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

June 2023

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 6 INFORMER 23.

The Informer – June 2023

Circuit Courts of Appeals

Fourth Circuit

Sixth Circuit

Seventh Circuit

Eighth Circuit

Tenth Circuit

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FLETC Informer Webinar Schedule: July – September 2023

1. Anatomy of a Traffic Stop: When Can We Perform a Stop? (Part One, 1-hour)

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

Terry stops of vehicles are powerful investigative tools; however, officers may hesitate to conduct a stop, unsure whether the information they possess about the vehicle, or its occupants, is sufficient to warrant a stop. Once a stop is initiated, officers may wonder what their legal authority is with respect to the vehicle and its occupants.

In Part One of this two-part webinar series, we will examine the types of information that will justify a stop.

Friday, July 7, 2023: 12:30 p.m. Eastern / 11:30 a.m. Central / 10:30 a.m. Mountain / 9:30 a.m. Pacific

To apply to participate in this webinar:
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Subject: FAST question about class V_ATS_LG-2301

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2. Anatomy of a Traffic Stop: What is our Legal Authority During the Stop? (Part Two, 1-hour)

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

In Part Two of this two-part webinar series, we examine the authority law enforcement officers have during the stop, once initiated.

Thursday, September 7, 2023: 12:30 p.m. Eastern / 11:30 a.m. Central / 10:30 a.m. Mountain / 9:30 a.m. Pacific

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https://sass.fletc.dhs.gov/fast/class/8a661a0f88562cb40188964e82ba7551

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CASE SUMMARIES

Circuit Courts of Appeals

Fourth Circuit

Sharpe v. Winterville Police Department, 59 F.4th 674 (4th Cir. 2023)

Officer Myers Helms and his partner, Officer William Ellis, stopped a vehicle for a traffic infraction. When the passenger, Dijon Sharpe, began streaming the stop to Facebook Live, Officer Helms reached through Sharpe's open window and attempted to grab Sharpe's phone. The officers told Sharpe that he could record the stop but could not stream it to Facebook Live because doing so posed a threat to officer safety. The officers also told Sharpe that if he tried to livestream a future police encounter, he would have his phone seized or he would be arrested.

Sharpe sued the Town of Winterville (the Town) under 42 U.S.C. § 1983 for allegedly having a policy that prohibits recording and livestreaming public police interactions in violation of the First Amendment. Sharpe also sued Office Helms under § 1983, in his individual capacity, for attempting to stop him from livestreaming the stop in violation of the First Amendment.

The district court ruled in favor of the Town and Officer Helms solely based upon the pleadings filed by the parties and dismissed the lawsuit. The district court held that the Town's policy, as alleged by Sharpe, did not violate the First Amendment. The court further held that Officer Helms was entitled to qualified immunity because it was not clearly established that his actions violated Sharpe's First Amendment rights. Sharpe appealed.

The Fourth Circuit Court of Appeals found that, for Sharpe's claim against the Town to survive the pleading stage and avoid dismissal, Sharpe need only to plausibly allege that: (1) the Town has a policy preventing a passenger from livestreaming their traffic stop; and (2) such a policy violates the First Amendment. The court emphasized, at this stage of the litigation, it was merely "testing the sufficiency of the complaint, not resolving its merits or any factual disputes." The court added, that as long as Sharpe alleged facts that, when assumed to be true, stated a plausible First Amendment violation, then his suit should survive dismissal at this stage of the proceedings.

First, the court found that Sharpe sufficiently alleged that the Town has a policy that prohibits an occupant from livestreaming their own traffic stop and that Sharpe's allegation was plausible. The court concluded that Sharpe supported his allegation by asserting: (1) Officer Helms tried to seize his phone upon learning Sharpe was streaming to Facebook Live; (2) Officer Ellis said that in the future if Sharpe broadcasts on Facebook Live his phone will be taken from him and, if Sharpe refuses to give up his phone, he will go to jail; and (3) both officers justified their efforts to prevent livestreaming using the same officer-safety rationale. Consequently, the court concluded it was reasonable to infer that, absent a policy, the officers would not have taken the same course of action, for the same reason, nor would those officers have known in advance that Sharpe would face the same treatment if he tried to livestream another officer in the future.

Next, the court held that livestreaming a police traffic stop is speech protected by the First Amendment. As a result, the court held that Sharpe met his initial burden by plausibly alleging that the Town adopted a livestreaming policy that violates the First Amendment.

Finally, court noted the Town claimed to justify the policy prohibiting livestreaming based on officer safety concerns. According to the Town, livestreaming a traffic stop endangers officers because viewers can locate the officers and intervene in the encounter; therefore, banning livestreaming prevents attacks or related disruptions that threaten officer safety.

While not all regulation of protected speech violates the First Amendment, the court concluded that at this stage of the litigation and the limited record, it could not determine whether the Town's officer safety argument was enough to sustain the policy prohibiting livestreaming. Consequently, the court remanded the case to the district court where, to prevail, Sharpe must show that the livestreaming policy he plausibly alleged actually exists. If Sharpe does so, then the Town will have the opportunity to prove that the policy does not violate the First Amendment based on officer safety concerns.

As to Officer Helms, the court agreed with the district court and held that he was entitled to qualified immunity. The court found that, at the time of the traffic stop, it was not clearly established that forbidding a passenger from livestreaming their own traffic stop violated the First Amendment.

For the court's opinion: https://cases.justia.com/federal/appellate-courts/ca4/21-1827/21-1827-2023-02-07.pdf?ts=1675800101

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United States v. Linville, 60 F.4th 890 (4th Cir. 2023)

In 2013, Eugene Linville pled guilty to receiving child pornography in violation of 18 U.S.C. § 2252(a)(2) and (b)(1). He was sentenced to 78 months in prison, followed by ten years of supervised release. A standard condition of his release required Linville to truthfully answer questions from his probation officer. The special conditions of his supervised release required Linville to participate in a sex offender treatment program and submit to polygraph testing. In addition, Linville was subject to warrantless searches upon reasonable suspicion of unlawful conduct, or a violation of supervised release and he was prohibited from viewing, purchasing, possessing, or controlling any sexually explicit materials.

After completing his prison term, Linville began his supervised release. After the first year of supervision, his probation officer scheduled a polygraph examination for Linville. During the exam, when asked whether he had purchased, possessed, or viewed pornography, Linville's answer on the polygraph indicated possible deception.

After learning about Linville's possible deception, his probation officer asked Linville, without providing Miranda warnings, if he possessed adult pornography. Linville admitted that he did. The probation officer then asked if he possessed child pornography. Again, Linville admitted that he did. Afterward, the probation officer accompanied Linville to his home where Linville turned over numerous CDs and DVDs that contained images and videos of child pornography.

The United States Probation Office petitioned for revocation of Linville's supervised release. In addition, the government charged Linville with possession of child pornography in violation of 18 U.S.C. § 2252A(a)(5)(B) and (b)(2).

In the new criminal proceeding, Linville filed a motion to suppress his statement to the probation officer that he possessed child pornography along with the evidence obtained from his home as a

result of that statement. After the district court denied Linville's motion to suppress, he pled guilty to the child pornography offense.

On appeal, Linville argued the probation officer obtained his statement and the evidence in violation of his Fifth Amendment right against self-incrimination because he was faced with a "penalty situation." Linville claimed that if he declined to answer his probation officer's question on the grounds that the answer would incriminate him, he would be violating the condition of his supervised release requiring him to "answer truthfully all inquiries of the probation officer." On the other hand, if he answered truthfully, Linville claimed he would incriminate himself and become subject to a new criminal prosecution.

In Minnesota v. Murphy, the Supreme Court explained that the Fifth Amendment's guarantee that no person "shall be compelled in any criminal case to be a witness against himself" not only permits a person to refuse to testify against himself at a criminal trial in which he is a defendant; it also "privileges him not to answer official questions put to him in any other proceeding, civil or criminal, formal or informal, where the answers might incriminate him in future criminal proceedings." In addition, the Court held that "[a] defendant does not lose this protection by reason of his conviction of a crime; notwithstanding that a defendant is imprisoned or on probation at the time he makes incriminating statements, if those statements are compelled[,] they are inadmissible in a subsequent trial . . . ."

To invoke the Fifth Amendment privilege against self-incrimination, a defendant "ordinarily must assert the privilege rather than answer if he desires not to incriminate himself." Therefore, if the defendant voluntarily "chooses to answer," that answer is not privileged. However, there is an exception to this general rule called the "penalty exception."

The penalty exception applies if the government, "either expressly or by implication, asserts that invocation of the privilege would lead to" punishment, which in this case would be the revocation of supervised release. In this "classic penalty situation, the defendant's failure to assert the privilege would be excused, and the [defendant's] answers would be deemed compelled and inadmissible in a criminal prosecution."

In this case, the Fourth Circuit Court of Appeals held that the supervised release condition requiring Linville to answer questions from his probation officer truthfully did not place him in a "penalty situation." First, this condition did not require Linville to choose between revocation of his supervised release and invoking his privilege against self-incrimination. Specifically, the supervised release condition did not expressly state that if Linville exercised his Fifth Amendment right to remain silent, he risked criminal penalty. For a condition of probation to provide a sufficient "penalty" to overcome a defendant's free choice to remain silent, the threat of revocation must be "nearly certain."

Second, the court concluded that even if Linville believed that invoking the Fifth Amendment would have risked revocation, this belief was not reasonable. Linville offered no evidence that the probation officer told him he would face any such penalty, such as revocation of his supervised release, for asserting his rights.

Finally, the court recognized that the United States Sentencing Guidelines § 5D1.3 cmt. n. 1 provides, "Although the condition in [Section 5D1.3] subsection (c)(4) requires the defendant to 'answer truthfully' the questions asked by the probation officer, a defendant's legitimate invocation of the Fifth Amendment privilege against self-incrimination in response to a probation officer's question shall not be considered a violation of this condition. Consequently, the court

found that no supervised releasee who answered a probation officer's questions after 2016, when this commentary was added to the sentencing guidelines, could reasonably believe that he would be faced with the classic penalty situation for invoking the privilege against self-incrimination.

For the court's opinion: https://cases.justia.com/federal/appellate-courts/ca4/21-4559/21-4559-2023-02-24.pdf?ts=1677268950

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Sixth Circuit

Habich v. Wayne County, 2023 U.S. App. LEXIS 8868 (6th Cir. April 12, 2023)

A Wayne County, Michigan deputy sheriff observed what he believed to be an unmarked police Dodge Charger. The driver of the Charger flashed police-style lights at the deputy, then drove away from the deputy after the deputy displayed a badge to the driver of the Charger. The deputy called in the license plate information and was informed the Charger was not licensed with any law enforcement agency. Two days later Deputy John Wojciechowski observed the Charger in a driveway, parked even with the front of the house and several feet over from the side of the house, which was visible from and facing the street, with police-style push bar and lights clearly visible. Deputy Christopher Mittlestat arrived on scene as back up and both deputies approached the driveway.

Deputies made contact with Eugene Habich, who was working on another vehicle parked behind the Charger. Habich admitted he flashed the Charger's police-style lights at a vehicle on the highway. During the conversation, Deputy Mittlestat walked to the rear of the Charger to confirm the license plate, which matched the one collected by the fellow deputy two days prior. The route to the rear of the Charger took Deputy Mittlestat near the main door of the residence on the side of the residence. The Deputies impounded the Charger without a warrant and held it for investigative purposes.

Habich sued the county and both deputies under 42 U.S.C § 1983, alleging they violated his Fourth and Fourteenth Amendments by searching and seizing the Charger without a warrant. The district court found in favor of the deputies and granted them granted qualified immunity. The district court concluded the Charger was outside the curtilage of the home and in plain view; therefore, the deputies were permitted seize the vehicle and search it without a warrant. Habich appealed.

A plaintiff has the burden of showing that a defendant is not entitled to qualified immunity. To meet this burden, the plaintiff must allege facts that would permit a reasonable juror to find that: (1) the defendant (police officer) violated a constitutional right; and (2) the right was clearly established.

On appeal, a three-judge panel of the Sixth Circuit Court of Appeals did not determine whether Deputy Mittlestat unconstitutionally seized the Charger. Instead, the court held that Habich did not show that Deputy Mittlestat violated a clearly established right when he did so; therefore, Deputy Mittlestat was entitled to qualified immunity. The court noted that Deputy Wojciechowski died during this litigation and was not a party to this appeal.

The court explained that a plaintiff has an obligation to "identify a case that puts [the officer] on notice that his specific conduct was unlawful." The obligation is especially important in the Fourth Amendment context, because pre-existing law should dictate to a reasonable officer what

the officer is doing violates federal law in a particular set of circumstances. The pre-existing case law must be published and factually similar to the facts of the present case.

In this case, Habich argued that Florida v. Jardines, decided by the Supreme Court in 2013, and Morgan v. Fairfield County, decided by the Sixth Circuit Court of Appeals in 2018, put Deputy Mittlestat on notice that seizing Habich's Charger from his driveway was unlawful. The court disagreed, finding that Jardines and Morgan were too factually dissimilar to the facts in this case.

The court distinguished Jardines because, in that case, officers brought a drug-sniffing dog on the defendant's front porch without a warrant, which the court described as the "classic exemplar" of curtilage. The court distinguished Morgan, because Morgan dealt with the sides of a house and backyard not visible to neighbors or from the road. In this case, the court commented that Habich's house did not have a front porch or hidden-from-view curtilage. Instead, Deputy Mittlestat and the Charger were both on the driveway, which, depending on the driveway's particularities, has been viewed as outside the curtilage. In addition, neither Jardines nor Morgan involved the seizure of a vehicle, let alone in a driveway; therefore, they do not clearly establish that Deputy Mittlestat's conduct fell outside the plain-view doctrine.

For the court's opinion: https://cases.justia.com/federal/appellate-courts/ca6/22-1517/22-1517-2023-04-12.pdf?ts=1681326075

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Seventh Circuit

United States v. Bailon, 60 F.4th 1032 (7th Cir. 2023)

In 2020, Mario Olivas Bailon was an unauthorized immigrant residing in Aurora, Illinois. On August 6, he went with a friend, Ricardo Aguila, on a road trip from Aurora to Chicago, where Aguila had arranged to purchase seventeen kilograms of cocaine. Unbeknownst to them, the individual with whom Aguila arranged to meet was a confidential source for the Drug Enforcement Administration (DEA).

After arriving at the agreed-upon location, Aguila showed the confidential source cash for the drugs. DEA agents then arrested Aguila and Bailon and searched Aguila's car, where they found a pistol on the rear passenger seat. The agents placed Bailon inside a DEA van and asked him about his involvement in the drug transaction and about the gun, without first informing Bailon of his Miranda rights. Although the conversation was constrained by Bailon's limited English skills, Bailon made incriminating statements concerning the gun. The agents in the van did not share the contents of this conversation with any other agents.

The agents transported Bailon to the Chicago DEA office and placed him in interrogation room where he was questioned by three different agents. Although a Spanish interpreter was not in the room, Agent Vazquez spoke Spanish and translated for Bailon. At the beginning of the interview, Bailon informed the agents that he had a limited understanding of English but that he could speak and read Spanish. The agents asked Bailon to read an "Advice of Rights" form written in Spanish, which informed Bailon of his rights under Miranda, to include the right to remain silent and the right to have an attorney present during questioning.

After Bailon read the form aloud, Agent Vazquez asked him, "Do you understand?" In response, Bailon initialed next to each of his rights. He also signed the form on the bottom of the page under the section titled "Waiver of Rights."

During the interview, Bailon admitted to being in the country without authorization. He also told the agents that he had seven children and a wife at home. The agents asked questions about Aguila's drug transaction, and the gun recovered from the floor of the car, but Bailon repeatedly denied knowing anything. At one point, the agents asked him if he "want[ed] to go back to Mexico or ... tell [them] the truth." The agents told Bailon they were going to "call CBP and ICE" and that he was "going back to Mexico, leaving behind [his] seven kids."

The agents then told Bailon they planned to test the gun for fingerprints. After hearing this, Bailon admitted to placing the gun in Aguila's car earlier that day.

The government charged Bailon with being an alien unlawfully in the United States in possession of a firearm in violation of 18 U.S.C. § 922(g)(5). Bailon filed a motion to suppress the statements he made in the DEA van and the DEA office, arguing that the statements were made in violation of his Miranda rights.

The district court granted Bailon's motion as to the statements he made to the agents in the DEA van. However, the court denied Bailon's motion concerning the statements he made to the agents in the DEA office. The district court held that Bailon knowingly, intentionally, and voluntarily waived his Miranda rights to these agents before they interviewed him. After being convicted, Bailon appealed the denial of his motion to suppress the statements made to the agents at the DEA office.

First, the Seventh Circuit Court of Appeals affirmed the district court's holding that Bailon made a knowing and intelligent waiver of his Miranda rights. The court agreed with the district court's finding that Bailon's limited education and limited ability to speak English did not affect his ability to understand his Miranda rights. The court noted that one agent communicated with Bailon in Spanish, his native language, and then Bailon signed the Miranda waiver that was written in Spanish, which accurately and clearly outlined his rights under the law. Additionally, Bailon communicated intelligently in Spanish about the circumstances of his arrest.

Second, the court also rejected Bailon's claim that his Miranda waiver was not valid because he did not know why he was arrested or the criminal charge for which he was being held. The Supreme Court has found "the Constitution does not require that a criminal suspect know and understand every possible consequence of a waiver of the Fifth Amendment privilege" against self-incrimination.

Third, the court held that Bailon's questioning by agents in the van prior to receiving Miranda warnings did not render his subsequent Miranda waiver invalid. The court concluded there was no evidence to support a finding that the agents deliberately withheld Miranda warnings to obtain a confession. Specifically, the court noted the interrogations were separated in time, took place in two different locations, and involved different agents. In addition, the questioning in the DEA van was brief, the language barrier between the agent and Bailon hindered meaningful communication, and the contents of the conversation were not disclosed to the agents who interrogated Bailon at the DEA office.

Fourth, the court held that Bailon's waiver of his Miranda rights was voluntary. Although there were three DEA agents inside the room, the agents were polite and respectful, no weapons were

drawn, Bailon laughed at times, the interview occurred during the middle of the afternoon and lasted approximately one hour.

The court further held the agents' statements about Bailon's family did not cause Bailon to involuntarily waive his Miranda rights. When conducting an interrogation, the government is permitted to discuss a suspect's family; however, the government is not permitted to lie about or threaten a suspect's family to coerce a Miranda waiver.

In this case, the court found that the agents never made any threats or promises regarding Bailon's family to induce a confession. Three agents mentioned Bailon's children and wife twice during the hour-long conversation. In addition, when the agents mentioned Bailon's family, they stated only true facts regarding the potential consequences of a conviction, for example, that Bailon would be unable to see them if he were deported and unable to reenter the United States.

Finally, the court rejected Bailon's argument that the agents' "threats to deport him" rendered his Miranda waiver involuntary. Even though the agents stated on three occasions that they would call "Immigration" or that he would "go back to Mexico" if he did not tell the truth, the court held these statements constituted a small portion of the conversation. In addition, Bailon continually denied owning the gun or knowing anything about the gun, even after the agents told him that he was "going back to Mexico." It was not until the agents told Bailon that they planned to test the gun for fingerprints that he admitted to placing it in Aguila's car.

For the court's opinion: https://cases.justia.com/federal/appellate-courts/ca7/22-1793/22-1793-2023-02-23.pdf?ts=1677191523

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Eighth Circuit

United States v. Treanton, 57 F.4th 638 (8th Cir. 2023)

Federal and state law enforcement agents executed a search warrant at Justin Treanton's house in connection with a child pornography investigation. When the agents arrived, Treanton was not present; however, they discovered that he might be at another house nearby. Agents visited that house and obtained consent from its owner to search the garage for Treanton.

In the garage, agents found Treanton hiding behind stacks of boxes and debris. The agents instructed Treanton to climb over the debris toward them. Treanton began climbing but hesitated after receiving conflicting instructions from the agents. An agent then pulled Treanton down from the debris pile and caused him to fall to the ground.

The agents believed they saw Treanton holding a large object and ordered him to show his hands. When Treanton refused, an agent punched him once in the face and placed him in handcuffs. The agents then searched Treanton. When they did not find a weapon, the agents removed the handcuffs and told Treanton that he was not under arrest.

Two agents walked Treanton to a vehicle near the garage for an interview. Once in the vehicle, the agents told Treanton several times that he was not under arrest. The agents also advised Treanton that he was free to leave whenever he wished and did not have to answer any questions. Treanton talked with the agents for over ninety minutes and made incriminating statements about photos and videos that contained child pornography. Near the end of the interview, a county

attorney instructed the agents to arrest Treanton on state criminal charges. The agents then informed Treanton of his rights under Miranda v. Arizona and transported him to jail.

The government charged Treanton with two child pornography-related offenses. Treanton filed a motion to suppress statements made to the agents in the vehicle. The district court denied the motion. Afterward, Treanton plead guilty, reserving the right to appeal the denial of his motion to suppress.

On appeal, Treanton renewed his argument that the agents subjected him to custodial interrogation without first advising him of his Miranda rights. Treanton claimed that, because the agents struck him and handcuffed him during the initial encounter in the garage, he was in custody for Miranda purposes during the subsequent interview in the vehicle.

The Eighth Circuit Court of Appeals recognized that in California v. Beheler, the Supreme Court found that "the ultimate inquiry [to determine whether a person is in-custody for purposes of Miranda] is simply "whether there is a formal arrest or restraint on freedom of movement of the degree associated with a formal arrest." Additionally, the court noted that "even with a use of force and temporary use of restraints," an initial investigative detention is not automatically transformed into the functional equivalent of a formal arrest.

Here, the court held that a reasonable person in Treanton's position would have believed that he was free to terminate the interview if he wished.

First, agents promptly released Treanton from restraints as soon as concerns about officer safety were resolved, and they informed him that he was not under arrest. The court added that "advice that a suspect is free to leave 'generally removes any custodial trappings from the questioning,' even when the suspect was handcuffed earlier in the encounter." Second, agents did not physically restrain Treanton in the vehicle. Third, only two agents questioned Treanton, and they repeatedly told him that he was not under arrest and was free to leave. Fourth, the agents were not deceptive or threatening, and Treanton voluntarily answered their questions. Finally, the agents did not intend to arrest Treanton until they were directed to do so near the end of the interview, and the fact of a later arrest does not establish that the preceding interview was custodial.

As a result, the court concluded that Treanton was not in custody for purposes of Miranda, and that the district court properly declined to suppress incriminating statements made during the interview before agents informed Treanton that he would be arrested.

For the court's opinion: https://cases.justia.com/federal/appellate-courts/ca8/22-1476/22-1476-2023-01-18.pdf?ts=1674057665

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Tenth Circuit

Hemry v. Ross, 62 F.4th 1248 (10th Cir. 2023)

Two Yellowstone Park rangers (Ross and Azizian) received information that a park employee had a conversation with an individual by the name of Michael Bullinger and gave out a vehicle description of a white Toyota with Missouri license plates. Bullinger was a fugitive wanted for allegedly shooting and killing three women in Idaho. Rangers followed the white Toyota with Missouri plates out of the park and the vehicle stopped 16 miles east of the park entrance.

While waiting for county law enforcement, the rangers held the occupants of the white Toyota at gunpoint, instructed the driver, over a loudspeaker, to throw out the keys, and ordered the occupants to place their hands on the ceiling of the vehicle. Once county law enforcement arrived, the rangers ordered the two adult occupants out of the vehicle, handcuffed them, and then placed them in separate police cruisers. After twenty minutes, officers asked the driver for his identification. After examination of identification, the two occupants were released because officers determined that neither was Bullinger. Inside the white Toyota was Brett Hemry, along with his wife, Genalyn, and their seven-year-old daughter.

The Hemrys sued under 42 U.S.C. § 1983 for false arrest, false imprisonment, and excessive force. The district court denied the rangers qualified immunity as to Mrs. Hemry's false arrest claim and Mr. and Mrs. Hemry's excessive force claims. The district court opined the rangers arrested Mrs. Hemry without probable cause and that it was unreasonable for the rangers to point guns at the Hemrys during the stop. The rangers appealed.

On appeal, a three-judge panel of the Tenth Circuit Court of Appeals reversed the district court. The court concluded the rangers were entitled to qualified immunity because, at the time of the incident, the law did not clearly establish the investigative detention of Mrs. Hemry amounted to: (1) an arrest of Mrs. Hemry without probable cause; or (2) excessive force against the Hemrys.

The court recognized there are "three types of police-citizen encounters: (1) consensual encounters which do not implicate the Fourth Amendment; (2) investigative detentions, or Terry stops, which are Fourth Amendment seizures of limited scope and duration and must be supported by a reasonable suspicion of criminal activity; and (3) arrests, the most intrusive of Fourth Amendment seizures and reasonable only if supported by probable cause."

Here, the court found that the rangers had reasonable suspicion to stop Mrs. Hemry. To satisfy the reasonable suspicion standard, court found that "an officer need not rule out the possibility of innocent conduct." Instead, the officer must only maintain a "reasonable suspicion supported by articulable facts that criminal activity may be afoot." In this case, the rangers reasonably suspected they were confronting a fugitive triple-murderer accompanied by an unknown passenger, that could have been a collaborator or a hostage.

In addition, the court rejected Mrs. Hemry's claim that the rangers' use of firearms to detain her transformed the investigative detention into an arrest requiring probable cause. The court found that it was reasonable for the rangers to believe they were confronting a fugitive, triple murderer, who was accompanied by an unknown passenger. Although the information the rangers received did not include the presence of an adult passenger, the information also did not indicate that Bullinger travelled alone. In addition, given the matching vehicle and license plate number, the court added that it would have been unreasonable for the rangers to conclude they were free from danger.

The court further held that the duration of Mrs. Hemry's detention did not transform the investigative detention into an arrest requiring probable cause. The court recognized that "an officer can detain a suspect without arresting him." However, an officer cannot detain a suspect beyond the time "reasonably needed to effectuate the [purpose of the stop]." The court commented that the reasonableness of the duration of an investigative detention "is not an exercise in counting minutes." Instead, a court must analyze the factual context and the "underlying justification" for the detention.

In U.S. v. Villa-Chaparro, decided the Tenth Circuit Court of Appeals in 1997, the court found that an officer acted reasonably by detaining the defendant for "an additional thirty-eight minutes while he waited for the canine unit to arrive." Here, the court reasoned that the law did not forbid the rangers from waiting for additional officers when faced with a suspect reasonably suspected of triple homicide, who was accompanied by least one unidentified passenger. Accordingly, the court concluded that the rangers would not have been on notice that they were violating Mrs. Hemry's rights by detaining her to wait for backup and identification.

Finally, as to the excessive force claims by the Hemrys, the court found that they did not identify a case where an officer acting under similar circumstances as the rangers faced was held to have violated the Fourth Amendment. The court distinguished two cases relied upon by the Hemrys because they did not contain any facts that the suspect posed a deadly threat to the officers. In this case, the rangers were presented with a situation where they believed they had a triple murderer in front of them, along with an unknown accomplice or hostage. Consequently, the court held that the rangers' reaction was proportional, and no case provided by the Hemrys, or the district court, suggested otherwise; therefore, the rangers were entitled to qualified immunity.

For the court's opinion: https://cases.justia.com/federal/appellate-courts/ca10/22-8002/22-8002-2023-03-10.pdf?ts=1678464232

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