
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 1 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 – January 2022

Case Summaries

Circuit Courts of Appeals

First Circuit

United States v. Miles: Whether an alleged pre-textual traffic stop violated the Fourth Amendment.....4

United States v. Guerrero: Whether officers must “actually fear” for their safety before they can conduct a lawful frisk of a vehicle under Michigan v. Long.....5

Fifth Circuit

Timpa v. Dillard: Whether police officers were entitled to qualified immunity in a lawsuit alleging an excessive use of force against one officer when an individual died after being restrained in a prone position for approximately fourteen minutes, and bystander liability against four other officers for their failure to intervene.....6

Sixth Circuit

Gordon v. Bierenga: Whether a police officer was entitled to qualified immunity in a lawsuit alleging an excessive use of force after the officer shot and killed the driver of a fleeing car9

Eighth Circuit

United States v. Meyer: Whether the warrantless entry into the defendant’s home to search for and seize his electronic devices was justified by exigent circumstances.....11

Estate of Fritz ex rel. v. Henningar: Whether a police officer drove his police cruiser recklessly while responding to a call after he struck another vehicle in an intersection.....12

Eleventh Circuit

Johnson v. City of Miami Beach: Whether a police officer was entitled to qualified immunity in a lawsuit alleging the officer used excessive force by striking the plaintiff in the face while he was secure, not resisting, and not a threat to the officer.....13



Chief Justice John Roberts’s 2021 Year-End Report on the Federal Judiciary: <https://www.supremecourt.gov/publicinfo/year-end/2021year-endreport.pdf>



FLETC Informer Webinar Schedule – February 2022

1. Supreme Court Rulings and the Fourth Amendment

Presented by Arie J. Schaap, Attorney Advisor / Senior Instructor, Federal Law Enforcement Training Centers, Artesia, New Mexico.

In 2021, the Supreme Court issued two unanimous opinions, Lange v. California and Caniglia v. Strom. In both cases the Court addressed a classic Fourth Amendment issue: the warrantless entry of a home. The Court ruled against the government in both of the cases. Lange v. California dealt with the exigent circumstances exception to the warrant requirement and Caniglia v. Strom dealt with law enforcement's authority concerning community caretaking tasks.

In 2021, the Supreme Court also issued a 5-3 opinion in Torres v. Madrid. In this case, the Court addressed a claim of excessive use of force against police officers and what constitutes a "seizure" in the context of the Fourth Amendment.

Thursday, February 24, 2022: 3 p.m. Eastern / 2 p.m. Central / 1 p.m. Mountain / 12 p.m. Pacific

To participate in this webinar: <https://share.dhs.gov/informer>



To Participate in a FLETC Informer Webinar

1. Click on the link to access the Homeland Security Information Network (HSIN).
2. If you have a HSIN account, enter with your login and password information.
3. If you do not have a HSIN account, click on the button next to "Enter as a Guest."
4. Enter your name and click the "Enter" button.



CASE SUMMARIES

Circuit Courts of Appeals

First Circuit

United States v. Miles, 2021 U.S. App. LEXIS 34122 (1st Cir. ME November 17, 2021)

A Maine state trooper, Thomas Pappas, was patrolling the Maine Turnpike at around 10:30 p.m., when he saw a car traveling approximately thirty miles per hour in the southbound right-hand lane. The car moved into the left lane and, with Trooper Pappas following, proceeded in that lane for approximately two miles without passing any other vehicles. Trooper Pappas ran the license plate and learned that the car was registered to a woman named Wilkerson at a street address in Dorchester, Massachusetts. Trooper Pappas remembered that a few years earlier, he had participated in a drug arrest of a man named Wilkerson on that particular street.

While Trooper Pappas followed, the car passed a road sign reading “Keep Right Except to Pass.” Nonetheless, the car continued driving in the left-hand lane. Trooper Pappas then signaled the car to pull over to the side of the road. When Trooper Pappas approached the stopped car, he smelled marijuana and observed a bottle of champagne on the back seat. During the stop, Trooper Pappas discovered that the driver, Arthur Miles, had a suspended driver’s license, was in violation of probation conditions in Massachusetts, and was out on bail in Maine. Trooper Pappas handcuffed Miles and searched his car, discovering a quantity of unlawful drugs.

The government charged Miles with possession of a controlled substance with intent to distribute. Miles filed a motion to suppress the evidence seized from his car, arguing that Trooper Pappas lacked reasonable suspicion to conduct the traffic stop. The district court disagreed, holding that the stop was justified under the Fourth Amendment by Miles’s failure to obey a traffic control device (i.e., road sign) that directed motorists to “Keep Right Except to Pass.” Miles appealed.

On appeal, Miles argued that Trooper Pappas’s real motivation for initiating the traffic stop was not for his failing to obey the Keep-Right-Except-to-Pass rule. Instead, Miles claimed that Trooper Pappas stopped him on a “mere hunch” that Miles was engaged in criminal activity based on the trooper’s knowledge that a person having the same last name as the registered owner of the car had previously been arrested for drug activity on the street where the registered owner lived.

To support his position, Miles relied, in part, on portions of Trooper Pappas’s testimony from the suppression hearing. For example, Trooper Pappas testified that: (1) he “intend[ed] to stop [Miles] even though [Miles] hadn’t reached” the sign that instructed drivers to “Keep Right Except to Pass;” and (2) even if Miles “had pulled back over into the right lane,” he would have stopped the car for “[t]he same thing.”

The First Circuit Court of Appeals rejected Miles’s argument. In [Whren v. United States](#), the Supreme Court held that the reasonableness of a traffic stop under the Fourth Amendment is based on objective criteria and not the actual or subjective motivations of a law enforcement officer involved. Specifically, “as long as a traffic stop is warranted by objectively reasonable facts, a claim that the officer making the stop was acting in accordance with some hidden agenda will not ground a successful Fourth Amendment challenge.” In this case, the court held that Trooper Pappas had a reasonable basis to believe that Miles had committed a traffic infraction. As a result,

the court held that Trooper Pappas was entitled to conduct the traffic stop, regardless of any subjective motivation he possessed.

For the court's opinion: <https://cases.justia.com/federal/appellate-courts/ca1/20-2031/20-2031-2021-11-17.pdf?ts=1637182832>

United States v. Guerrero, 2021 U.S. App. LEXIS 35883 (1st Cir. RI Dec. 6, 2021)

At approximately 1:00 a.m., police officers responded to a “shots fired” call from a nearby laundromat. When the officers arrived, they saw a BMW sedan racing away from the area. The officers attempted to stop the fleeing vehicle, but the driver refused to pull over. After a brief chase, the BMW stopped and the officers secured the driver, Juan Guerrero, and the passenger, a 16-year-old minor. The officers then searched the BMW and found a magazine loaded with bullets in a backpack behind the driver’s seat. After finding the magazine, the officers searched the rest of the vehicle but did not find a firearm.

The government charged Guerrero with unlawful possession of ammunition by a convicted felon. Guerrero filed a motion to suppress the evidence seized from the vehicle.

In [Michigan v. Long](#), the Supreme Court held that when law enforcement officers conduct investigative detentions or Terry stops involving automobiles, they may conduct a warrantless “car frisk” of the areas within the suspect’s “grab space,” if they have reasonable suspicion that a suspect could immediately access a weapon.

Subsequently, in [United States v. Lott](#) and several other cases, when determining the reasonableness of car frisks under Long, the First Circuit Court of Appeals required that: (1) the officers must actually fear that the suspect was armed (subjective prong); and (2) this fear must be reasonable under the circumstances, (objective prong) before officers could “frisk a vehicle for weapons.”

Applying Lott to the facts of this case, the district court held that the second prong was satisfied, as it was objectively reasonable for the officers under the circumstances to believe that Guerrero could have accessed a weapon in the BMW. However, the district court held that the officers “lacked” an “actual fear” for their safety; therefore, they were not entitled to frisk the BMW for weapons. As a result, the district court granted Guerrero’s motion to suppress. The government appealed.

The First Circuit Court of Appeals expressly rejected the “actual fear,” or subjective prong articulated previously by the court in Lott and subsequent cases. First, the court was mindful of the “law of the circuit” rule which provides that once a court decides a legal issue, as the court in Lott did, that ruling usually binds later courts. However, the court realized that after it decided Lott in 1989, the Supreme Court issued several opinions, in various Fourth Amendment contexts, which held that legal tests based on reasonableness should be based on objective standards rather than on standards that depend on the subjective state of mind of the officer. In addition, the court found that the Fifth, Eighth, and District of Columbia circuits specifically rejected the relevance of an officer’s subjective fear when reviewing the reasonableness of a car frisk under Long. Based on these factors, the court believed that the judges that decided Lott, if given the chance, would not require officers to have an “actual fear” for their safety before conducting a lawful car frisk

under Long. As a result, the court reversed the district court's ruling that granted Guerrero's motion to suppress the evidence seized from the vehicle.

For the court's opinion: <https://cases.justia.com/federal/appellate-courts/ca1/21-1244/21-1244-2021-12-06.pdf?ts=1638829807>

Fifth Circuit

Timpa v. Dillard, 20 F.4th 1020 (5th Cir. 2021)

On the evening of August 10, 2016, Anthony Timpa called 911 and asked to be picked up. Timpa stated that he had a history of mental illness, he had not taken his medications, he was "having a lot of anxiety," and he was afraid of a man that was with him. Timpa provided his location on Mockingbird Lane in Dallas, Texas. During this time, two other people called 911 concerning Timpa's erratic behavior. The dispatcher requested officers respond to a Crisis Intervention Training (CIT) situation and described Timpa as a white male with schizophrenia who was off his medications.

A CIT call informs responding officers that the situation involves an individual who may be experiencing mental health issues. Dallas Police Department (DPD) General Orders required that five officers report to CIT calls to perform the "Five-Man Takedown," which is a control technique where each of four officers secures one of the subject's limbs while a fifth officer holds the head. This technique allows officers to gain control over a subject and simultaneously prevent the subject from injuring himself or others. Regardless of whether officers were responding to a CIT call, DPD General Orders instructed that, for all arrestees, "as soon as [they] are brought under control, they are placed in an upright position (if possible) or on their side." A separate DPD General Order reiterated this instruction for the restraint of subjects suffering from "excited delirium," which was defined as "a state of agitation, excitability, and paranoia . . . often associated with drug use, most commonly cocaine."

When Supervising Police Sergeant Kevin Mansell arrive, Timpa had already been handcuffed by two private security guards and he was sitting barefoot on the grass beside the sidewalk yelling, "Help me! . . . You're gonna kill me!" Sgt. Mansell called for backup and for an ambulance. A few minutes later, two paramedics arrived along with Corporal Raymond Dominguez, and Officers Dustin Dillard, Danny Vasquez, and Domingo Rivera. Officers Dillard, Vasquez, and Rivera were wearing body cameras, which captured the next fifteen minutes.

After Timpa began to roll back and forth on the grass, close to the curb of the street, Officers Dillard and Vasquez forced Timpa onto his stomach and each pressed one knee on Timpa's back while a security guard restrained his legs. Officer Vasquez removed his knee after approximately two minutes. Officer Dillard continued to press his knee onto Timpa's upper back while he was in the prone restraint position for fourteen minutes and seven seconds.

Approximately fifteen seconds into the restraint, Officer Dillard asked Timpa: "What did you take?" Timpa answered, "Coke." During this time, Timpa was also exhibiting signs of excited delirium, such as "yelling incoherently and acting really strange."

Between three to seven minutes into the restraint, the officers swapped out the private security guard's handcuffs with some difficulty because of Timpa's continued flailing. At the same time,

the officers zip-tied Timpa's ankles and forced his lower legs under the cover of a concrete bus bench.

Seven minutes into the restraint, Timpa, prone and cuffed at the hands and ankles, had calmed down sufficiently for a paramedic to successfully take his vitals. While the paramedic was taking Timpa's vitals, Officer Rivera left the scene to find Timpa's car. By the time the paramedic had finished, approximately nine minutes into the restraint, Timpa's legs had stopped kicking, though he remained vocal and kept calling for help. Thirty seconds later, only Timpa's head moved intermittently from side to side. He continued to cry out, "Help me!" but his voice was weakened and slurred. Forty-five seconds later, Timpa suddenly stilled and was quiet except for a few moans. Timpa then fell limp and was nonresponsive.

At this point, Officer Dominguez asked Sgt. Mansell what to do. Sgt. Mansell responded that they should strap Timpa to a gurney and then he returned to his patrol car, located a few feet away, to check for warrants for Timpa's arrest. During this time, the officers expressed concern that Timpa was nonresponsive with Officer Dominguez commenting that he wanted to make sure Timpa was still breathing because his nose [was] buried in the [ground]. Officer Dillard responded, "I think he's asleep!" and stated that he heard Timpa "snoring." Officers Dominguez and Vasquez expressed surprise and then mocked Timpa for losing consciousness. Three-and-a-half minutes after Timpa had become nonresponsive, Officer Dillard removed his knee from Timpa's back. Shortly afterward, when the officers placed Timpa on the gurney, the paramedics discovered that he was dead.

Timpa's mother and others (plaintiffs) sued Officer Dillard under 42 U.S.C. § 1983 claiming that his restraint of Timpa constituted both excessive force and deadly force in violation of the Fourth Amendment. Specifically, the plaintiffs claimed that Officer Dillard unlawfully restrained Timpa in the prone position with bodyweight force pressed on Timpa's back in violation of clearly established law. The plaintiffs also sued Officers Dominguez, Vasquez, Mansell, and Rivera under a theory of bystander liability for their failure to intervene and stop Officer Dillard's excessive use of force against Timpa. The district court held that all of the officers were entitled to qualified immunity and dismissed the plaintiffs' claims. The plaintiffs appealed.

First, the Fifth Circuit Court of Appeals considered the excessive force claim against Officer Dillard. In [Graham v. Connor](#), the Supreme Court held that whether an officer has used excessive force depends on "the facts and circumstances of each particular case," including a non-exhaustive list of factors, such as: (1) "the severity of the crime at issue"; (2) "whether the suspect poses an immediate threat to the safety of the officers or others"; and (3) "whether he is actively resisting arrest or attempting to evade arrest by flight."

In this case, the court held that the first factor weighed against the prolonged use of bodyweight force, as Officer Dillard's continued use of force was not justified by a criminal investigatory function. The officers conceded that Timpa's criminal liability was "minor," no more than a traffic violation, and they did not intend to charge him with any crimes.

Concerning the second factor, the immediacy of the threat posed by Timpa, the court found that approximately nine-minutes into the restraint: (1) Timpa was cuffed at both the wrists and ankles, (2) his lower legs had stopped moving and were confined under the bus bench; and (3) he was surrounded by five officers, two paramedics, and two private security guards, most of whom were mulling about while Officer Dillard maintained bodyweight force on Timpa's upper back. Based on these fact the court held that a jury could conclude that no objectively reasonable officer would

believe that Timpa, restrained, surrounded, and subdued, continued to pose an immediate threat of harm justifying the prolonged use of force.

Concerning the third Graham factor, the court held that the plaintiffs raised a genuine dispute of material fact as to whether Timpa continued to actively resist arrest. The officers claimed that Timpa continued to actively resist arrest by “squirming” and “moving his head from left to right” in the final minutes of the restraint. The plaintiffs argued that Timpa moved his body in order to breathe, a position supported by the plaintiffs’ expert witness, a forensic pathologist. The court added that the plaintiffs’ claim was not contradicted by the officers’ body camera footage which showed Timpa attempting to raise his torso while he cried out repeatedly, “Help me,” “You’re gonna kill me,” “I’m gonna die,” “I can’t live.” Finally, the court held that the risks of asphyxiation in this circumstance should have been familiar to Officer Dillard because he had received training on the use of a prone restraint to control subjects in a state of excited delirium. Based on these facts, the court held that a jury could find that an objectively reasonable officer with Officer Dillard’s training would have concluded that Timpa was struggling to breathe, not resisting arrest.

The court commented that, while a jury could find that Officer Dillard’s continued use of force was objectively unreasonable, a jury could ultimately conclude the opposite: that Timpa was not subdued and continued to pose an immediate threat throughout his restraint. The court noted that it was a jury’s job to resolve such factual disputes.

Second, the court held that a jury could find that the use of a prone restraint with bodyweight force on an individual with three apparent risk factors, obesity, physical exhaustion, and excited delirium, constituted unreasonable deadly force. The court based this holding on the fact: (1) that the officers involved in this case were trained that the prolonged use of a prone restraint on subjects in a state of excited delirium can result in positional asphyxia death; (2) prominent guidance from the Department of Justice concerning risks, including sudden death, associated with prone handcuffing and positional asphyxia; and (3) expert witness testimony from the plaintiffs concerning the substantial risks of a prone restraint with weight on an obese and physically exhausted person in a state of excited delirium.

Third, the court found that the state of the law in August 2016 clearly established that the continued use of force against a restrained and subdued subject violated the Fourth Amendment; therefore, Officer Dillard was not entitled to qualified immunity.

Fourth, the court considered the plaintiffs’ bystander liability claims against Officers Vasquez and Dominguez. It was undisputed that both officers stood a few feet away from Timpa throughout the fourteen-minute duration of the restraint and that they were aware of the risks associated with holding an arrestee in the prone restraint position. In addition, the officers did not dispute that they lacked a reasonable opportunity to intervene. Finally, it was undisputed that the officers watched Timpa suddenly lose consciousness, expressed surprise, and then “stood by and laughed” while Officer Dillard continued to kneel on Timpa. Based on these facts, the court held that a jury could conclude that the officers failed to intervene to stop Officer Dillard’s excessive use of force against Timpa; therefore, they were not entitled to qualified immunity.

Fifth, the court held that Sgt. Mansell was not entitled to qualified immunity. Thirty-four seconds after Timpa was subdued, he returned to his patrol car a few feet away and sat with the car door open while he ran a check on Timpa’s license. Although Sgt. Mansell claimed that he did not hear Officers Vasquez and Dominguez mock Timpa for losing consciousness, there was testimony that supported an inference that he was aware that Timpa had become incapacitated. As a result,

the court held that a jury could find that Sgt. Mansell remained present on the scene and acquiesced in the violation of Timpa's Fourth Amendment rights.

Finally, the court held that Officer Rivera was entitled to qualified immunity because he lacked a reasonable opportunity to intervene. It was undisputed that Officer Rivera left the scene approximately two-and-a-half minutes before Timpa stopped moving his legs and that he remained absent until after Officer Dillard removed his knee from Timpa's back.

For the court's opinion: <https://cases.justia.com/federal/appellate-courts/ca5/20-10876/20-10876-2021-12-15.pdf?ts=1639614617>

Sixth Circuit

Gordon v. Bierenga, 2021 U.S. App. LEXIS 36867 (6th Cir. MI Dec. 14, 2021)

Around 6:00 p.m. on April 10, 2018, Officer Keith Bierenga attempted to stop a BMW driven by Antonio Gordon after Gordon almost collided with another vehicle. After failing to pull over for several blocks, Gordon stopped his car behind several other vehicles at a red light. Officer Bierenga exited his police cruiser, approached Gordon's car, and began speaking to him through the partially open driver's-side window. During the ten second conversation, Officer Bierenga perceived that Gordon was under the influence of something. When the light turned green and the traffic ahead of him moved forward, Gordon accelerated away from Officer Bierenga.

Officer Bierenga returned to his cruiser and followed Gordon as he made a sharp left turn in front of oncoming traffic into a White Castle parking lot. Gordon drove against the designated flow of traffic for the drive-thru window and went the wrong way around the parking lot. Officer Bierenga attempted to follow, but lost Gordon.

Approximately fifteen minutes later, Officer Bierenga spotted a BMW in the line at the White Castle drive-thru window that looked like Gordon's. It was, in fact, Gordon at the drive-thru window paying for his order. There was another vehicle parked in line approximately three feet behind Gordon. Officer Bierenga pulled into the parking lot and positioned the back of his cruiser at a diagonal angle directly in front of Gordon's car, effectively blocking him in. Officer Bierenga exited his vehicle and walked toward Gordon's car with his firearm drawn. Gordon backed his car into the vehicle behind him and then drove forward striking Officer Bierenga's cruiser, seemingly in an attempt to make a three-point turn get out of the drive-thru lane. While standing to the side of Gordon's car, Officer Bierenga repeatedly yelled at him to stop. As Gordon continued to maneuver his car, Officer Bierenga walked closer to Gordon's driver's-side window. After Gordon pulled forward, heading away from the White Castle and toward an opening behind Officer Bierenga's cruiser, Officer Bierenga yelled, "Stop!" and fired four shots at Gordon through the driver's side of the car.

Gordon continued out of the parking lot and drove a short distance before he collided head-on with another vehicle. Gordon was subsequently transported to the hospital where he died. Gordon suffered two gunshot wounds, one to his left arm and chest and another to his right arm. Gordon's toxicology report indicated that he had a blood alcohol concentration of .27 at the time of his death.

Gordon's Estate (Plaintiff) sued Officer Bierenga for excessive use of force under 42 U.S.C. § 1983. The district court denied Officer Bierenga qualified immunity. The court held that Officer Bierenga's use of deadly force violated Gordon's Fourth Amendment right to be free from excessive force during his vehicular flight, and that this right was clearly established in [Latits v. Phillips](#), decided by the Sixth Circuit Court of Appeals in 2017. Officer Bierenga appealed.

A police officer is entitled to qualified immunity from suit unless the plaintiff establishes: (1) a constitutional violation; and (2) that the right at issue was clearly established when the incident occurred.

In this case, the Sixth Circuit Court of Appeals held that the plaintiff failed to satisfy the second prong. A right is clearly established when it is sufficiently clear that every reasonable officer would have understood that what he is doing violates that right. This analysis depends on the specific facts of the case at hand and their similarity to caselaw in existence at the time of the alleged violation. In [Latits](#), the court held that in evaluating the reasonableness of deadly force in the context of a fleeing driver, it must determine: (1) whether anyone was in the car's immediate path at the time of the shooting; and (2) examine the officer's prior interactions with the driver that show potential for "imminent danger to other officers or members of the public in the area" if the driver is permitted to continue fleeing.

The court held that here, like in [Latits](#), the evidence allowed for an interpretation that Officer Bierenga fired four shots at Gordon after Gordon's car had passed the point the point where it could harm him, such that Officer Bierenga had time to realize that he was no longer in immediate danger. However, unlike [Latits](#), which had a chase that occurred when the driver fled, in the dead of night, on a large, effectively empty highway surrounded by non-populated areas, the circumstances of Gordon's flight were different. First, Gordon fled from Officer Bierenga during rush hour in the middle of a major road in a populated Detroit suburb, adjacent to residential neighborhoods and businesses. Second, Officer Bierenga saw Gordon make a reckless left turn in the face of oncoming traffic near a busy intersection to escape from him, causing oncoming cars to brake to avoid colliding with Gordon as he turned into the White Castle parking lot. Third, several cars were parked in the parking lot and multiple patrons and employees were inside the establishment. Finally, after Officer Bierenga blocked Gordon at the drive-thru window, Gordon reversed into the occupied vehicle behind him before accelerating forward and hitting Officer Bierenga's police vehicle. The court concluded that, while Gordon's contact with those vehicles occurred at a relatively low speed, his conduct showed a willingness to strike both police and civilian vehicles to effectuate his escape from police. Based on these facts, the court held that Gordon's reckless driving posed a materially higher risk of harm to the surrounding public than the reckless driving in [Latits](#). Accordingly, the court found that [Latits](#) did not "clearly establish" that using lethal force in the specific scenario Officer Bierenga confronted violated the Fourth Amendment.

For the court's opinion: <https://cases.justia.com/federal/appellate-courts/ca6/20-2013/20-2013-2021-12-14.pdf?ts=1639510269>

Eighth Circuit

United States v. Meyer, 2021 U.S. App. LEXIS 35593 (8th Cir. IA Dec. 2, 2021)

After the government discovered financial ties between William Meyer and individuals in the Philippines who were livestreaming sex acts involving children, two federal agents visited Meyer at his home. After the agents knocked on his door, Meyer insisted on speaking with them outside, so the agents spoke with Meyer in their car.

During their conversation, Meyer revealed a number of facts that aroused the agents' suspicion, including that Meyer had personal and financial ties to the individuals involved in the abuse. When Meyer admitted that he used a computer and cell phone to contact them, the agents asked Meyer if he would be willing to turn those devices over to them for an examination. Meyer told the agents that he was willing to turn them over later, after he had a chance to "check [his] email and stuff." Once the agents expressed concern that a delay would give him a chance to erase what was on them, Meyer still refused to consent, claiming that his house was "a mess" and "not . . . in any condition to entertain people." Then, after the agents mentioned the possibility of getting a warrant, Meyer suggested that the agents "come back later." One of the agents told Meyer that if they obtained a warrant, they would not tell him beforehand when they were coming to execute it. A short time later, Meyer went back inside his house.

Concerned that Meyer would destroy evidence if they waited any longer, one of the agents called a prosecutor for advice on whether "an exigent circumstance existed." When he was told that it did, the agents again knocked on Meyer's door, searched his home for electronic devices, and seized two computers, a cellphone, and a hard drive. Afterward the agents obtained a warrant to search the devices seized from Meyer's home. The search revealed child pornography videos and evidence that Meyer had sent money in exchange for the videos.

After the district court denied Meyer's motion to suppress the evidence discovered on his devices, he plead guilty to one count of sexual exploitation of children. On appeal, Meyer claimed that the agents' warrantless entry into his home violated the Fourth Amendment.

Generally, before law enforcement officers can lawfully enter a home to search for and seize evidence, they must first obtain a warrant. However, if the officers have probable cause to believe that the place to be searched contains evidence of a crime and there is a basis to believe that evidence will be destroyed, then exigent circumstances exist that will allow the officers to enter and search the home without a warrant. The exception to this rule is when the officers themselves have created the exigency by "engaging or threatening to engage in conduct that violated the Fourth Amendment.

In this case, the Eighth Circuit Court of Appeals held that exigent circumstances existed that permitted the agents to enter Meyer's house without a warrant and seize his electronic devices. First, by the time the agents decided to enter Meyer's house they had probable cause to believe that he was involved in criminal activity. Specifically, the agents knew that Meyers: (1) had ties to the individuals who were livestreaming sexual abuse of children; (2) had stayed with these individuals when he visited the Philippines; (3) had paid thousands to them and one of the minor victims; and (4) did not tell his wife about some of the money he sent, despite claiming that the payments were tied to his humanitarian work.

Second, the court held that the agents had probable cause to believe that there would be incriminating evidence on Meyer's devices, as Meyer admitted to the agents that he used a

computer and cellphone to communicate with the abusers and had stayed in regular contact with them. The agents also knew that his Skype username was “prettyvirginfilipino” and that the profile he used was a variant of the first name of one of the minor victims. After Meyers admitted that these devices were in his home, the court concluded that there was a fair probability that the agents would find “evidence of a crime” inside his home.

Third, the court held that it was reasonable for the agents to believe that Meyer would destroy the evidence on his devices after he went back inside his home. Meyer told the agents they could examine his devices after he “checked his email and stuff.” When the agents suggested that they accompany Meyer inside and look at the devices together, Meyer shifted his attention to the tidiness of his house and told the agents he would need “a few minutes to clean up first.” The court concluded that Meyer’s insistence that he have an opportunity to be alone with his devices gave the agents reason to believe that he was hiding something. Knowing that data can be deleted “at the touch of a button,” the court found that it was reasonable for the agents to enter Meyer’s home without a warrant and seize his devices.

Finally, the court held that the agents did not create the exigency by “engaging or threatening to engage in conduct that violates the Fourth Amendment.” By the time the agents mentioned their concern that Meyer might destroy evidence, he had already made a number of suspicious comments, including offering multiple excuses for his refusal to cooperate. Consequently, the court held that officers could not have manufactured or created an exigency that already existed.

For the court’s opinion: <https://cases.justia.com/federal/appellate-courts/ca8/20-2958/20-2958-2021-12-02.pdf?ts=1638462628>

Estate of Fritz ex rel. Fritz v. Henningar, 2021 U.S. App. LEXIS 36124 (8th Cir. IA Dec. 8, 2021)

Officer Bryson Henningar responded to a “fight in progress” call at an apartment complex by activating the emergency lights on his police cruiser and traveling down a two-lane Iowa highway toward the complex. A few minutes later, with other vehicles already pulled over to the side of the road, Officer Henningar accelerated from 47 to 60 miles per hour as he crossed a four-way intersection. On the other side of the intersection, Willys Fritz’s truck was idling at a stop sign. As Officer Henningar approached, Fritz pulled out into the highway and tried to cross the intersection. Officer Henningar’s cruiser broadsided Fritz’s truck, killing Fritz.

Fritz’s estate (plaintiffs) sued Officer Henningar for recklessly causing Fritz’s death under Iowa Code § 321.231 and under 42 U.S.C. § 1983 for violating Fritz’s civil rights. After the district court granted Officer Henningar’s motion for summary judgment and dismissed the case, the plaintiffs appealed.

Iowa Code § 321.231 provides, in part, that while responding to “emergency calls,” operators of emergency vehicles can: (1) proceed past a red [light] or stop signal or stop sign, but only after slowing down as may be necessary for safe operation and can (2) exceed the maximum speed limits so long as the driver does not endanger life or property. Operators of emergency vehicles are only entitled to do so when an “audible” or “visual signaling device” is used, such as flashing lights or a siren. Nonetheless, § 321.231 requires operators of emergency vehicles to drive with “due regard for the safety of all persons,” and does not protect them from “the consequences of the driver’s reckless disregard for the safety of others.” The plaintiffs argued that Officer

Henningar's operation of his police cruiser was reckless under § 321.231; therefore, the district court erroneously dismissed the lawsuit against him.

Under Iowa law, to show that Officer Henningar acted recklessly, the plaintiffs must show, in part, that he intentionally committed an unreasonable act in disregard of a known risk or a risk that was so obvious that he must have been aware of it. The Eighth Circuit Court of Appeals agreed with the district court which held that the plaintiffs could not meet this requirement.

To support this conclusion, the court cited [Bell v. Community Ambulance Service Agency](#) decided by the Iowa Supreme Court in 1998. In Bell, an ambulance responding to an emergency call approached an intersection with its lights and sirens activated. From the ambulance driver's point of view, all traffic was stopped, and the intersection was clear. However, when another vehicle tried to cross the intersection, the ambulance a massive broadside collision resulted. The Court found that the ambulance driver was not reckless under § 321.231 because at the time of the collision the road was straight, all surrounding traffic had stopped, and witnesses clearly saw and/or heard the ambulance.

In this case, the court concluded that, while the emergency vehicle was different than in Bell, the circumstances were almost identical. As Officer Henningar's police cruiser approached the intersection, traffic had stopped, the road was straight, and the lane ahead was clear. In addition, multiple witnesses reported hearing a siren or seeing flashing lights. The court concluded that if the evidence in Bell was insufficient to establish the recklessness of the ambulance driver, then it followed that the evidence in this case could not establish that Officer Henningar acted recklessly under § 321.231.

For the court's opinion: <https://cases.justia.com/federal/appellate-courts/ca8/20-3582/20-3582-2021-12-08.pdf?ts=1638979272>

Eleventh Circuit

Johnson v. City of Miami Beach, 2021 U.S. App. LEXIS 34507 (11th Cir. FL Nov. 19, 2021)

Police officers arrested Richard Johnson after he sold cocaine to two undercover Miami Beach police officers. When the officers walked Johnson to the transport vehicle and told him to have a seat, Johnson refused, stating that he was not going to jail. Johnson repeatedly asked the officers why he was being arrested, insisted he had done nothing wrong, and accused them of setting him up. While Johnson was talkative, he was not physically aggressive. Johnson did not immediately follow the order to sit down but, after 20 or so seconds, he sat down in the vehicle.

While driving Johnson to the Miami Beach Police Department, Officer Duane Mitchell called for backup to meet him at the police station, explaining over the radio that Johnson had "said he isn't going." Officer Christopher Aguila responded to the call and met Officer Mitchell at the police department. Officer Mitchell told Officer Aguila that Johnson did not want to get out of the police car. Officer Aguila opened the door of the car, and Johnson got out six seconds later. Officer Aguila then walked Johnson, still handcuffed, into the police station for processing.

Inside the police station, officers removed Johnson's handcuffs. Body camera footage showed Johnson, no longer in handcuffs, continuing to ask why he had been arrested and insisting that he

had done nothing wrong. At one point, facing Officer Aguila, Johnson stated, “I ain’t scared of you by a long shot, buddy.” Nonetheless, the videos showed that Johnson complied with the officers’ instructions to take off his socks and shoes and then to turn around and place his hands on the table behind him.

After the officer searched Johnson, they escorted him to a holding cell. When Officer Walter Mejia placed his hand on Johnson’s back and guided him toward the open cell door, Johnson stepped to the right of the cell’s doorway and placed his back against the adjacent wall, stating, “I’m not going to go in there.” Another officer immediately said, “My man, my man, you’re going in there,” and Johnson made no further remarks to the officers. Officer Mejia grabbed Johnson by the shoulder and pushed him into the cell. After Johnson was inside the cell, Officer Mejia took a step to the left, such that he was no longer directly in front of the cell’s doorway and reached for the cell’s sliding door. Johnson was then well inside the cell and standing still. At this point, Officer Aguila, who had been standing outside the cell to the right of Officer Mejia, entered the cell and forcibly struck Johnson in the face with his elbow. The incident was captured, at various angles, on two security cameras and two body cameras. None of these videos showed Johnson making any perceptible movements in the time between when Officer Mejia placed him in the cell and when Officer Aguila then entered the cell and struck him. Johnson was later treated for a small laceration to his mouth.

Johnson sued Officer Aguila and the City of Miami Beach for, among other things, excessive use of force under 42 U.S.C. § 1983. The district court held that Officer Aguila was entitled to qualified immunity “because a reasonable officer could have believed that the force used was necessary under the circumstances.” Johnson appealed.

Qualified immunity protects government officials, including police officers, from civil liability unless their conduct violates clearly established statutory or constitutional rights of which a reasonable person would have known. The Fourth Amendment’s freedom from unreasonable searches and seizures includes the right to be free from the use of excessive force in the course of an arrest. In excessive force cases, whether a plaintiff’s constitutional rights were violated is governed by the Fourth Amendment’s objective reasonableness standard. In [Graham v. Connor](#), the Supreme Court held that whether an officer has used excessive force depends on “the facts and circumstances of each particular case,” including a non-exhaustive list of factors, such as: (1) “the severity of the crime at issue”; (2) “whether the suspect poses an immediate threat to the safety of the officers or others”; and (3) “whether he is actively resisting arrest or attempting to evade arrest by flight.”

In this case, viewing the evidence and the videos in the light most favorable to Johnson, the Eleventh Circuit Court of Appeals held that a reasonable jury could find that at the time Officer Aguila entered the holding cell and forcibly struck him: 1) Johnson was under arrest; 2) Johnson was fully secured, as he was far enough inside the holding cell that Officer Mejia could have slid the door closed without incident; 3) Johnson was not moving, resisting, or otherwise posing a threat to Officer Mejia or any other officer; 4) Johnson was not attempting to flee; and 5) Officer Aguila had no need to use any force against Johnson. As a result, the court concluded that a reasonable jury could find that Officer Aguila used excessive force in violation of the Fourth Amendment when he entered the holding cell and forcibly struck Johnson.

Next, the court held that at the time of the incident, it was clearly established in the Eleventh Circuit that an officer violates the Fourth Amendment when he uses gratuitous force against an

arrestee who is fully secured, not resisting arrest, and not posing a safety threat to the officer. As a result, the court held that Officer Aguila was not entitled to qualified immunity.

For the court's opinion: <https://cases.justia.com/federal/appellate-courts/ca11/20-10834/20-10834-2021-11-19.pdf?ts=1637350360>
