Circuit Courts of Appeals â?? August 2021

Description

The Legal Training Division of the Federal Law Enforcement Training Centersâ?? 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.

Fourth Circuit

Walker v. Donahoe, 3 F.4th 676 (4th Cir. 2021)

On February 21, 2018, a concerned citizen called 911 and reported a man with an assault rifle walking westbound along Route 33 through a suburban residential and commercial area. Corporal Brian Donahoe and Deputy Brandon Pauley were dispatched to locate the armed man. From the callerâ??s report, the officers knew that Teays Valley Christian School was less than a mile ahead of the armed man. In addition, the officers knew that on February 14, 2018, a 19-year old gunman in Parkland, Florida shot and killed 17 persons and wounded several others with an assault rifle inside Marjory Stoneman Douglas High School. Finally, although it is generally legal in West Virginia to openly carry firearms, including assault rifles, the officers knew there were some limitations to this law. For example, a person under the age of 18, who is not married or otherwise emancipated, is prohibited from possessing or carrying concealed or openly any deadly weapon.

A short time later, the officers saw the armed man, later identified as Michael Walker, walking toward Teays Valley Christian School. Walker was wearing military-style clothing, and he was carrying a backpack and an uncased AR-15-style assault rifle on his back. Upon seeing Walker, the officers believed that he could be under the age of 18 because of his youthful appearance and the fact that he was walking rather than driving.

The officers stopped Walker and obtained his identification papers, which indicated that he was 24 years old. Corporal Donahoe then called the Sheriffâ??s dispatch office for a criminal history check to ascertain whether Walker had any criminal conviction that would disqualify him from carrying a firearm. The Sheriffâ??s dispatch office promptly responded to Corporal Donahoeâ??s request for a criminal history check and reported that Walker had been convicted of a misdemeanor drug offense and acquitted of a charge of obstructing a law enforcement officer. At this point, believing that Walker was eligible to carry a firearm, Corporal Donahoe returned Walkerâ??s identification papers and told him that he was free to go. The entire encounter lasted less than nine minutes.

Walker sued the officers under 42 U.S.C. Â§ 1983. Walker claimed that Corporal Donahoeâ??s detention of him constituted an unreasonable Fourth Amendment seizure and that Deputy Pauley was liable as a bystander of Corporal Donahoeâ??s conduct. The district court dismissed the lawsuit.

The district court found that the facts known to Corporal Donahoe when he detained Walker supported a reasonable suspicion that: 1) Walker posed an imminent threat to the students and staff at Teays Valley Christian School, and 2) Walker was violating West Virginia law, which prohibits minors under the age of eighteen from carrying firearms.

Walker appealed. Walker claimed that in a state like West Virginia, where it is legal to openly carry a firearm, the act of openly carrying a firearm can never establish reasonable suspicion to support a stop and investigatory detention. Walker further argued that there was no lawful basis to consider a personâ??s open carry of an AR-15 differently from any other lawful firearm under state law.

The Fourth Circuit Court of Appeals disagreed. First, the court noted that in states where individuals are permitted to openly carry firearms, the exercise of this right, without more, cannot justify an investigatory detention. However, the court recognized that lawful possession of a firearm, â??plus something more,â?• can contribute to reasonable suspicion that a person is involved in criminal activity, and therefore justify an investigatory detention. Second, the court stated that Supreme Court and Fourth Circuit case law has held that different firearms have different features, capabilities, and typical uses, which may be considered in a reasonable suspicion analysis, particularly when comparing handguns to AR-15 and other assault rifles.

After finding that possession of a firearm can be a circumstance justifying an investigatory detention, the court held that Corporal Donahoe established â??something moreâ?• than the fact thatWalker was openly carrying a firearm that justified his detention.

First, the court held that it was proper for Corporal Donahoe to consider the type of firearm thatWalker was carrying, an AR-15-style assault rifle. Corporal Donahoe testified that such rifles have been â??the weapon of choice for the deadliest mass shooters of the past decade,â?• to include massacres including: at a movie theater in Aurora, Colorado; at Sandy Hook Elementary School in Newtown, Connecticut; at a holiday party in San Bernardino, California; at the Pulse nightclub in Orlando, Florida; at a music festival in Las Vegas, Nevada; at a church in Sutherland Springs, Texas; and at Marjory Stoneman Douglas High School in Parkland, Florida. Second, the Parkland school shooting occurred just a week before Walker was stopped and detained while carrying an AR-15-style rifle. Corporal Donahoe stated that he had been on heightened alert for possible copycat crimes. Significantly, the Parkland shooter used an AR-15-style assault rifle to kill and injure his victims. Third, Walker was walking toward and within a mile of Teays Valley Christian School when Corporal Donahoe detained him. Fourth, Walker was dressed to look like a soldier, in a black sleeveless shirt and camouflage pants. Fifth, Walker was walking rather than driving, suggesting that he might be a minor and perhaps a student at Teays Valley Christian School. Based on these facts, the court held that it agreed with the district court that Corporal Donahoe had reasonable suspicion that Walker was intent on perpetrating a mass shooting at Teays Valley Christian School. The court declined to decide the issue of whether Corporal Donahoe had reasonable suspicion that Walker was under the age of 18 and therefore illegally carrying a firearm.

For the courtâ??s opinion: https://cases.justia.com/federal/appellate-courts/ca4/20-1547/20-1547-2021-07-07.pdf?ts=1625682630

United States v. Rose, 3 F.4th 722 (4th Cir. 2021)

In October 2016, drug task force agents were screening packages at a FedEx facility when they noticed a suspicious package. The package attracted the officersâ?? attention because of the type of box, the heavy taping used, and the senderâ??s location in Chandler, Arizona, which was a knownâ??source cityâ?• for narcotics. The package was addressed to Ronald West and listed a phone number on the label. After checking a law enforcement database, the officers verified that neither the phone number nor the address was registered to a person named Ronald West. The officers alerted the FedEx facilityâ??s manager to the suspicious package, which the manager opened. The package contained about two kilograms of cocaine.

Several minutes later, officers saw a second package with similar characteristics, which also was addressed to Ronald West and had been shipped from Chandler, Arizona. When the officers had search warrant, opened the package, and found two more kilograms of cocaine.

Following these discoveries, law enforcement officers coordinated a controlled delivery of both packages to Westâ??s residence and conducted surveillance of the home. After the packages were delivered, officers observed Faruq Rose and another man, LaVonne Murray, arrive at Westâ??s residence in a silver car and enter the home, before leaving shortly thereafter. However, while at the house, neither Rose nor Murray touched the packages that had been left on the front porch. When West later arrived at his residence, he entered but also did not touch the packages on the porch. Later that day, Rose and Murray returned to the residence, retrieved the packages, and departed inthe silver car. The officers ultimately stopped the vehicle and arrested Rose.

The officers discovered that Rose paid his friend, Donald West, to allow the packages, which were addressed to Westâ??s deceased brother, Ronald West, to be delivered to Westâ??s house in Wallace,North Carolina. Rose did not live at Westâ??s residence. Under the delivery arrangement with Donald West, and before delivery of the packages in this case, Rose successfully had obtained multiple packages addressed to Ronald West that had been delivered to the residence. Law enforcement was not aware of these prior deliveries.

Before trial, Rose filed a motion to suppress evidence of the cocaine found in the two searches conducted at the FedEx facility. Rose argued that although he was neither the sender of, nor the named recipient on, the packages, he nonetheless had a reasonable expectation of privacy in those packages because he was their intended recipient. The district court rejected Roseâ??s argument and denied his motion to suppress the evidence. Rose appealed.

The Fourth Circuit noted that both senders and recipients of letters and other sealed packages ordinarily have a legitimate expectation of privacy in those items even after they have been placed in the mail. However, when a sealed package is addressed to a party other than the intended recipient,that recipient does not have a legitimate expectation of privacy in the package unless h • of the package at the time of the search. The court added that this indicia of ownership, possession, or control can be proven if a defendant can show that the fictitious name is an established alias.

In this case, the court held that Rose did not have a reasonable expectation of privacy in the packages addressed to Ronald West because, at the time of the searches, there were no objective indications that Rose owned, possessed, or exercised control over the packages. Specifically, the court found that nothing about the packages, including the senderâ??s name, the named recipient, theaddress, or the phone number listed on the packages indicated that Rose had an interest in the

packages. The packages were addressed to a deceased individual at a residence lacking any established connection to Rose. In addition, at the time of the searches, Rose had not taken possession of the packages.

The court further held that its holding was not altered by the fact that Rose previously had collected from Westâ??s home multiple packages addressed to Ronald West using the same delivery scheme. The court held that Roseâ??s limited use of this deceased, third partyâ??s name did not establish that Rose used â??Ronald Westâ?• as an alias or was commonly known by that name. The court added there was no evidence that anyone recognized Rose by the name Ronald West,
nor did any evidence show that
Rose used the name Ronald West regularly under different circumstances.

Consequently, the court found that the district court did not err in denying the
motion to suppress because Rose failed to establish an expectation of privacy in the two packages at issue.

For the courtâ??s opinion: https://cases.justia.com/federal/appellate-courts/ca4/19-4755/19-4755-2021-07-09.pdf?ts=1625855420

Fifth Circuit

Jackson v. Gautreaux, 3 F.4th 182 (5th Cir. 2021)

At approximately 8:30 p.m. on February 23, 2016, Kimula Porter called 911 to report that herboyfriend, Travis Stevenson, physically assaulted her and her daughter with pepper spray, smashed al left, he called and texted Porter to say he was going to commit suicide.

Around 9:50 p.m., Lieutenant Michael Birdwell located Stevenson. Stevenson was in a car, whichwas turned off and parked next to an apartment building. An SUV was parked to the left ofStevenson, an industrial-sized dumpster was on his right, and the building was directly in front ofhim.

Lieutenant Birdwell parked his patrol car behind and perpendicular to Stevensonâ??s car, approachedthe him at first, so Lt. Birdwell kept knocking. At this point, Stevenson turned on the car
as if to drive away. Inresponse, Lt. Birdwell attempted use his pocketknife to break the driverâ??s-side window and removeStevenson from the vehicle. However, before Lt. Birdwell could remove him, Stev placed his car in reverse and slammed into Lt. Birdwellâ??s patrol car. The force
caused Lt. Birdwellâ??s patrol carto crash into a nearby parked car and deploy its airbags.

Seconds later, Detective Scott Henning arrived on the scene and ordered Stevenson to exit thevehicle. Stevenson refused to comply and repeatedly yelled â??Kill me!â?•
By this time, Lt. Birdwellwas positioned between the front of Stevensonâ??s car and the apartment building. Stevenson
thenshifted the car into drive and accelerated toward Lt. Birdwell. Believing Stevenson was trying to runov his firearm toward Stevenson. The bullet didnâ??t hit Stevenson, instead it hit one of the windows. As Stevenson accelerated toward him, Lt. Birdwell jumped back and hit the parked SUV. Stevenson

crashed into a pole in front of the apartment building. He then shifted back into reverse and slammed into Lt. Birdwellâ??s patrol car again.

Shortly thereafter, several other officers arrived on the scene. One officer fired two or three shots into the driverâ??s-side tire in an attempt to disable the vehicle. The shots didnâ??t stop Stevenson, who accelerated forward and then back into Lt. Bidwellâ??s patrol car again and again. While Stevenson was oscillating between the apartment building and the patrol unit, Lt. Birdwell was trapped in Stevensonâ??s path. Eventually, officers opened fire on the vehicle. Stevenson sustained seven gunshot wounds and was pronounced dead on the scene. The entire episode, from the time Lt. Birdwellspotted the car, to the time officers notified dispatch that Stevenson was down, lasted 85 s

Stevensonâ??s estate (Plaintiffs) sued the officers under 42 U.S.C. Â§ 1983. The plaintiffs alleged that the

district court disagreed, holding that the officers were entitled to qualified immunity. Plaintiffsappealed.

To determine whether an officer is entitled to qualified immunity, the first question the court will askis whet the constitutional right at issue was clearly established at the time of the incident. In thiscase, the Fifth Circuit Court of Appeals found that it needed only to resolve the first question, as theplaintiffs could not show a Fourth Amendment violation for excessive force.

An officerâ??s use of force must be objectively reasonable. A court will consider the severity of thecrime, the immediacy of the threat posed by the suspect, and whether the suspect is activelyresisting arrest or trying to flee. In addition, when considering the reasonableness of using deadlyfo the court will consider whether the suspect poses a threat of serious physical harm to theofficer or others.

In this case, the court held that the officersâ?? use of force was objectively reasonable for threeseparate reasons. First, Stevenson was using his car as a weapon. Second, Stevenson exhibitedvolatile behaviors that contributed to the officersâ?? justification in firing to prevent death or greatbodily harm to Lt. Birdwell. Specifically, before the incident, Stevenson was drinking and usingdrugs; he pepper sprayed his girlfriend and her daughter in a fit of rage; he stole his girlfriendâ??swallet and drove away while intoxicated; he repeatedly told his girlfriend and the officers that hewas suicidal; he repeatedly yelled, â??Kill me!â?• at one officer while ignoring commands from otherofficers; and he repeatedly rammed his car into a patro from hitting Lt Birdwell. Third, the plaintiffs did not produce any evidence that suggested theofficers might have had a reasonable alternative course of action.

When asked at oral argument for a reasonable alternative, plaintiffsâ?? counsel said that officersshould have â??step[ped] back and allow[ed] Mr. Stevenson to finish the episode, and then they couldhave acted.â?• The court found that to be â??absurd,â?• as Lt. Birdwell was inches from the front left bumper of Stevensonâ??s car while he was repeatedly driving it backwards and forwards and violently crashing into things. The court added that â??whatever reasonable alternatives officers mightâ??ve had, doing nothing and praying for the best [was] not one of them.â?•

For the courtâ??s opinion: https://cases.justia.com/federal/appellate-courts/ca5/20-30442/20- 30442-2021-07-01.pdf?ts=1625151615

Seventh Circuit

United States v. Tuggle, 2021 U.S. App. LEXIS 20841 (7th Cir. IL July 14, 2021)

Between 2013 and 2016, several law enforcement agencies investigated a large methamphetaminedistrib ring in central Illinois. As part of their investigation, officers installed three cameras on public property that viewed Travis Tuggleâ??s home. Officers mounted two cameras on a pole in an alley next to Tuggleâ??s residence and a third on a pole one block south of the other two cameras. Thefirst two cameras viewed the front of Tuggleâ??s home and an adjoining parking area. T third camera also viewed the outside of Tuggleâ??s home but primarily captured a shed owned by another member of the ring. Together, the three cameras captured almost eighteen months of footage by recording Tuggleâ??s property between 2014 and 2016.

While in use, the cameras recorded around the clock. Rudimentary lighting technology improved thequalit could also remotely zoom, pan, and tilt the cameras and review the camera footage in real time, though the footage captured only the exterior of Tuggleâ??s house. While officers frequently monitored the live feed during business hours, they could later review all the footage at other times.In addition, the cameras had the practical advantage of enabling the officers to surveil Tuggleâ??s home without conspicuously deploying agents to perform traditional visual or physical surveillanceon the lightly traveled roads of Tuggleâ??s residential neighborhood.

The cameras provided substantial video evidence that supported the belief that Tuggle and otherswere trafficking methamphetamine. Specifically, the officers accumulated over 100 instances ofwhat they suspected were deliveries of methamphetamine to Tuggleâ??s residence. Camera footagede individuals arriving at Tuggleâ??s home, carrying various items inside, and leaving only with smaller versions of those items or sometimes nothing at all. After these suspected â??drops,â?• different individuals would soon arrive, enter the home, and purportedly pay for and pick upmethamphetamine. Several witnesses corroborated these activities. Relying heavily on the videoevidence, the officers obtained and executed search warrants on several locations, includingTuggleâ??s house. A grand jury subsequently indicted Tuggle on two drug-related offenses.

Prior to trial, Tuggle filed a motion to suppress the evidence obtained from the pole cameras,arguing that the use of the cameras constituted a warrantless search in violation of the FourthAmendment. After the district court denied the motion, Tuggle entered a guilty plea. However,Tuggle reserved his right to appeal the courtâ??s denial of his motion to suppress the pole cameraevidence.

On appeal, Tuggle first argued that the warrantless pole camera surveillance, regardless of thelength of that surveillance, violated the Fourth Amendment.

The Seventh Circuit Court of Appeals held that the isolated use of pole cameras on public property,without a warrant, to observe Tuggleâ??s home, did not violate the Fourth Amendment. A expectation of privacy generally does not extend to what a person â??knowingly exposes to the public,even in his own home.â?•
In this case, the court noted that Tuggle knowingly exposed the areas captured by the three cameras. Specifically, the outside of his house and his

driveway, which wereplainly visible to the public. In addition, the court reasoned that the officers only used cameras, a technology that is in â??general public use,â?• to identify who visited Tuggleâ??s house and what they carried, all things that a theoretical officer could have observed without a camera. Consequently, thecourt held that Tuggle did not have a reasonable expectation of privacy in what in front of his home. The court added that the Fourth and Tenth Circuit Courts of Appeals have considered the use of cameras by police officers to observe the exterior of private homes and have held such uses to be constitutional.

Second, Tuggle argued that the prolonged and uninterrupted use of the pole cameras to conductcontinuous surveillance of his house, for a period of approximately eighteen months, constituted aFourth Amendment violation, under the â??mosaic theory.â?•

The court noted that Tuggleâ??s argument was based on the belief that the â??government can learnmore from a given slice of information if it can put that information in the context of a broaderpattern, a mosaic.â?• The court stated that while it has garnered some passing endorsements fromseveral Supreme Court justices in various opinions, the â??mosaic theoryâ?• has not been adopted by theCourt and the Court has not required the lower courts to apply it.

The court added that, even if it was bound to apply it, the pole camera surveillance in this casewould not have constituted a search under the mosaic theory. In the cases where the mosaic theoryw discussed, the Supreme Court was concerned with types of surveillance, like GPS tracking, thatcould create â??a precise comprehensive record of a personâ??s public movements,â?• which would revealâ??a wealth of detailâ?• about a personâ??s â??familial, political, professional, religious, and sexualassociations.â?• In this case, the court recognized that the pole cameras captured an important sliver ofTuggleâ??s life, bu Supreme Court in other cases. Unlike GPS and other technologies, the pole cameras exposed no details about where Tuggle traveled, what businesses he frequented, with whom he interacted inpublic, or whose homes he visited. If anything, instead of capturing Tuggleâ??s public movem when Tuggle left his home.

Next, the court recognized that the constitutionality of prolonged pole camera surveillancepresented an issue of first impression in the Seventh Circuit. However, the court commented that noother federal circuit court of appeals has held that a Fourth Amendment search occurred based on long-term use of pole cameras on public property to view plainly visible areas of a personâ??s home. The court agreed with the rationale behind these holdings and affirmed the district courtâ??s denial ofTuggleâ??s motion to suppress the pole camera evidence.

In conclusion, the court added that the Fifth Circuit Court of Appeals held that the governmentâ??s use of a pole camera for more than thirty days to record the exterior of the defendantâ??s home constituted a search under the Fourth Amendment. Significantly, however, the government positioned thecamera in that case to look over a ten-foot-tall fence and capture images unviewable to passersby.Finally, the court noted that several federal district courts outside the Seventh Circuit, as well as several state appellate and supreme courts have found that the use of pole cameras for varying durations violates the Fourth Amendment.

For the courtâ??s opinion: https://cases.justia.com/federal/appellate-courts/ca7/20-2352/20-2352-2021-07-14.pdf?ts=1626289227

Eighth Circuit

United States v. Thompson, 2021 U.S. App. LEXIS 22041 (8th Cir. MO July 26, 2021)

Police officers had an arrest warrant for Tyreese Thompson for robbery. At the time, officers knewThompson was a convicted felon and that he was suspected of being involved in a gunfight i 2014 and stealing guns from a pawnshop in 2016. A confidential informant told the officers that Thompson was at a house that belonged to his girlfriend. The officers went there to arrest him.

Officers knocked on the door, announced themselves, and called Thompsonâ??s name. They sawwindow blinds move and heard sounds of people walking and moving things inside the house.Officers continued to knock and call for six to eight minutes. A man, later identified as GeorgeRichards, finally answered the door with an aggressive dog. Officers asked Richards to restrain the dog, and he dragged it away, leaving the door open. An officer then saw Thompson peek out from inside the house, so he ordered him to show his hands. Thompson instead retreated around a corner, but eventually he came out and surrendered. When he was arrested and put in a police car, officers saw dirt and spider webs on his arms, shirt, and the back of his head.

Richards then emerged. Police asked him twice whether anyone else was inside, but he did notanswer right away. Then he said, â??Nobody else that I know of.â?• Officers were not sure of thisbecause of his reluctance to answer, his odd response, the information suggesting Thompsonâ??sgirlfriend lived there, the sounds from inside, and the long delay in answering the door. Co • the officers told Richards that they would do a protective sweep ofthe home. Richards did not object.

During the ten-minute sweep, police looked into a back-bedroom closet and noticed an attic accesspanel in the ceiling and a scuff mark on the wall. Worried that someone went into the attic, anofficer guarded the closet until the house was cleared. Afterward, the officers opened the atticaccess panel and saw disturbed cobwebs and guns. Richards claimed that he either owned or rented house but denied knowing about the guns. He agreed to a search of his house. Richards said that Thompson was dropped off at the house the day before and did not live there. Richards also saidthat Thompson spent the night and slept in the room with the attic access. When officers went int they recovered four guns.

The government charged Thompson with being a felon in possession of a firearm, for the gunsseized from the attic. Thompson filed a motion to suppress the firearms, which the district courtdenied. Thompson was convicted. On appeal, he argued that the officers violated the FourthAmendment because they had no authority to conduct a protective sweep of the home after hevoluntarily came out of the house and was in the police car.

In Maryland v. Buie , the Supreme Court held that police officers may conduct a protective sweep of ahouse for unknown indiv •Officers conducting a protective sweep must â??possess a reasonable belief based on specific andarticulable facts which, taken together with the rational inferences from those facts, reasonablywarranted the officer in believing . . . that the area swept harbored an individual posing a

danger to the officer or others.â?• Although Buie does not allow officers to conduct a protective sweep to locate weapons or contraband, officers may seize any â??immediately apparentâ?• contraband that is â??in plain viewâ?• while performing the sweep.

In this case, the Eighth Circuit Court of Appeals held that the officers were justified in performing asweep. Second, after announcing their presence, officers were forced to wait for minutes while the blinds on either side of the door moved and they heard movement, and possible preparation for an attack inside. Third, officers thought the house belonged to Thompsonâ??s girlfriend, who was not located. Fourth, after Richards was asked whether anyone else was still in the house, he was silent at first and then gave the odd, ambiguous answer that there was â??nobody elseâ?• in the home â??that he knew of.â?• The court concluded that Richardsâ??s initial reluctance and his unusual response strengthened the officersâ?? suspicion that potentially dangerous people remained in the house. Fifth, Thompson was covered in dust and cobwebs, suggesting that he had just been in
a dusty place likean attic or basement. The court held that these facts support the reasonable belief that â??someone else could be inside posing a danger to [officers] during or following the arrest.â?• Finally, the court held that extending the sweep to the closet and then to the attic after seeing the scuff mark was reasonable. The court noted that sweeping a space that requires a boost or ladder to access, like an attic, is at the outer boundary of the protective sweep doctrine; but we think the officersâ?? conduct in this case was reasonable.

For the courtâ??s opinion: https://cases.justia.com/federal/appellate-courts/ca8/20-1228/20-1228-2021-07-26.pdf?ts=1627313420

United States v. Sanders, 2021 U.S. App. LEXIS 21065 (8th Cir. IA July 16, 2021)

An eleven-year old girl, N.R., called her grandmother and said that her mother, Karina LaFrancois and her motherâ??s boyfriend, Kenny Sanders were â??fighting really badâ?• and that â??they needed someone to come.â?• The grandmother called 911, reported what N.R. had told her and told the operator thattwo additional minor children, ages seven and one, were inside the residence.

When officers arrived at LaFrancoisâ?? house, one of them saw N.R. â??acting excitedâ?• and gesturingthrough an upstairs window. The officers knocked on the front door and LaFrancois came o talk to them. LaFrancois told the officers that everything was okay, even though LaFrancois was visibly upset and had red marks on her face and neck. The officers told LaFrancois that they needed to talk to Sanders. LaFrancois offered to have Sanders speak with the officers outside. The officer initially agreed to allow LaFrancois to go inside and get Sanders; however, when she opened the door, the officers heard crying inside. At that point, the officers decided to enter the house to
makesure that everyone was safe.

Upon entering, the officers saw Sanders and LaFrancois standing just inside the doorway and acrying infant located in a nearby playpen. One of the officers went upstairs to check on N.R. while another officer directed Sanders to sit on the couch. N.R. told the officer that during the fight with Sanders, she heard her mother yelling, â??Put the gun down!â?• N.R. told the officer that the gun might be in a specific drawer downstairs. The officer checked the drawer, but he did not find a gun. The officer then spoke with LaFrancois who stated that the gun might be â??in the couch.â?• The officer asked Sanders to get off the couch and discovered a handgun in the couch cushions.

The government charged Sanders with possession of a firearm by a prohibited person, in violation of18 U. the house and the search of his couch for the gun violated the Fourth Amendment.

In April 2020, the Eighth Circuit Court of Appeals affirmed Sandersâ??s conviction. The court held thatthe the Fourth Amendmentâ??s warrant requirement.

In May 2021, in Caniglia v. Strom
, the Supreme Court held that there is no standalone communitycaretaker doctrine that justifies warrantles in Caniglia, Sanders appealed. The Supreme Court vacated Sandersâ??s conviction
andremanded the case the Eighth Circuit. The Court emphasized that while it rejected the communitycare exception as it related to warrantless searches and seizures in the home, another exceptionto
the warrant requirement might apply in this case.

On remand, the Eighth Circuit Court of Appeals held that the officersâ?? warrantless entry intoSandersâ??s house was reasonable under the exigent circumstances exception to the warrantrequiren this exception, an officer may enter a home without a warrant if he has anobjectively reasonable basis to believe that entry is necessary â??to render emergency assistance to aninjured occupant
or to protect an occupant from imminent injury.â?•

In this case, the court held that the facts known to the officers when they decided to enter the house included: 1) the information from the 911 call; 2) the officersâ?? observations when they arrived; and 3) the information provided by N.R. and LaFrancois. Based on these facts, the court concluded that it was reasonable for the officers to believe that an emergency situation
existed that required theirimmediate attention by entering the house to either provide emergency assistanc to the child who was heard crying or to prevent an imminent assault on the daughter who had reported the incident.

The court further held that exigent circumstances justified the officerâ??s warrantless search to locate and •;

- the officer had an objectively reasonable belief that a gun was inside the house; and 3) theofficer lim his search to areas where the gun might have been placed.

For the courtâ??s opinion: https://cases.justia.com/federal/appellate-courts/ca8/19-1497/19-1497-2021-07-16.pdf?ts=1626449449

United States v. Shipton, 2021 U.S. App. LEXIS 21852 (8th Cir. MN July 23, 2021)

Peer-to-peer networks provide common forums for those who trade child pornography on theInternet. Users may connect to a peer-to-peer network and share files on their computer with others. Law enforcement agencies have developed programs that mimic ordinary users of peer- to-peer networks that are designed to help identify child-pornography purveyors. Like
ordinary participantsin the network, officers can search for and obtain child pornography from other users. addition, officers can also compare a retrieved fileâ??s â??hash value,â?• which is essentially
a particular fileâ??sdigital signature, with the hash values of files known to contain child pornography. Whe can almost always be assured that the file at issue contains child pornography.

In this case, a Minneapolis police officer used a program called RoundUp eMule to search for users on a peer-to-peer network who were sharing child pornography. The officer downloaded part of a file, a video that played for twenty to thirty seconds, from an IP address in or around St. Paul, Minnesota. Using the fileâ??s hash value, the officer was able to obtain the complete file anddetermined that it contained child pornography.

After subpoenaing the relevant internet service provider, the officer learned that ChristopherShipton was the person associated with the IP address. The officer further discovered that Shi a registered sex offender who was convicted in June 2015 of possessing child pornography.Further, a search of the Child Protection System database, which is a database that â??com of previously identified child pornography and documents hits that have occurred for certainIP addresses,â?• revealed that Shipton had advertised 92 known or suspected child pornography files near the time the officer here was investigating him. These 92 files were uncovered by programssimilar to RoundUp eMule known as G2Scanner and Nordic Mule. Based on this information, a Minnesota state court issued a search warrant for Shiptonâ??s home, where officers found additionaldigital files containing child pornography.

The government charged Shipton with possession of child pornography. Shipton filed a motion to suppress the evidence seized during the search. Shipton argued that the officer who used theRoundUp eMule program to download the initial file had conducted a warrantless search inviolation of the Fourth Amendment. Shipton claimed that the officer violated his reasonable

expectation of privacy in the anonymous communications he made on the network. Shipton alsorequested that the software the officer used to facilitate the sharing be tested to ensure it wasreliable and that it did not gain access to private areas of Shiptonâ??s computer. The district courtdenied Shiptonâ??s motion and upon conviction he appealed.

The Eighth Circuit Court of Appeals affirmed Shiptonâ??s conviction. First, the court stated, â??we have held numerous times that a defendant has no objectively reasonable expectation of privacy in files he shares over a public peer-to-peer network, including those shared anonymously with law enforcement officers.â?• The court added that the First, Fourth, Fifth, and Ninth circuits have reachedthe same conclusion in similar cases.

Next, the court addressed Shiptonâ??s concern about the governmentâ??s â??dragnet surveillanceâ?• through programs like RoundUp eMule and vast databases of known hash values that connect known orsuspected child pornography to IP addresses where those files were offered for sharing. to- peernetworks have deliberately chosen not to keep private.

Finally, the court held that the evidence in the record established the programs used by the officeroperate reliably, did not access private areas of Shiptonâ??s computer, and that Shipton did not offer any reason to conclude otherwise.

For the courtâ??s opinion: https://cases.justia.com/federal/appellate-courts/ca8/20-2570/20-2570-2021-07-23.pdf?ts=1627054245

Tenth Circuit

United States v. Woodard, 2021 U.S. App. LEXIS 22443 (10th Cir. OK July 26, 2021)

An individual called the police and stated that Evan Woodard had violated a protective order, that he was â??fighting a huge drug case,â?• may have smoked PCP, and that he had three previous gun cases.After talking to the caller, the police discovered that Woodard had an outstanding warrant for misdemeanor public intoxication. Based on this information, officers began looking for Woodward,planning to serve him with the protective order and execute the warrant.

Officers found Woodard in Tulsa, Oklahoma, at about 8:00 a.m. and initiated a traffic stop (the Tulsastop). Woodard pulled into a parking lot at a QuikTrip convenience store and stopped there. The officers told Woodard to get out of the car, arrested him based on the warrant, and took hiscellphone. Woodard then asked if he could call someone to pick up the car. One of the officersresponded, â??I donâ??t think so.â?• The officers decided to impound Woodwardâ??s car pursuant to theTulsa Police Departmentâ??s standardized impoundment policy. This policy generally restrictsimpoundment to removal of vehicles from a public way, but it allows impoundment from privateproperty when the traffic stop follows an offense committed on a public way.

Two officers then opened the front doors and began to search the car. One officer looked in thepanel on the driverâ??s side door and on the floor under the driverâ??s seat, saying that Woodard wasâ??fighting a huge drug case.â?• The other officer replied that Woodard liked PCP. As the officerreplied, he opened the center console, stating that he was looking for verification of car insurance,w expressing doubt that Woodward had insured the car. After seeing no verification in the centerconsole, he eventually found proof of an old insurance policy in the glove compartment.

By then, however, another officer had found marijuana, cocaine, a digital scale, and a gun. With that evidence, the police obtained a warrant allowing access to text messages on Woodardâ??s cellphone.Those text messages provided evidence of drug dealing.

Based on the messages found on the cellphone, the government charged Woodward with drug andfirearm related crimes stemming from the Tulsa traffic stop and from a previous stop in which drugevidence had been seized from his car.

Woodward filed a motion to suppress the evidence found during the Tulsa stop, including the drugs, the gun, his cellphone, and a digital scale. Woodward argued that: 1) the Tulsa Police Departmentâ??s policy had not authorized impoundment of his car because he had not committed an offense on apublic way, and 2) the officers ordered impoundment as a pretext to search veh denied the motion and Woodward appealed.

The Tenth Circuit Court of Appeals agreed with Woodward. First, the court held that the TulsaPolice Departmentâ??s standardized impoundment policy did not authorize the impoundment ofWoodardâ??s car. The officers stopped Woodward to serve a protective order and execute a warrant fo public intoxication. The stop occurred in the QuikTrip parking lot, which the government did not dispute was private property. As such, the court reasoned that the policy only permitted the officers to impound Woodardâ??s vehicle from private property â??when the offense the vehicle was initially stopped for

occurred on a public way.â?• The court held that the stop of Woodard to serve the protective order and to execute the arrest warrant for public intoxication did not constitute anâ??offense.â?• Because no offense took place on a public way, the court held the policy did not allow theofficers to impound Woodardâ??s vehicle.

Next, the court held that the officersâ?? decision to impound Woodardâ??s vehicle was pretextual. Animp is pretextual when the police are seeking evidence of a criminal violation rather thanacting to safeguard the vehicle or its contents to promote public safety or convenience. In the T five factors are considered to determine the possibility of pretext:

1. Whether the car is on private or public property;
2. Whether the property owner has been consulted;
3. Whether an alternative to impoundment exists, especially the availability of someone else todrive the
4. Whether the car is implicated in a crime; and
5. Whether the driver or owner has consented to the impoundment.

In reviewing these factors, the court concluded that every factor pointed to pretext. First, Woodardâ??s vehicle was on private property, where public safety and convenience are less likely to be at risk.Second, the officers did not consult the QuikTrip employees to see if they wanted the vehicleimpounded. Third, the officers had an alternative to impoundment, as Woodard asked t officers if he could call someone. However, the officers refused, without providing an explanation. The court added that neither party raised the issue of whether the police have a duty to allow an arrestee tocontact someone else to pick up a vehicle before impounding it. Regardless, th court noted this issue had nothing to do with whether alternatives existed to impoundment. Fourth, the government conceded that the vehicle was not implicated in a crime, so there was no need to preserve evidenceby impounding the car. Finally, Woodard did not consent to impoundment.

The court further held that the officersâ?? comments and actions showed pretext. First, beforesearching the vehicle, while discussing how to proceed, an officer declared his intent to â??frigginlight [Mr. Woodard] up with whatever we can.â?• Next, as the officers started the search, one officer said that Woodard was fighting a big drug case and facing three gun charges. Third, another officercommented that Woodard liked PCP, adding that he began his search in the center console • there. Finally, an officer repeatedly stated that he was searching the vehicle for a valid insurance card despite expressing doubt that one existed andwithout asking Woodard for an updated card, contacting the insurance company, or checking a available database. The court found that these comments and actions showed the officersâ?? intent tolook for criminal evidence rather than to safeguard the vehicle and its contents.

Because the Tulsa Police Departmentâ??s standardized policy did not apply and the officersâ?? statedreasons for impoundment of Woodardâ??s vehicle was pretextual, the court held that the district courterred in denying the motion to suppress the evidence found during the search.

For the courtâ??s opinion: https://cases.justia.com/federal/appellate-courts/ca10/20-5004/20-5004-2021-07-26.pdf?ts=1627313460

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