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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 11 INFORMER 21.

The Informer – November 2021

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FLETC Informer Webinar Schedule – December 2021

1. Policing and the Mentally Ill – Legal Liabilities

Presented by Debora Gerads, Attorney Advisor/Senior Instructor, Federal Law Enforcement Training Centers, Artesia, New Mexico.

Mentally ill individuals in the criminal justice system continues to be a growing problem. This, the second webinar in our series on Policing the Mentally Ill, will focus on the legal challenges associated with law enforcement encountering the mentally ill.

Thursday, December 16, 2021: 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

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CASE SUMMARIES

Circuit Courts of Appeals

First Circuit

French v. Merrill, 15 F.4th 116 (1st Cir. 2021)

In February 2016, Christopher French, a college student, was dating a fellow student, Samantha Nardone. On February 18, 2016, at approximately 1:00 a.m., police officers were dispatched to Nardone's residence in response to a call concerning a domestic dispute. Upon arrival, Nardone told the officers that she wanted French to leave her alone for the night. French agreed to leave; however, during the walk to his apartment, he sent Nardone several offensive text messages. Nardone showed the messages to officers, who caught up with French before he arrived home. The officers served French with a Cease Harassment Notice (CHN), which prohibited French from "engaging, without reasonable cause, in any course of action with the intent to harass, torment, or threaten" Nardone.

Later that day, Nardone reported that French had been calling her, sending her messages via text, email, and various social media platforms throughout the day. Nardone also told the officers that some of her friends had told her that French was looking for her on campus and that she had seen French during a trip to a local store and assumed French was following her. Based on these facts, officers arrested French for harassment under Me. Rev. Stat. tit. 17-A, § 15(1)(A)(12). The charges were subsequently dismissed by the state.

On September 14, 2016, at approximately 3:19 a.m., the police received a report of a possible break-in at Nardone's residence. Officers Morse and Gray responded. Nardone told the officers that she and French had reconciled, although they were not dating. She also told the officers she suspected that French had stolen her cell phone while she had been sleeping that night. She told the officers that she suspected French because French had taken her keys the prior week and had not yet returned them.

After the officers left, they responded to a second call from Nardone at approximately 4:43 a.m., reporting that she and her roommate had seen French attempting to enter their home, but that he had run off when the women screamed. As the officers approached Nardone's residence, they received another report that French had just been seen running down the street toward his house. Officers Morse and Gray immediately went to French's house.

Once at French's house, the officers saw lights on inside the home and decided to conduct a "knock and talk" rather than immediately apply for a warrant. The officers walked onto the front porch, knocked on the front door, and announced they were police officers seeking to speak with French. (First Entry). No one answered the door, and the officers left the property.

While Officer Morse went to speak to Nardone, Officer Gray stayed near French's home to surveil the property. While standing on a neighbor's driveway, Officer Gray thought he saw a young man peering out the basement window. Office Gray shined his flashlight through the window, which caused the young man to cover the window and turn off the basement lights. Officer Gray then returned to the front porch of French's home, and again knocked on the front door, but no

one answered. (Second Entry). During this time, Officer Gray noticed that lights were quickly being turned off in the residence. Officer Gray left French's property.

A few minutes later, Officer Morse returned, along with two other police officers. Officer Morse walked back onto French's property and, peering through a window, saw that a light remained on in the kitchen. (Third Entry). Officer Morse then rejoined the other officers and told them that he would return to the station to apply for a search warrant. One of the officers suggested that they should attempt another "knock and talk." Officer Morse replied that he and Office Gray had already done that, and he did not think French would respond if the officers tried it again.

Nonetheless, the Officer Morse and another officer went to the left side of house, walked through the curtilage along a narrow strip of grass and located what they believed was French's bedroom window. The officers knocked forcefully on the window frame and ordered French to come out and talk, while at the same time, Officer Gray returned to the front porch, knocked on the front door, and told French to come outside. (Fourth Entry). Eventually, French reluctantly came to the door and spoke to the officers. French admitted that he had Nardone's cell phone but claimed he had found it on the ground outside Nardone's building and planned to return it the next day. The officers deemed French's story not credible and arrested him for burglary. The state subsequently dismissed the charge because Nardone refused to cooperate and was out of state.

French sued the officers under 42 U.S.C. § 1983 for: 1) arresting him without probable cause in February 2016; and 2) unlawfully entering the curtilage of his house in September 2016 to conduct several "knock and talks," in violation of the Fourth Amendment.

Regarding the February 2016 incident, the district court held that the officers had probable cause to arrest French for harassment. As to the September 2016 incident, the district court found that even if the officers' multiple attempts to persuade French to come to the door violated the "knock and talk" exception to the Fourth Amendment, the officers were entitled to qualified immunity because there was no clearly established law that made their conduct unlawful. French appealed.

First, the First Circuit Court of Appeals agreed with the district court and held that the officers had probable cause to arrest French for harassment under Maine law. The court noted that the undisputed facts established that French used several different communications platforms to call and message Nardone repeatedly, despite receiving no response from her. In addition, content of the messages ranged from pleas to talk, to threats of suicide, to telling Nardone that he would "find" her. Finally, Nardone told officers that French had been looking for her on campus and that he had followed her to a local store, which was conduct that terrified her.

Next, the court applied the holding from Florida v. Jardines to determine if the officers' repeated entries onto the curtilage of French's home violated clearly established law. In Jardines, decided in 2013, the Supreme Court recognized that the curtilage of a home is protected under the Fourth Amendment to the same degree as the interior of the home itself. However, the Court also recognized that an implicit social license or invitation to enter the curtilage of another's property exists by virtue of "the habits of the country." For example, the Court commented that "the knocker on the front door is treated as an invitation or license to attempt an entry, justifying ingress to the home by solicitors, hawkers, and peddlers of all kinds." Consequently, the Court explained that the implicit license "typically permits the visitor to approach the home by the front path, knock promptly, wait briefly to be received, and then (absent invitation to linger longer) leave." The Court added the simplicity of the implicit license "is generally managed without incident by the Nation's Girl Scouts and trick-or-treaters." This implicit license allows police officers to

approach a home without a warrant and attempt to make contact with the homeowner as any private citizen might do.

In this case, the court held that the officers exceeded the scope of the implicit social license that authorized their presence on French's property. First, it was obvious that the occupants of the home were aware of, and did not want to receive, visitors. This was evidenced by the refusal to answer the door during the officers' first and second entries onto the porch and the swift covering of windows and turning off lights in response to the knock on the door during the second entry onto the porch. Second, despite these signs, the officers continued to try to coax French out of the house, even after Officer Morse expressed doubt that French would come to the door and that the officer should attempt to obtain a warrant. At this point, the court concluded that any reasonable officer would have understood that repeated, forceful knocking on the front door and a bedroom window frame, while urging French to come outside, during the officers' third and fourth entries, exceeded the limited scope of the customary social license to enter French's property. By doing so, the court concluded that the officers engaged in the kind of warrantless and unlicensed physical intrusion on French's property that Jardines clearly established as a Fourth Amendment violation. As a result, the court held that the officers were not entitled to qualified immunity.

For the court's opinion: https://cases.justia.com/federal/appellate-courts/ca1/20-1650/20-1650-2021-10-01.pdf?ts=1633122007

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Fifth Circuit

United States v. Beard, 2021 U.S. App. LEXIS 31974 (5th Cir. TX Oct. 22, 2021)

A narcotics investigator with the United States Postal Inspection Service (USPIS) suspected that Clarence Beard was unlawfully mailing opioid pills from Houston, Texas, to a Kelly McAllister in Hammond, Louisiana. The investigation revealed among other things, that Beard had used the alias "Nick Johnson" to mail packages and that McAllister had wired numerous structured payments of $1,000 to Beard. As a result, the investigator placed an alert on McAllister's address in Hammond so he would be notified if any packages were mailed to this address.

On January 8, 2018, the investigator received an alert that a package had been mailed to McAllister's address in Hammond. The investigator learned that the package had been mailed from a post office in Houston, it was addressed to McAllister, the sender's name was "Nick Johnson," and the return address was fake. The investigator believed that he had reasonable suspicion to detain the package, so later that day he submitted a request that the package be pulled from the mail stream. However, it was impossible to stop the package before it arrived in Hammond because there was no way to tell where it was located in the mail stream.

On January 11, 2018, the investigator learned the package had arrived at the post office in Hammond. The investigator called the post office and requested that the package be mailed back to Houston. Although the investigator expected the package to take one or two days to return to Houston, he received the package on the afternoon of January 17, 2018. The inspector then arranged for a canine inspection of the package on January 18, 2018.

After the canine alerted to the package on January 18, 2018, the inspector completed a search warrant application, obtained approval from the AUSA, and presented the warrant application to

the court as quickly as he was able to see the judge, which was the next morning, on January 19, 2018. After obtaining the warrant, the inspector searched the package and discovered drugs.

After Beard pleaded guilty to possession with intent to distribute a controlled substance, he appealed the district court's denial of his motion to suppress the drugs found in the package. On appeal, Beard conceded that the initial detention of the package in Hammond on January 11 was lawful because it was supported by reasonable suspicion. However, Beard argued that the detention of the package became an unreasonable seizure when it was rerouted back to Houston, which took five days, before further investigative steps to confirm reasonable suspicion were taken. Specifically, Beard argued that the investigator unreasonably delayed his investigation because a canine sniff could have been conducted in Hammond, thereby substantially minimizing the delay in establishing probable cause to obtain the warrant to search the package.

In United States v. Van Leeuwen, the Supreme Court held that the protections of the Fourth Amendment apply to packages sent via the United States Postal Service. Specifically, while in the mail, a package can be searched, i.e., opened and the contents examined, lawfully only if a search warrant is obtained. Regarding the seizure of a package, the Court held that if the government has reasonable suspicion that a package contains contraband or evidence of criminal activity, the package may be detained without a warrant while an investigation is conducted. The court added, however, that "detention of mail could at some point become an unreasonable seizure of 'papers' or 'effects' within the meaning of the Fourth Amendment."

The Fifth Circuit Court of Appeals recognized that there was "little precedent" determining the reasonableness of the detention of a package under Van Leeuwen in the Fifth Circuit. However, the court found that, in other circuit decisions that have addressed this issue, the relevant factors to consider in determining reasonableness include: 1) investigatory diligence; 2) the length of the detention; and 3) whether there were circumstances beyond the investigator's control.

In this case, the investigator testified that when packages were rerouted back to him in Houston, they were typically mailed back by Express Mail, so the expected the box would reach him "within a day or two." Although the transit time from Hammond to Houston was five days, the delay was beyond the investigator's control. The investigator further testified that he would have encountered delays had he requested a canine sniff be performed in Hammond because he would have had to enlist "people from New Orleans, or wherever it may be, to go to Hammond, get the box, get up to speed, and get a dog hit on it." The investigator also explained that a different postal agent and different AUSA would have to become involved if the dog had alerted in Hammond. In the end, the investigator believed the time it would take to obtain a warrant in Hammond versus Houston would have been about the same, and because the drugs would ultimately have to be tested in Houston, he chose to request that the package be rerouted to him in Houston. Finally, when the package arrived in Houston, the investigator acted on it quickly and obtained a warrant within 48 hours.

Based on these facts, the court held that the investigator's decision to reroute the package back to Houston was reasonable and did not show any lack of diligence. The court further held that the five days the package was in transit from Hammond to Houston, as well as the two days it took to obtain the warrant after the package returned to Houston, were not unreasonably long.

For the court's opinion: https://cases.justia.com/federal/appellate-courts/ca5/20-20116/20-20116-2021-10-22.pdf?ts=1634945413

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Seventh Circuit

United States v. Wood, 2021 U.S. App. LEXIS 31731 (7th Cir. IL Oct. 21, 2021)

In 2018, Henry Wood was released on parole from Indiana state prison for methamphetamine-related offenses. Wood's parole release agreement provided among other things, that property under his control was subject to reasonable searches by his supervising officer if there was reasonable suspicion to believe that he was violating a condition of his parole.

Three months later, Wood violated his parole by failing to report to his supervising officer and a warrant was issued for his arrest. Parole agents arrested Wood at his home and, while they were searching him, an agent noticed Wood repeatedly turning toward his cellphone, which was lying on a "junk pile." When the agent picked up the cellphone, Wood ordered the agent to turn it off. Instead, the agent handed Wood's phone to another agent who felt something "lumpy" on the back of the cellphone. The agent removed the back cover and found a packet of a substance that he believed to be methamphetamine. Wood admitted the substance was methamphetamine. The agents charged Wood with possession of methamphetamine and seized his cell phone as evidence.

Seven days after Wood's arrest, an investigator for the Indiana Department of Correction performed a warrantless search of Wood's cellphone by extracting its stored data. This search revealed child pornography. The investigator forwarded this information to a special agent of the Federal Bureau of Investigation, who obtained a search-and-seizure warrant for Wood's cellphone and its contents. The government subsequently charged Wood with child-pornography-related offenses.

Wood filed a motion to suppress the data extracted from his cellphone. Wood argued that the state investigator's warrantless search of his cellphone violated Riley v. California. The district court disagreed and denied the motion. Wood appealed, arguing that the Supreme Court's holding in Riley should apply to parolees.

In Riley, the Supreme Court held that police officers may not generally search digital information on a cell phone seized from an individual who had been arrested, without first obtaining a warrant. The Seventh Circuit Court of Appeals recognized that "given the context-specific nature of the Fourth Amendment, Riley is not readily transferable to scenarios other than the one it addressed," and Riley did not involve the search of a parolee's cell phone. The court also recognized that it has declined to apply Riley in two other contexts: consent searches and border searches. Finally, the court noted that there have been no circuit court decisions extending a Riley-like rule to parolees. Instead, the court found that the Eighth, Ninth, and Tenth Circuits have held that Riley does not apply. Following this trend, the Seventh Circuit declined to extend Riley to parolees.

Next, the court found that the Supreme Court's decisions in United States v. Knights and Samson v. California, which permit warrantless searches with less than probable cause for parolees and probationers, applied to the warrantless search of Wood's cellphone. Under Knights and Samson, courts must balance the state's interest in supervising parolees against a parolee's privacy expectations.

In this case, the court recognized that Indiana had an "overwhelming interest in supervising parolees," and that its goals of "reducing recidivism" and "promoting reintegration . . . warrant privacy intrusions" that would not otherwise be permitted under the Fourth Amendment. The court then commented that, while cellphones have the ability to hold "vast quantities of personal

information", they do not automatically receive heightened protection under Knights and Samson. Consequently, the court held that Indiana's strong governmental interest outweighed Wood's diminished expectation of privacy; therefore, the warrantless search of Wood's cellphone was reasonable. The court added that the Eighth, Ninth, and Tenth Circuits have held similarly in other cases when faced with this issue.

For the court's opinion: https://cases.justia.com/federal/appellate-courts/ca7/20-2974/20-2974-2021-10-21.pdf?ts=1634851815

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Eighth Circuit

Haynes v. Minnehan, 14 F.4th 830 (8th Cir. 2021)

After receiving complaints about drug activity and other crimes, the Des Moines, Iowa, Police Department sent three officers to patrol a particular neighborhood. During this time, an officer saw a person on the sidewalk approach a passenger's side window of a vehicle. The officer saw a ten-to-fifteen second meeting that involved "an exchange of something between them." Based on his training, experience, and nature of the crimes reported in the neighborhood, among other things, the officer believed that this interaction might have been an illegal drug transaction.

The officer notified his two colleagues, who located the vehicle, and conducted a traffic stop a short time later. The officers asked the driver, Dejuan Haynes, "What were you doing?" Haynes explained that he had just given some change away. When the officers asked Haynes for identification, he could not locate his driver's license. Instead, Haynes gave the officers a credit card, and his insurance card, which bore his name, as well as a Costco card that showed his photograph and correctly listed his name.

The officers asked Haynes to exit car, and he complied. The officers handcuffed Haynes, as was their "standard practice" to do so if a driver lacked identification during a traffic stop. The officers frisked Haynes and then asked him if they could conduct a "pocket check." Haynes consented and the officers searched the pockets of his jeans. When the officers asked Haynes if he had another pair of pants underneath his jeans, he told them he did, and offered to let the officers check those pockets as well. The officers unbuckled Haynes's belt and searched the pockets of the other pair of pants. The officers did not find any weapons or drugs. After completing their search, the officers left Haynes's belt unbuckled and his pants unzipped.

Next, the officers asked Haynes if he had anything illegal in his car. Haynes said that he did not and told the officers they could search his car; however, they declined. During this time, the officer asked Haynes to confirm his name, birthdate, and Social Security number, which he did. Approximately two minutes later, the officers told Haynes, "We're good," and removed the handcuffs. From the time the officers finished searching Haynes until he was uncuffed was approximately five minutes.

Haynes sued the officers under 42 U.S.C. § 1983 alleging, among other things, that the officers violated the Fourth Amendment by keeping him handcuffed after they finished searching him. The district court granted the officers qualified immunity and dismissed the lawsuit. Haynes appealed. The Eighth Circuit Court of Appeals agreed with Haynes and reversed the district court.

During a Terry stop, officers may handcuff a suspect when they have a reasonable belief that the suspect is armed and dangerous or that the restraints are necessary for some other legitimate purpose. When officers conduct a stop to investigate a suspected drug deal, it is reasonable to believe that the person may be armed and dangerous. However, as the officers obtain new information during the stop, what might have originally been a reasonable belief that the suspect is armed and dangerous could become an unreasonable one.

In this case, the Eighth Circuit Court of Appeals held that the officers failed to articulate any specific facts to support an objective concern for their safety during the nearly five minutes Haynes was left handcuffed after their search. The court noted that initial stop and use of handcuffs was lawful. However, during the stop, in which the officers outnumbered Haynes, they did not find any drugs or weapons on Haynes nor did they see any drugs or weapons in his car. The court added that the officers chose not to search Haynes's car after he gave them consent to do so. Finally, according to the officers' testimony, aside from the suspected drug deal, nothing about Haynes's behavior led them to believe that he was a safety risk or uncooperative. Consequently, the court held that keeping Haynes handcuffed after searching him "was not reasonably necessary to protect their personal safety or maintain the status quo during the investigatory stop." The court further held that, at the time of the incident, it was clearly established that handcuffing, "absent any concern for safety," violates the Fourth Amendment.

For the court's opinion: https://cases.justia.com/federal/appellate-courts/ca8/20-1777/20-1777-2021-09-21.pdf?ts=1632238221

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United States v. Foster, 15 F.4th 874 (8th Cir. 2021)

Officer Stanley Johnson stopped a vehicle driven by Charlie Foster for having an "unsafe windshield," after he noticed a crack near the bottom of the windshield. During the stop, Officer Johnson asked Foster and his female companion for identification. Foster produced a driver's license, but his companion denied having any identification and provided an identification that ultimately proved to be false. Officer Johnson observed that both occupants of the vehicle seemed nervous, noting that Foster's hands were visibly shaking as he retrieved his driver's license. When Officer Johnson called in the information, dispatch informed him that Foster was on parole and an active arrest warrant existed for the passenger.

As Officer Johnson was walking back to Foster's vehicle, he observed the occupants moving around the inside of the vehicle. Officer Johnson commanded Foster to step out of the vehicle. Foster complied, but as he was exiting the vehicle, he tugged his jacket down. Officer Johnson conducted a Terry frisk and found a handgun in Foster's waistband.

The government charged Foster with being a felon in possession of a firearm. Foster filed a motion to suppress the firearm.

First, Foster argued that a crack in a vehicle's windshield must obstruct the driver's view before it is considered a violation of Arkansas law. Accordingly, Foster claimed that the traffic stop violated the Fourth Amendment because the crack near the bottom of the windshield did not obstruct his view.

The Eighth Circuit Court of Appeals disagreed. Officer Johnson initiated the traffic stop after he saw Foster's windshield was cracked and believed it may have constituted a safety defect under

Arkansas law. Eighth Circuit case law provides that an officer's "incomplete initial observations may give reasonable suspicion for a traffic stop," even if subsequent examination reveals no traffic law violation." As a result, the court held that, while his initial observation turned out to be mistaken, Officer Johnson's mistake of fact was an objectively reasonable one; therefore, Foster was not unreasonably seized when Officer Johnson conducted the traffic stop.

Next, Foster argued that Officer Johnson was required to terminate the stop as soon as he realized the crack in the windshield did not obstruct the driver's view. Foster claimed that Officer Johnson's failure to do so, but instead asking Foster and his passenger for identification, unreasonably extended the scope and duration of the stop.

Again, the court disagreed. The court found that under the Eighth Circuit caselaw, a police officer is allowed to conduct a license and registration check when conducting a stop based on a mistaken belief that a traffic violation has occurred. Consequently, the court held that the officer did not unlawfully expand the scope or extend the stop when he asked for identification from Foster and his companion.

For the court's opinion: https://cases.justia.com/federal/appellate-courts/ca8/20-1241/20-1241-2021-10-12.pdf?ts=1634052619

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United States v. Martin, 15 F.4th 878 (8th Cir. 2021)

A man robbed a Sprint Wireless Express store in Davenport, Iowa, at gunpoint, making off with cell phones, tablets, and a GPS tracker courtesy of the store employee. The employee called police, describing the robber as 5' 7" tall, heavyset, male, African American with a grey ski mask, a blue hooded sweatshirt, and grey sweatpants. The employee described the getaway car as a dark green Pontiac Grand Am or Grand Prix driven by someone he did not see, and said the vehicle went north on Elmore Avenue. The employee also reported that the robber had a tiny, silver handgun.

Officers responded to the store within minutes, and shortly thereafter they began receiving location reports from the GPS tracker, which updated every six seconds. The data, collected by a third-party provider, directed officers to the intersection of Kimberly and Spring Streets, about 1.5 miles from the store. At the intersection, officers saw two cars: a white one and a dark blue, four-door Ford Contour. There were two black male passengers in the dark blue car, and police noticed that the occupants were not looking around at the multiple squad cars. When the dark blue car pulled through the intersection and into a gas station, one officer turned on his overhead lights.

After stopping the car, officers ordered the occupants out of the car. The officers secured the driver first, and then the passenger, later identified as Christopher Martin. The officers searched the car and found the stolen cell phones and tablets. The government charged Martin with a variety of criminal offenses.

Martin filed a motion to suppress the evidence seized during the stop. Martin argued that GPS tracking data and the fact that the store employee's description of the get-away vehicle was not a match, did not provide probable cause or reasonable suspicion to stop the vehicle in which he was traveling.

The Eighth Circuit Court of Appeals disagreed. First, considering the tight window of opportunity the officers have to locate a fleeing suspect, the court found it was reasonable for police to rely on third-party GPS data. Second, the stop occurred at the intersection of Kimberly and Spring

Streets, which was in the general vicinity of the crime scene. Third, when the five police cars arrived at the intersection, they saw two vehicles. Police could reasonably rule out one because it did not even remotely match the description given by the store employee. The second vehicle, the Ford Contour, roughly matched the description, and it had the same general shape as a Pontiac Grand Am and Grand Prix. In addition, the court noted that store employee only saw the car briefly and described its color as being as dark green was close to the color of the Ford Contour, which was dark blue. Finally, the officers noticed the unusual behavior of the car's occupants, who did not acknowledge an "overwhelming police presence." Based on these facts, the court held that the officers had reasonable suspicion to stop the Ford Contour.

For the court's opinion: https://cases.justia.com/federal/appellate-courts/ca8/20-1511/20-1511-2021-10-18.pdf?ts=1634569315

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Eleventh Circuit

Sosa v. Martin County, 13 F.4th 1254 (11th Cir. 2021)

A deputy with the Martin County, Florida, Sheriff's Department pulled David Sosa (Plaintiff) over for a traffic violation in November 2014. After the deputy ran the Plaintiff's name through the Department's computer system, he learned that an outstanding arrest warrant had been issued out of Harris County, Texas, in 1992 for an individual named David Sosa (the wanted Sosa). The warrant provided identifying characteristics for the wanted Sosa, including his date of birth, height, weight, and description of a tattoo. The Plaintiff told the deputy his date of birth, height, and weight – a 40-pound difference – did not match the information for the wanted Sosa, and unlike the wanted Sosa, he had no tattoos. Although some of the identifying details from the wanted Sosa differed from the Plaintiff, the deputy arrested the Plaintiff. At the police station, deputies fingerprinted the Plaintiff. The deputies released the Plaintiff after three hours, when it was determined that he was not the wanted Sosa.

On April 20, 2018, a different deputy with the Martin County Sheriff's Department stopped the Plaintiff for a traffic violation. After the deputy ran the Plaintiff's name through the Department's computer system, he discovered the same outstanding Harris County, Texas, arrest warrant from 1992 for David Sosa. The Plaintiff explained that he was not the wanted Sosa and told the deputy that he had previously been mistakenly arrested on that warrant. He also told the officer that he and the wanted Sosa did not share the same birthdate, Social Security number, or other identifying information. The deputy arrested the Plaintiff and impounded his vehicle. At the jail, the Plaintiff told deputies in the booking area that he was not the wanted Sosa. The deputies wrote down the Plaintiff's information and told him they would follow up on the matter. Three days later, deputies fingerprinted the Plaintiff and released him after acknowledging that he was not the wanted Sosa.

The Plaintiff filed a lawsuit under 42 U.S.C. § 1983 alleging, among other things, that his 2018 arrest and detention for three days were unreasonable under the Fourth Amendment. The district court disagreed and dismissed the lawsuit. The Plaintiff appealed.

The Eleventh Circuit Court of Appeals held that the deputy's arrest of the Plaintiff on the wanted Sosa's warrant, while mistaken, was nonetheless reasonable under the Fourth Amendment. First, the court noted the arrest occurred during a roadside stop, which limited the deputy's ability to investigate the Plaintiff's claims of mistaken identity. Next, the Plaintiff and the wanted Sosa shared some similarities, specifically, their names and genders were the same, and the Plaintiff

did not allege any difference between his and the wanted Sosa's race. Finally, the court concluded that any differences between the Plaintiff and the wanted Sosa were not material. While the Plaintiff alleged that the two men's birthdates were different, he did not claim there was any significant difference in the men's ages. In addition, the court found it significant that 26 years had passed between the issuance of the arrest warrant and Plaintiff's arrest. During this time, the court noted that the Plaintiff could have relocated from Texas to Florida, his weight could have varied by 40 pounds, and he could have had any tattoo removed.

Next, the court held that the deputies violated the Plaintiff's constitutional right to be free from over detention when they did not act for three days to investigate and follow up on information indicating that the Plaintiff was not the wanted Sosa. Over detention means continued detention after entitlement to release, even though probable cause supported the charge underlying the original detention. A person has the right to be free from continued detention after it should have been known that the detainee was entitled to release.

In this case, the Plaintiff alleged that he repeatedly advised deputies, including those at the jail on the date of his arrest, that he was not the wanted Sosa. The Plaintiff also told the deputies that: (1) he had previously been mistakenly arrested by the Martin County Sheriff's Department on the wanted Sosa's warrant; (2) he and the wanted Sosa had different birthdates, Social Security numbers, and other identifying information, including a difference in height, weight, and tattoos; and (3) deputies in the booking area took down this information and claimed they would look into the matter.

Based on these allegations, the court concluded that the Plaintiff sufficiently established that the deputies at the jail had enough information to know that: (1) a substantial possibility existed that the Plaintiff was not the wanted Sosa; and (2) they had the means readily available to rapidly confirm the Plaintiff's identity, yet they took no action for three days and nights while the Plaintiff remained in jail. The court added that, during the Plaintiff's first Martin County arrest on the same warrant three-and-a-half years earlier, the Plaintiff was correctly identified and released within three hours because of the fingerprint-comparison process. The court concluded by stating, "where the simple process of comparing prints would have—and indeed, ultimately did—immediately reveal that [the Plaintiff] was not the wanted Sosa, officers who have reason to know a straight-up mistaken identity may have occurred cannot do nothing for three days."

Finally, the court found that, in April 2018, the Plaintiff's right to be free from prolonged detention without any effort by the holding deputies to resolve doubts about the Plaintiff's identify was clearly established. As a result, the court held that the deputies were not entitled to qualified immunity.

For the court's opinion: https://cases.justia.com/federal/appellate-courts/ca11/20-12781/20-12781-2021-09-20.pdf?ts=1632159059

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