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

May 2022

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 5 INFORMER 22.

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CASE SUMMARIES

United States Supreme Court

Thompson v. Clark, 142 S. Ct. 1332 (2022)

In January 2014, Larry Thompson was living with his fiancée and their newborn baby in an apartment in Brooklyn, New York. Thompson's sister-in-law, who apparently suffered from a mental illness, called 911 to report that Thompson was sexually abusing the baby. When Emergency Medical Technicians (EMTs) arrived, Thompson denied that anyone had called 911. The EMTs left but later returned with four police officers. Thompson told the officers they could not enter the apartment without a warrant. The police nonetheless entered the apartment and arrested Thompson for obstructing governmental administration and resisting arrest. EMTs took the baby to the hospital where medical professionals examined her and found no signs of abuse.

Thompson was detained for two days before being released. The charges against Thompson were dismissed before trial without any explanation by the prosecutor or judge. After the dismissal, Thompson filed suit against the officers under 42 U. S. C. §1983, alleging that he was "maliciously prosecuted" without probable cause, which led to his unlawful seizure in violation of the Fourth Amendment.

To proceed with a Fourth Amendment claim for malicious prosecution under §1983, a plaintiff, such as Thompson, must demonstrate, among other things, that he obtained a favorable termination of the underlying criminal prosecution. To meet that requirement, Second Circuit precedent required Thompson to show that his criminal prosecution ended not only without a conviction, but also with some affirmative indication of his innocence.

The district court, bound by this precedent, held that Thompson's criminal case has not ended in a way that affirmatively indicated his innocence because Thompson could not offer any substantial evidence to explain why his case was dismissed. On appeal, the Second Circuit Court of Appeals affirmed the dismissal of Thompson's claim. The Supreme Court granted certiorari to resolve the split among the Courts of Appeals over how to apply the favorable termination requirement concerning a Fourth Amendment claim under §1983 for malicious prosecution.

In a 6-3 opinion authored by Justice Cavanaugh, the Court held that a Fourth Amendment claim under §1983 for malicious prosecution does not require the plaintiff to show that the criminal prosecution ended with some affirmative indication of innocence. A plaintiff need only show that the criminal prosecution ended without a conviction.

The Court supported this position by finding that American tort-law consensus as of 1871, when § 1983 was enacted by Congress, did not require a plaintiff in a malicious prosecution suit to show that his prosecution ended with an affirmative indication of innocence. The Court reasoned that a Fourth Amendment claim for malicious prosecution under §1983 should be similarly construed.

The Court commented that doing so is consistent with "the values and purposes" of the Fourth Amendment. Specifically, the question of whether a criminal defendant was wrongly charged does not logically depend on whether the prosecutor or court explained why the prosecution was dismissed. In addition, a person's ability to seek redress for a wrongful prosecution cannot reasonably "turn on the fortuity of whether the prosecutor or court happened to explain why the

charges were dismissed." Finally, requiring a plaintiff to show that his prosecution ended with an affirmative indication of innocence is not necessary to protect officers from unwarranted civil suits as officers are still protected by the requirement that the plaintiff show the absence of probable cause and by qualified immunity.

In this case, the Court held that Thompson satisfied the requirement that his criminal prosecution ended without a conviction, and the lower courts erred by requiring some affirmative indication of his innocence. As a result, the court reversed the judgment of the Second Circuit Court of Appeals and remanded the case.

In conclusion, the Court specifically noted that it expressed no view on additional questions that may be relevant on remand, including whether Thompson was ever seized as a result of the alleged malicious prosecution, whether he was charged without probable cause, and whether the officers are entitled to qualified immunity. On remand, the Second Circuit or the District Court, as appropriate, may consider those and other pertinent questions.

For the Court's opinion: https://www.supremecourt.gov/opinions/21pdf/20-659_3ea4.pdf

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Circuit Courts of Appeals

Seventh Circuit

United States v. Swinney, 28 F.4th 864 (7th Cir. 2022)

Around 9:30 a.m. on November 19, 2018, an anonymous woman called 911 to report that she had just seen a man on the street take a silver handgun out of his pocket. The woman described that man as wearing blue jeans, white gym shoes, a black skullcap, and a black coat with fur around the collar. The woman explained that she was watching the man and that he was walking towards AIDA liquor store with his hand in his right coat pocket where the gun was located.

As the 911 operator asked follow-up questions, the woman became more animated and stated that the man just walked into a liquor store. The call, which was recorded, lasted around ninety seconds, and the caller's cell phone number was captured by the 911 system. The dispatcher then notified officers that a male wearing "a black skull cap" and "black coat with fur just pulled a large gun from his pocket" and "just walked into the AIDA liquor store."

A few minutes after the radio dispatch, several officers responded to the call and entered the liquor store. The officers saw a man, later identified as Tyshawn Swinney, waiting in line at the front register. Swinney was wearing a black coat with a fur-trimmed hood, a black skullcap, blue jeans, and white sneakers. The officers requested Swinney step out of line, patted him down, and found a loaded .45-caliber semiautomatic pistol in Swinney's right coat pocket. Swinney was arrested for possessing a firearm in a place that is licensed to sell alcohol, a violation of Illinois law. The government subsequently charged Swinney with possession of a firearm by a felon.

Swinney filed a motion to suppress the gun as the fruit of an illegal search, arguing that the police did not have reasonable suspicion to conduct a Terry stop because the anonymous tip did not reliably report that Swinney had committed or was committing a crime. The district court denied Swinney's motion, finding that there was enough reliable information to establish reasonable

suspicion that Swinney was carrying a gun. Swinney pled guilty but preserved his right to appeal the denial of his suppression motion.

Police officers may detain a suspect for a brief investigatory stop if they have a "reasonable suspicion based on articulable facts that a crime is about to be or has been committed." Usually, anonymous tips alone "are not reliable enough to establish reasonable suspicion" because they "seldom demonstrate the informant's basis of knowledge or veracity." However, in Navarette v. California, the Supreme Court "identified three factors that make an anonymous tip reliable enough to create reasonable suspicion: the tipster (1) asserts eyewitness knowledge of the reported event; (2) reports contemporaneously with the event; and (3) uses the 911 emergency system, which permits call tracing."

Although not all the information from the anonymous call was relayed to the officers, the Seventh Circuit Court of Appeals held that the dispatcher's description of Swinney's clothing—his 'black skullcap" and "black coat with fur"—was sufficiently detailed for the officers to be able to identify him. In addition, while the officers were not able to listen to the caller's play-by-play account of Swinney's movements, the dispatcher still relayed the immediacy of the caller's account; the officers knew that the man "*just* pulled a large gun out of his pocket" and "*just* walked into the AIDA liquor store." The court concluded this language indicated that the caller had observed these actions as they were happening—she both had "eyewitness knowledge of the reported event" and "reported contemporaneously with the event." Finally, the caller used the 911 emergency system and was, therefore, able to be tracked down, fulfilling the Supreme Court's third and final factor indicating reliability. Based on these facts, the court held that the anonymous call provided enough information to establish reasonable suspicion that Swinney was carrying a firearm in a liquor store, a violation of Illinois law.

For the court's opinion: https://cases.justia.com/federal/appellate-courts/ca7/21-1006/21-1006-2022-03-16.pdf?ts=1647453622

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United States v. Ambriz-Villa, 28 F.4th 786 (7th Cir. 2022)

Raul Ambriz-Villa drove past Illinois State Trooper John Payton on I-57, where Trooper Payton was parked in his patrol car. Trooper Payton, who is specially trained in drug interdiction, made several observations about Ambriz-Villa's car which led him to suspect potential drug trafficking activity. When Ambriz-Villa's car crossed the solid white line on the shoulder of the road, Trooper Payton executed a pretextual traffic stop. As was his custom, Trooper Payton asked Ambriz-Villa to sit in the front seat of the patrol car as a safety measure for the duration of the traffic stop. While processing a warning for the traffic violation, Trooper Payton asked Ambriz-Villa about his background and purpose for traveling. Ambriz-Villa said he owned a tire shop in Nebraska and was driving to Georgia for his nephew's birthday and that the rest of his family had flown down. When asked why he chose to drive alone, Ambriz-Villa "floundered nonresponsive," and then when asked again, stated that it was because he liked to drive. Still processing the warning, Trooper Payton asked more questions. Throughout this conversation, Ambriz-Villa's unusual responses and excessively nervous and evasive reactions raised Trooper Payton's suspicion that Ambriz-Villa was involved in criminal activity.

After processing the warning, Trooper Payton handed it to Ambriz-Villa, who then opened the door and began to exit the patrol car. When Ambriz-Villa was "halfway out the door," Trooper Payton asked, "Do you mind if I ask you a few more questions?" Ambriz-Villa agreed, and

Trooper Payton then asked whether he was involved in any drug activity, which Ambriz-Villa denied, and if he would consent to a search of his car. Ambriz-Villa said yes. Trooper Payton asked again "for clarification", and Ambriz-Villa again confirmed that he consented to the search of his car. The search uncovered 13 packages, roughly one kilogram each, of methamphetamine.

The government charged Ambriz-Villa with possession with intent to distribute at least 500 grams of methamphetamine. Ambriz-Villa filed a motion to suppress the drugs, which the district court denied.

On appeal, Ambriz-Villa conceded that Trooper Payton was permitted to stop him based on the traffic violation but argued that the scope and the manner of the stop was unreasonable under the Fourth Amendment because Trooper Payton asked him repetitive and persistent questions not related to the reason for the initial stop while he was in the patrol car.

The Seventh Circuit Court of Appeals disagreed. An officer may ask a person questions unrelated to the reason for the traffic stop as long as doing so does not prolong the duration of the stop. In addition, it is irrelevant if the person is in the officer's patrol car during questioning, as officers are permitted to ask individuals to sit in their patrol cars while writing citations. In this case, the court held that Trooper Payton's questioning did not prolong the duration of the traffic stop; therefore, Ambriz-Villa's Fourth Amendment rights were not violated.

Next, Ambriz-Villa argued that his consent to search was not voluntary. Ambriz-Villa claimed that when he was exiting the patrol car to return to his car with the warning violation in his possession, no reasonable person would have felt free to ignore Trooper Payton's question and simply walk away.

To evaluate voluntariness of consent to a search, the court examines the totality of the circumstances, considering the following factors: (1) the person's age, intelligence, and education; (2) whether he was advised of his constitutional rights; (3) how long he was detained before he gave his consent; (4) whether his consent was immediate, or was prompted by repeated requests by the authorities; (5) whether any physical coercion was used; and (6) whether the individual was in police custody when he gave his consent.

Here, the court concluded that, under the totality of the circumstances, Ambriz-Villa's consent was voluntarily given. First, it was undisputed that Trooper Payton had handed Ambriz-Villa the warning ticket and that Ambriz-Villa was exiting the police car at the time the consent to search was sought. Second, the stop occurred on a public highway during the day. Third, Trooper Payton showed no weapons nor used any physical force. Finally, Trooper Payton's language and tone were limited to a series of targeted questions and confirmed whether a search would be allowed.

For the court's opinion: https://cases.justia.com/federal/appellate-courts/ca7/21-1362/21-1362-2022-03-14.pdf?ts=1647293420

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Bayon v. Berkebile, 29 F.4th 850 (7th Cir. 2022)

On the morning of December 24, 2017, Alhadji Bayon attempted to rob a gas station in Indianapolis, Indiana. He fled the scene in a white SUV. Numerous police officers learned of the attempted robbery over their police radios and gave chase. Bayon refused to stop and, consequently, a high-speed pursuit through residential areas ensued. To end this dangerous

situation, one of the pursuing officers executed a maneuver with his car that resulted in Bayon's SUV spinning and crashing into a tree in the front yard of a home.

Using a loudspeaker, one of the officers ordered Bayon to exit the SUV multiple times. However, it took Bayon several minutes to exit the vehicle. During this time, the officers had a clear view of the driver-side door, but because the door had been damaged in the crash and the airbags had deployed, the officers could not see inside the SUV. When Bayon exited the SUV, officers shot him. Bayon survived and subsequently sued the officers, alleging that the shooting was unreasonable and violated the Fourth Amendment.

Bayon testified in his deposition that he was dazed from hitting his head during the collision. In addition, Bayon claimed the damage from the crash made it difficult for him to open the door of the SUV, but he was eventually able to force it open and exit the vehicle. Once outside the SUV, Bayon claimed that he saw ten to fifteen police officers and heard two conflicting commands: to put his hands up and to show identification. Bayon testified that after he reached toward his back right pants pocket for his wallet, the officers shot him three times. Bayon then fell face-first to the ground. According to Bayon, the officers approached him and rolled him over. Bayon stated that once he was rolled over, one of the officers said, "Oh, my God, he doesn't have a weapon."

The officers presented a different version of the events. The officers testified that it took Bayon approximately five minutes to exit the SUV after being given multiple orders to do so. During this time, one of the officers observed the SUV rocking back and forth and thought that Bayon could be "digging around" for something in the vehicle.

After Bayon finally exited the vehicle, the officers stated that they saw him take several aggressive steps towards them and they also saw him reach for something in or near his waistband, not his back pocket. One of the officers testified that she saw Bayon reach down and lift up his t-shirt where she saw a black, hard object with a ribbed handle that she thought it was a gun. Another officer testified that he saw Bayon lift his shirt and reach for a black object in the waistband of his pants and that he heard other officers yell "gun" before shots were fired.

After rolling Bayon over while he was on the ground, one of the officers pulled "a car jack handle, about 2 feet long" out of his pant leg. Finally, when asked by an officer why he did it, Bayon told the officers that he "wanted to die." In his deposition, Bayon stated that he did not recall making that statement.

The district court denied the officers qualified immunity. The court commented that whether a defendant officer is entitled to qualified immunity involves two questions: (1) whether the facts, taken in the light most favorable to the plaintiff (Bayon) make out a violation of a constitutional right, and (2) whether that constitutional right was clearly established at the time of the alleged violation.

In this case, the district court found that taking the facts in the light most favorable to Bayon, as it was required to do, there were genuine issues of material fact concerning the incident that needed to be decided by a jury. Specifically, the district court concluded that if a reasonable jury credited Bayon's version, it could find that, when the officers shot Bayon, he was subdued and complying with the officers' orders. Consequently, if he was complying with the officers' orders at the time of the shooting, then the jury would be obligated to find that the officers employed an unreasonable use of force. The officers appealed.

The Seventh Circuit Court of Appeals affirmed the district court's denial of qualified immunity for the officers. The court noted the officers argued they were entitled to qualified immunity based on their version of the facts, not on the facts taken in the light most favorable to Bayon. The court found that the problem with this argument was that the facts offered by the officers and their characterization of those facts conflicted with Bayon's account of the incident. In this case, both parties disagreed as to what exactly happened after Bayon exited the SUV and prior to the gunshots being fired. For example, did Bayon pose a threat to a reasonable officer after he exited his vehicle? How immediate was the threat? Did he continue to resist arrest? The court held that there were factual disputes to be addressed concerning the objective reasonableness of the force used to arrest Bayon; as such, a trial is required before a determination can be made as to whether the officers are entitled to qualified immunity.

For the court's opinion: https://cases.justia.com/federal/appellate-courts/ca7/21-1125/21-1125-2022-03-28.pdf?ts=1648490419

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Eighth Circuit

Williams v. City of Burlington, 27 F.4th 1346 (8th Cir. 2022)

Officers Chris Chiprez and Joshua Riffel stopped Marquis Jones on the afternoon of October 1, 2017, for playing music too loudly while driving in a residential neighborhood. Jones got out of his car and ran from the traffic stop. Officer Chiprez pursued on foot while Officer Riffel intercepted Jones with the patrol car. Officer Riffel got out and tackled Jones in the street. Officer Riffel saw that Jones had a handgun. At this point, Officer Riffel shoved Jones away and shouted, "He's got a gun, Chip!" Officer Chiprez, arriving on foot, saw Officer Riffel retreating.

Jones continued running, up a hill, away from the officers. Officer Chiprez yelled "Drop it!" Seconds later, he fired seven shots, missing Jones. Jones ran through a gate into a fenced-in yard, where he got down on the ground. Officer Chiprez approached the yard, yelled "stop," and shot Jones in the chest, killing him.

It was undisputed that, near where Officer Chiprez ordered him to drop the gun, Jones dropped it. However, Officer Chiprez claimed that he mistakenly believed Jones was still armed when he shot and killed him, and that he reasonably believed Jones was in a "firing position" at the time.

Jones's estate (Plaintiff) sued Officer Chiprez alleging that he used excessive force, in violation of the Fourth Amendment, against Jones. The Plaintiff claimed that Officer Chiprez knew or should have known that Jones was unarmed when he shot him. The Plaintiff refuted Officer Chiprez's account of the shooting by presenting autopsy results, body camera footage, and inconsistent police reports of the incident. This evidence supported the Plaintiff's claim that Officer Chiprez saw Jones drop the gun, and that he could not have reasonably believed that Jones was in a shooting position.

Officer Chiprez filed a motion for summary judgment based on qualified immunity. The district court held that Officer Chiprez was not entitled to qualified immunity based on two genuine disputes of material fact that needed to be resolved by the jury: (1) whether Officer Chiprez saw Jones drop the gun when he ordered him to do so; and (2) whether Officer Chiprez was

unreasonable in believing Jones was taking a firing position rather than surrendering. Officer Chiprez appealed.

The Eight Circuit Court of Appeals agreed with the district court and affirmed the denial of qualified immunity. When analyzing a claim of qualified immunity, "courts may not resolve genuine disputes of fact in favor of the party seeking summary judgment," in this case, Officer Chiprez. Instead, a court "must construe the facts in the light most favorable to [the non-moving party, in this case, the Plaintiff] to determine whether a constitutional violation occurred and whether any violation of a constitutional right was clearly established.

In this case, the Eighth Circuit Court of Appeals noted that in one frame of the body-camera footage, Officer Chiprez appeared to look directly at the items dropped by Jones—including the gun—while running after him. In addition, the autopsy results and re-creations of the scene supported the Plaintiff's claim that Jones was nearly prone on the ground when he was fatally shot, rather than in the upright "firing position" as alleged by Officer Chiprez. The court held that this evidence presented by the Plaintiff, if credited by the jury, would support a finding that Officer Chiprez used excessive force against Jones. The court added that, if the jury believed that Officer Chiprez used excessive force against Jones, it was clearly established in 2017 that the use of deadly force against a fleeing suspect who does not pose a significant threat of death or serious physical injury to the officers or others is unlawful.

For the court's opinion: https://cases.justia.com/federal/appellate-courts/ca8/21-1450/21-1450-2022-03-09.pdf?ts=1646843451

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Eleventh Circuit

United States v. Sanchez, 30 F.4th 1063 (11th Cir. 2022)

Police officers obtained a warrant to seize Romeo Sanchez's cell phone (Phone 1) and then search it for evidence related to a child pornography investigation. When the officers arrived at Sanchez's house, he came out to the driveway to speak to them. Sanchez told the officers that he lived at the house with his parents. The officers showed Sanchez a copy of the search warrant for Phone 1 and told him they were there to seize the phone. Sanchez told the officers, "I'm fine giving you my phone."

While Sanchez was speaking with the detectives, his parents returned home. Sergeant Kaye approached them and told them that their son was being questioned as part of an investigation. Later, they came over to where the detectives were speaking with Sanchez. At that point, Sanchez and the other officers were discussing the warrant for seizing the phone, and Sergeant Kaye proposed that Sanchez's parents retrieve the phone. Sanchez said that his parents knew where the phone was located and said it was in his room.

Sergeant Kaye later testified that Sanchez's mother agreed to get the phone from the house, and he went in with her to get it. Sergeant Kaye did not recall whether her consent was verbal or nonverbal, but he testified that he would not have entered the house without her permission and the district court found his testimony credible.

Sergeant Kaye testified that he accompanied Sanchez's mother to get the phone "for safety purposes and to ensure that the phone was not tampered with." She led him to an unlocked

bedroom where the phone was located. Sergeant Kaye could not recall who picked up the phone, but he testified that they were in the home just a few minutes, and after they had retrieved the phone, the officers left. The officers did not arrest Sanchez at that time. A forensic search of Phone 1 uncovered chat conversations between Sanchez and a fourteen-year-old girl concerning their sexual relationship and eighteen videos of child pornography.

A few months after the officers seized Phone 1, Sanchez was arrested at his place of employment. During the arrest, Sanchez attempted to conceal his phone (Phone 2) from the officers. The officers seized Phone 2 and obtained a warrant to search it. The search of Phone 2 produced evidence of another child-victim and additional images of child pornography.

The government subsequently charged Sanchez with a variety of criminal offenses based on evidence found on Phone 1 and Phone 2. Sanchez filed a motion to suppress all evidence obtained from both phones. First, Sanchez argued that, although the officers had a warrant to search Phone 1, they did not have a warrant to search his home to retrieve it; therefore, their warrantless entry into his home violated the Fourth Amendment. Next, Sanchez argued that the officers obtained the warrant to search Phone 2 based on evidence they discovered on Phone 1; therefore, the evidence obtained from Phone 2 "was fruit of the poisonous Phone 1 tree." The district court denied Sanchez's motion and upon conviction, he appealed.

First, the Eleventh Circuit Court of Appeals held that Sanchez verbally consented to the seizure of Phone 1 from his house when he told the officers that he was "fine" with giving them his phone and told them it was located in his room. Next, the court found that after Sanchez made this comment, his mother gave Sergeant Kaye nonverbal consent to follow her into the home to retrieve the phone. The court emphasized that it has "repeatedly made clear that consent can be non-verbal. For example, stepping aside and yielding the right-of-way to officers at the front door is valid consent to enter and search. Likewise, silently accepting an officer's expressed intent to enter the house solely for the purpose of retrieving a phone is also valid consent, especially when the owner of the phone, who is a co-occupant of the house, has already verbally consented to turning it over (pursuant to a valid warrant) and has told the officers in which room it is located. Based on these facts, the court held that the officers had valid consent, obtained voluntarily from Sanchez and his mother to enter the house for the sole purpose of retrieving Phone 1. Because the search for, and seizure of, Phone 1 was lawful, the court concluded that the search for and seizure of Phone 2 was not tainted.

For the court's opinion: https://cases.justia.com/federal/appellate-courts/ca11/19-14002/19-14002-2022-04-05.pdf?ts=1649181658

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