1

BOVAT V. VERMONT
141 S.CT. 22 (2020)

- Game wardens suspected Bovat of unlawfully hunting a deer, and went to his residence to investigate
- Upon arrival, they noticed a window in a detached garage through which they saw what they suspected to be deer hair on the tailgate of a truck
- Wardens "lingered" there for approximately 15 minutes before the Bovat's wife went outside to talk to them – asked for consent to search, which she denied
- Wardens left and got a search warrant based on what they had observed in the garage
- Vermont Supreme Court found that the search was justified under the plain view doctrine

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BOVAT V. VERMONT
141 S.CT. 22 (2020)

- Supreme Court denied cert, but Gorsuch, joined by Sotomayor and Kagan authored a statement criticizing the ruling by the Vermont Supreme Court
- Noted that the court had failed to analyze the case under Florida v. Jardines, which recognized that a home's curtilage is protected by the Fourth Amendment
- "There might be reason to hope that, while Vermont missed *Jardines* in one deer-jacking case, its oversight will prove a stray mistake. But however all that may be, the error here remains worth highlighting to ensure it does not recur. Under *Jardines*, there exist no "semiprivate areas" within the curtilage where governmental agents may roam from edge to edge. Nor does *Jardines* afford officers a fifteen-minute grace period to run around collecting as much evidence as possible before the clock runs out or the homeowner intervenes. The Constitution's historic protections for the sanctity of the home and its surroundings demand more respect from us all than was displayed here."

3

BAXTER V. BRACEY
140 S.CT. 1862 (2020)

- Sixth Circuit granted qualified immunity to an officer who released a dog to apprehend a suspect, allegedly after he had already surrendered
- US Supreme Court denied the petition for cert
- Justice Thomas dissented, on the grounds that he has "strong doubts" about the Court's qualified immunity jurisprudence
- "Regardless of what the outcome would be, we at least ought to return to the approach of asking whether immunity was historically accorded the relevant official in an analogous situation 'at common law."

4

KANSAS V. GLOVER
140 S.CT. 1183 (2020)

- Kansas deputy sheriff ran a license check on a pickup truck, and discovered that the truck belonged to Glover, whose license had been revoked
- Deputy pulled Glover, who was in fact driving, and charged him with driving as a habitual violated
- Glover moved to suppress evidence from stop, arguing that the officer did not have reasonable suspicion, as he didn't know that Glover was driving when he pulled the truck over
- Supreme Court held that the stop was supported by reasonable suspicion, and that it is a reasonable inference to believe the owner of a vehicle is driving, unless there is information to negate that presumption

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WINGATE V. FULFORD
987 F.3D 299 (4TH CIRCUIT, 2021)

- George Wingate III was driving down Jefferson Davis highway around 2 a.m. one morning when his check engine light came on. He pulled his car over near a streetlight to look under the hood
- Deputy Fulford was patrolling the area and pulled over to help. He asked for Wingate's ID, and Mr. Wingate refused to provide it. At that point, Deputy Fulford called for backup
- Wingate asked if he was free to go, and Deputy Fulford told him he was not free to leave until he had provided identification
- Deputies tried to arrest Wingate for refusing to provide ID pursuant to a county ordinance making it a crime to refuse to provide ID "if the surrounding circumstances are such as to indicate to a reasonable man that the public safety requires such identification."
- Wingate physically resisted handcuffs and began to flee, but stopped when a Taser was drawn
- Wingate was arrested and charged with various charges, including the county ordinance on identification

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WINGATE V. FULFORD
987 F.3D 299 (4TH CIRCUIT, 2021)

- Court held that a valid investigatory stop, supported by *Terry*-level suspicion, is a constitutional prerequisite to enforcing stop and identify statutes.
- Officers were not entitled to qualified immunity for the stop – they did not have a reasonable belief that criminal activity was afoot
- However, they were entitled to qualified immunity for the arrest pursuant to the county ordinance – court had not previously clarified limits of the ordinance
- "A reasonable officer could infer—albeit incorrectly—that *Terry*'s requirements did not apply to stop and identify statutes rooted in public safety rather than crime prevention."

7

US V. MEYERS
986 F.3D 453 (4TH CIRCUIT, 2020)

- Officer stopped and searched vehicle, finding 300 grams of fentanyl
- Passenger was arrested, and argued that officer did not have particularized suspicion to arrest him, as the driver admitted that a gun and several phones in the vehicle belonged to him
- Court found that the ruling in Maryland v. Pringle controlled, which held that officer has particularized suspicion for all occupants of a vehicle where drugs are found when no one in the vehicle admits ownership, even given the other factors implicating the driver

8

VARNER V. ROANE
981 F.3D 288 (4TH CIRCUIT, 2020)

- Varner was having lunch at a local restaurant when Deputy Roane, an Augusta County Deputy Sheriff, approached Varner and requested that he grab his jacket and leave the restaurant with him. Varner complied with the request, knowing that Roane was a police officer because Roane had previously arrested him on drug charges. Once they were outside the restaurant, Roane asked Varner to empty his pockets. After he found nothing, Roane patted down Varner. No incriminating items were found. Because Varner was drinking, Roane asked him to submit to a breath test. Varner stated he would not be driving and refused.
- Second, Varner alleged an unlawful search of his automobile. After Roane patted down Varner, K-9 officer Jeremy Johnson approached Varner's car with a drug-sniffing dog named Zeke. Zeke and Johnson regularly trained and worked together. They together successfully completed testing in Police Narcotic Detection Training and obtained certification from the Virginia Police Canine Association. Johnson testified during a deposition that Zeke pressed his nose against a surface if he detected drugs underneath.

9

US V. BRINKLEY
980 F.3D 377 (4TH CIRCUIT, 2020)

- Police officers entered a private home attempting to locate Brinkley, for whom they had an arrest warrant
- There were several possible addresses that the officers believed were Brinkley's place of residence
- After doing some Facebook research, one of the officers found out that Brinkley was dating Chisholm, who lived at one of the addresses, and determined that this was likely where Brinkley was staying
- Officers conducted a knock and talk, and felt that Chisholm was hiding Brinkley in the house due to her evasiveness
- They decided to go in and arrest Brinkley
- They found him in the bedroom, and also found digital scales and bags of cocaine base

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US V. BRINKLEY
980 F.3D 377 (4TH CIRCUIT, 2020)

- An arrest warrant carries with it the limited authority to enter a dwelling in which the suspect lives when there is reason to suspect the suspect is within (but not a third parties home)
- Fourth Circuit held, as a matter of first impression that officers armed with an arrest warrant may not enter a residence where they believe the suspect to be without probable cause
- Court held that officers did not have probable cause to believe that home belonged to Brinkley *or* that he would be there, due to the other possible residences

11

BARRETT V. PAE GOVERNMENT SERVICES
975 F.3D 416 (2020)

- Plaintiff, who had lived and worked in Middle East for several years, claimed that she was victim of constant harassment by while she was abroad, and that stalkers had followed her home to Virginia
- Plaintiff reported that she was being stalked by a coordinated network of Southeast Asian men, who would knock on her door, whistle at her dogs to make them bark, and had bugged her house
- She believed that the network of stalkers was centralized on the 11th floor of a nearby building
- She had talked to others about killing the stalkers although she stated that she was not referring to the stalkers specifically, but stated that "all Pakistani men" should be killed
- After an interview with Plaintiff, officers obtained an emergency custody order to obtain an involuntary mental evaluation
- The evaluation determined that Plaintiff was suffering from PTSD and paranoia
- Magistrate judge entered orders for commitment and further evaluation
- Upon further evaluation, the examiner concluded that Plaintiff did not meet the criteria for involuntary commitment

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BARRETT V. PAE GOVERNMENT SERVICES
975 F.3D 416 (2020)

- Plaintiff argued that she really had been the victim of stalking by Southeast Asian men, that her statements were taken out of context, and that she told the officers she had no intent to harm anyone
- The Fourth Circuit concluded that the officers had reasonably trustworthy information to believe that the plaintiff posed a danger to herself and others
- Court held that the proper focus was on the "the totality of the facts and circumstances that were presented to them at the time," rather than what Plaintiff may have said before the officers interviewed her
- Officers had no reason to question the veracity of what they had been told, because many of Plaintiff's own statements were consistent with the information they had been given

13

US V. FELICIANA
974 F.3D 519 (2020)

- Officer stopped Feliciana, who was driving a commercial delivery truck on the George Washington Memorial Parkway, which requires a permit for commercial vehicles
- Feliciana did not have the required license, but did have marijuana
- Officer charged her with driving without the required license and for marijuana
- Officer testified that he stopped the vehicle because "it was a commercial truck on the Parkway"
- Fourth Circuit held that the stop was not supported by reasonable suspicion because the officer articulated no reason to suspect that Feliciana did not have a permit when he stopped her

14

US V. COBB
970 F.3D 319 (4TH CIRCUIT, 2020)

- Cobb was living with his parents and his cousin, Wilson. A fight broke out one night between Cobb and Wilson, and Cobb put him in a chokehold with a knee in his chest. Wilson died, and Cobb was charged with second-degree murder
- While in jail, Cobb was recorded on a phone call telling his father that Wilson had put some stuff on the computer, and that it needed to be wiped down or cleaned
- Officers suspected the computer may contain some evidence explaining why Cobb killed Wilson, or whether the murder had been planned
- Officers obtained a search warrant for various items, including the computer, which was found to contain child pornography
- Cobb moved to suppress, arguing there was no probable cause for the search warrant for the computer
- Court found that the fact Cobb had instructed his parents to wipe down the computer shortly after being arrested gave probable cause to believe the computer would contain evidence related to the murder
- Court rejected Cobb's arguments that the warrant did not specify the type of files sought, the location of the files, or the timeframe between the files and the information police had about the murder

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U.S. V. CURRY
965 F.3D 313 (4TH CIRCUIT 2020)

- Officers were responding to a shots fired call, and encountered several individuals, including Curry, who appeared to be walking away from the location of the call
- The officers stopped Curry, and directed him to lift his shirt so they could perform a visual inspection to see if he was carrying a firearm
- Curry refused and physically resisted their efforts to pat him down, and the officers arrested him
- Officers did not argue reasonable suspicion, instead relying on exigent circumstances given the shots fired call, arguing that they were acting to protect individuals from imminent harm

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U.S. V. CURRY
965 F.3D 313 (4TH CIRCUIT 2020)

- Fourth Circuit originally held that the officers had exigent circumstances to perform the stop
- Fourth Circuit re-heard case en banc, and reversed
- The Court noted that this particular exception has been applied to vehicular checkpoints along routes expected to be used by suspects fleeing from a crim
- However, Court found that the application of this exception requires "specific information" about the crime and the suspect
- Court noted that officers did not know whether anyone had actually been shot, and there was no known location of the shooting (only the general area)
- Court also noted that the officers did not stop everyone, but only certain people, including Curry
- "In sum, the exigent circumstances exception may permit suspicionless seizures when officers can narrowly target the seizures based on specific information of a known crime and a controlled geographic area."

17

RAY V. ROANE
948 F.3D 222 (4TH CIR.2020)

- Officer went to plaintiff's property to serve an arrest warrant. As he approached, a dog ran towards him. The facts alleged by the plaintiff were that officer knew the dog was secured by a zip-tie leash, and the officer shot the dog after it had reached the end of the leash
- Dogs are "effects" under the Fourth Amendment, and thus the shooting of a dog constitutes a seizure
- Must be reasonable under the circumstances
- Court held that officer violated plaintiff's Fourth Amendment rights because evidence showed officer knew that the dog was on a leash, and could no longer reach him
- No qualified immunity, because a reasonable officer would have known his conduct was unlawful

18

US V. MITCHELL
963 F.3D 385 (4TH CIRCUIT, 2020)

- Officers responded to calls about a fight at a bar, and a report of a person with a gun. The individual was described as a black man wearing red pants and a black shirt walking eastbound. Officers did not recall who gave that description, other than someone who had been at the bar
- Officers saw Mitchell, who matched that description, walking and stopped him. After a frisk, they found a firearm on him and took him into custody
- Mitchell moved to suppress the weapon on the grounds that the officers did not have reasonable suspicion to stop him based on an anonymous report of a witness
- The Fourth Circuit found that the officers had reasonable suspicion under the circumstances, and held that the bystander's presence at the location of the fight supported the tip's reliability
- Although officers could not recall identity of the informant, court found it significant that the report was made in person directly to the officer
- Court also rejected Mitchell's argument that him simply leaving the bar with a gun was not sufficient to establish reasonable suspicion of criminal activity

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EST. OF JONES V. CITY OF MARTINSBURG, W.VA.
961 F.3D 661 (4TH CIRCUIT, 2020)

- Jones, a black homeless man, was stopped by officers for walking in the road. The officers asked if he had a weapon, and Jones responded that he did have "something." The encounter quickly escalated, and the officers told Jones to put his hands on the car, which he refused to do. Jones tried to move away, and the officer Tased him. Another officer arrived on the scene at this point, and Tased Jones as well. Both officers reported that the Tasers had no effect.
- Jones broke away and run down the street. The officers pursued him on foot, and one officer stated that Jones hands "were about to go up," and that he believed Jones was going to assault him. The officers told Jones to get on the ground, and he kept refusing, saying he hadn't done anything wrong.
- Jones put his hands up and the officers grabbed them, and Jones and the two officers fell down a set of stairs. One of the officers then put Jones in a choke hold in an effort to stop him from resisting. Other officers were kicking him. The officer who had Jones in a choke hold suddenly felt a sharp poke in his side, and realized Jones had a knife
- The officers all drew back, and Jones lay motionless on the ground. All five officer drew their weapons and ordered Jones to drop the knife. Jones did not make any overt acts with the knife, but all five officers fired, firing a total of 22 rounds at Jones, who was killed as a result

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EST. OF JONES V. CITY OF MARTINSBURG, W.VA. 961 F.3D 661 (4TH CIRCUIT, 2020)

- Fourth Circuit determined that the officers were not entitled to qualified immunity.
- Defendants argued that Jones had stabbed an officer, and was not in handcuffs when the officers shot him
- The Court held that Jones was secured when he was shot, even though he had not been handcuffed yet and was still armed with the knife
- Court did find that City could not be held liable under Monell, as this was a single incident and the City did have a non-aggression policy in place

21

US V. FEREBEE 975 F.3D 406 (4TH CIRCUIT, 2020)

- Ferebee was staying at Dunbar's house. Dunbar was on probation, and officers arrived to conduct a warrantless search as authorized by the terms of the probation. Ferebee was smoking marijuana, and held a backpack. The officers asked Ferebee if there were any weapons in the bag, and he denied that the bag was his. The bag was searched incident to arrest, and contained marijuana, a gun, and Ferebee's ID
- Ferebee attempted to challenge the search of the bag, but the Court held that he abandoned the bag when he claimed it was not his, and therefore abandoned any expectation of privacy. In addition, the search was also authorized as incident to the arrest

22

CYBERNET, LLC V. DAVID
954 F.3D 162

- Deputies seized various items, including gaming machines from a Sweepstakes business. Plaintiffs allege that Defendants damaged their property during the seizure
- Fourth Circuit noted that during the course of a search, "incidental damage may occur," but "excessive or unnecessary destruction of property in the course of search may violated the Fourth Amendment"
- Damage to property does not violate the 4th Amendment where it is "reasonably necessary to execute a lawful search warrant"
- Officers are not required to use "least possible destructive means" and damage must be "excessive"
- Fourth Circuit found that damage done by Defendants was not objectively unreasonable

23

US V. MOORE
952 F.3D 186

- Moore was stopped at a routine traffic checkpoint, where it was discovered that he had a substantial quantity of illegal drugs
- He moved to suppress all evidence on the grounds that the stop was in violation of the Fourth Amendment
- Checkpoint was upheld as within the bounds of the Fourth Amendment.
- Two part test for checkpoints:
  - Is there a reasonable purpose (not just "crime control")
  - Was the checkpoint reasonable on the basis of individual circumstances

24

US V. JONES
952 F.3D 153 (4TH CIRCUIT 2020)

- Officers were investigating a complaint when they knocked on Jones' door. When Jones opened the door, the officers smelled marijuana, at which point the officers arrested Jones and conducted a sweep of the house
- During the sweep, they found a still-smoldering marijuana cigarette in a trash can
- Based on this, they obtained a search warrant to search "any safes or locked boxes that could aid in the hiding of illegal narcotics." Officers found in a safe a handgun, marijuana, crack cocaine, and items commonly used to package and weigh narcotics
- Jones challenged the warrant as over broad, as it allowed a search of "every container in the house" based on a single joint
- The Court rejected this argument, holding that "the presence of one marijuana cigarette in the kitchen did not negate the fair probability that other evidence of the crime of marijuana possession would be found in the house

25

STATE V. LYNCH
852 S.E.2D 924 (N.C. APP. 2020)

- Defendant was arrested by an officer with the Lincolnton Police Department and was charged with assault
- He was defended in the criminal trial by the town attorney, and raised concerns with his representation, but did not raise any specific issues.
- Should the trial court determine that Wilson advised or represented the Lincolnton Police Department or its members at any time relevant to this case, Wilson labored under a conflict of interest that could not be waived and Defendant is entitled to a new trial.

Wingate v. Fulford
987 F.3d 299 (4th Circuit, 2021)

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INTERLOCUTORY APPEALS ISSUES OF FACT

- Rhoades v. Forsyth, 834 F. App'x 793, 796 (4th Cir. 2020)
- Gallmon v. Cooper, 801 F. App'x 112 (4th Cir. 2020)
- Livingston v. Kehagias, 803 F. App'x 673 (4th Cir. 2020)

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#8CANTWAIT

1. Ban chokeholds
2. Require De-escalation
3. Require warnings before shooting
4. Exhaust all other means before shooting
5. Duty to intervene
6. Ban shooting at moving vehicles
7. Require use of force continuum
8. Require comprehensive reporting

28

GEORGE FLOYD JUSTICE IN POLICING ACT (HR 1280)

- Passed by the U.S. House of Representatives on March 3, 2021
- Faces an uphill battle in the Senate
- Contains a number of measures intended to address concerns in the law enforcement community

29

WOULD END QUALIFIED IMMUNITY FOR LAW ENFORCEMENT

It shall not be a defense or immunity in any action brought under this section against a local law enforcement officer (as such term is defined in section 2 of the George Floyd Justice in Policing Act of 2021), or in any action under any source of law against a Federal investigative or law enforcement officer (as such term is defined in section 2680(h) of title 28, United States Code), that—

(1)the defendant was acting in good faith, or that the defendant believed, reasonably or otherwise, that his or her conduct was lawful at the time when the conduct was committed; or

(2)the rights, privileges, or immunities secured by the Constitution and laws were not clearly established at the time of their deprivation by the defendant, or that at such time, the state of the law was otherwise such that the defendant could not reasonably have been expected to know whether his or her conduct was lawful.

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OTHER REQUIREMENTS

•Amends federal criminal statute from “willfulness” to a “recklessness” standard to successfully identify and prosecute police misconduct.

•Requires state and local law enforcement agencies to report use of force data, disaggregated by race, sex, disability, religion, age.

•Requires state and local law enforcement agencies that receive federal funding to "ensure" the use of body-worn and dashboard cameras.

31

NC SENATE BILL 300

- Filed in NC Senate on March 15, 2021
- Requires cities and towns to provide information to DOJ regarding disciplinary actions against law enforcement officers to maintain in a statewide database
- Requires all law enforcement agencies to provide to Training and Standards data on “critical incidents,” defined to include any use of force by a law enforcement officer that results in death or serious bodily injury

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