officers searched Price's vehicle and residence, they knew that Price had likely violated the terms of his parole agreement after he purchased .40 caliber ammunition and a magazine, traveled to a gun store to use the shooting range, and was arrested by SA Clancy. Consequently, the court held that the parole officers did not violate the Fourth Amendment by conducting a warrantless search of the Ford Escape and Price's home. The court added that evidence seized during the second search of Price's home by SA Clancy was authorized by a search warrant independent of the parole agreement.

In affirming the district court's denial of Price's motion to suppress, the court rejected Price's argument that the evidence seized during the warrantless searches of his vehicle and home should be suppressed under the "stalking horse" theory. A search under the stalking horse theory occurs when a parole or probationary search is conducted as "a subterfuge for a criminal investigation" to evade the Fourth Amendment's warrant and probable cause requirements, a violation of the Fourth Amendment.

In this case, Price claimed that SA Clancy violated the Fourth Amendment by using parole officers as pawns to conduct a search by calling them to the scene of the arrest and prompting them to conduct a warrantless search under the parole agreement that SA Clancy was not himself authorized to conduct.

In Griffin v. Wisconsin, decided in 1987, the Supreme Court upheld the warrantless search of a probationer's residence after probation officers established reasonable grounds to believe the probationer was unlawfully in possession of firearms. The Court held that supervision of probationers is a "special need" of the State; therefore, it was reasonable under the Fourth Amendment for the State to "depart from the usual warrant and probable cause requirements." Following Griffin, warrantless searches of probationers seemingly needed to be justified by the "special needs" of the state's probation system as opposed to police officers using a parole officer as a "stalking horse" to assist in an unrelated investigation.

However, in United States v. Knights, decided in 2001, and Samson v. California, decided in 2006, the Supreme Court held that warrantless probation and parole searches need not be based on "special needs," but can also be evaluated under the Fourth Amendment's reasonableness inquiry by considering the totality of the circumstances.

Significantly, the court noted that Price did not point to a single federal appellate decision in which a search was invalidated under the stalking horse theory since the Court's rulings in Knights and Samson. In addition, the court found that each circuit court to have examined the theory since Knights has either rejected it or limited its applicability to circumstances where the government relies solely on the "special needs" of a state's probationary or parole system as the basis for a search.

In this case, because the government did not rely on the "special needs" of Indiana's parole system to justify the searches of Price's property and residence, it was irrelevant whether parole officers initiated their searches of Price's vehicle and residence of their own volition or at SA Clancy's request.

For the court's opinion: https://cases.justia.com/federal/appellate-courts/ca7/20-3191/20-3191-2022-03-09.pdf?ts=1646843420

*****

Eighth Circuit

United States v. Mattox, 27 F.4th 668 (8th Cir. 2022)

On September 22, 2018, police officers responded to a 911 call about gunshots at an apartment complex. The officers followed a fresh blood trail and found a loaded Desert Eagle .50-caliber semi-automatic pistol with blood on it and the hammer cocked back in the firing position. The officers learned that a man had been shot in his face and right foot and had been taken to the hospital.

An officer went to the emergency room at the hospital and entered the man's room. The man's bloody clothes were on the floor, and at the officer's request, a nurse took the identification from the clothes. The identification indicated the man's name was Marcus Mattox. The officer took the clothes, and the next day, an officer went to the hospital and executed a warrant for a DNA swab from Mattox and asked him some questions for a few minutes. Mattox admitted that he was at the scene of the crime and stated that he did not know who shot him. He declined to answer more questions.

The police compared Mattox's DNA sample to gun swabs that tested positive for blood. The swabs matched Mattox's DNA sample. The police also obtained video surveillance footage of the shooting. The video showed Mattox exit the apartment building, approach a male and a female at the back of an SUV in the parking lot, appear to draw a firearm, and take a shooting stance. After Mattox drew his gun, the male appeared to shoot at Mattox.

The government charged Mattox with possession of a firearm by a convicted felon. Mattox filed a motion to suppress the evidence seized from his hospital room and the statements he made to the officer while hospitalized. The district court denied the motion. Upon conviction, Mattox appealed.

The Fourth Amendment permits an officer to seize an object without a warrant under the plain-view doctrine if: (1) the officer did not violate the Fourth Amendment in arriving at the place from which the evidence could be plainly viewed; (2) the object's incriminating character is immediately apparent; and (3) the officer has a lawful right of access to the object itself. In this case, Mattox did not dispute that the second and third conditions were met. Instead, Mattox's sole argument was that the officer violated his Fourth Amendment rights by entering his hospital room which allowed the officer to see his clothes on the floor. Mattox argued that he had a reasonable expectation of privacy in his hospital room, like overnight guests in homes and hotel rooms.

The Eighth Circuit Court of Appeals disagreed. First, the court recognized that overnight guests in homes and hotel rooms have a reasonable expectation of privacy because hosting overnight guests in homes "is a longstanding social custom that serves functions recognized as valuable by society." However, the court noted that being admitted to the hospital for a gunshot wound does not serve the same valuable societal function.

Second, the court recognized that police in Minnesota are expected to show up to hospitals to investigate a gunshot-wound victim like Mattox because Minnesota law requires hospitals to report gunshot wounds to the police. The officer who interviewed Mattox testified that he had gone to the hospital in the past to interview victims of gunshot wounds. In addition, the court noted that the Fourth Circuit Court of Appeals has recognized that a police officer "lawfully fulfilling his duty to investigate a reported shooting . . . lawfully entered the emergency room of a hospital to interview the victim of the shooting."

Finally, the court found that, unlike in a hotel room and residential guest rooms, in a hospital room people are constantly coming and going from the room to provide medical services. Although there is a significant privacy interest in medical care, the court commented that this interest is diminished in Minnesota for patients with gunshot wounds because the law requires the reporting of gunshot wounds. As a result, the court held that the Mattox did not have an objectively reasonable expectation of privacy in his hospital room; therefore, the officer did not violate his Fourth Amendment rights by entering the room and seizing his clothes.

Mattox further argued that his statements to the officer were involuntary because he was in the hospital recovering from gunshot wounds, he had taken pain medication, the police executed a warrant to obtain a DNA sample, and he was not read Miranda rights.

A statement made outside of a custodial interrogation may be suppressed if it is not made voluntarily. A statement is involuntary when the circumstances surrounding the statement are sufficient to overbear a suspect's will. In this case, the court held that the totality of the circumstances showed that the officer did not overbear Mattox's will; therefore, his statements to the officer were voluntary.

First, the interview lasted only a few minutes and Miranda warnings were not required because Mattox was not in custody. Second, being on pain medication does not automatically establish that a person's will has been overborne if there is evidence that the patient answered "reasonably" and understood what was occurring. Here, the officer testified that "Mattox answered questions in an appropriate context and manner; Mattox spoke in a normal cadence and pace; Mattox did not slur his words; and that [the officer] was able to totally understand Mattox's answers." In addition, the court added that Mattox refused to answer some of the officer's questions, which suggested that the pain medication did not impair his ability to resist "police pressure." Finally, the court found there was no evidence to suggest that the officer employed strong-arm tactics, deception, or made threats or promises while talking to Mattox.

For the court's opinion: https://cases.justia.com/federal/appellate-courts/ca8/20-3065/20-3065-2022-03-04.pdf?ts=1646409671

*****

United States v. Sandell, 27 F.4th 625 (8th Cir. 2022)

Police officers obtained a search warrant for a home during an investigation of a peer-to-peer computer file sharing network being used to acquire child pornography. After questioning the residents and searching their home, the officers ruled out the residents of the home as suspects. The officers began to suspect Mark Sandell, a neighbor, after the residents told the officers that Sandell asked to use their Wi-Fi when he moved into his home so he could access the internet to register his sex offender status.

Officers then went to Sandell's home to question him. Upon arrival, the officers knocked on Sandell's door, and Sandell answered. The officers identified themselves as law enforcement and instructed Sandell to step outside while they conducted a sweep of the home. Once the officers determined no one else was in the home, the officers asked Sandell where he would like to talk. Sandell told the officers he preferred to speak in his living room. The officers followed Sandell into his living room and explained they were attempting to obtain a search warrant for Sandell's home based on the information from Sandell's neighbors. One officer informed Sandell he was

not under arrest and was not obligated to talk to them. Officers also asked Sandell if he would consent to a home search, but Sandell refused.

The conversation continued and the officers again reminded Sandell he was not obligated to speak to them. The officers informed Sandell he was free to leave but they also told him that if he chose to drive, they would ask for consent to search his vehicle. The officers also told Sandell they needed to supervise his movements inside the home to ensure Sandell did not access any weapons or tamper with evidence. Consequently, the officers supervised Sandell while he took his dog out, took his medication, made coffee, used the restroom, and retrieved the phone number of his probation officer from a separate floor of the home.

While speaking to the officers, Sandell admitted to downloading child pornography recently and that his child pornography collection on his laptop contained a little of "everything." Sandell also voluntarily retrieved and turned over a camera and two thumb drives to the officers, but he refused to discuss the details of his past child pornography conviction. Sandell did, however, comment that given his criminal history, he was likely facing fifteen years of imprisonment. One officer agreed with Sandell's estimated prison time and commented that, at Sandell's age, he would likely spend the rest of his life in prison.

The officers ultimately obtained a search warrant for Sandell's home and collected evidence including Sandell's laptop, thumb drives, and DVDs. Although the officers left after the search without arresting him, the government later charged Sandell with distribution, receipt, and possession of child pornography. After the district court denied Sandell's motion to suppress statements made during the interrogation at his home, he pled guilty, preserving his right to appeal the district court's denial of his motion to suppress.

On appeal, Sandell argued that the officers were required to provide him with Miranda warnings because he was in custody for Miranda purposes when the officers questioned him.

A person is considered to be in custody for the purposes of Miranda warnings when there is a "formal arrest or restraint [on his or her] freedom of movement of the degree associated with formal arrest." To determine whether a person is in custody, the court asks, whether under the totality of the circumstances, a reasonable person would have felt free to terminate the questioning and leave or cause the officers to leave.

In this case, the Eighth Circuit Court of Appeals held that Sandell was not in custody for Miranda purposes; therefore, the officers were not required to advise Sandell of his Miranda rights before they questioned him. First, it was undisputed that the officers informed Sandell many times he was not under arrest and was not obligated to speak to them. The court noted that, repetitive reminders that a defendant is free to terminate an interview "is powerful evidence that a reasonable person would have understood that he was free to terminate the interview."

Second, Sandell retained his freedom of movement during questioning, as the officers never handcuffed him nor physically or verbally restrained Sandell from moving about his house. Although the officers followed Sandell while he moved around the house, the court found that "police escorts throughout a house do not restrain a defendant's movement to the degree associated with a formal arrest. In addition, while Sandell was told his vehicle needed to be searched if he chose to leave in it, the court concluded that this did not restrict Sandell's movement during their questioning or require him to answer questions.

Third, Sandell voluntarily acquiesced to official requests to respond to questions. Although the officers initiated the encounter, they frequently reminded Sandell he was not obligated to speak with them, and he continued to answer their questions. Finally, the officers did not use any strong arm or deceptive tactics, nor did they arrest him at the conclusion of the questioning.

Sandell further argued that his statements to the officers were involuntary. A statement is involuntary when it is obtained by threats, violence, or express or implied promises that "overbear the defendant's will."

Here, the court held that Sandell's will was not overborne when he made the statements to the officers. The court found there was no evidence that Sandell lacked the requisite maturity, education, or mental or physical stamina to understand his rights. Throughout the interview, the officers continued to remind Sandell he was not under arrest and was not obligated to talk to them. In addition, although the officers discussed the potential of a lengthy prison sentence for Sandell, it was Sandell who first raised the topic. Finally, Sandell admitted he had experience with the criminal justice system, suggesting he was familiar with his constitutional rights. Based on these facts, the court concluded that Sandell voluntarily made statements to the officers.

For the court's opinion: https://cases.justia.com/federal/appellate-courts/ca8/21-1511/21-1511-2022-03-03.pdf?ts=1646323273

*****

Eleventh Circuit

Powell v. Snook, 25 F.4th 912 (11th Cir. 2022)

On June 7, 2016, around midnight, a Henry County, Georgia, 911 operator spoke to a caller who reported hearing a woman's screams and three gunshots. The caller gave her address as 736 Swans Lake Road and said the noises were coming from "a few houses down." The operator asked the caller several follow-up questions, in an effort to ascertain the precise address of the incident location; however, the operator could only narrow down the location to "two or three houses down to the right" of the caller's address. Based on the operator's report, a 911 dispatcher sent police officers to 736 Swan Lake, explaining that if they were "looking at this location, it's two houses down on the right, maybe three houses." Officer Patrick Snook responded to the call with two other officers. On the way to Swan Lake, Officer Snook asked dispatch if it could find the address for the place where the disturbance had actually occurred. A 911 call center supervisor, who had replaced the earlier dispatcher after shift-change, replied that dispatch thought it was "either 690 or 634."

Based on the 911 dispatch information, the officers approached 690 Swan Lake Road, which could not be seen from the road because of its long driveway. As the officers walked down the long, dark driveway, there were no lights on inside or outside the house. There were two trucks parked at the house, which the supervisor told Officer Snook were registered to the homeowners, David and Sharon Powell, a couple in their sixties. The supervisor also told Officer Snook that previous 911 calls for the Powell's house had involved an alarm and an ambulance. Officer Snook knew from his experience that alarm or ambulance calls sometimes grew out of domestic violence incidents; however, he also knew (because the supervisor had told him) that police had not been dispatched to the Powell's house before for a domestic violence incident.

Officer Snook used his flashlight to look in the windows, but he did not see any damage or lights on inside the house nor did he hear any screaming. In the meantime, David and Sharon Powell, who were asleep inside the home, were awakened by their dogs barking. David Powell (Powell) looked out a window and told his wife that he saw someone outside. Powell got his pistol, walked through the house to an attached garage, and pushed a button which opened the garage door and caused the garage light to come on.

Powell then walked out onto the driveway holding the loaded pistol in his right hand, pointed straight down. After walking 10 to 15 steps at a normal pace, which took approximately nine seconds, he stopped and turned to face the walkway leading up to his front door, which was where Officer Snook was positioned in the dark. According to Sharon Powell, who had followed her husband onto the driveway, she sensed that he was looking at someone. When Powell started to raise his pistol with his right arm, Officer Snook fired three shots with his rifle. After Officer Snook fired, Powell dropped to the ground. Sharon Powell ran into the house and called 911. The officers on the scene aided Powell and called for the ambulance that took him to the hospital, but he died the next day.

Sharon Powell ("the Plaintiff") sued Officer Snook under 42 U.S.C. § 1983 alleging excessive use of force in violation of the Fourth Amendment. Specifically, the Plaintiff claimed that, at the time of the incident, clearly established law prohibited Officer Snook from using deadly force against David Powell without first identifying himself as a police officer and issuing a warning. The Plaintiff argued that Officer Snook could have "easily" given that warning because Powell was not an immediate threat to Officer Snook, he did not refuse any of Officer Snook's commands, nor was he attempting to escape.

The district court found that Officer Snook fired the fatal shots while Powell "was facing Snook and in the process of raising a handgun," which "justified his actions on the basis of [Officer Snook's] belief that [Powell] was about to shoot him." Consequently, the district court held that Officer Snook was entitled to summary judgment based on qualified immunity because it was not clearly established that the use of deadly force in these specific circumstances violated the Fourth Amendment. The Plaintiff appealed.

The Eleventh Circuit Court of Appeals recognized that in Tennessee v. Garner, the Supreme Court held that an officer may use deadly force when he:

> (1) "has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others" *or* "that he has committed a crime involving the infliction or threatened infliction of serious physical harm;" (2) reasonably believes that the use of deadly force was necessary to prevent escape; *and* (3) has given some warning about the possible use of deadly force, if feasible.

In cases following Garner in the Eleventh Circuit, the court found that the "mere presence of a gun or other weapon is not enough to warrant the exercise of deadly force and shield an officer from suit;" however, when a suspect's gun is "available for ready use" — even when the suspect has not "drawn his gun" — an officer is "not required to wait and hope for the best." In addition, the court reiterated that Garner does not require an officer to always provide a warning before using deadly force but, instead, only "if feasible."

Applying Garner to the facts of this case, the court held that an officer in Officer Snook's position during the rapidly unfolding events on that dark night reasonably could have believed that the man raising a pistol in his direction was about to shoot him. While in hindsight, that decision

might have been a mistake, courts "do not view an officer's actions with the 20/20 vision of hindsight," as qualified immunity leaves "room for mistaken judgments"

Next, the court explained that under these circumstances, Eleventh Circuit caselaw established that Officer Snook could "respond with deadly force to protect himself" and was not required to wait until Powell fired his gun to return fire in self-defense. In conclusion, the court recognized that "the shooting was tragic, as such shootings always are, but tragedy does not equate with unreasonableness under clearly established law."

For the court's opinion: https://cases.justia.com/federal/appellate-courts/ca11/19-13340/19-13340-2022-02-08.pdf?ts=1644334243

*****