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

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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 2 INFORMER 25.

The Informer – February 2025

Circuit Courts of Appeals

Second Circuit

Fourth Circuit

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Sixth Circuit

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FLETC Informer Webinar Schedule: March – April 2025

1. Officer Liability: Supervisor's Edition (Episode 2, Qualified Immunity) (1-hour)

Presented by Mary Mara and Samuel A. Lochridge, Attorney Advisors / Senior Instructors, Federal Law Enforcement Training Centers, Glynco, Georgia.

The legal consequences for law enforcement in the course of their duties has become more than a sparsely reported news story but evolved into a commonplace reality. This is no less true for those who train and supervise the men and women working in the industry. This six-part web series will explore the liability of supervision. Please join Attorney Advisors Sam Lochridge and Mary Mara as they continue this journey in Episode 2: Qualified Immunity.

Monday, March 10, 2025: 3:00 p.m. Eastern / 2:00 p.m. Central / 1:00 p.m. Mountain / 12:00 p.m. Pacific

To join: Officer Liability: Supervisor's Edition (Episode 2, Qualified Immunity)

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2. Questions You've Always Wanted to Ask a Lawyer (1-hour)

Presented by Tom Leak, Attorney Advisor / Senior Instructor, Federal Law Enforcement Training Centers, Glynco, Georgia.

Have you ever had a question that you wanted to ask a lawyer but did not have access to one? Have you ever wondered what kinds of questions seasoned attorneys are asked throughout their careers? The array of topics and questions are vast – and often funny – and we have compiled some of the more frequent types of questions that are posed to lawyers on a regular basis. Please join Attorney Advisor Tom Leak as he addresses the many types of questions that have been posed to lawyers in Questions You've Always Wanted to Ask a Lawyer.

Thursday, March 27, 2025: 2:30 p.m. Eastern / 1:30 p.m. Central / 12:30 p.m. Mountain / 11:30 a.m. Pacific

To join: Questions You've Always Wanted to Ask a Lawyer

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3. Officer Liability: Supervisor's Edition (Episode 3, Supervisor Liability Generally) (1-hour)

Presented by Mary Mara and Samuel A. Lochridge, Attorney Advisors / Senior Instructors, Federal Law Enforcement Training Centers, Glynco, Georgia.

The legal consequences for law enforcement in the course of their duties has become more than a sparsely reported news story but evolved into a commonplace reality. This is no less true for those who train and supervise the men and women working in the industry. This six-part web series will explore the liability of supervision. Please join Attorney Advisors Sam Lochridge and Mary Mara as they continue this journey in Episode 3: Supervisor Liability Generally.

Wednesday, April 16, 2025: 3:00 p.m. Eastern / 2:00 p.m. Central / 1:00 p.m. Mountain / 12:00 p.m. Pacific

To join: Officer Liability: Supervisor's Edition (Episode 3, Supervisor Liability Generally)

CASE SUMMARIES

Circuit Courts of Appeals

Second Circuit

United States v. Poller, No. 24-75 (2d Cir. 2025)

On May 3, 2022, Waterbury Police Department officers had a search and seizure warrant for Christopher Poller's residence based on a drug and weapons investigation and began a surveillance of him in anticipation of his arrest. Officers observed Poller park a gray Acura sedan on a public street near his residence and watched several unknown individuals then approach the vehicle and exchange items with Poller, which was behavior that they believed to be consistent with hand-to-hand exchanges of narcotics. Poller then exited the car and entered his residence.

While one group of officers went to the residence to execute the search warrant, another group went to the car, which had dark tinted windows. One officer opened his iPhone's camera application and first placed the phone flush against, then later close to, but not touching, the passenger-side car window. Using the camera application, the officer was able to see what he believed were two firearms wedged between the front seats and the center console. He repeated the iPhone camera process on the other side of the car and showed the image to another officer. A second officer used the same process and observed two firearms, including one with an extended magazine, and a bag containing an unknown substance. A third officer then cupped his hands around his eyes, peered into one of the windows without touching the glass and stated, "I see a bag of heroin on the front seat, two guns, one's got an extended mag, and looks like probably… a bag of drugs right there in the passenger seat." This officer's body camera was also able to capture the interior of the car. The car was then towed, a search warrant was obtained, the car was searched, and officers seized all of the items observed through the windows.

Poller moved to suppress the evidence, arguing that the officers violated his reasonable expectation of privacy by: 1) using the iPhone camera to view the items inside of his car; and 2) physically touching his car during those observations, which constituted a trespassory search by the officers. The district court denied the motion, ruling that the use of iPhone cameras did not violate Poller's expectation of privacy because the technology is in general public use and also found that the physical touching of the car was not necessary for law enforcement to see the contraband inside. Poller appealed.

The Second Circuit Court of Appeals affirmed the lower court's decision and equated the iPhone camera application to shining a flashlight to illuminate the inside of a vehicle, which has been previously found to not violate the Fourth Amendment, such as in Mollica v. Volker. Additionally, the Second Circuit found that the tinted windows on the car did not create a legitimate expectation of privacy, nor was it a reasonable expectation of privacy.

First, the Second Circuit addressed Poller's argument that the use of the iPhone camera violated his reasonable expectation of privacy under Kyllo v. United States and held that the Kyllo decision did not extend to observations directed at the interior of an automobile. The Court distinguished the heightened privacy interests within a home and the car in this case and refused to extend the protections held in Kyllo. Additionally, the Court distinguished the advanced technology referenced in Kyllo (thermal-imaging devices) and the iPhone in the present case which, the Court noted, showed the officers "what they undisputedly could see with their naked eyes." Therefore, the use of the iPhone to aid viewing through the tinted windows was not a search.

The Court then addressed Poller's argument that, by repeatedly touching Poller's car while making observations of the items within it, the officers engaged in a trespassory search under United States v. Jones. The Court opined that, even if they were to assume a trespassory search occurred, suppression is unwarranted because Poller could not establish that it was necessary for the iPhone to be in physical contact with his car in order for the camera application to allow the officers to see the interior of his car. Therefore, the suppression of the guns and drugs would be unwarranted and the lower court was correct in denying the motion to suppress those items.

For the court's opinion: https://law.justia.com/cases/federal/appellate-courts/ca2/24-75/24-75-2025-02-20.html

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Fourth Circuit

U.S. v. Mayberry, 125 F.4th 132 (4th Cir. 2025)

At 4:00 a.m. on May 3, 2018, a South Carolina Highway Patrol officer stopped the driver of a car for speeding, which resulted in a search of the vehicle where the officer found guns, methamphetamine, and $20,000 in cash. Josh Davis, a passenger in the car, told the officers he was going to a hotel to purchase four pounds of methamphetamine from a man he knew as "Red." When other officers showed Davis a photograph of Ray Philips, a known drug trafficker who used the name "Red," Davis identified Philips as the man from whom he had previously purchased drugs. Davis then agreed to work with the officers in their investigation of Red.

The officers sent "Red" a text message from Davis's cell phone saying that Davis was on the way to the hotel. A short time later, officers saw a pickup truck enter the hotel parking lot. At that time, Davis received a text message from "Red" saying that he had arrived. Davis responded with a text message telling "Red" that he was on the second floor.

Almost immediately, the officers saw the driver of the pickup truck get out of his vehicle and enter the side door of the hotel. The driver, later identified as Cornelius Mayberry, carried a red, white, and blue "Tommy Hilfiger" backpack. Two officers entered the hotel through the same side door, which led to an interior stairwell. The officers climbed the stairs and opened a door which led to the second-floor hallway. Upon entering the hallway, the officers saw Mayberry about 15- 20 feet down the hall, walking away from the stairwell door and arrested him.

During this time, a third officer entered the hotel and walked up the same set of interior stairs. On the landing next to the closed door to the second floor, the officer saw a red, white, and blue

"Tommy Hilfiger" backpack that looked like the one Mayberry had been carrying. Officers searched the backpack and found two kilograms of methamphetamine.

Mayberry was convicted and, on appeal, Mayberry first argued that the officers lacked probable cause to arrest him in the hallway of the hotel. Mayberry claimed that Davis's "tip" providing information about the impending drug transaction was unreliable, because Davis had identified someone in a photograph other than Mayberry as being "Red." The Fourth Circuit disagreed. Probable cause to arrest requires facts and circumstances known to the officer that are "sufficient to warrant a prudent person" in believing that the suspect "has committed, is committing, or is about to commit an offense." To determine whether officers had probable cause to arrest, a court must consider the totality of the circumstances leading to that arrest.

Here, the accuracy of the detailed information provided by Davis was strongly corroborated by the officers' real-time observations of Mayberry after Davis exchanged text messages with the person known to him as "Red." The court added that Davis's improper identification of Philips as "Red" did not render Davis's other information unreliable or insufficient to establish probable cause.

Next, Mayberry argued that the warrantless search of his backpack was unreasonable because neither his words nor his actions showed that he intended to abandon it in the hotel stairwell. The Court disagreed, stating that a person who voluntarily abandons property loses any reasonable expectation of privacy in the property and is consequently precluded from seeking to suppress evidence seized from that property.

Here, Mayberry voluntarily left his backpack in the hotel's common stairwell and walked away from the bag while it remained behind a closed door as Mayberry walked down the second-floor hallway. Additionally, the stairwell was accessible by anyone, without the use of a hotel key. As such, the Court concluded that the facts supported a finding that Mayberry abandoned the backpack.

For the court's opinion: https://law.justia.com/cases/federal/appellate-courts/ca4/23-4051/23-4051-2025-01-07.html

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Fifth Circuit

Barnes v. Felix, No. 22-20519 (5th Cir. 2024)

Texas Officer Roberto Felix, Jr. conducted a traffic stop on Ashtian Barnes after hearing a dispatch from Harris County Toll Road Authority relaying the license plate number of Barnes' vehicle as one with outstanding toll violations. Felix subsequently saw the vehicle with the matching plate on the Tollway and conducted a traffic stop, which was captured on Felix's dash camera. After Felix engaged his emergency lights, Barnes pulled off the road into the median on the left-hand side of the Tollway. Felix then parked his patrol vehicle behind Barnes' Toyota Corolla, walked to the driver's side window, and requested Barnes' driver's license and proof of insurance. Barnes claimed not to have the requested documentation with him and mentioned that the car had been rented a week earlier in this girlfriend's name.

During the discussion, Barnes kept "digging around" around the vehicle and Felix warned him to stop doing so. Felix also stated that he smelled marijuana and asked if there was anything in the vehicle Felix needed to know about. Barnes then turned off the vehicle, placed the keys by the gear shift, and stated that the documentation that Barnes requested "might" be in the trunk of the vehicle. As Felix ordered Barnes to open the trunk, the left turn signal continued to flash but when the trunk to Barnes' Toyota opened, the left turn signal stopped flashing. Felix ordered Barnes to step out of the vehicle and, as the door opened, the left turn signal began to flash again, indicating that the vehicle was going to be moving. As the signal began to flash again, Officer Felix ordered Barnes to stop moving and pointed his pistol at him. As the Toyota moved forward, Officer Felix jumped onto the door sill. While the automobile continued driving forward with Officer Felix hanging on, Felix fired at least twice into the vehicle at Barnes. After a short distance, the Toyota came to a stop. Barnes was pronounced dead at the scene approximately eight minutes later.

On behalf of Barnes, his parents filed suit against Officer Felix under 42 U.S.C § 1983, claiming Fourth Amendment constitutional violations for his shooting of Barnes. Felix moved for summary judgment, claiming that Barnes' constitutional rights weren't violated, and that Felix reasonably feared for his life at the time of the shooting, due to Barnes' moving vehicle. The Plaintiffs replied, arguing that regardless of Barnes' attempt to flee, this did not pose a threat that justified deadly force.

The district court found that the precise instant Barnes began to move the car, he presented "a threat of serious harm to Officer Felix." Specifically, the "moment of threat" took place in the two seconds prior to Barnes being shot. At that precise moment, Felix was hanging outside the open door of Barnes' moving Toyota, therefore Felix could have been placed in a reasonable belief "his life was in imminent danger." The district court also determined that Felix's actions leading up to the moment of threat were not relevant in evaluating Barnes' shooting. Based on these findings, the district court concluded that Felix's use of force was not excessive and granted his motion for summary judgment.

On appeal, the Fifth Circuit reviewed whether Felix "was in danger *at the moment of the threat* that caused him to use deadly force against Barnes." (Emphasis added.) According to Fifth Circuit precedent, an officer's actions prior to the moment of the shooting are irrelevant to any excessive force review, and instead the court is required to focus on the act that led to the officer's discharge of their firearm, otherwise known as the moment of the threat. Citing the similar case of Harmon v. City of Arlington, the Fifth Circuit focused on the instant where the officer is hanging to the side of an accelerating vehicle as the officer draws their weapon. According to the Fifth Circuit, this is the moment of threat that a court must evaluate to determine whether an officer reasonably believes they are at risk of serious physical harm. As this was the exact situation that Officer Felix faced, the Court determined that he did not violate Barnes' Fourth Amendment rights, and therefore affirmed the district court's finding of summary judgment for Felix.

However, in a concurring opinion, the Fifth Circuit stated that the moment of threat doctrine overly limited their ability to determine whether or not an officer's use of force was reasonable. Citing Scott v. Harris, which states that a Fourth Amendment analysis is a "factbound morass of reasonableness" by necessity, the Fifth Circuit claimed that they are deprived of potentially relevant facts at the expense of human life.

In the case of Barnes, the facts that the initial crime was driving with an outstanding toll fee, that Felix jumped into the door sill of the moving vehicle, and that Felix fired within two seconds are a collection of facts that "merits finding that Officer Felix violated Barnes' Fourth Amendment right to be free of excessive force." Based, in part, on this concurring opinion, Barnes' estate appealed this decision to the U.S. Supreme Court, oral arguments were heard on January 22, 2025, and the decision is currently pending.

For the court's opinion: https://law.justia.com/cases/federal/appellate-courts/ca5/22-20519/22-20519-2024-01-23.html
For the U.S. Supreme Court's audio:
https://www.supremecourt.gov/oral_arguments/audio/2024/23-1239

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Sixth Circuit

Naji v. City of Dearborn, Michigan, No. 24-1058 (6th Cir. 2024)
On December 18, 2022, Corporal Timothy Clive was working the front desk in the lobby of the City of Dearborn, Michigan, Police Headquarters when Ali Naji entered the lobby through the public entrance. Naji wore a COVID mask and a winter hat and when Clive greeted him by asking how he was doing, Naji did not respond. Instead, Naji pulled a handgun from his waistband and pointed it at Clive who was standing behind bulletproof glass. Clive shouted, "gun, gun, gun!" Naji squeezed the trigger, but nothing happened due to an apparent malfunction. The gun "clicked" and Naji pulled out the magazine seemingly trying to fix the malfunction. In the meantime, Clive grabbed his service revolver, slid open the front desk window and fired seventeen rounds "in a continuous 4-5 second volley." Naji fell to the floor and dropped his gun. When Clive started firing, Naji was holding his gun about chest-high while pointing it towards Clive and about six seconds had passed since Naji first attempted to shoot him. Although no other members of the public were in the lobby that day, eleven people were working at the station. All the events were captured by five surveillance cameras.

Hussein Naji sued on behalf of Ali Naji's estate alleging that Corporal Clive and the City of Dearborn were civilly liable for his death. The lawsuit filed in federal district court alleged a Fourth Amendment excessive force violation under §1983, a municipality-liability claim against Dearborn, and claims of assault and battery, and gross negligence under Michigan law. Although the district court granted summary judgment to Clive and the City of Dearborn on all claims, Naji's representative appealed to the Sixth Circuit on behalf of his estate.

The Sixth Circuit noted at the outset that the facts on appeal are construed in favor of the party opposing summary judgment. However, the Sixth Circuit cited to the Supreme Court's decision in Scott v. Harris and stated that "[w]hen the record contains 'a videotape capturing the events in question,' we may not adopt a 'version of the facts […]' that 'blatantly contradict[s]' the asserted version of events [by the party moving for summary judgment] such that 'no reasonable jury could believe it.'" Naji's attempt to shoot Clive and Clive's shooting of Naji in response were captured on surveillance video.

Corporal Clive raised the defense of qualified immunity meaning that Naji's estate would have to prove that: 1) Clive violated his constitutional rights, i.e., he acted unreasonably; and 2) those rights were clearly established at the time of the violation. In response to the estate's claim that Clive used excessive force in shooting Naji, the Sixth Circuit agreed with the district court's finding that there was no constitutional violation. The Court noted that the objective reasonableness standard views the facts and circumstances confronting officers who "make split-second judgments" in dangerous and difficult situations. The Court also reiterated the principle that the use of deadly force is objectively reasonable whenever an officer has probable cause to believe that a suspect poses an immediate threat of serious physical harm to the officer or others. Because Naji posed a threat both to Corporal Clive and to other officers or members of the public, the Sixth Circuit agreed that Clive's response to Naji was a reasonable one.

Naji's estate argued that he did not pose a threat of death or serious physical harm because "Naji was not pointing the gun at Clive or any other person while Clive shot him." However, the video recordings of the event showed Naji holding his firearm chest-high and fidgeting with it in an apparent attempt to get it to fire at Clive at the time that Naji was shot. The images of Naji pointing the barrel directly at Clive while pulling back the weapon's slide directly refuted the claim by Naji's estate. When discussing the threat to Clive, the Sixth Circuit joined the Second and Eleventh Circuits in rejecting the notion that "bulletproof" glass dispels all danger to someone positioned behind it.

Regarding the threat to others, Naji's estate argued that his failure to flee and Clive's statement at his deposition that he could not remember the last time he had seen someone walk into the station, showed no one else was at risk. The Sixth Circuit noted that many other officers were present at the station that day and that the shooting happened "on a busy Sunday during a Christmas toy drive." The mere possibility of another citizen or officer coming into the station during the event posed a sufficient threat for Clive to respond.

The Sixth Circuit also rejected the argument that Clive's shooting of Naji was an unreasonable response since Naji never got a shot off, and because Clive continued to fire as Naji fell. The fact that Clive had been fired upon unsuccessfully did not create a need for him to wait until Naji could reload or repair his gun any more than an officer would otherwise be required to wait for an armed suspect to open fire on him before firing back. A mere six seconds lapsed between Naji's attempted shots and Clive's return fire. The Court reiterated that, as the Graham v. Connor case reminds us, officers often "make split-second judgments" in "uncertain[] and rapidly evolving" situations and found that Clive's response reasonable.

The Sixth Circuit affirmed the lower court finding that Clive was entitled to qualified immunity and rejected the municipal liability and state law tort claims as well.

For the court's opinion: https://law.justia.com/cases/federal/appellate-courts/ca6/24-1058/24-1058-2024-10-28.html

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