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Case Summaries: Fourth Circuit Court of Appeals (Feb. 1, 2, and 22, 2022)

Exigent circumstances supported warrantless acquisition of cell phone location and call log data

[U.S. v. Hobbs](#), 24 F.4th 965 (Feb. 1, 2022). In this case from the District of Maryland, the defendant broke into his ex-girlfriend's home, threatened her with a firearm, and took a television. He also threatened to kill the woman, her child, other family members, and any police officers who may be alerted. When the victim reported the incident to law enforcement, she recounted that the defendant was "obsessed" with guns and had possessed assault rifles in the past. She was aware of the defendant's violent criminal history, which included robbery and attempted murder convictions. She also provided the defendant's cell phone number. A detective submitted an "exigent form" to a cell phone provider seeking to locate the defendant by way of pinging the phone and to access the phone's call log. The form noted that the defendant was suspected of threatening the victim with a gun and that he had stated that he would not surrender peacefully. Police were able to locate the defendant with the information from the cell phone company and eventually arrested him, finding a loaded firearm in his vehicle. He was charged with felon in possession and moved to suppress the cell phone evidence. The district court denied the motion, finding that officers had exigent circumstances. On appeal, a unanimous panel of the Fourth Circuit agreed.

The defendant was suspected of serious offenses, including firearms offenses, and swore to kill any responding law enforcement officers, in addition to the threats to the victim and her family. Police found the victim credible and corroborated the damage to the victim's home. Coupled with the defendant's criminal history, there was an imminent threat of harm to the victim, her family, and to law enforcement. Additionally, the data obtained was limited to location and call logs and could be produced by the cell phone company in an hour. The same company was known to typically require days to comply with a search warrant. This was sufficient exigent circumstances, and the search was therefore reasonable under the Fourth Amendment. According to the court:

[W]e agree with the district court's observation that even a brief delay in apprehending Hobbs placed many individuals at significant risk of harm. We therefore conclude that the district court did not clearly err in finding that 'the only way to get help from T-Mobile' in a timely fashion was by submitting an 'exigent form.' *Hobbs* Slip op. at 10 (citation omitted).

Another challenge to the verdict was similarly rejected, and the district court affirmed in full.

Bullet wound in decedent's back created issue of fact for the jury to determine; grant of qualified immunity reversed

[Stanton v. Elliot](#), 25 F.4th 227 (Feb. 1, 2022). In this case from the Northern District of West Virginia, the district court erred in granting a state trooper qualified immunity for shooting the deceased. Law enforcement was called to the property of the deceased in a rural area after his family reported that he was erratic and violent. The deceased was known to have firearms and frequently made threats about shooting law enforcement. During the confrontation, the man ran around the corner of the home. A pursuing trooper saw him stop and suddenly turn around. Thinking the man was armed, the trooper shot five times, hitting the man twice and killing him. The man was not armed. The estate sued, alleging excessive force and other claims. The district court granted the defendant summary judgment based on qualified immunity. A unanimous panel of the Fourth Circuit reversed. While the trooper's actions may have been fully justified, the fact that the one of the trooper's shots hit the deceased in the back called into question the trooper's version of events and presented a genuine dispute of material fact for the jury to resolve. In the court's words:

[T]he totality of the evidence presented here creates a genuine fact question about whether [the trooper's] story is true or whether [the decedent] was shot while running away. And if the jury finds that [the decedent] was shot in the back while unarmed and running away, that would violate his clearly established rights. *Stanton* Slip op. at 13.

The grant of summary judgment was therefore reversed, and the matter remanded for further proceedings.

Testimony regarding the risks of the defendant's actions to the company retirement account was not materially false or misleading

[U.S. v. Barringer](#), 25 F.4th 239 (Feb. 2, 2022). The defendant was convicted of willful failure to pay taxes and making false statements to federal agents in the Western District of Virginia. The case stemmed from her failure to pay payroll taxes and misrepresentations made to obtain disbursements from her 401k account. On appeal, the defendant argued that testimony at trial regarding the potential for her actions to jeopardize the entire company retirement account was a material falsehood in violation of her due process rights. Reviewing for plain error, the court rejected this claim. The testimony at issue was "plausibly accurate," if not necessarily a likely outcome. *Barringer* Slip op. at 22. This was not error, much less plain error. Other challenges were similarly rejected, and the district court unanimously affirmed.

Terry frisk could not justify search of defendant's bag where the bag was not within reach and the defendant was handcuffed and secured

[U.S. v. Buster](#), ___ F.4th ___; 2022 WL 518996 (Feb. 22, 2022). In this case from the Eastern District of Virginia, police were called regarding a domestic dispute and a report of shots fired. The defendant was walking down the street and police approached, believing he was the suspect. An officer asked to speak with the defendant, who refused and kept walking. The officer yelled at the defendant, and the defendant ran away but immediately fell. The officers kept the defendant on the ground and cut the strap of his bag to remove it from within his reach and to keep the strap from choking him. According to the officer, the bag felt hard, which he believed indicated the presence of a gun. With the defendant handcuffed on the ground, the officer opened the bag and found a gun and ammo. The officers questioned the defendant without Mirandizing him, and only gave a *Miranda* warning later at the police station where the questioning was repeated. He was charged with felon in possession and sought to

suppress the gun and statements. The district court granted the motion as to the defendant's statements at the police station, finding that the officers used an improper two-step interrogation to bypass the defendant's protections against self-incrimination, but denied the motion as to his statements on the scene. It also denied the motion as to the gun, finding that the bag was properly opened because officers had reasonable suspicion that the defendant was armed and dangerous. The defendant entered a guilty plea and preserved his ability to appeal the denial of the suppression motion. On appeal, a divided Fourth Circuit reversed.

Here, the sole grounds argued by the government and found by the trial court in support of the search of the defendant's bag was that the search amounted to a protective frisk under *Terry v. Ohio*, 392 U.S. 1 (1968). The purpose of a *Terry* frisk is to ensure officer safety. When a defendant is secured and has no access to nearby property, *Terry* does not justify searching the property for officer safety. According to the majority:

The government offers no explanation for how the contents of the bag presented any credible threat to the officers' safety at the time they searched it, and quickly frisking an unsecured suspect or a bag during a *Terry* stop is simply not the same as methodically searching the contents of a bag to which a suspect no longer has access—particularly where the suspect remained restrained and under the officers' physical control. *Buster Slip op.* at 11.

That the officer felt a hard object in the bag did not justify treating the defendant as armed once the defendant was cuffed and secured. The court concluded: "We hold only—but importantly—that a doctrine authorizing a limited warrantless search to protect officer safety cannot be stretched to cover situations where there is no realistic danger to officer safety." *Id.* at 13. The defendant's plea was therefore vacated, the order denying the suppression motion reversed, and the matter remanded for further proceedings.

Judge Richardson dissented and would have found that the defendant's appeal was not properly before the court, as the conditional plea was invalid.