

C.A.L.L.

City Attorney Law Letter

2015 Legal Survival Skills for Rookies

The City Attorney's Office, with assistance from the Police Department, Community Engagement (Code Enforcement) and Judge Jeff Harper, held its Legal Survival Skills for Rookies class the week of March 16—20, 2015. Officers in attendance were (front row-left to right) Morgan Abernathy, Mitchel Valley, Roger Eubanks, Shelby West and (second row-left to right) Benjamin Stuckey, Brian Gabbard, Patrick Olcott, Jonathan Waters, and Reo Blow. During this 5 day session, everything from traffic light issues to community oriented policing were covered. At the end of the week, tests were given in the categories of Civil Liability, Criminal Law/Criminal Procedure, Traffic Law, DWI/DUI, and Community/Police/Courts. The highest overall test score certificate was given to Roger Eubanks. Brian Gabbard received the highest score for Community/Police/Court; Morgan Abernathy received the highest score



for Domestic Violence; Roger Eubanks received the highest score in both Criminal Law/Criminal Procedure; Benjamin Stuckey and Roger Eubanks tied for the highest score in DWI/DUI/Traffic Law; Mitchel Valley received the highest score in Civil Liability and Brian Gabbard received the highest score for Community/Police/Courts.

An Analysis of No DL Charges For 2013 & 2014

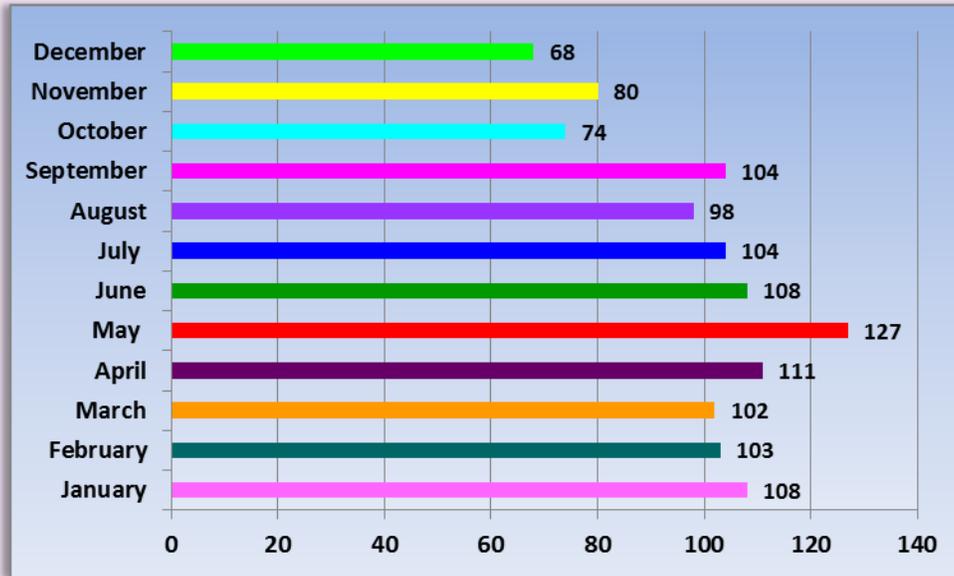
Like many other communities, the City of Springdale has a problem with large numbers of unlicensed drivers on its streets and highways. Unlicensed drivers present a threat to the safety of other motorists and to property owners. After all, there is a reason why one must pass both a written test and a driving test before the State will give someone a drivers' license. Those who have not taken and passed these tests are a danger

to themselves and other people, as they likely do not understand the rules of the road. With this public safety goal in mind, it is both helpful and interesting to analyze the citations issued in Springdale for No Drivers' License ("No DL") during the last two years (2013 and 2014). In an attempt to compare "apples to apples", it is important to note that every effort has been made to exclude from this analysis any citations for suspended driv-

ers' license, and to focus only on those individuals who do not actually possess a drivers' license.

2013 No DL Citations

In 2013, a total of 1,187 citations were issued for No DL in Springdale. The following chart indicates how many citations were written each month, with May being the highest and December being the lowest:



Reasons for Law Enforcement Contact (2013)

Prior to determining if a person possesses a drivers' license, the law enforcement officer must first have some legally valid reason for contacting the person. In other words, an officer does not know if a person possesses a drivers' license until after the officer makes contact. In 2013, the most common reason for officer contact was that the person driving committed a traffic violation. More specifically, of the 1,187 citations written for No DL in Springdale in 2013, 735 were the result of the driver committing a traffic violation. In 2013, 61.92% of those individuals cited for No DL were stopped because of a traffic violation.

Springdale in 2013, 132 were the result of an equipment violation on the vehicle (tail light out, broken windshield, etc.), 102 were the result of a no seatbelt or no child restraint traffic stop, and 84 were the result of an expired or no vehicle tag traffic stop.

Another method of determining that a person does not possess a drivers' license is during the investigation of a traffic accident. In 2013, of the 1,187 persons cited for No DL in Springdale, 233 of those were involved in a traffic accident. In other words, 19.63% of the individuals cited for No DL in Springdale in 2013 were involved in a traffic accident. That is 233 traffic accidents that could have been prevented had the person not been driving at all.

Other reasons exist for officer contact as well. Of the 1,187 citations written for No DL in

2013 No DL while Intoxicated

Persons who drive without a drivers' license present a public safety risk. Adding the element of alcohol or drugs makes that persons' driving doubly dangerous. In other words, a person who does not possess a drivers' license should not drive sober, let alone drunk. In 2013, there were 143 DWI arrests of persons who did not have a drivers' license. In other words, of the 1,187 persons cited for No DL in Springdale in 2013, 12.04% of those were driving while intoxicated. That is a disturbing number.

2013 Repeat Offenders

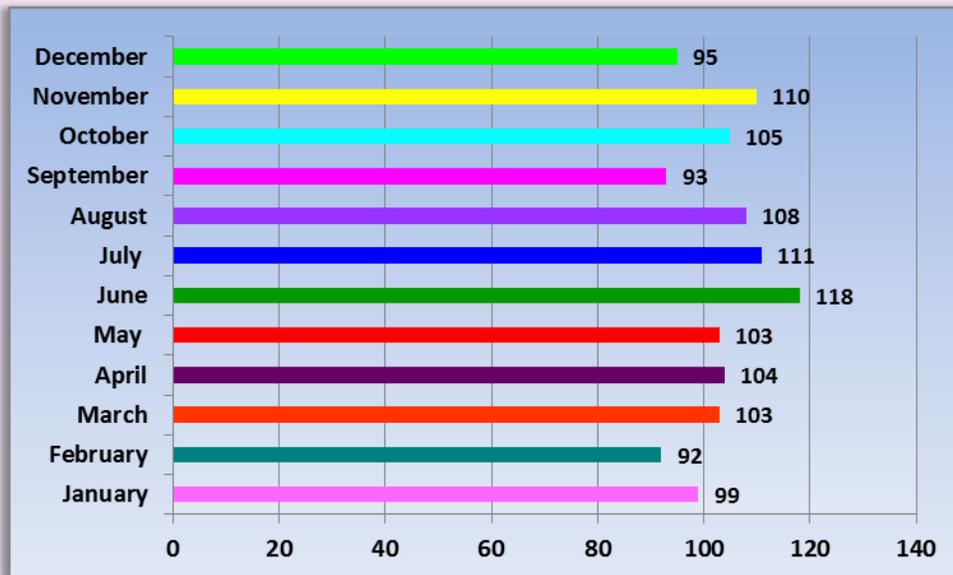
In 2013, the majority of those individuals cited for No DL were cited for the first time in Springdale. Of the 1,187 person cited for No DL in Springdale in 2013, 640 had no prior offenses in Springdale. In other words, 53.92% of those cited in 2013 were not repeat offenders. It should be noted, however, that many of these 640 "first time offenders" did not subsequently appear in court on the citation, and their identity remains questionable. Many of these individuals were unable to produce any form of identification at the time the citation was

written, so the officer was forced to believe them if they said their name was "Elvis Presley, date of birth 07/04/1976".

Of the 1,187 individuals cited for No DL in Springdale in 2013, 547 of those had at least one prior offense of No DL in Springdale. In other words, 46.08% of those people cited for No DL in Springdale had at least one prior offense of No DL in Springdale. The number of prior offenses committed by each of these 547 repeat offenders varied anywhere from 1 prior offense to 17 prior offenses. There were 57 individuals cited for No DL in Springdale in 2013 who had 5 or more prior offenses in Springdale.

2014 No DL Citations

In 2014, a total of 1,241 citations were issued for No DL in Springdale, a 4.55% increase over the 1,187 citations issued in 2013. The following chart indicates how many citations were written each month, with June being the highest and February being the lowest:



Hug a police officer, it's the law ~ Author Unknown

Reasons for Law Enforcement Contact (2014)

Prior to determining if a person possesses a drivers' license, the law enforcement officer must first have some legally valid reason for contacting the person. In other words, an officer does not know if a person possesses a drivers' license until after the officer makes contact. In 2014, like 2013, the most common reason for officer contact was that the person driving committed a traffic violation. More specifically, of the 1,241 citations written for No DL in Springdale in 2014, 760 were the result of the driver committing a traffic violation. In 2014, 61.24% of those individuals cited for No DL were stopped because of a traffic violation, compared to 61.92% in 2013.

Other reasons exist for officer contact as well. Of the 1,241 citations written for No DL in Springdale in 2014, 178 were the result of an equipment violation on the vehicle (tail light out, broken windshield, etc.), 71 were the result of a no seatbelt or no child restraint traffic stop, and 95 were the result of an expired or no vehicle tag traffic stop.

Another method of determining that a person does not possess a drivers' license is during the investigation of a traffic accident. In 2014, of the 1,241 persons cited for No DL in Springdale, 275 of those were involved in a traffic accident. In other words, 22.16% of the individuals cited for No DL in Springdale in 2014 were involved in a traffic accident. That is 275 traffic accidents that could have been prevented had the person not been driving at all.

2014 No DL while Intoxicated

Persons who drive without a drivers' license present a public safety risk. Adding the element of alcohol or drugs makes that persons' driving doubly dangerous. In other words, a person who does not possess a drivers' license should not drive sober, let alone drunk. In 2014, there were 173 DWI arrests of persons who did not have a drivers' license. In other words, of the 1,241 persons cited for No DL

in Springdale in 2014, 13.94% of those were driving while intoxicated. That is a disturbing number.

2014 Repeat Offenders

In 2014, a slim majority of those individuals cited for No DL were cited for the first time in Springdale. Of the 1,241 person cited for No DL in Springdale in 2014, 639 had no prior offenses in Springdale. In other words, 51.49% of those cited in 2014 were first time offenders, compare to 53.92% in 2013. It should be noted, however, that many of these 639 "first time offenders" did not subsequently appear in court on the citation, and their identity remains questionable. Many of these individuals were unable to produce any form of identification at the time the citation was written, so the officer was forced to believe them if they said their name was "Elvis Presley, date of birth 07/04/1976".

Of the 1,241 individuals cited for No DL in Springdale in 2014, 602 of those had at least one prior offense of No DL in Springdale. In other words, 48.51% of those people cited for No DL in Springdale in 2014 had at least one prior offense of No DL in Springdale, up from 46.08% in 2013. The number of prior offenses committed by each of these 602 repeat offenders varied anywhere from 1 prior offense to 14 prior offenses. There were 58 individuals cited for No DL in Springdale in 2014 who had 5 or more prior offenses in Springdale, compared to 57 in 2013.

Comparing 2013 and 2014

When comparing the statistics for No DL charges in 2013 to the statistics for 2014, some alarming results are noted. Most notably, the number of individuals arrested for DWI + No DL in 2014 increased by 20.97% from 2013. In 2013, 143 persons were arrested for DWI + No DL. That number increased to 173 in 2014. This is an alarming trend. That is why I have requested Senator Jon Woods and Representative David Whitaker to co-sponsor a bill in the 2015 Arkansas General Assembly which would create an

enhanced penalty for DWI + No DL, much like the enhanced penalty for DWI when a child is present in the vehicle. I will keep you posted should this bill become law.

Similarly, 2014 saw a sharp increase in the number of No DL offenders who are under the age of 18. In 2013, 73 persons under the age of 18 were cited for No DL in Springdale. That number increased dramatically by 28.77% to 94 in 2014. As such, it is important for law enforcement officers to determine who let these minors drive without a drivers' license, and to issue citations for allowing an unauthorized person to drive, where appropriate.

Finally, the number of persons involved in a traffic accident + No DL increased dramatically as well. In 2013, 233 of the individuals cited for No DL in Springdale were involved in an accident. That number increased by 18.02% in 2014 to 275.

Over the last two years, that is over 500 traffic accidents that could have been prevented had the person not been driving at all. In 2014, 22.16% of all persons cited for No DL were involved in a traffic accident.

This is the first two years that I have kept and evaluated statistics for No DL. I will continue to do so, so that trends can be noted, and information can be gathered about these offenders. As has been shown in this brief study, analyzing these statistics can also illustrate the need for a change in the law, so to better protect our citizens, and to discourage those without a drivers' license from driving.

Presented by:

Ernest B. Cate, City Attorney

Arkansas Court of Appeals Holds That Investigatory Stop Was Proper When Color of Vehicle Did Not Match Color Reported From Vehicle License Check

Facts Taken From the Case

On November 24, 2011, at around 1:00 a.m., Rogers Police Officer Dustin Wiens was sitting inside a patrol car at an intersection when a vehicle driven by Jordan Schneider passed by. For no particular reason, Officer Wiens began to follow Schneider's vehicle and ran the vehicle license to check the year, make, model, and color of the car. The license plate check indicated that the car was a blue 1992 Chevrolet Camaro. Officer Wiens recalled seeing a red car when Schneider's car passed by, and Officer Wiens noticed while following Schneider's car that it had a black bumper. Officer Wiens never saw any blue on the car before pulling Schneider over, and Officer Wiens had no opportunity to pull up beside Schneider's car to look at the other side before making the traffic stop. According to Officer Wiens, making a traffic stop on Schneider's vehicle was necessary to investigate whether the car was stolen. Officer Wiens also conceded that but for the color discrepancy of Schneider's vehicle, he would not have stopped Schneider.

At a suppression hearing, Schneider argued that the color discrepancy alone did not establish reasonable suspicion to stop the vehicle, and Schneider cited a case from Florida, *Van Teamer v. State*, 108 So. 3d 664 (Fla. Dist. Ct. App. 2013), to support his argument. The trial court acknowledged the case law from Florida, but denied the motion to suppress. Schneider then entered a conditional plea of guilty to the charges of possession of controlled substance and possession of drug paraphernalia, and he appealed the trial court's denial of his motion to suppress to the Arkansas Court of Appeals.

Argument and Decision by the Arkansas Court of Appeals

Schneider argued to the Arkansas Court of Appeals (Court) that Officer Wiens lacked reasonable suspicion to initiate an investigatory stop on Schneider's vehicle. The Court said that reasonable suspicion is defined as a suspicion based on facts or circumstances which of themselves do not give rise to the probable cause requisite to justify a lawful arrest, but which give rise to more than a bare suspicion. The Court continued that whether reasonable suspicion exists depends upon whether, under the totality of the circumstances, the police have specific, particularized, and articulable reasons that the person may be involved in criminal activity.

In analyzing the issue of whether the color discrepancy in a vehicle, standing alone, gives rise to reasonable suspicion to stop a vehicle, the Arkansas Court of Appeals noted that different courts around the United States have reached different conclusions. However, the Arkansas Court of Appeals concluded that a color discrepancy like the one presented in the facts by Officer Wiens permits an officer to reasonably suspect that, for example, the tags are fictitious or the car may be stolen, both of which justify an investigatory stop. Therefore, the Court affirmed the trial court's denial of Schneider's motion to suppress.

Case

This case was decided by the Arkansas Court of Appeals on December 17, 2014, and was an appeal from the Benton County Circuit Court, Honorable Judge Robin Green. The case citation is *Schneider v. State*, 2014 Ark. App. 711.

Presented by:

Taylor Samples, Senior Deputy City Attorney

DWI#3 - Exigent Circumstances Entry *State v. Grubb*

Steven Grubb was charged on citation with Driving While Intoxicated, 3rd offense on April 12, 2014. The charge was based on Springdale Police investigation of a citizen complaint of a traffic accident. Police officers entered a dwelling at night without a warrant and subsequently issued the citation.

Facts of the Case

On April 12, 2014 just before 6:52 p.m. a hit-and-run accident was called in to Springdale dispatch. The complainant stated he had witnessed reported that a tan Chevy Tahoe bearing Arkansas VL 284 PNK had rear-ended another vehicle and fled. Officers Mackey, Patton and Abernathy were dispatched to the area on Huntsville Street.

While enroute, the officers learned that the witness was following the fleeing vehicle and that it had travelled to a house at 518 Mill Street, where the caller was waiting.

Upon arrival, officers observed that the vehicle in question was parked in front of a house at that address. The caller was waiting across the street and indicated that the fleeing driver, described as an older white male wearing an orange shirt and bluejeans, had gone into the house. Officers also observed that the vehicle engine was still warm, the vehicle contained beer cans and loose pills and the contents of the vehicle had been thrust forward, likely due to collision. Officers also noticed damage to the front-end of the vehicle.

The officers proceeded to the door to the building and knocked and announced. At first, no one answered. After a few minutes, an unidentified male came to the door and invited officers in. The individual did not match the description. The individual explained that the house was a form of "halfway house" and had several residents, each with their own bedroom. The individual pointed out the door to the person in question, also identifying him as Steven Grubb.

Officers found Grubb's door ajar slightly. The officers could hear Grubb's breathing. The senior officer knocked with increasing intensity for approximately 2 minutes. There was no response. The officer then fully opened the door.

The officers observed that the man lying in bed matched the description provided. They could also see that he was still wearing his sunglasses and had keys in his hand while on his bed. An officer called out several times for the man to wake up. The officer then shook him. He woke up.

Officers talked with the man, identified as Steven Grubb, and invited him to voluntarily come to the station for a BRAC test, in which he blew a 0.195. Afterwards, he was returned to his residence and written a citation for DWI#3.

The Law firm of Norwood & Norwood, a criminal defense firm specializing in cases with Constitutional issues, was hired by the Defendant, Steven Grubb. At a hearing in Springdale District Court, the motion to suppress was denied and a plea was entered by Defendant who timely appealed to the Circuit Court, Arkansas Fourth Judicial District, Division 1, Judge Storey presiding.

Analysis

The central issue of the case on appeal was the Constitutional permissibility of the entry by officers. Entry of a residence by State actors is presumptively unreasonable in the absence of a warrant or consent, unless exigent circumstances exist. Exigent circumstances are those that require "immediate aid or action." The most

common examples of exigent circumstances involve the removal or destruction of evidence, danger to life, or hot pursuit of a suspect. While the evidence of a DWI offense clearly dissipates over time, other cases have held that metabolization of alcohol in the blood is not, by itself, sufficient to constitute an exigent circumstance.

In this case, Officer testimony indicated a concern for well-being of the subject, given the evidence of a collision. The Court ruling, issued by Judge William Storey in one of his final acts on this bench, identified the factors of the damage to the vehicle and unresponsiveness of the subject as justifying the warrantless intrusion.

Other testimony that, while not enumerated in the ruling, played a significant part in this decision, involved the lack of seizure of evidence or of the suspect. Had an actual arrest been made, or had evidence been seized by police, a different analysis would have been applied to this case.

Conclusion

Officers acted reasonably in investigating this case. They managed to walk the tightrope between violating civil rights and failing to aggressively pursue leads and, as a result, obtained a conviction while protecting the city.

This case was not further appealed. Therefore, these facts could still lead to a different result in another case as this is not considered settled law.

Case

This case was decided by the Arkansas Court of Appeals, and was an appeal from the Washington County Circuit Court, Honorable Judge William Storey. The case citation is *State v. Grubb*, CR 2014-1973-1

Presented by:

David Phillips, Deputy City Attorney



Arkansas Court of Appeals Holds that Information Given by Caller to Police Dispatch Provided Reasonable Suspicion to Make Investigatory Traffic Stop

Facts Taken From the Case

On November 11, 2012, at 3:54 p.m., Arkansas State Police dispatch received a call from a motorist traveling west on Interstate 40 near Fort Smith, who said that a silver Toyota pickup travelling in front of him was repeatedly "riding the rumble strip." The dispatcher logged the call as a possible DWI, and the caller provided to the dispatcher his name, phone number, and the type of vehicle he was driving. Additionally, the caller provided the dispatcher with the tag number of the Toyota, and the caller stayed on the phone with dispatch and followed the Toyota on the interstate until a state trooper made contact with the driver of the Toyota.

The caller testified that the Toyota would go from one lane to the shoulder of the road, driving down the rumble strip for extended periods of time. The caller also testified that the Toyota would then correct before going back and crossing to the other lane without signaling. The caller testified that the Toyota would then drive down the other rumble strip. The caller said that this happened on more than one occasion, that it went on for several minutes, and that it occurred on several occasions.

State Trooper Sam Bass testified that he was at headquarters when dispatch relayed the motorist's call that the motorist was in a black Jeep following a Toyota pickup that appeared to be all over the road and intoxicated. Trooper Bass drove to a location on Interstate 40, where he observed the two vehicles passing by.

Trooper Bass got behind the Toyota pickup and, without personally observing any traffic violations, made a traffic stop on the Toyota. The driver of the Toyota, Janet Tankersley, was

subsequently arrested for DWI. Following the trial court's denial of her motion to suppress evidence of her intoxication, Tankersley entered into a conditional guilty plea to DWI. Tankersley then appealed the trial court's denial of her motion to suppress to the Arkansas Court of Appeals.

Argument and Decision by the Court of Appeals

On appeal to the Arkansas Court of Appeals (Court), Tankersley argued that the trial court erred in denying her pretrial motion to suppress evidence of her intoxication because the caller's uncorroborated tip about Tankersley's illegal behavior was not sufficiently reliable to give the arresting officer reasonable suspicion to pull her over. In setting forth the applicable rule, the Court said that Arkansas Rule of Criminal Procedure 3.1 authorizes a police officer who is lawfully present in any place to:

in the performance of his duties, stop and detain any person who he reasonably suspects is committing, has committed, or is about to commit (1) a felony, or (2) a misdemeanor involving danger of forcible injury to persons or of appropriation of or damage to property, if such action is reasonably necessary either to obtain or verify the identification of the person or to determine the lawfulness of his conduct.

The Court continued that an investigatory stop is lawful when, considering the totality of the circumstances, an officer acts on particularized and objective reasons indicating that the person may be involved in criminal activity. The Court said that reasonable suspicion is a suspicion

based on facts or circumstances which of themselves do not give rise to the probable cause requisite to justify a lawful arrest, but which give rise to more than a bare suspicion.

Next, the Court discussed the case of *Frette v. City of Springdale*, 331 Ark. 104 (1998), where a truck driver phoned the Springdale Police Department and provided the dispatcher with his name, address, and occupation. The caller in *Frette* said that he had observed an elderly male in a red Volvo tractor-trailer drinking beer in the cab of his vehicle in the commercial-truck parking lot behind McDonald's. Springdale Officer Kwano then responded to the scene and discovered Frette behind the wheel inside a red tractor-trailer parked behind McDonald's. Officer Kwano ordered Frette to step out of the car, and noticed the strong odor of intoxicants on Frette, who swayed as he spoke. The Supreme Court in the *Frette* case enunciated a three-part test to determine the reliability of a citizen informant's report: (1) whether the informant was exposed to possible criminal or civil prosecution if the report is false; (2) whether the report is based on the personal observations of the informant; and (3) whether the officer's personal observations corroborated the informant's observations. Under the first factor, the caller in the *Frette* case received a high ranking on reliability because the caller identified himself by name, address, and occupation, thereby exposing himself to potential prosecution for making a false report. Under the second factor, the caller in *Frette* personally observed the alleged criminal activity and therefore provided a basis for knowledge of the tip. Under the third factor, the caller's report in the *Frette* case was substantially corroborated by the officer's own observations (Officer Kwano quickly arrived at the specified location and observed the vehicle as described with an older man sitting in the cab). Therefore, the court in *Frette* concluded that, under the totality of the circumstances, the informant's tip carried with it sufficient indicia of reliability to justify an investigatory stop under Rule 3.1.

Next, the Arkansas Court of Appeals discussed a recent case from the United States Supreme Court, *Navarette v. California*, 134 S.Ct. 1683 (2014), where the United States Supreme Court held that an officer who already has reasonable suspicion of drunk driving need not personally observe suspicious driving. In the *Navarette v. California* case, an anonymous 911 caller was run off the road by another vehicle. The United States Supreme Court in the *Navarette* case used a common sense approach that certain dangerous driving behaviors are sound indicia of drunk driving. The United States Supreme Court in the *Navarette* case noted that a reliable tip for dangerous driving behaviors such as weaving all over the roadway, crossing the center line and nearly causing head-on collisions, driving all over the road and weaving back and forth, and driving in the median would generally justify a traffic stop for suspicion of drunk driving.

Finally, the Arkansas Court of Appeals turned its attention to the facts as presented by Tankersley and Trooper Bass. The Court stated that under the first *Frette* factor, the caller's tip ranked high in reliability since the caller provided his name, phone number, and vehicle, thereby exposing himself to possible prosecution for filing a false police report. Additionally, the Court said that the second *Frette* factor was satisfied because the report to law enforcement was based on the caller's personal observations of illegal activity. Finally, the Court said that the third *Frette* factor was satisfied because the caller's vehicle and Tankersley's vehicle were observed by Trooper Bass at the location described by the caller. In conclusion, the Arkansas Court of Appeals held that Trooper Bass was not required to personally observe Tankersley's erratic driving in order to form a reasonable suspicion of drunken driving and to pull her over. Under the common sense approach of the United Supreme Court in the *Navarette* case and the three-factor analysis of the *Frette* case, the caller's tip about Tankersley's illegal behavior was sufficiently reliable to give Trooper Bass reasonable suspicion to pull her over on suspicion of driving while intoxicated.

Case

This case was decided by the Arkansas Court of Appeals on January 28, 2015, and was an appeal from the Crawford County Circuit Court, Michael Medlock, Judge. The case citation is *Tankersley v. State*, 2015 Ark. App. 37.

Civil Liability – Due Process and State-Created Danger

The City of Scottsbluff, Missouri, and the Chief of Police were sued in Federal Court for civil rights violations under 42 U.S.C. § 1983.

Background

In late 2008, Moreno and Villanueva began a watch group for Villanueva's neighborhood. Villanueva was the group's contact person to the police department, and as the contact person, she regularly communicated with Moreno about problems in the neighborhood. In August 2010, Villanueva expressed to Moreno that she might be the wrong person to lead the neighborhood watch because she had been in an abusive marriage and her ex-husband, Alvaro Villanueva, had assaulted her the previous day. Although Moreno did not file a formal written report or take any official action against Alvaro, the next day Moreno did speak with Alvaro about the incident. On other occasions, Scottsbluff police officers would neither arrest Alvaro nor generate formal written reports after Villanueva complained about domestic disputes. Officers did arrest Alvaro in August 2011 for violating a protection order.

After the August 2010 conversation, Moreno began what Villanueva describes as a "priming process." He spent more time alone with Villanueva and occasionally touched her. At this point, Villanueva viewed Moreno as a "father

Presented by:

Taylor Samples, Senior Deputy City Attorney

figure" and believed he was someone she could go to for help in [*3] dealing with her abusive relationship with Alvaro. After a neighborhood watch meeting in October 2010, Moreno kissed Villanueva and thereafter started sending her sexually explicit emails and text messages. Moreno's and Villanueva's platonic relationship developed into a sexual one, and they had sexual intercourse on two occasions. In November 2010, Villanueva ended the relationship and then began experiencing what she believed was harassment. Villanueva observed unknown cars parked outside her house and received threatening phone calls from people whose voices she did not recognize. Because the callers told Villanueva to stay away from Moreno and referenced private conversations between Villanueva and Moreno, Villanueva believed Moreno orchestrated the harassment.

Villanueva reported this harassment to the Scottsbluff police on numerous occasions, and officers were dispatched to Villanueva's house after many of the calls, yet the officers generated only two written reports and took no official action in response to her complaints. Before this alleged harassment, Villanueva had suffered from depression, but the stress of her relationship with Moreno and the subsequent events worsened [*4] her symptoms, eventually leading to a diagnosis of depression and Post Traumatic Stress Disorder. Distressed by the perceived harassment, Villanueva sought help from a number of officials at different levels of government before finally filing the instant suit.

Villanueva v. City of Scottsbluff, 2015 U.S. App. LEXIS 2568, 1-4 (8th Cir. Neb. Feb. 20, 2015)

Villanueva sued Moreno, in his individual and official capacities, and Scottsbluff for violating the Equal Protection Clause of the Fourteenth Amendment and for subjecting her to state-created danger. She also sued Moreno individually for negligent infliction of emotional distress. The district court granted summary judgment in favor of defendants on Villanueva's constitutional claims and declined to exercise supplemental jurisdiction over the negligence claim. The case was appealed to the U.S. Eighth Circuit Court of Appeals.

Villanueva's equal protection claim alleged that the department was failing to respond to or investigate complaints of alleged domestic abuse. As evidence, she noted that the Scottsbluff Police Department did not always make an arrest in response to her complaints of domestic abuse and that two other complaints, by other persons, of sexual assault and rape did not even result in reports being produced.

The state may not selectively deny its protective services to certain disfavored minorities without violating the Equal Protection Clause. The Court acknowledged that the case on point for this type of equal protection claim was *Ricketts v. City of Columbia, Mo.*, 36 F.3d 775, 779 (8th Cir. 1994). In that case, plaintiffs brought "substantial statistical evidence" that fewer arrests were made in domestic violence complaints and that this pattern disproportionately affected women. That evidence was held to be insufficient. The Court found that the evidence in this case, which the Court referred to as a "smattering of anecdotal experiences," was even less persuasive.

The Court also held that Villanueva's state-created danger claim was without merit. In general, the State does not owe any individual protection from danger unless the danger was created by the State. Specifically, to establish that a duty of protection exists, a plaintiff must prove:

"(1) that she was a member of a limited, precisely definable group, (2) that the

municipality's [*9] conduct put her at a significant risk of serious, immediate, and proximate harm, (3) that the risk was obvious or known to the municipality, (4) that the municipality acted recklessly in conscious disregard of the risk, and (5) that in total, the municipality's conduct shocks the conscience."

Villanueva v. City of Scottsbluff, 2015 U.S. App. LEXIS 2568, 8-9 (8th Cir. Neb. Feb. 20, 2015)

The Court first noted that Villanueva failed to show a connection between any departmental action or inaction and any increase in the danger she may face. But the decisive issue in this claim was that the specified conduct did not "shock the conscience." Though not all reports resulted in arrests, at least one did and only one of many reports failed to produce at least a report.

The Court was less charitable as to the conduct of the Chief of Police, who engaged in an adulterous affair with the plaintiff during the time in question. Though his conduct was found to be short of being shocking, it was deemed inappropriate in the Court record.

The Federal District Court Ruling was affirmed and the motion for summary judgment by the Defense was granted as to all claims.

Case

This case was decided by the United States Court of Appeals for the Eighth Circuit on February 20, 2015. The case citation is *U.S. v. Riles*, 2015 U.S. App. LEXIS 2565 (8th Cir. Minn. Feb. 20, 2015).

Presented by:

David Phillips, Deputy City Attorney

Constructive Possession of a Firearm



Ronald Riles was convicted in US District Court, for the District of Minnesota, of being a felon in possession of a firearm in violation of 18 U.S.C. §§ 922(g) and 924(a)(2). The case was based on the theory of constructive possession.

On February 6, 2013, as part of a narcotics investigation, police officers executed a search warrant for an apartment that Riles and his girlfriend were occupying. Approximately ten minutes elapsed between the time when officers made contact with Riles and his girlfriend [*2] and when the two exited the apartment and officers were able to enter. As part of the search, officers seized a residential lease for the apartment signed by both Riles and his girlfriend, photo identification cards for Riles, and a car title listing Riles's name. Officers also located two handguns hidden above ceiling tiles in the apartment's bedroom.

Officers took Riles into custody. When asked for his address, Riles gave the apartment address where the firearms were seized. After waiving his Mirandaⁿ² rights, Riles admitted to holding the firearms as collateral for money he had loaned to two different people. Laboratory tests showed the presence of DNA from three individuals on one of the firearms, but none of the DNA samples matched Riles. The other firearm lacked any retrievable evidence of DNA.

FOOTNOTES

n2 *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

At trial, Riles testified that he had not been living in the apartment with his girlfriend, rather he cosigned the lease only so she could qualify to rent the apartment. He further testified that he lied to officers when he claimed to be holding the firearms as collateral for loaned money. Instead, Riles testified that when the search warrant was being executed but before officers had gained [*3] entry, Riles's

girlfriend panicked, showed Riles the two firearms, and asked Riles to hide the firearms for her. Riles then concealed the guns in the ceiling panels of the bedroom.

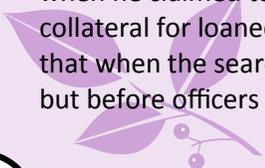
United States v. Riles, 2015 U.S. App. LEXIS 2565, 1-3 (8th Cir. Minn. Feb. 20, 2015)

The only issue on appeal was Riles' claim that the prosecution had not produced sufficient evidence that Riles knowingly possessed the firearms in question.

To establish a violation of section 922(g)(1), the government must prove (1) the defendant had previously been convicted of a crime punishable by imprisonment of over a year, (2) the defendant knowingly possessed a firearm, and (3) the firearm was in or affected interstate commerce. *United States v. Riles*, 2015 U.S. App. LEXIS 2565 (8th Cir. Minn. Feb. 20, 2015). The question before the Court was whether the Defendant had "dominion" over the firearm itself, or over the premises on which it was located.

The Court noted that even fleeting possession of a firearm is sufficient for conviction under this statute. The factors the Court weighed were the Defendant's use of the apartment as his primary address, both on his car title and at arrest, and his admission that he was "keeping" the firearms as

Blessed are the peacemakers:
for they shall be called the
children of God. Matthew
5:9



collateral.

Arkansas law in constructive possession is similar to the Federal law for constructive possession as illustrated in this case. However, we need not show a nexus to interstate commerce.



Case

This case was decided by the United States Court of Appeals for the Eighth Circuit on February 20, 2015. The case citation is *U.S. v. Riles*, 2015 U.S. App. LEXIS 2565 (8th Cir. Minn. Feb. 20, 2015)

Presented by:

David Phillips, Deputy City Attorney

Arkansas Court of Appeals Affirms DWI Conviction Where Defendant was Ordered to Perform Field Sobriety Tests and Provided Qualitative Urine Sample

Facts Taken From the Case

On October 28, 2011, Benton County Deputy Sheriff Jason Wood stopped Michael Alley's vehicle on suspicion that Alley was driving while intoxicated. Deputy Wood testified that on October 28, 2011, he observed Alley in the parking lot of a restaurant known to serve alcohol and saw that Alley had difficulty exiting the lot in his vehicle. Deputy Wood then saw Alley driving erratically on the road, and Deputy Wood then stopped Alley and asked for Alley's license and registration. Alley located the documents, but looked at them for several minutes before passing them over. According to Deputy Wood, Alley then admitted that he had been drinking and had taken a Klonopin tablet earlier in the evening. Deputy Wood also noticed that Alley had slurred speech.

Deputy Wood administered a breathalyzer test on Alley, and the test showed a breath alcohol content less than .08%. Deputy Wood then directed Alley to perform three field-sobriety tests (horizontal gaze nystagmus, walk-and-turn,

and one-leg-stand), and Deputy Wood testified that Alley failed all three tests. Alley was then arrested for DWI, and following the arrest Alley provided a urine sample, which was sent to the Arkansas Crime Lab. At trial, the State introduced the urine sample reports into evidence. Chemist Danny Sanders from the crime lab testified that the sample testified positive for tramadol, promethazine, codeine, dihydrocodeine, and alprazolam. Sanders also said that he did not test the urine to see how much of each drug was contained in the sample, and Sanders stated that he could not determine from the sample when Alley ingested the drugs, but that it could have been as long as two or three days prior to Alley's arrest. Alley objected to the introduction of the urine sample reports, arguing that the reports violated Arkansas Rule of Evidence 403.

Following his conviction for DWI, Alley appealed his case to the Arkansas Court of Appeals. Alley argued that the trial court erred by denying his motion to suppress the field sobriety tests; by overruling his Arkansas Rule of Evidence 403

objections; and by denying his motion for a directed verdict for insufficient evidence.

Argument and Decision by the Arkansas Court of Appeals

The Arkansas Court of Appeals (Court) first addressed Alley's claim that the State presented insufficient evidence of intoxication because the State performed only a qualitative analysis on the urine sample, and did not complete a quantitative test on it. The Court concluded that Alley's argument was not persuasive. The Court said that even without the results of the urine sample, the State offered other substantial evidence that Alley was intoxicated (such as Alley having difficulty exiting the parking lot; Alley driving erratically; Alley's admission to taking Klonopin that night; Alley's slurred speech and difficulty identifying his license and registration; and Alley's poor performance of field sobriety tests). The Court said that Deputy Wood's testimony constituted substantial evidence to support the fact-finder's conclusion that Alley was intoxicated. Therefore, the Court held that the trial court properly denied Alley's motion for a directed verdict.

Next, the Court addressed Alley's claim that the trial court should have granted his motion to suppress the results of the field sobriety tests because Deputy Wood commanded Alley to perform the tests; in other words, Alley claimed that the Fourth Amendment requires police officers to receive consent before directing an individual to take a field sobriety test. The Court disagreed with Alley and held that the trial court properly denied Alley's motion to suppress results of field sobriety tests. The Court reasoned that it has held that no Fourth Amendment violation occurs when an officer commands a defendant to perform a field-sobriety test so long as the officer has reasonable suspicion that a defendant has committed the offense of DWI. See *Fisher v. State*, 2013 Ark. App. 301, and *Tiller v. State*, 2014 Ark. App. 431.

Finally, the Court addressed Alley's argument that the trial court erred by admitting into evidence

the urine sample because the reports violate Arkansas Rule of Evidence 403. The Court noted that Arkansas Rule of Evidence 403 states that, "evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." In particular, Alley claimed that the reports unfairly prejudiced him because no testimony from any state witness linked the urine drug results to any level of intoxication. The Court held that the admission of the urine sample reports did not unfairly prejudice Alley, and the trial court did not abuse its discretion by allowing the reports into evidence. For all of the above reasons, the Arkansas Court of Appeals affirmed Alley's conviction for DWI.

Case

This case was decided by the Arkansas Court of Appeals on January 28, 2015, and was an appeal from the Benton County Circuit Court, Honorable Robin Green, Judge. The case citation is *Alley v. State*, 2015 Ark. App. 31.

Presented by:

Taylor Samples, Senior Deputy City Attorney

Pretextual Traffic Stop

James Earl Gunnell was sentenced to 240 months' imprisonment and 10 years' supervised release on the federal charge of possession of more than 50 grams of Methamphetamine in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(A), and 851. The charges stemmed from a traffic stop for travelling 10 miles over the posted speed limit and a subsequent narcotics dog sniff and resultant search. The State acknowledged that the traffic stop was conducted as a pretext for a search for

narcotics. Gunnell appealed his conviction to the US Eighth Circuit Court on constitutional grounds.

Facts of the Case

On August 25, 2011, James Gunnell was the subject of a police investigation that led to his arrest. Gunnell was observed driving [*2] a 2000 Kawasaki motorcycle in Springfield, Missouri, by Drug Enforcement Agency (DEA) and Task Force Officers (TFOs) who had information to believe Gunnell was a multi-pound dealer of methamphetamine. TFO Justin Arnold contacted TFO Eric Hawkins and informed him of Gunnell's location. TFO Hawkins then contacted Springfield Police Department Sergeant David Meyer to ask that Sgt. Meyer be in the general surveillance area to assist if necessary. TFO Hawkins told Sgt. Meyer that Gunnell was suspected of drug-related activity and was possibly carrying a weapon. Sgt. Meyer was also instructed to "develop probable cause" to stop Gunnell in order to search his person and his motorcycle, if possible. Sgt. Meyer then contacted K-9 Officer Kyle Tjelmeland and asked him to be available in the surveillance area with his drug dog, Raider.

At approximately 2:00 p.m. the same day, Gunnell was seen leaving an apartment building with a blue bag that he placed in the right saddlebag of his motorcycle. Gunnell left the apartment complex and began driving on Walnut Street. Sgt. Meyer started following Gunnell shortly after Gunnell turned onto Walnut Street, and he paced Gunnell for approximately three quarters [*3] of a mile.n2 Sgt. Meyer testified that Gunnell was traveling 41 or 42 miles per hour, at least 10 miles per hour over the speed limit. Sgt. Meyer stopped Gunnell's motorcycle on Walnut Street, just before the Kansas Expressway.

FOOTNOTES

n2 According to Sgt. Meyer: "Pacing the vehicle is not as an exact science like a radar gun or anything like that, but you basically get behind a vehicle and you travel at a speed to where you're not gaining on the vehicle and you're not losing ground on the vehicle, so you're basically going

the same speed and you estimate how fast the vehicle is going."

Sgt. Meyer walked up to Gunnell and asked for identification. Shortly after Gunnell was stopped, two other officers arrived to provide support. Gunnell did not have his driver's license with him, so the officers took his information verbally and ran his name through the system to check his license and to determine whether there were any outstanding warrants for his arrest. The officers learned that Gunnell did not have a motorcycle designation on his license and that there were no warrants for his arrest.

Sgt. Meyer questioned Gunnell about his criminal history and travel plans and asked for Gunnell's consent to search [*4] his person and motorcycle. Gunnell declined to provide consent for either search. Sgt. Meyer conducted a pat-down search of Gunnell and placed him in handcuffs.n3

FOOTNOTES

n3 Gunnell does not assert that the fact he was placed in handcuffs affects the court's analysis regarding the length, or purpose, of the traffic stop.

Officer Tjelmeland, after hearing over the police scanner that Sgt. Meyer had made the traffic stop, went with his drug dog, Raider, directly to the location of the stop. When he arrived at the scene, Officer Tjelmeland walked Raider around the motorcycle. Raider alerted near the right rear compartment of Gunnell's motorcycle by biting and scratching at the area where Gunnell had placed the blue bag. Officer Tjelmeland and Sgt. Meyer then searched the motorcycle because of Raider's alert, and Sgt. Meyer located the blue bag in the right rear saddlebag. The blue bag contained approximately one pound of methamphetamine, clear plastic baggies, and a set of digital scales. Sgt. Meyer placed Gunnell under arrest. Gunnell was charged by superseding indictment with possession of 50 grams or more of methamphetamine with intent to distribute, in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1) (A).

Gunnell filed a motion to [*5] suppress the evidence seized during the traffic stop. A hearing was held on Gunnell's motion, and the court denied the motion. Gunnell pleaded guilty, reserving his right to appeal the denial of his motion to suppress.

United States v. Gunnell, 2015 U.S. App. LEXIS 426, 1-5 (8th Cir. Mo. Jan. 12, 2015)

"Lets be careful out there."

Roll Call quote from Sgt.
Esterhaus, NYPD Blues

Analysis

In this case, law enforcement officers wanted to stop the vehicle to search for drugs based on information from other sources. A narcotics detection dog was pre-positioned in anticipation of a likely traffic stop. The resulting stop was for a very minor violation which would not ordinarily be enforced. While one officer wrote out the violation, another employed the working dog which Alerted on the motorcycle. A search revealed illegal narcotics.

The Defense raised constitutional issues with the stop itself, arguing that it was a warrantless seizure in violation of the Fourth Amendment of the US Constitution. But this argument was quickly dealt with by the earlier case of *Whren v. United States*, 517 U.S. 806, 809-10 (1996) in which the U.S. Supreme Court held:

"As a general matter, the decision to stop an automobile is reasonable where the police have probable cause to believe that [*6] a traffic violation has occurred." *Id.* at 810. But "[s]ubjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis." *Id.* at 813. "Once an officer has probable cause, the stop is objectively reasonable and any ulterior motivation on the officer's part is irrelevant." *United States v. Frasher*, 632 F.3d 450, 453 (8th Cir. 2011) (quotation omitted).

"Similarly, it is irrelevant that the officer would have ignored the violation but for his ulterior motive." *Id.*

United States v. Gunnell, 2015 U.S. App. LEXIS 426, 5-6 (8th Cir. Mo. Jan. 12, 2015)

The Defense also argued that detention while awaiting a narcotics dog was unlawful. The Court quoted its earlier case of *United States v. Ovando-Garzo*, 752 F.3d 1161, 1162 (8th Cir. N.D. 2014):

[I]f a defendant is detained incident to a traffic stop, the officer does not need reasonable suspicion to continue the detention until the purpose of the traffic stop has been completed. Occupants . . . may be detained while the officer completes a number of routine but somewhat time-consuming tasks related to the traffic violation. These tasks can include a computerized check of the vehicle's registration and the driver's license and criminal history, as well as the preparation of a citation or warning. The officer may also ask questions about the occupant's travel itinerary. However, once an officer finishes the tasks associated with a traffic stop, the purpose of the traffic stop is complete and further detention . . . would be unreasonable unless something that occurred during the traffic stop generated the necessary reasonable suspicion to justify further detention. Whether a detention is reasonable is a fact-intensive question which is measured in objective terms by examining the totality of the circumstances.

United States v. Gunnell, 2015 U.S. App. LEXIS 426 (8th Cir. Mo. Jan. 12, 2015)

So here we have a "totality of circumstances" test. But in this case, the test was unnecessary, as the primary purpose of the traffic stop, citation for speeding, had not yet been completed. The K-9 Officer testified that he arrived in five minutes or less. Therefore, attendant events that take place during the stop are not an infringement of

any expressed right. However, the Court, in dicta, went on to warn that once the stop is over, further detention becomes a "de facto" arrest, quoting *United States v. Bloomfield*, 40 F.3d 910, 916-17 (8th Cir. 1994).

The Defense's final argument went to the narcotics detection dog reliability and consequent probable cause for the search. The Defendant simply alleged that the dog was unreliable.

In addressing this argument, the Court first acknowledged the basis for any probable cause search – facts available to the law enforcement officer. This is another "totality of circumstances" test. Here, the central issue is whether it is reasonable to rely on an alert by the dog.

The better evidence of reliability is found in animal performance in controlled environments. Certification performance can provide "sufficient reason to trust his alert." *Id.* In the case at bar, the handler testified that his animal "never had a false alert" while with that officer. No other records were provided. The Court was satisfied with this testimonial evidence. Gunnell's conviction was affirmed.

The very nature of pretextual stops can seem unfair. Someone unfamiliar with traffic laws and criminal procedure may not understand how this is all legal. But it is and has been the law in this Circuit. This case is a reminder that the prolixity of traffic regulation creates an environment

favorable to law enforcement. It is very difficult for any motorist to follow all laws in the Highway Code for any length of time. Sooner or later, law enforcement will observe a violation. Then a traffic stop is an option.

Important Points

- Any traffic infraction is sufficient to warrant a traffic stop for the stated violation, even if there are ulterior motives for the stop.
- Once the violation is addressed, the stop is over. In Arkansas, that means "not more than fifteen (15) minutes or for such time as is reasonable under the circumstances." A. R. Cr. P. Rule 3.1.
- If you are trafficking illegal narcotics, drive VERY carefully along the way.

Case

This case was decided by the United States Court of Appeals for the Eighth Circuit. The case citation is *U.S. v. Gunnell*, 2013 U.S. Dist. LEXIS 18003 (W.D. Mo., Feb. 11, 2013)

Presented by:

David Phillips, Deputy City Attorney

Benton County Quorum Court Approves One Million Dollar Settlement to Avoid Trial in Deliberate Indifference Case Involving Inmate with Medical and Mental Issues

Faith Whitcomb died of pancreatic cancer at the age of 52 years on May 3, 2012, while she was a prisoner in the Benton County jail. While in the jail, the cancer spread to Ms. Whitcomb's liver, lungs, and lymph system, and Ms. Whitcomb filed numerous medical complaints about stomach trouble during her eight months in the Benton County jail. Ms. Whitcomb was being held in the Benton County jail awaiting space at the Arkansas State Hospital in Little Rock.

Subsequently, in August of 2013, a lawsuit was filed in federal district court in Fayetteville, AR, where Ms. Whitcomb's family claimed that the medical staff at the jail acted with deliberate indifference in regard to Ms. Whitcomb's medical care. In particular, Ms. Whitcomb's family claimed that she did not receive adequate medical care while in the jail and that the jail's medical personnel never took a proper medical history and never ordered tests to determine what was wrong with Ms. Whitcomb. According to Doug Norwood, attorney for Ms. Whitcomb's family, "This poor woman could not have been saved if her cancer was diagnosed. The lawsuit was over whether they gave her sufficient pain medication while she was dying." Ms. Whitcomb was mentally ill with diagnosis of paranoid schizophrenia, and part of the claim in the lawsuit was that the pain she was suffering and being held in segregation impacted the issues she had with her mental illness.

On Thursday, February 5, 2015, the Benton County Quorum Court voted 15-0 to approve a one million dollar settlement with Ms. Whitcomb's family so that the case would not go to trial. According to Jason Owens, attorney for the Benton County jail, if the case were to go in front of a jury, Ms. Whitcomb's family would have been able to evoke emotions that could have impacted the outcome of the case, and a jury could have awarded an amount that would have easily eclipsed the amount approved in the settlement. Jason Owens also pointed-out that the county's liability was now limited since the jail contracts with a third party for medical care in the jail.

Citation

The information provided above was obtained from an article written by Tracy M. Neal and published in the NWA Democrat-Gazette on February 6, 2015.

Presented by:

Taylor Samples, Senior Deputy City Attorney

8th U.S. Circuit Court of Appeals Holds that Officers Who Made Seizure Based on Anonymous Tip Were Entitled to Qualified Immunity in § 1983 Civil Suit

Facts Taken From the Case

On October 26, 2011, Minneapolis Police Officers Adam Chard and Robert Illetschko were dispatched to investigate shoplifting allegations in Uptown Minneapolis. Prior to leaving the police station, the officers were informed that a couple of black females had reportedly stolen merchandise from Urban Outfitters, and that an

employee from the nearby Heartbreaker store had called to report the suspected shoplifters. While driving to Uptown Minneapolis, Officer Illetschko called the Heartbreaker store and was informed by the manager that a customer had approached another Heartbreaker employee and pointed out several African American females inside the store. Additionally, the manager reported to Officer Illetschko that the customer claimed to have seen the females running out of Victoria's Secret. Officer Illetschko then called Victoria's Secret and spoke with an employee there, who confirmed to Officer Illetschko that a group of black females had very recently run out of the store. However, the employee could not confirm whether any merchandise was stolen.

When Officers Chard and Illetschko arrived to the Heartbreaker store, the manager pointed to Alexys Parker and her two friends as the African American females who were identified by the

customer. The manager told the police officers that the customer thought that the group's running from Victoria's Secret was suspicious and indicated shoplifting. The customer did not provide her name or contact information, and the customer left the Heartbreaker store before the officers arrived. The manager at Heartbreaker did not personally suspect Parker or her friends of stealing from Heartbreaker. The officers observed Parker and her friends inside Heartbreaker and watched as they left the store. The officers did not observe any suspicious activity and did not believe the females had stolen from Heartbreaker.

Officer Illetschko followed Parker and her friends on foot, and Officer Chard got inside the police car. Parker and her friends began to leave in Parker's car, but Officer Chard pulled his police car in front of Parker's car and turned on his blue lights at around 5:34 p.m. Officer Chard then approached the car and asked the females if they had been to Victoria's Secret, to which the females replied they had not. Officer Chard then told the females that the officers had received a report from someone who believed they had shoplifted at Victoria's Secret. Officer Illetschko also approached the car, and Parker consented to a search of her shopping bags. After searching the bags, the officers believed that everything was in order and that nothing appeared to be stolen. Officer Chard asked Parker for her driver's license and ran it inside his police vehicle at about 5:39 p.m. Officer Chard then returned Parker's license and told her that she was free to leave. Parker requested that Officer Chard speak to her father on Parker's cell phone. The phone conversation lasted five to ten minutes. Subsequently, the officers went to Victoria's Secret to review the security video and continue the shoplifting investigation.

Alexys Parker sued Officers Chard and Illetschko and the City of Minneapolis under 42 U.S.C. § 1983 and under state law, claiming civil rights violations. The United States District Court for the District of Minnesota-Minneapolis denied the police officers qualified immunity on one of the § 1983 claims, finding that the officers violated the Fourth Amendment by seizing Parker without having any reasonable suspicion to do so. The police officers

then appealed this ruling to the Eighth Circuit United States Court of Appeals.

Argument, Applicable Law, and Decision by the 8th U.S. Circuit Court of Appeals

On appeal to the Eighth Circuit U.S. Court of Appeals (Court), Parker argued that the officers violated her rights by seizing her without reasonable suspicion, based only upon an unreliable and uncorroborated anonymous tip. Officers Chard and Illetschko did not deny that Parker was seized; however, the officers argued that they were entitled to qualified immunity.

In setting forth the rule on qualified immunity, the Court said that qualified immunity shields public officials performing discretionary functions from liability for conduct that does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. Additionally, the Court stated that qualified immunity gives government officials breathing room to make reasonable but mistaken judgments about open legal questions and protects all but the plainly incompetent or those who knowingly violate the law. Also, the Court said that in order for a plaintiff to overcome qualified immunity, a plaintiff must demonstrate that (1) there was a deprivation of a constitutional or statutory right, and (2) the right was clearly established at the time of the deprivation. Finally, the Court noted that for a right to be clearly established, the contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right. The Court said that clearly established law is not defined at a high level of generality, since doing so avoids the crucial question whether the official acted reasonably in the particular circumstances that he or she faced. The Court stated that it is unnecessary to have a case directly on point, but existing precedent must have placed the statutory or constitutional question beyond debate.

Next, the Court set forth the applicable law on reasonable suspicion. The Court said that

reasonable suspicion exists, and officers therefore may conduct an investigatory *Terry* stop, when based on the totality of the circumstances the officers have a particularized and objective basis for suspecting the particular person stopped of criminal activity. Furthermore, the Court stated that before an anonymous tip gives rise to such suspicion, the tip must be suitably corroborated and exhibit sufficient indicia of reliability. The Court noted that prior decisions of the United States Supreme Court in the cases of *Alabama v. White*, 496 U.S. 325 (1990), and *Florida v. J.L.*, 529 U.S. 266 (2000), require corroboration of the tips' predictive elements. The Court also pointed-out that the Supreme Court in the cases of *Alabama v. White* and *Florida v. J.L.* did not hold that corroboration of predictive elements is the exclusive measure of a tip's reliability.

Based on the facts in the scenario presented by Minneapolis Police Officers Chard and Illetschko seizure of Alexys Parker, the Eighth U.S. Circuit Court of Appeals reversed the trial court and held that Officers Chard and Illetschko were entitled to qualified immunity. The Court reasoned that although the tip did not contain predictive elements that the officers could use to test the tipster's reliability, the tip was based upon firsthand observation of readily visible activity. The Court also stated that the tips involved in *Alabama v. White* and *Florida v. J.L.* were not tips that were based on eyewitness accounts, but were instead tips coming from a tipster with inside information about the defendant or the concealed criminal activity. Conversely, the tip received by Officers Chard and Illetschko came from a person who had observed visible activity. Furthermore, the Court said that Officers Chard and Illetschko corroborated the part of the tip alleging suspicious activity by confirming with

Victoria's Secret that a group of black females had recently run out of the store. The Court also referenced the decision of the United States Supreme Court in the case of *Navarette v. California*, 134 S.Ct. 1683 (2014), where the Supreme Court analyzed indicia of reliability for eyewitness tips. In conclusion, the Court said that the cases decided by the United States Supreme Court do not clearly establish how to balance anonymous tips with other circumstances, such as those circumstances presented to Officers Chard and Illetschko. Therefore, in light of the precedent coming from the Supreme Court of the United States, it was not clearly established that Officers Chard and Illetschko could not have reasonably suspected Parker of shoplifting. Stated differently, the Court said that whether or not the constitutional rule applied by the court below was correct, it was not beyond debate. For these reasons, Officers Chard and Illetschko were entitled to qualified immunity.

Case

This case was decided by the United States Court of Appeals for the Eighth Circuit on January 29, 2015, and was an appeal from the United States District Court for the District of Minnesota-Minneapolis. The case citation is *Parker v. Chard*, ___ F.3d ___, (2015).

Presented by:

Taylor Samples, Senior Deputy City Attorney



The wicked flee when no man pursueth but the righteous are bold as a lion. Proverbs 28:1



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