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CASE SUMMARIES

United States Supreme Court

Caniglia v. Strom, 2021 U.S. LEXIS 2582 (May 17, 2021)

During an argument with his wife at their home, Edward Caniglia retrieved a handgun from the bedroom, put it on the dining room table, and asked his wife to “shoot [him] now and get it over with.” She declined and, instead, left to spend the night at a hotel. The next morning, when Caniglia’s wife discovered that she could not reach him by telephone, she called the police and requested a welfare check.

Officers met Caniglia’s wife and went to the residence, where they encountered Caniglia on the porch. Caniglia confirmed his wife’s account of the argument but denied that he was suicidal. The officers disagreed, believing that Caniglia posed a risk to himself or others. Consequently, the officers called an ambulance and Caniglia agreed to go to the hospital for a psychiatric evaluation, but only after the officers promised not to confiscate his firearms. However, after Caniglia was gone, the officers decided to seize his firearms. The officers entered Caniglia’s home, and guided by his wife, whom they allegedly misinformed about his wishes, seized two handguns.

Caniglia sued the officers under 42 U.S.C. § 1983, claiming that the officers violated the Fourth Amendment when they entered his home and seized him and his firearms without a warrant. The district court disagreed and dismissed the lawsuit. On appeal, the First Circuit Court of Appeals affirmed the district court, solely on the ground that the officers’ decision to remove Caniglia and his firearms from the residence fell within a “community caretaking exception” to the warrant requirement. Accordingly, the First Circuit did not consider: 1) whether anyone had consented to the officers’ actions; 2) whether these actions were justified by “exigent circumstances”; or, 3) whether any state law permitted this kind of mental-health intervention. Caniglia appealed to the Supreme Court. The Supreme Court agreed to hear the case to determine whether the “community caretaking” exception to the Fourth Amendment’s warrant requirement, which has been well settled in the motor vehicle context, extends to the home.

In a unanimous decision, the Supreme Court held that it did not. In delivering the decision of the Court, Justice Thomas recognized that in [Cady v. Dombrowski](#), the Court held that a warrantless search of an impounded vehicle for an unsecured firearm did not violate the Fourth Amendment. In reaching this conclusion, the Court found that police officers who patrol the “public highways” are often called to discharge noncriminal “community caretaking functions,” such as responding to disabled vehicles or investigating accidents.

However, Justice Thomas added that the First Circuit’s “community caretaking” rule in this case went beyond anything the Supreme Court has recognized, stating that “neither the holding nor logic of [Cady](#) [justified warrantless searches and seizures in the home].” In [Cady](#), the location of the warrantless search was an impounded vehicle, not a home, a “constitutional difference” that was repeatedly stressed in the Court’s opinion. In addition, the Court in [Cady](#) made an “unmistakable distinction between vehicles and homes” and placed “into proper context its reference to ‘community caretaking.’” Finally, the Court has recognized what is reasonable under the Fourth Amendment for vehicles is different from what is reasonable for homes. The Court

acknowledged this fact in Cady, and, in subsequent opinions, the Court has repeatedly “declined to expand the scope of . . . exceptions to the warrant requirement to permit warrantless entry into the home.” As a result, the Court held that its holding in Cady did not create a stand-alone “community caretaking” exception that justified warrantless searches and seizures in the home.

For the Court’s opinion: https://www.supremecourt.gov/opinions/20pdf/20-157_8mjp.pdf

Circuit Courts of Appeals

Fifth Circuit

Estate of Aguirre v. City of San Antonio, 995 F.3d 395 (5th Cir. 2021)

In the early evening of April 12, 2013, the San Antonio Police Department received complaints from motorists that a man who appeared mentally disturbed, later identified as Jesse Aguirre, was walking and waving his hands near the narrow median of Highway 90. The first four officers that responded to the complaint, Cristina Gonzales, Roberto Mendez, Jennifer Morgan, and Bettina Arredondo arrived in separate vehicles on the eastbound side of the expressway opposite where Aguirre was walking eastward near the median on the westbound side.

Officer Gonzales was the first to arrive. She approached Aguirre on foot with her firearm pointed at him, ordering him to “come here.” When Aguirre did not acknowledge the command and continued to walk, Officer Gonzales stepped over the median and followed him. Soon thereafter, Officer Morgan, pointing her gun, and Officer Mendez, pointing his taser, also approached Aguirre along the eastbound side. Aguirre then stopped, bent forward, and placed his hands on the median; Officer Gonzalez rushed forward, grabbed Aguirre’s arms, and handcuffed Aguirre’s hands behind him while he remained bending over the median. Aguirre did not visibly resist being handcuffed. While handcuffing Aguirre, the officers noticed that he had fresh needle marks on his arms, indicating that he had recently used intravenous drugs.

What occurred next was documented by the videos taken by dashboard cameras in the officers’ vehicles. (To view the clearest – and most inclusive – among the videos, which played a central role in the court’s decision, go to: <https://www.ca5.uscourts.gov/opinions/pub/17/17-51031.mp4>).

The three officers then pulled Aguirre over the median barrier, causing him to land on his head on the eastbound side of the expressway. The officers patted Aguirre down, finding no weapon, pulled him to his feet, walked him over to the front of Officer Mendez’s car, and bent him over the hood face down with his hands cuffed behind him.

After one or two more officers arrived, they assisted in moving Aguirre from the car hood to the ground onto his stomach next to the median with his hands still cuffed behind him. The video does not show that Aguirre resisted during this maneuver, but instead that he stumbled with the officers toward the median. After Aguirre was placed prone on his stomach, Officer Gonzales pushed his legs up and crossed them near his buttocks and knelt forward on Aguirre’s legs, holding them near Aguirre’s bound hands in a hog-tie-like position. Officer Mendez knelt with one knee on the ground and the other on Aguirre’s back, later changing position to hold Aguirre’s shoulders and cheek down against the pavement with his hands. Officers Morgan and Arredondo then joined Officers Gonzales and Mendez, placing their hands on Aguirre’s arms and back to

hold him prone in the maximal-restraint position. Several more officers arrived and, with Aguirre still being held in that position, the group of officers milled around near Aguirre.

Officer Benito Juarez, a medical tech officer, arrived after Aguirre had been placed in the prone maximal-restraint position, but the record did not disclose whether Juarez offered any advice or assistance to the other officers about the manner in which Aguirre was being held. At some point, Officer Arredondo observed that Aguirre's lips turned blue, but she thought it was the result of drugs he had taken. At some point during the officers handling of Aguirre, they called for a police "wagon" to transport him.

The officers held Aguirre in the prone maximal-restraint position for approximately five-and-a-half minutes while they waited for a police "wagon" to arrive to transport him. After the five-and-a-half minutes had elapsed, the officers noticed that Aguirre was no longer breathing or responsive, and they turned him over on his back and removed the handcuffs.

Aguirre remained unresponsive, leading Officer Mendez to perform a "sternum rub" in an unsuccessful attempt to rouse him. When this and similar techniques proved unsuccessful, Emergency Medical Services ("EMS") was contacted and one of the officers began to attempt cardiopulmonary resuscitation ("CPR"), but she stopped after about twenty seconds. Eventually, four minutes and thirty-eight seconds after Aguirre was turned over, Officer Juarez began administering CPR in earnest. Officer Juarez and other officers continued to perform CPR on Aguirre until EMS arrived. The officers were ultimately unsuccessful at reviving Aguirre. A subsequent autopsy report concluded that the position in which the officers had placed Aguirre had caused him to asphyxiate, stating that "[d]ue to the restraint by police, this case is classified as a homicide."

Aguirre's family (Plaintiffs) filed a lawsuit under 42 U.S.C. § 1983 against five of the officers and the City of San Antonio. The Plaintiffs alleged, among other things, that the officers violated Aguirre's Fourth Amendment right to be free from unreasonable seizure. Specifically, the Plaintiffs claimed that the officers used excessive force against Aguirre by contorting and holding his body in a prone, hog-tie-like "maximal restraint position" for five-and-a-half minutes during his arrest, causing him to die from asphyxiation.

After the district granted the officers qualified immunity and dismissed the lawsuit as to the City, the Plaintiffs appealed.

The Fifth Circuit Court of Appeals recognized that officers are entitled to qualified immunity as long as their actions do not violate a clearly established constitutional right. A plaintiff can rebut this defense by establishing that genuine issues of fact exist as to whether an officer's conduct violated clearly established law. In addition, when making a qualified immunity determination, a court is bound to view all the facts in the light most favorable to the Plaintiff.

In addition, the court noted that in [Graham v. Connor](#), the Supreme Court held that when making a determination as to whether force is excessive, a court should consider the totality of the circumstances, "including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight."

Applying these standards, the court held that the officers were not entitled to qualified immunity because there were genuine issues of material fact as to whether the officers violated Aguirre's Fourth Amendment rights.

First, the court noted the lack of visible resistance by Aguirre, the presence of numerous officers surrounding him, and the fact that the officers had already blocked off several lanes and caused traffic to slow significantly all weighed against the inference of any immediate safety threat or other need that would justify placing Aguirre in the prone maximal-restraint position. The court stated: “[A] jury could conclude that no reasonable officer would have perceived [Aguirre] as posing an immediate threat to the officers’ [or his own or the public's] safety,” meaning that the officers’ use of what may have amounted to deadly force was necessarily excessive of any need to mitigate a public safety threat. Similarly, the court added, “a jury could conclude that no reasonable officer on the scene would have thought that [Aguirre] was resisting arrest,” meaning that the use of force far exceeded the amount necessary to effect Aguirre’s arrest or ensure his safety.

The court recognized that the officers presented their own version of events that included claims of Aguirre’s resistance, including that he: 1) “was resisting and trying to pull away from” the officers while walking near the westbound side of the median; 2) “was still resisting” when placed on the hood of the car; and, 3) “continued to resist by shifting his body around and trying to break free” while pinned against the hood of the patrol car. However, the court found that these claims contradicted the evidence from the police dashcam videos and reinforced the conclusion that genuine disputes of material facts exist.

Second, the court held that, at the time of the incident, it was clearly established that when a suspect is not resisting, it is unreasonable for an officer to apply unnecessary, injurious force against a restrained individual, even if the person had previously not followed commands or initially resisted the seizure. The court added that, in this case, a jury could credit the Plaintiff’s version of the incident and conclude “that no reasonable officer would have perceived [Aguirre] as posing an immediate threat to the [O]fficers’ safety or thought that he was resisting arrest.” Therefore, if a jury believed: 1) that the officers unnecessarily placed Aguirre in the maximal-restraint position when there was no reason to believe he had committed a serious crime; 2) that he posed a continuing threat to the officers or public safety; or, 3) that he was resisting arrest, the officers violated Aguirre’s clearly established constitutional rights.

For the court’s opinion: <https://cases.justia.com/federal/appellate-courts/ca5/17-51031/17-51031-2021-04-22.pdf?ts=1619134220>

Sixth Circuit

Cunningham v. Shelby County, 944 F.3d 761 (6th Cir. 2021)

Around noon on March 17, 2017, Nancy Lewellyn called 911 and reported that “she was depressed and suicidal, that she had a gun, and that she would kill anyone who came to her residence.” In response, the dispatcher for the Shelby County Sheriff’s Department alerted three of the department’s deputies, Justin Jayroe, Robert Paschal, and Marvin Wiggins to the potential danger posed by Nancy Lewellyn. The deputies were also aware from the dispatcher that Lewellyn was “suffering from some type of mental illness and/or crisis,” and that she was saying she was armed with “what may be a .45 caliber pistol.” Each deputy drove a Sheriff’s Department cruiser equipped with a dashboard camera, which recorded video, sound, and the time of day.

Deputy Jayroe arrived first, shortly after 12:13 p.m., and parked his cruiser facing Lewellyn's house. Deputy Paschal arrived soon thereafter and parked behind him, as did Deputy Wiggins. At 12:14 p.m., Lewellyn walked out of her front door and turned towards the driveway in front of her home's garage where a sedan was parked. She carried something in her right hand, which was later determined to be a BB handgun but resembled a .45 caliber pistol.

The video recorded by the dashboard camera in Deputy Jayroe's cruiser showed that as Lewellyn was walking towards the driveway, she began to raise the handgun. At this point, one of the deputies yelled to her. Although the parties disagreed as to whether the video showed Lewellyn beginning to turn towards the deputies, it was then that Deputy Paschal fired his service pistol once. A second shot followed after a short pause. As Lewellyn continued walking with her right arm extended horizontally and the pistol pointed in the direction of her car, Deputy Wiggins, who was the last to arrive and who had initially taken cover behind the parked cruiser, also began shooting. After reaching the vehicle, Lewellyn leaned on its hood briefly and then turned back toward the house. As the firing continued, Lewellyn took a few steps and collapsed. A total of eleven seconds had elapsed since Lewellyn exited her house.

Altogether, ten shots had been fired, with eight striking Lewellyn. Although not visible to the deputies, nor on the video, Lewellyn had deposited the BB handgun on the sedan's hood before turning back. As Lewellyn lay on the driveway, the deputies approached her and demanded that she show her hands before discovering that she was unarmed. The deputies rendered medical aid while awaiting EMS personnel. Lewellyn died at the scene.

The representatives of Lewellyn's estate (Plaintiff) sued Deputies Paschal and Wiggins under 42 U.S.C. § 1983, alleging that they used excessive force in violation of Fourth Amendment. After the district court denied the deputies qualified immunity, they appealed.

Qualified immunity protects federal and state officials from being liable for money damages unless a plaintiff alleges facts showing: (1) that the official violated a statutory or constitutional right, and (2) that the right was clearly established at the time of the challenged conduct. Because both prongs must be satisfied by the plaintiff, the court is permitted to decide which prong of the qualified immunity analysis to review first.

In addition, when deciding whether an officer is entitled to qualified immunity, the court is generally bound to view the facts in the light most favorable to the Plaintiff. However, in [Scott v. Harris](#), the Supreme Court held that when video footage exists, the reviewing court need not credit the version of a party who claims facts that are "blatantly contradicted" by the video tape. Instead, the reviewing court should view the facts in the light depicted by the videotape. As a result, because the events in this case were recorded on video, the court viewed the facts in the light depicted in the video, not in a light favorable to the Plaintiff.

Against this backdrop, the Sixth Circuit Court of Appeals began by considering the second prong of the qualified immunity analysis to determine "whether on March 17, 2017, it was clearly established that deputies Paschal and Wiggins' resort to lethal force violated a Fourth Amendment right of which a reasonable person would have known."

First, the court held that none of the three cases, which were relied upon by the district court to deny the deputies qualified immunity, identified situations where officers acting under circumstances similar to those faced by Deputies Paschal and Wiggins were held to have violated the Fourth Amendment. Specifically, the court found that none of the cases involved the ultimate victim calling the police to declare that she possessed a firearm and intended to use it against

anyone who came to her residence. In addition, in none of the cases was it undisputed that the victim of the police shooting was brandishing a firearm in the manner Lewellyn displayed in the video.

Second, in his deposition, Deputy Paschal said that he felt threatened by Lewellyn's display of the gun, as he perceived her beginning to turn in the deputies' direction. The court held that the facts and circumstances supported the deputies' contention that a reasonable officer would perceive that Lewellyn posed an immediate threat to their safety.

The court concluded that neither the Plaintiff nor the district court pointed to any existing precedent that governed the specific facts and circumstances that would have given Deputies Paschal and Wiggins fair notice that their conduct violated the Fourth Amendment. As a result, the court vacated the judgment of the district court and held that the deputies were entitled to qualified immunity.

For the court's opinion: <https://cases.justia.com/federal/appellate-courts/ca6/20-5375/20-5375-2021-04-19.pdf?ts=1618857046>

Seventh Circuit

Lopez v. Sheriff of Cook County, 993 F.3d 981 (7th Cir. 2021)

At approximately 3:55 a.m. on November 30, 2014, Fernando Lopez was driving a group of his friends westbound on Grand Avenue when he sideswiped an SUV parked in front of the Funky Buddha Lounge (the Lounge). A group of bystanders loitering outside the Lounge saw this and reacted by swarming Lopez's car and grabbing and punching at him through an open window. One of the passengers exited Lopez's car, displayed a handgun, and fired a warning shot into the air. Lopez then got out of the car, grabbed the passenger's gun, and waved it around in the air, presumably to scare off the group that had encircled his car. Lopez walked toward a few of the men in the now-dispersed group, crossing the street and alternating between pointing the gun at them and up in the air as if to tell everyone not to mess with him.

While all this unfolded, Michael Raines, a correctional officer with the Cook County Sheriff's Office who had been out celebrating a friend's birthday, ran onto Grand Avenue from an intersection, emerging a few car lengths from where Lopez stood. After Officer Raines arrived, Lopez turned away and began to walk back toward his car. While doing so, Lopez stopped in the middle of the street and fired two shots at an upward angle in the general direction of a few fleeing Lounge-goers.

Officer Raines then approached Lopez with his own gun drawn. While it is unclear if Lopez saw Officer Raines, Lopez waved his gun up and down, although he did not appear to have aimed directly at Officer Raines. For his part, Raines had his gun aimed at Lopez. When Lopez reached his car, Officer Raines shot him before he could get inside. Lopez, hit by at least one bullet, turned, dropped his gun, and started to stagger away. Officer Raines stayed focused on Lopez and continued to fire for two more seconds. All told, Officer Raines appeared to have fired six rounds in three seconds.

Injured but still standing, Lopez then ran around the back of his car, eventually reaching the sidewalk right outside the Lounge. Officer Raines pursued Lopez, who was holding himself up

by leaning against the Lounge's wall. As Officer Raines followed and approached Lopez, Mario Orta, a passenger in Lopez's car, picked up Lopez's gun and almost immediately fired a shot at Officer Raines. The shot missed. Officer Raines reached Lopez along the Lounge's exterior wall a few seconds later.

For about three and a half minutes, Mario Orta and Officer Raines engaged in a protracted standoff with guns pointed at one another. At several points in the standoff, Orta circled Officer Raines, getting as close as a couple of feet away from him. Throughout the standoff with Orta, Officer Raines simultaneously restrained Lopez, now wounded, but conscious, and used him as a human shield to prevent Orta from getting a clean shot. During this confrontation, Officer Raines alternated between holding the gun at Lopez's head, using it to wave off bystanders who tried to diffuse the situation, and pointing his gun straight at Orta. Lopez, injured but still alert, repeatedly swatted at Raines's gun in an effort to dislodge it. At approximately 4:00 a.m., Orta fled the scene. (Video footage from a security camera that captured the incident may be accessed at: <https://www.chicagotribune.com/news/breaking/ct-funky-buddha-gunfight-sentencing-20170725-story.html>).

Lopez survived and faced criminal charges, eventually pleading guilty to a state law firearms offense. Lopez also filed suit against Officer Raines under 42 U.S.C. § 1983, alleging that Officer Raines used excessive force in violation of the Fourth Amendment. The district court held that Officer Raines was entitled to qualified immunity. Lopez appealed.

To determine whether an officer is entitled to qualified immunity, a court will ask: 1) whether the officer's conduct violated a constitutional right and, if so, 2) whether that right was clearly established at the time of the alleged violation. In making this determination, the court may choose which prong to address first.

The Seventh Circuit Court of Appeals, like the district court, first chose to analyze whether Officer Raines violated Lopez's clearly established Fourth Amendment right to be free from unreasonable seizure. In doing so, the court considered Officer Raines's use of force in two distinct phases: 1) the shooting of Lopez; and, 2) the use of Lopez as a human shield during the sidewalk standoff.

First, the court held that neither Supreme Court nor Seventh Circuit precedent clearly established that Officer Raines's first shot at Lopez was unlawful. When Officer Raines initially discharged his firearm, he knew that Lopez had just fired two rounds from his gun on a crowded street and that Lopez was not walking in his general direction with the gun. The court held that a reasonable officer could have concluded that Lopez was an imminent threat both to the officer and the bystanders on the street and outside the Lounge. The court added that even if Officer Raines did not identify himself as a police officer or warn Lopez before firing, as Lopez claimed, he was not required to do so. Officers are only required to warn "where feasible," not under all circumstances.

Next, the court analyzed Officer Raines's subsequent shots. After Officer Raines shot Lopez, Lopez dropped his gun one second later. As Lopez turned and started to run, Officer Raines fired for two more seconds, with all three shots occurring in the span of three seconds. The court held that Lopez could not point to a case that clearly established a reasonable officer could not use lethal force over the span of three seconds on an individual he had just seen fire his weapon, who had not surrendered, and was still moving to evade capture. The court emphasized that while it had the benefit of reviewing security footage, it would have been tempting to parse the multiple shots into separate individual events. However, the court recognized that it had to consider the

shots together in light of how quickly the incident transpired, recognizing that “police officers are often forced to make split-second judgments — in circumstances that are tense, uncertain, and rapidly evolving — about the amount of force that is necessary in a particular situation.”

Finally, the court held that Officer Raines’s actions on the sidewalk after the shooting, specifically pointing his gun at Lopez’s head and using Lopez as a shield to ward off Mario Orta until police arrived did not violate clearly established law. During this time, Lopez was actively trying to swat Officer Raines’s gun away as Raines tried to fend off an armed and dangerous Orta, who had already shot at him once and continued to point his gun at Raines.

For the court’s opinion: <https://cases.justia.com/federal/appellate-courts/ca7/20-1681/20-1681-2021-04-09.pdf?ts=1618000240>

Eighth Circuit

United States v. Mays, 993 F.3d 607 (8th Cir. 2021)

In May 2017, Otis Mays, who is not an attorney, approached a married couple at the Hennepin County, Minnesota courthouse, told them he was a lawyer named Chris Harrison, and offered to assist them with some legal issues they were having. The couple hired him, and Mays subsequently defrauded them out of more than \$300,000. The couple eventually discovered the fraud and reported Mays to law enforcement.

In September 2017, the Bloomington, Minnesota Police Department and the Federal Bureau of Investigation (“FBI”) commenced a joint investigation into Mays’s alleged fraud. Later in 2017, the FBI and the Richfield, Minnesota Police Department began a joint investigation into allegations that Mays was involved in a juvenile sex-trafficking ring.

In July 2018, Mays’s uncle, Bernard Holmes, met with an FBI agent and a Bloomington Police Department detective who were working on the fraud investigation. Holmes told the investigators that he had heard from more than one person that Mays had defrauded them by pretending to be an attorney. Holmes also told the investigators that Mays “always” had his laptop with him, including when he went to court, and that Mays constantly used it. Holmes then told investigators that he had taken Mays’s laptop without Mays’s permission in April 2018 and still had it in his possession. Holmes also told the investigators that he had accessed the laptop and found on it a file labeled “Evidence” as well as video recordings of Mays having sex with various women.

Holmes then mentioned how Mays was “gung ho” about recovering the laptop and recently had been trying to reclaim it from Holmes, possibly going so far as having someone impersonate a police officer, call Holmes, and leave him threatening voicemails about returning the laptop. One of the investigators told Holmes that they wanted to obtain the laptop, and Holmes responded that he had it at his current residence and that they could come retrieve it. After the interview ended, the investigators followed Holmes to his residence, and Holmes gave them Mays’s laptop.

Fifteen days later, an FBI agent working on the sex-trafficking investigation applied for a search warrant for the laptop, including in the supporting affidavit extensive details learned about Mays during the joint investigations. A federal magistrate judge issued a search warrant that same day. Investigators then discovered what they believed to be child pornography on the laptop.

The government subsequently charged Mays with several child pornography-related offenses and wire fraud. Mays filed a motion to suppress the video recordings discovered on his laptop, arguing that they were the fruit of an illegal warrantless seizure. The district court denied the motion and Mays appealed.

First, Mays claimed that the investigators' acquisition of his laptop from Holmes constituted an unreasonable seizure under the Fourth Amendment.

The Eighth Circuit Court of Appeals disagreed. The warrantless seizure of property is per se unreasonable under the Fourth Amendment unless it falls within an exception to the warrant requirement. In this case, the court held that warrantless seizure of Mays's laptop was reasonable because: 1) the investigators had probable cause that it contained contraband or evidence of a crime; and, 2) exigent circumstances justified immediately seizing it.

The court found that Holmes's statements to the investigators concerning Mays's fraud scheme and the file labeled "Evidence" that he had discovered on Mays's computer made it "fairly probable that evidence of Mays's fraud would be found on the laptop, furnishing investigators with probable cause to seize it." The court added that the information provided by Holmes could be deemed reliable because he met with the investigators in person, he admitted to taking Mays's laptop without permission, and the investigators corroborated some of the information Holmes provided.

In addition, the court found that the investigators had an objectively reasonable belief that exigent circumstances existed which justified the warrantless seizure of the laptop. The court based this finding on the fact that Holmes told investigators that Mays was "gung-ho" about recovering his laptop. In addition, Holmes also told the investigators about threatening-sounding voicemails he had received seeking the return of the laptop to Mays, which one of the investigators suggested sounded as if someone acting at Mays's behest was impersonating a police officer. The court concluded that with Mays "actively searching" for his laptop, the investigators "risked losing digital evidence" on the laptop "without immediate seizure," as Mays easily could have removed or destroyed any evidence it contained upon reclaiming it from Holmes. As a result, the court held that the investigators had an objectively reasonable belief that exigent circumstances demanded immediate seizure of Mays's laptop.

Second, Mays argued that the investigators' retention of the laptop for fifteen days before seeking a warrant to search it was unreasonable under the Fourth Amendment.

The court recognized that while the initial, warrantless seizure of property may be reasonable, the duration of the seizure pending the issuance of a search warrant must also be reasonable. In this case, the court held that while several factors weighed in Mays's favor, the fifteen-day delay between the seizure of the laptop and the issuance of the search warrant was reasonable. The court based its holding primarily on the fact that several different investigative teams were working a complex investigation related to two distinct crimes: fraud and sex trafficking. In addition, the court noted the considerable effort it took to prepare the affidavit supporting the warrant application, as the affidavit was eighteen pages long and included seven pages of specific information about Mays's alleged conduct learned by each of the four investigative teams during their respective investigations.

For the court's opinion: <https://cases.justia.com/federal/appellate-courts/ca8/20-1333/20-1333-2021-04-06.pdf?ts=1617723024>

United States v. Whitehead, 995 F.3d 624 (8th Cir. 2021)

Anthony Whitehead was wanted on several arrest warrants, including one for the attempted kidnapping of Brittney Lark. While searching for the pair, a Deputy United States Marshal found a room registered in Lark’s name at a Kansas City hotel. When officers went to the room and knocked on the door, Lark answered it. The officers ordered Whitehead, who was lying on the bed, to walk towards them and lie down outside the threshold of the door, where they handcuffed and arrested him. While retrieving Whitehead’s pants for him, an officer discovered a baggie of cocaine in one of the pockets.

In the meantime, the remaining officers conducted a “protective sweep” of the hotel room to determine if anyone else was present. When one of the officers checked under the mattress, he discovered a pistol. The officer left the pistol where it was found and obtained Lark’s consent to search the room. After obtaining Lark’s consent, the officers went back into the room and seized the pistol.

The government charged Whitehead with drug and firearm offenses. Prior to trial, Whitehead filed a motion to suppress the gun. The district court denied the motion and Whitehead appealed.

Even assuming that Whitehead had “a legitimate expectation of privacy” in the hotel room, despite not having been a registered guest, the Eighth Circuit Court of Appeals agreed with the district court that the protective-sweep exception to the Fourth Amendment’s warrant requirement justified the initial search of the room. In [Maryland v. Buie](#), the Supreme Court held that officers can conduct “a quick and limited search of premises incident to an arrest” when they have a reasonable belief there might be others present who pose a danger to them.

In this case, when Lark opened the door, the room was dark, the officers saw movement, and they could not tell how many people were there. Combined with Whitehead’s extensive criminal history, the court found that these facts gave the officers a reasonable belief that there might be others in the room who posed a danger to them.

Next the court held that the search was “quick and limited,” as it lasted approximately two minutes and was limited to looking only in places in which a person might be hiding. The court added that the officers did not exceed the scope of a protective sweep by checking under the mattress, given that one of the officers testified that, in his experience, fugitives sometimes hide there.

Finally, the court agreed with the district court that Lark’s consent justified the later reentry into the room to seize the gun. Lark, who was the registered occupant of the room voluntarily consented during a “fairly cordial” conversation with officers, who did not threaten her or make any express promises. The court commented that even though Lark was under arrest at the time, that fact by itself did not prevent her from voluntarily consenting to a search of the room.

For the court’s opinion: <https://cases.justia.com/federal/appellate-courts/ca8/19-3614/19-3614-2021-04-26.pdf?ts=1619451025>

United States v. Morris, 995 F.3d 665 (8th Cir. 2021)

A police officer conducted a traffic stop on a pickup truck driven by Dennie Morris for a speeding violation. During the stop, the officer discovered a valid outstanding warrant for Morris's arrest. The officer arrested Morris and asked him if he had a preferred towing service to transport his vehicle. Morris told the officer that he preferred Martin's Towing, which dispatch successfully contacted and directed to the vehicle's location.

As he was searching Morris before placing him in the back of the patrol car, the officer found a large sum of money, consisting of \$20-dollar and \$100-dollar bills, in Morris's front pocket. At Morris's request, the officer retrieved a cell phone and some additional cash from the pickup's front seat. The officer then conducted a warrantless search of the vehicle, during which he discovered under the front seat: 1) a drawstring bag containing a digital scale; 2) bundles of one-dollar bills; and, 3) a plastic bag containing methamphetamine. Morris's vehicle was eventually removed by Martin's Towing and held at their lot. At the police station, after being advised of his Miranda rights, Morris made incriminating statements to a drug task force agent.

The government charged Morris with possession with intent to distribute methamphetamine. Morris filed a motion to suppress the evidence seized from his vehicle, as well as his statements to the task force agent. The district court denied Morris's motion to suppress. The court held that the evidence obtained from Morris's truck was seized during a valid inventory search, recognizing that, "after lawfully taking custody of an automobile, police may search the automobile without a warrant to produce an inventory of the automobile's contents." Morris appealed.

On appeal, Morris argued that the officer's search could not have been a valid inventory search because Morris maintained constructive possession of the vehicle while awaiting the tow truck's arrival. Morris claimed that because he was allowed to select a towing company, the vehicle was not "impounded or otherwise in lawful police custody" at the time of the search.

The Eighth Circuit Court of Appeals disagreed. There was no dispute that Morris was under arrest and in the back of the patrol vehicle during the search, that no one else was present to take possession of the vehicle, and that the officer made the decision to tow the vehicle. In addition, the court found that Morris's request that the officer retrieve his cash and phone from the vehicle further indicated that Morris did not expect to retain custody over the vehicle and its contents during the towing process. Consequently, the court held that Morris did not maintain control or possession of the vehicle while awaiting the tow truck's arrival.

Next, Morris argued that the officer's inventory search was unreasonable because a provision in his department's inventory policy provided that, "an inventory shall not be required" when the vehicle is released to "a responsible and reasonable person at the request of the owner."

Again, the court disagreed. The court found that nothing in the department's policy suggested that using the driver's preferred tow company constituted the equivalent of releasing the vehicle to "a responsible and reasonable person at the request of the owner." Instead, the court found that another section of the policy required that the officer "insure the protection of vehicle owners from unethical or unfair business practices on the part of the private wrecker companies whose services are authorized" and "make all effort to ensure the safe care of the towed vehicle and valuables within the vehicle." In addition, the officer testified that the policy's inventory requirement is designed to establish the vehicle's contents at the time of the stop and at the time of release to a tow driver and that it "protects the officer and also keeps the tow company honest."

Finally, Morris argued that inventory search was unreasonable because it was a pretext to search for criminal evidence. The court recognized that inventory searches conducted according to standardized policy are generally considered to be reasonable as long as the policy does not allow excessive officer discretion and limits concerns that the inventory is being conducted to investigate criminal activity. The court noted that failure to follow standard policy does not automatically render an inventory search unreasonable. An inventory search may still be reasonable as long as it is not conducted as a pretext or as a “ruse for general rummaging in order to discover incriminating evidence.”

In this case, although the district court found that the officer failed to strictly follow his department’s policy regarding the information that must be included in the towing and inventory reports, an officer’s failure to follow standard procedures does not automatically render an inventory search unreasonable. Instead, there must be other factors to suggest an officer conducted an inventory search as a pretext to conduct an investigatory search for evidence. The court added that even if an officer has an “investigatory motive,” it will not invalidate an otherwise lawful inventory search. In this case, the court found that the only additional relevant fact was that the officer testified that the amount of cash found in the vehicle raised his suspicions that drugs were involved. The court found the officer’s testimony that he believed that an inventory was necessary to discourage the towing service from damaging or stealing personal property to be credible, notwithstanding the discovery of the cash and its possible criminal implications. As a result, the court held that inventory search of Morris’s vehicle was reasonable and was not a pretext for an investigatory search.

For the court’s opinion: <https://cases.justia.com/federal/appellate-courts/ca8/20-2298/20-2298-2021-04-30.pdf?ts=1619796630>

Tenth Circuit

United States v. Guillen, 2021 U.S. App. LEXIS 12468 (10th Cir. N.M. Apr. 27, 2021)

On May 31, 2017, law enforcement responded to a 911 call from “MC,” a young woman who had found an improvised explosive device under her bed. The device was a pressure cooker sealed with white duct tape and filled with black powder, homemade napalm, and various types of shrapnel, including nuts, bolts, and screws. Special Agent Zachary Rominger, an agent with the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), interviewed MC and her mother. When asked if anyone would want to hurt or kill her, MC could think of only one person, her ex-boyfriend, Ethan, who had been harassing her since their breakup. After the interview, SA Rominger and several other agents and bomb technicians went to Ethan’s house at approximately 9:43 p.m.

When the agents knocked on the door, Ethan and his brother, Tyler Guillen, answered. At the time, Ethan was eighteen years old; Tyler was twenty. The agents asked if they could come inside and talk. Tyler agreed, but Ethan asked if the agents had a warrant. After one of the agents said they did not have a warrant, Ethan suggested they talk in the doorway instead. When the agents asked again if they could come inside, the brothers had a brief discussion. Afterward, Ethan told the agents “sure,” and then Tyler put his hand on Ethan’s shoulder, and both brothers moved out of the doorway. When one of the agents asked, “Are you inviting us in to talk?”, one of the

brothers responded, “Yeah, sure.” Then they all went inside the house. Agent Rominger interviewed Ethan at the kitchen table, while other agents spoke with Tyler in the hallway.

Approximately eighteen minutes later, Ethan and Tyler’s father, Reynaldo Guillen arrived home. Reynaldo confirmed he owned the house and gave the agents consent to search. On the back porch, the agents discovered a table with burn marks and a piece of fuse burned onto it. The agents also found white duct tape matching the tape on the pressure cooker bomb, black duct tape, latex gloves, scissors, super glue, and zip ties in a backpack on the floor of the master bedroom. The master bedroom was Ethan’s room.

Initially, Agents Rominger and another agent questioned Ethan at the kitchen table for about 50 minutes, during which time he repeatedly denied any involvement with making the bomb. After the search ended, the agents asked Ethan, who was then sitting on the couch in the living room, to return to the kitchen table. Agent Rominger then laid out the evidence discovered during the search, told Ethan it pointed to him, and asked if he created the bomb. Ethan replied, “Yes, I made it.” Agent Rominger immediately read Ethan his Miranda rights.

Ethan acknowledged he understood his rights, continued to respond to the agents’ questions, and provided information about his involvement with making the device for the next 20 to 40 minutes. Among other things, Ethan described how he made the pressure cooker bomb, explained how he planted it under MC's bed, and told the agents he wanted MC dead.

The government charged Ethan with possession of an unregistered destructive device and attempting to destroy a building by means fire or an explosive.

Ethan filed a motion to suppress his self-incriminating statements and the physical evidence obtained from the search of his home. Ethan argued that the agents violated his Fourth Amendment rights by entering his house and searching his bedroom without a warrant and without his consent. He also claimed that the agents violated his Fifth Amendment rights by questioning him without first providing Miranda warnings.

First, the district court denied Ethan’s motion to suppress the evidence obtained from the search. Next, the district court suppressed Ethan’s pre-Miranda statements he made after the agents confronted him with the evidence discovered during the search. Finally, the district court denied Ethan’s motion to suppress his statements to the agents after he had been advised of his Miranda rights.

Ethan subsequently pleaded guilty, but he reserved the right to appeal the district court’s denial of his motion to suppress.

Concerning Ethan’s Fourth Amendment claims, the Tenth Circuit Court of Appeals agreed with the district court’s holding that Ethan voluntarily consented to the agents’ entry into his home. Although Ethan did initially object to law enforcement entering his home, he subsequently consented to the agents’ entry by saying “sure” in response to their second request to come inside. The court found that the agents spoke in a casual, rather than an aggressive manner, and they never demanded entry or otherwise claimed any lawful entry to be admitted. The court concluded that, under these circumstances, neither the agents’ multiple requests to enter the Guillen residence nor Ethan’s initial objection rendered his subsequent consent involuntary.

The court further held that Ethan impliedly consented to the agents’ entry by stepping away from the doorway and allowing the agents to enter the house. The court noted that consent need not be

verbal, but “may instead be granted through gestures or other indications of acquiescence, so long as they are comprehensible to a reasonable officer.”

Finally, the court held that nothing else in the initial encounter established that Ethan’s consent was involuntary. Although there were multiple officers, all but two were in plainclothes with their weapons concealed and the uniformed officers never drew their weapons. In addition, Ethan was a legal adult who knew enough about his rights to ask the agents if they had a warrant to enter his home.

Next, the court held that Ethan’s father, Reynaldo, had apparent authority to consent to the search of Ethan’s bedroom and its contents. An officer may obtain valid consent to search from a third party with either actual or apparent authority over the area or property in question. Actual authority exists when a third party “has either (1) mutual use of the property by virtue of joint access, or (2) control for most purposes.” When actual authority is lacking, “a third party has apparent authority to consent to a search when an officer reasonably, even if erroneously, believes the third party possesses authority to consent.” To determine if apparent authority exists, a court will ask, “would the facts available to the officer at the moment warrant a [person] of reasonable caution [to believe] that the consenting party had authority over the premises?”

The court found that at the time of the search, the agents knew Reynaldo owned the house and permitted his adult son to live there. Although the door to Ethan’s bedroom had a lock on it, which to some extent undermined Reynaldo’s apparent authority, the door was wide open when the agents arrived. Ethan never objected to the search and neither did Reynaldo or Tyler. In addition, at no point did any of the Guillens limit where the agents could look. Even if, as Ethan claimed, the agents knew he occupied the master bedroom when the search began, they had no way of knowing Reynaldo supposedly only entered that room with Ethan’s permission. When Reynaldo voluntarily consented to the search of the home, he did not mention any agreement he had with Ethan about access to the master bedroom. Ethan and Tyler likewise said nothing about any privacy arrangement amongst the household members. As a result, the court concluded that the facts known to the agents at the time of the search created an objectively reasonable perception that Reynaldo had authority to consent to the search of Ethan’s bedroom and its contents.

Concerning Ethan’s Fifth Amendment claim, the court agreed with the district court’s holding that Ethan’s pre-Miranda statement, “Yes, I made it,” was inadmissible while Ethan’s post-warnings statements were admissible.

Miranda warnings are required when an individual is subjected to custodial interrogation. The court held that based on the totality of the circumstances, Ethan was not in custody when Agent Rominger initially questioned him. However, the situation evolved when Agent Rominger confronted Ethan with the mounting information and evidence discovered during the search and then pressed Ethan, despite his repeated denials that he had made the bomb. At this point, the court found that a reasonable person in Ethan’s position would not have felt free to leave or otherwise end the interview; therefore, Ethan was in custody for Miranda purposes when he told Agent Rominger, “Yes, I made it.”

After Ethan admitted he made the bomb, Agent Rominger immediately provided Miranda warnings. Ethan waived his rights and then provided details about how he created the device and planted it under MC’s bed. At this point, the court had to decide whether Ethan’s post-warning statements should have been suppressed because of the initial Miranda violation.

To determine the admissibility of a confession that is obtained after an initial confession is deemed to be inadmissible due to a Miranda violation, a court must determine: 1) if the officers engaged in a deliberate two-step interrogation, designed to undermine Miranda, and if they did not, 2) whether the defendant's post-warning statement was voluntary.

Here, the court held that Agent Rominger did not deliberately avoid providing Miranda warnings with the hope of getting an unwarned confession and then obtain the same confession again, after providing the Miranda warnings. To support this finding, the court noted that after Ethan admitted to making the bomb, Agent Rominger immediately stopped questioning him and provided Miranda warnings. After waving his rights, Ethan's post-warning confession was not just a repetition of his initial admission but contained far more details about, among other things, how he made the bomb, placed it under MC's bed, and wanted MC dead. The court reasoned that if Agent Rominger had intended to obtain a "damning" confession first, give Miranda warnings, and then re-obtain the confession, he would have asked Ethan about those incriminating details earlier.

The court then held that Ethan voluntarily, knowingly, and intelligently waived his Miranda rights and gave a voluntary statement to Agent Rominger. To support this holding the court found that Ethan indicated that he understood his Miranda rights and continued to speak to Agent Rominger. In addition: 1) Ethan was an 18 year old high school student who had taught himself how to build a sophisticated explosive device from homemade materials; 2) Ethan displayed "fortitude" when he asked the agents if they had a warrant to enter his home; 3) Ethan was questioned in his home and he was not subject to any physical punishments or threats; and, 4) the interview was relatively short in duration and conducted in a conversational tone.

For the court's opinion: <https://cases.justia.com/federal/appellate-courts/ca10/20-2004/20-2004-2021-04-27.pdf?ts=1619543034>
