Circuit Courts of Appeals â?? July 2021

Description

Fourth Circuit

United States v. Buzzard, 2021 U.S. App. LEXIS 17518 (4th Cir. WV June 11, 2021)

Around 1:30 a.m., a police officer pulled over a car for a defective brake light. Jason Buzzard was driving, and Paul Martin was in the passenger seat of the car. When the officer made contact with the Buzzard, he requested Buzzardâ??s license, registration, and proof of insurance. While Buzzard was looking for these items, the officer noticed Martin. The officer recognized Martin from previous encounters and knew that he had a history of drug addiction, that he had recently gotten out of prison, and that he was a convicted felon. As the officer spoke with Buzzard, Martin kept moving and looking around. Because it was late at night, and there were two individuals in the car, one of whom the officer thought might run, the officer decided to wait for another officer to arrive before returning to his vehicle to check what information he could, as Buzzard had been unable to provide a driverâ??s license, registration, or proof of insurance.

While he waited, the officer asked Buzzard if there was anything illegal in the vehicle. The officer asked this question because of â??the time of night and the high crime drug area, Mr. Martinâ??s history, and Mr. Martinâ??s behavior.â?• In response, Buzzard and Martin (the defendants) both volunteered drug paraphernalia: Buzzard produced a marijuana â??bowlâ?• from under his shirt and Martin produced a hypodermic needle and syringe.

When additional officers arrived a short time later, the defendants were removed from the vehicle. The officers searched the car and recovered two handguns wrapped in socks, one from under the driverâ??s seat and one from under the passengerâ??s seat. The officers arrested defendants, who were each charged with being a felon in possession of firearms.

The defendants filed motions to suppress the guns, along with additional evidence found in the vehicle. The defendants claimed the officer unlawfully prolonged the duration of the stop by asking them whether there was anything illegal in the car, a question that was not related to the traffic stopâ??s mission concerning the defective brake light.

The district court disagreed, holding that the officerâ??s question related to officer safety, reasoning that it â??could expose dangerous weapons or narcoticsâ?• and that courts â??have already recognized the authority of officers conducting a traffic stop to inquire about dangerous weapons.â?• The defendants appealed.

The Fourth Circuit Court of Appeals agreed with the district court. The court found that the officer was in the middle of the stop when he asked whether there was anything illegal in the vehicle. At this point, the officer did not have the information he needed to perform the customary checks on the driver and vehicle, and he was waiting for an additional officer to arrive so he could safely proceed with the stop. Consequently, the court held that, because the question was asked during a lawful traffic stop and did not prolong the duration of the stop, the officer did not violate the Fourth Amendment by asking it.

Alternatively, the court also agreed with the district courtâ??s finding that the officerâ??s question related to officer safety; therefore, it related to the traffic stops mission. Given the defendantsâ?? behavior, the fact that the officer was outnumbered, and that the stop occurred at night in a high crime area, and the court held that it made â??sense that he needed to know more about what Buzzard and Martin had in the car.

For the courtâ??s opinion: https://cases.justia.com/federal/appellate-courts/ca4/20-4087/20-4087-2021-06-11.pdf?ts=1623436229

Seventh Circuit

United States v. Leal, 2021 U.S. App. LEXIS 18359 (7th Cir. IL June 21, 2021)

In July 2019, Jorge Leal contacted a user on Grindr, an online dating application. Unknown to Leal, that user was an undercover Federal Bureau of Investigation (FBI) agent looking to identify and locate individuals who have a sexual interest in children. The agent, posing as a teenage boy, informed Leal that he was 15 years old. Despite learning that the user was underage, Leal continued to engage in sexually explicit conversations and eventually solicited oral sex. A week after the initial conversation, Leal asked the user for his location. The agent provided Leal the address of a house that the FBI was using for the operation.

Leal arrived at the house on the evening of July 19. An FBI surveillance team watched Leal drive around the block and stop in an alley behind the house. Wary of a potential trap, Leal asked the supposed minor to flick on the outside lights to the house. When one of the surveillance team officers, U.S. Marshal Clark Meadows, drove an unmarked vehicle up the alley, Leal sped off. Meadows pursued Leal and stopped him approximately two blocks from the house.

Three law enforcement agents were present during the stop. Meadows wore a green tactical vest with a badge and â??U.S. Marshalâ?• written across the front and back. The other two, FBI special agent Adam Buiter and a local police officer, each wore plain clothes under a vest with the words â??Policeâ?• displayed across the front and back. Buiter identified himself as an FBI agent and asked Leal if he would step out of the car. Leal agreed, exited the vehicle, and consented to a pat down during which Buiter retrieved Lealâ??s wallet. When Buiter asked Leal if he had a cellphone, Leal pointed to it and handed it over. Buiter next explained to Leal that he was not under arrest and that he was stopped as part of an ongoing investigation. Buiter asked whether Leal would voluntarily consent to speak with other agents in a nearby house, and Leal said, â??Yes.â?• Before leaving, Buiter asked Leal for his car keys so an agent could move his car off the road to a nearby parking lot. Again, Leal consented and handed over his keys.

Meadows then drove Leal back to the house. When they arrived, another FBI agent escorted Leal through the back door and took him to a bedroom, where two new FBI agents were located. The agents placed Lealâ??s wallet and cellphone on a table; his car keys remained with law enforcement. Leal agreed to the interview, which proceeded with the door closed and was audiotaped. The agents neither handcuffed nor restrained Leal during this entire episode.

Leal quickly confessed. After explaining to Leal that the interview was informal and that they are â??just going to have a conversation,â?• the agents began by asking, â??What brings you out this way?â?•

Within two minutes, Leal admitted to driving to the house after â??chatting with a younger male through the Grindr app.â?• A few minutes later, an agent asked, â??What was the point of you coming here tonight?â?• Leal then admitted that he came to the house â??to play around sexuallyâ?• with and receive oral sex from a minor. Leal also confessed that he knew showing up to meet with a fifteen-year-old was wrong, but he did so anyway. Only after Lealâ??s confession did the agents read aloud the Grindr chat log containing Lealâ??s solicitation messages. Leal confirmed he had sent these messages. At the end of the interview, which lasted approximately eighteen minutes, the FBI arrested Leal.

The government charged Leal with knowingly attempting to entice a minor to engage in sexual activity. Leal moved to suppress his statements in the interview, arguing that the agents conducted a custodial interrogation without first advising him of his Miranda rights. The district court agreed. The district court concluded that Leal was â??in custodyâ?• for Miranda purposes during the interview with the agents. The government appealed.

Miranda warnings are required when a person is subjected to custodial interrogation. A person is in custody for Miranda purposes when formally arrested or when officers restrain the personâ??s freedom of movement to the degree associated with a formal arrest. To determine the issue of custody, courts must determine whether â??a reasonable person [would] have felt he or she was not at liberty to terminate the encounter and leave.â?• The court added this is an objective test and that a personâ??s subjective beliefs are irrelevant. Relevant factors to determine whether a person is in custody for Miranda purposes include: 1) the location and duration of the questioning; 2) statements made by the officers; 3) the presence or absence of physical restraints during the questioning; and 4) the release of the person at the end of the questioning.

Applying the circumstances surrounding Lealâ??s encounter with the officers against this framework, the Eighth Circuit Court of Appeals held that Leal was not in custody for Miranda purposes while the agents interviewed him and reversed the district court.

As an initial matter, the court noted that the district court erroneously considered Lealâ??s subjective beliefs when it held that he was in custody for Miranda purposes. For example, in analyzing the â??locationâ?• factor, the district court emphasized that Leal subjectively felt â??obligatedâ?• to stay because he was â??caught in the act.â?• The court conclude that this was erroneous: the fact that Leal believed he was in a precarious position from the moment he drove up the alley indicated nothing about the behavior of the officers or whether a reasonable person would have felt bound to stay.

Next, the court held that under an objective view of the totality of the circumstances, the agentsâ?? interview of Leal did not rise to the level of a custodial interrogation. First, the court found that Leal voluntarily consented at every stage of the encounter: stepping out of the car; complying with the pat down; surrendering his cellphone, wallet, and car keys, accompanying Meadows to the house; and speaking with the two agents inside the interview room. Second, the agents told Leal initially that he was not under arrest, and Leal never asked the agents to end the encounter or otherwise indicated that he wanted to leave. Third, the court found that the short duration of the interview, which was less than twenty-minutes, in addition to the fact that agents did not use physical restraint or brandish their weapons weighed against a finding of custody. Fourth, the agents did not confront Leal with evidence of his guilt until after he had voluntarily confessed. Finally, the fact that the agents arrested Leal at the end of the interview was not relevant, as it had no bearing as to whether a reasonable person would

have believed that he was free to end the questioning and leave.

For the courtâ??s opinion: https://cases.justia.com/federal/appellate-courts/ca7/20-3102/20-3102-2021-06-21.pdf?ts=1624294924

Eighth Circuit

United States v. Simmermaker, 998 F.3d 1008 (8th Cir. 2021)

Police officers executed a search warrant of a home in Tipton, Iowa, that belonged to W.S., someone familiar to the officers through drug investigations. The warrant authorized a search of the house and of W.S. It also authorized the search of items related to drug trafficking and â??locked containers, safes, hidden compartments or other items or areas capable of storing or concealing any of the other items listed herein.â?•

During the search, officers found Michelle Simmermaker asleep on the couch in the living room of the house. Close by on the couch was a meth pipe and a Brinkâ??s security lockbox that belonged to Simmermaker. The keys to the Brinkâ??s box were near the box. Officers woke Simmermaker, handcuffed her, and removed her from the room. Simmermaker told officers she had been staying at the home for a week, but the officers later learned she had been there for two nights. The officers unlocked the Brinkâ??s box and found 10.95 grams of methamphetamine and a digital scale inside. The government charged Simmermaker with possession of methamphetamine with intent to distribute.

Simmermaker filed a motion to suppress the evidence seized from the Brinkâ??s box, arguing that her lockbox was not within the scope of the search warrant for the house. The district court denied the motion and Simmermaker appealed.

The Eighth Circuit Court of Appeals commented that â??a visitorâ??s privacy interest is complicated when the visitor is connected to the illegal activity at the locationâ?• to be searched. In this case, the search warrant was for evidence of drug use and distribution. When the officers entered the house, they saw Simmermaker on the couch, asleep, with a meth pipe next to her. The court concluded that this gave the officers â??particularized suspicionâ?• that Simmermaker was connected to the illicit activity that provided the basis for the warrant. Consequently, the court held that Simmermakerâ??s personal belongings, including the Brinkâ??s box, would be subject to the warrant, especially because the warrant included all â??locked containers.â?•

The court added that while Simmermaker had a reasonable expectation of privacy in the Brinkâ??s box, officers had probable cause that she was involved in the criminal activity that formed the basis for the warrant. As a result, the court held that Simmermakerâ??s Brinkâ??s box fell within the scope of the warrant and searching it was lawful.

For the courtâ??s opinion: https://cases.justia.com/federal/appellate-courts/ca8/20-2071/20-2071-2021-06-01.pdf?ts=1622561428

Eighth Circuit

United States v. Short, 2021 U.S. App. LEXIS 19242 (8th Cir. IA June 29, 2021)

Police officers responded to a report of gunshots fired at an apartment complex. Various 911 callers reported that three potential suspects were involved and that two black cars were involved, including a black Dodge Charger. When an officer arrived at the apartment complex, he saw Shaun Short walking in the parking lot near a black Dodge Charger. Officer Miller recognized Short as matching the description reported by one of the 911 callers as a black male with dreadlocks wearing a white shirt and blue pants. The officer approached Short and asked him a series of questions regarding the reported gunshots. After placing Short in handcuffs, the officer detected a strong odor of marijuana emanating from the rear driverâ??s side window of the Charger, which was open an inch or two.

The officer called a narcotics officer to the scene. After the narcotics officer smelled the odor of marijuana coming from the Charger, officers searched the car. The officers found approximately two grams of marijuana and an identification card for Short, indicating that he lived in the apartment complex.

In the meantime, elsewhere at the apartment complex, officers identified two individuals reportedly involved in the shooting. Both men admitted to their involvement in the shooting and stated that they had come to the complex to purchase marijuana from Short. Based on this information as well as the evidence seized from the Charger, officers obtained a warrant to search Shortâ??s apartment. In Shortâ??s apartment, officers found approximately 70 grams of marijuana, baggies with marijuana residue, $12,000 in cash, working digital scales, and two firearms.

Prior to trial, Short filed a motion to suppress the evidence found during the warrantless search of the Charger. The district court denied the motion, holding that the smell of marijuana gave the officers probable cause to search the vehicle under the automobile exception to the Fourth Amendmentâ??s warrant requirement.

On appeal, Short did not contest the district courtâ??s conclusion that the smell of marijuana gave the officers probable cause to search his vehicle. Instead, Short argued that the automobile exception did not apply because his car was parked in the apartment complex lot with a flat tire, thereby rendering it immobile.

The Eight Circuit Court of Appeals disagreed. Under the automobile exception, the Supreme Court has held, â??if a car is readily mobile and probable cause exists to believe it contains contraband,â?• police officers may search it without a warrant. The court stated that Short had failed to cite any case in which a court had found that the automobile exception does not apply when the vehicle to be searched is temporarily immobilized. Instead, the court pointed to an unpublished opinion in the Eighth Circuit and published opinions in the Fifth and Tenth Circuits, which have held to the contrary. Consequently, the court held that it was undisputed that the officers had probable cause to search Shortâ??s vehicle, and that an easily repairable flat tire did not cause the vehicle to lose its inherent mobility. Accordingly, the court held that the automobile exception applied, and the district court properly denied Shortâ??s motion to suppress the evidence seized from his vehicle.

For the courtâ??s opinion: https://cases.justia.com/federal/appellate-courts/ca8/20-1533/20-1533-2021-06-29.pdf?ts=1624980623

Eighth Circuit

United States v. Keck, 2021 U.S. App. LEXIS 19240 (8th Cir. AR June 29, 2021)

In 2016, the Swiss federal police told the Federal Bureau of Investigation (FBI) that an internet protocol (â??IPâ?•) address in Arkansas was distributing child pornography on a file sharing website known as GigaTribe. The FBI tied the IP address to Matthew Fee. Agents then questioned Fee and his fiancÃ©e, Danika Keck, (the Fees). The Fees told the agents they should investigate Joseph Keck, Feeâ??s future father-in-law. The Fees told the agents that Keck worked as a long-haul truck driver and that he stayed at their house periodically when he was in town. In addition, several years earlier, Keck had spent thirty days in jail and paid a $16,000 fine for a child-pornography conviction.

When the agents first interviewed the Fees on a Friday night, the couple consented to the seizure and search of their personal electronic devices. Those searches revealed no child-pornography-related evidence. The following Monday, agents discovered that another jurisdiction was investigating Keck for child-pornography-related crimes. The Fees also told the agents that they expected Keck to return to their house that afternoon.

The lead agent on the case asked his supervisor and the FBIâ??s in-house legal counsel for advice. The agent was advised that the FBI could lawfully seize Keckâ??s electronic devices without a warrant to prevent Keck from destroying them, and the agents needed to do so as soon as Keck returned to town.

When Keck arrived at the Feesâ?? house on Monday, two FBI agents were there waiting for him. The agents then told Keck they needed his electronic media. Keck gathered his devices, including two laptops, a cell phone, a portable hard drive, and a memory card, from his van and gave them to the agents.

After obtaining a warrant to search Keckâ??s electronic devices, the FBIâ??s examination revealed, among other things, folders with thousands of child pornography videos and images. The government charged Keck with several child-pornography-related offenses.

Keck filed a motion to suppress the evidence recovered from his electronic devices. The district court denied the motion and Keck was subsequently convicted. On appeal, Keck claimed the

agentsâ?? warrantless search of his van and seizure of his electronic devices violated the Fourth Amendment.

The Eighth Circuit Court of Appeals disagreed. One exception to the Fourth Amendmentâ??s warrant requirement is the automobile exception. When police officers have probable cause to believe that an automobile contains contraband or evidence of a crime, the officers are justified to conduct a warrantless search of the automobile.

The court explained that the scope of the automobile exception includes â??the automobile and the containers within it where [officers] have probable cause to believe contraband or evidence is contained.â?• The court further explained that â??probable cause exists when, given the totality of the circumstances, a reasonable person could believe there is a fair probability that contraband or evidence of a crime,â?• to include electronic evidence, â??would be found in a particular place.â?•

In this case, the court found that, before the FBI agents encountered Keck in the Feesâ?? driveway and searched his van, the agents: 1) knew that someone associated with the Feesâ?? IP address had downloaded child pornography; 2) were told by Keckâ??s future son-in-law and Keckâ??s daughter that Keck was the likely suspect; 3) confirmed that none of the Feesâ?? electronic devices contained child pornography, which further supported Keck as the primary suspect as well as a belief that he had the devices with him on the road; and 4) knew that Keck had previously committed a child-pornography-related crime. Based on these facts, the court concluded there was a fair probability that contraband or evidence of a crime would be found in Keckâ??s van. As a result, the court held that the agents lawfully searched Keckâ??s van and seized his electronic devices under the automobile exception.

For the courtâ??s opinion: https://cases.justia.com/federal/appellate-courts/ca8/19-3534/19-3534-2021-06-29.pdf?ts=1624980621

District of Columbia Circuit

United States v. Jones, 2021 U.S. App. LEXIS 17756 (D.C. Cir. June 15, 2021)

On the night of April 6, 2019, the Metropolitan Police Department (MPD) alerted two police officers that its ShotSpotter system had identified the sound of gunshots in the 3500 block of 13th Street Southeast in Washington, D.C. ShotSpotter is â??a surveillance network of GPS-enabled acoustic sensorsâ?• that â??use[s] sophisticated microphones to record gunshots in a specific area.â?•

The officers arrived on the block a minute and a half after receiving the alert. The officers saw a man, later identified as Chauncey Jones, walking quickly and observed that there was no one else outside on the block. While the officers checked for victims, a dispatcher reported over their radio that citizens on neighboring blocks were calling 911 to report gunshots heard at either end of the 3500 block. The officers believed these were the same shots reported by ShotSpotter, as they had heard no additional shots since arriving on the block.

Finding no victims, the officers decided to stop Jones, following him around the corner onto Trenton Place, where a third officer joined them. As Jones continued to walk away, one of the officers called out to him, â??Hello, how ya doinâ??? Hello. Excuse me! Hello. You donâ??t hear me talking to you?â?• After approximately ten seconds, Jones, who was wearing a hooded jacket, stopped and turned back toward the officers, removing the headphones he was wearing under the

jacketâ??s hood. According to officer testimony, Jones â??kept moving, like moving a lot,â?• and his â??hand kept moving, gravitating towards his waistband area,â?• which led one of the officers to grab Jonesâ??s hand while telling him to stop moving. Observing an item jostle in Jonesâ??s waistband, another officer tackled Jones and, after a struggle, recovered the item, which was a pistol.

Jones, who had a previous felony conviction, was charged with unlawful possession of a firearm and filed a motion to suppress the pistol, arguing that the police officersâ?? stop had violated the Fourth Amendment because they lacked a reasonable and articulable suspicion that Jones was engaged in criminal activity. The district court denied the motion and Jones was subsequently convicted. On appeal, Jones claimed that the pistol should have been suppressed because the officers lacked reasonable suspicion to stop him in the first place.

The DC Circuit Court of Appeals disagreed. Under Terry v. Ohio, the Supreme Court held that officers may stop a citizen if they are â??able to point to specific and articulable facts which, taken together with rational inferences from those facts, support a reasonable and articulable suspicion that the person seized is engaged in criminal activity.â?• A Terry stop, which constitutes a Fourth Amendment seizure, â??occurs when physical force is used to restrain movement or when a person submits to an officerâ??s show of authority.â?• The Supreme Court clarified in Illinois v. Wardlaw that evidence must include more than mere â??presence in an area of expected criminal activity.â?•

In the case at hand, both parties agreed that the stop occurred when Jones stopped walking and removed his headphones at the officerâ??s direction. Jones conceded that the officers had reasonable suspicion that a gun was fired on the 3500 block of 13th Street Southeast shortly before their arrival but Jones disputed whether the officers had grounds to suspect that he had been involved.

The court found that the totality of the information known to officers when Jones was stopped sufficed to raise a reasonable suspicion because: 1) the ShotSpotter alert and dispatcher report from MPD indicated that shots were fired in the 3500 block of 13th Street Southeast; 2) the officers arrived at the location of the reported gunshots within a minute and a half of the MPD call; 3) officers testified that they saw that Jones was the only person on that block; 4) Jones was walking quickly away from the location of the shooting; and 5) Jones did not initially respond to an officerâ??s repeated efforts to get his attention and continued to walk away.

In addition, while Jones did not initially respond to one officerâ??s repeated efforts to get his attention, when he did finally respond, he reached up in a gesture suggesting he was removing earbuds, which might indicate that he didnâ??t hear the officerâ??s calling out to him. While officers could have drawn an alternative, non-suspicious inference from Jonesâ??s failing to respond and continuing to walk away, *e.g.*, he could have been listening to loud music and initially failed to hear calls out to him, the district court found that when the officer commanded Jones to stop, the officer could not see that Jones was wearing headphones and, therefore, it was reasonable for officers to treat Jonesâ??s non-responsiveness as grounds for suspicion.

The DC Circuit Court of Appeals affirmed the district courtâ??s denial of Jonesâ??s motion to suppress the firearm seized from his waistband, holding that the officers that seized the gun had reasonable suspicion, based on the totality of the facts, that Jones was involved in criminal activity.

For the courtâ??s opinion: https://cases.justia.com/federal/appellate-courts/cadc/20-3034/20-3034-2021-06-15.pdf?ts=1623769263

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