



RESOURCES

Tools of Convenience or Exigent Circumstances?

By **Daigle Law Group**

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Police officers responded to a 911 call reporting domestic violence at Jaquanna Foreman's residence. Foreman informed the officers that her former boyfriend, Erick Hobbs, had come to her home, brandished a semi-automatic handgun, and used the gun to break a window in her home. Hobbs then entered the home and took a television. Foreman also stated that Hobbs threatened to kill her, her daughter, and other family members, and warned that he would harm any responding officers if she contacted the police. Concerned for their safety, the officers accompanied Foreman and her daughter to the police station and initiated surveillance of Foreman's residence while Hobbs remained at large. Foreman provided the officers with Hobbs's cell phone number and mentioned that she had seen him in possession of assault rifles and had noticed his obsession with firearms.

During this time, Detective Michael Nesbitt confirmed that Hobbs had a violent criminal history, including convictions for armed robbery and attempted murder. Based on this information, Detective Nesbitt concluded that there was an extreme urgent threat to the community and submitted an exigent request to Hobbs's cell phone provider, T-Mobile. The request sought immediate police access, without a warrant, to obtain "pings" indicating Hobbs's cell phone location and call logs displaying the phone numbers Hobbs contacted, enabling the officers to locate him.

Within an hour, T-Mobile responded with real-time pings on Hobbs's cell phone, providing Detective Nesbitt with Hobbs's general location within a range of 3,000 to 5,000 meters, with updates every 15 minutes. Another detective utilized call logs obtained from T-Mobile to identify Hobbs's associates residing within the geographical range of each ping, leading to a more precise location of Hobbs.

Approximately six hours after the domestic incident, a team of officers attempted to make a traffic stop of Hobbs's vehicle. Hobbs initially tried to flee from the officers but eventually collided with a parked vehicle. The officers apprehended Hobbs and discovered a loaded handgun on the ground between the driver-side door of his car and the curb. As a convicted felon, Hobbs was charged with unlawful possession of a firearm and ammunition.

Hobbs filed a motion to suppress the firearm, arguing that the officers' use of the cell phone pings and call log did not justify the exigent circumstances exception to the Fourth Amendment's warrant requirement. The district court disagreed and denied the motion. Hobbs appealed.

FOURTH CIRCUIT COURT OPINION

The court held that the officers reasonably concluded that Hobbs was armed and dangerous, posing an imminent threat to Foreman, her family members, and law enforcement. Additionally, the court acknowledged that T-Mobile, Hobbs's cell phone provider, had a reputation for being slow in responding to law enforcement search warrants, often taking several days to produce the required cell phone location information. Considering these circumstances, the court determined that the intrusion on Hobbs's privacy rights was limited to the exigency. Importantly, the officers did not attempt to enter Hobbs's home without a warrant or track his movements for an extended period. Instead, they apprehended him within approximately one hour of receiving the pings.

Consequently, the court held that the exigent circumstances required the officers to promptly obtain Hobbs's cell phone location information from T-Mobile using the exigent request.

TAKEAWAYS

A key takeaway from the court's decision is that the exigent circumstances exception should not be utilized as a tool of convenience by law enforcement officers unless there is an immediate danger to individuals, a fleeing suspect, or a need to prevent the imminent destruction of evidence. In this case, the court recognized that an exigent request was absolutely necessary. Hobbs posed a clear and present danger as an armed and dangerous individual who openly threatened Foreman, her family members, and law enforcement personnel.

It is crucial to understand that the exigent circumstances exception must be invoked only when there is an absolute need for immediate action. This case exemplifies the proper use of an exigent request, as Hobbs's violent history, his access to firearms, and his explicit threats created a situation where the safety of individuals was at stake. The officers acted swiftly and responsibly to apprehend Hobbs within a reasonable timeframe, ensuring the protection of the community and preserving crucial evidence.

However, it is essential for law enforcement officers to exercise caution and balance their actions within the boundaries of the law. The court emphasized that the intrusion on Hobbs's privacy rights was limited to the exigency at hand. Officers should not overstep their authority by conducting unwarranted searches or prolonged surveillance without proper justification.

In conclusion, this case serves as a reminder of the importance of considering exigent circumstances when dealing with imminent threats to public safety. The decision highlights the need for a careful assessment of the situation and the reasonable application of the law to ensure the swift and appropriate response by law enforcement officers.

Surat v. Klamser, 2022 WL 16826568 (10th Cir. 2022)

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