



CourtSmart

By Law Enforcement Training, LLC

CourtSmart

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OFFICERS QUESTIONS--OUR ANSWERS



Question: In Illinois, an aggravated assault incident with a firearm resulted in a subject having an arrest warrant and being subject to a Firearms Restraining Order (FRO) and a FRO search warrant. If the subject is arrested for his aggravated assault warrant at the time of the FRO search warrant service, a civil order, do questions about the location of the firearm fall under *Miranda* and the 5th amendment, or can officers ask the subject about it without giving the *Miranda* Warnings?

Answer: For *Miranda* rights to apply, the law requires that a person is subject to custodial interrogation.

So, there must be two things that occur: custody AND interrogation.

In your scenario, the suspect is wanted on an arrest warrant, and you state the suspect will be arrested on that warrant. Once you make an arrest of a person, they will be considered in “custody.”

If officers now want to interrogate (question) him, then the suspect must be provided with *Miranda* warnings.

Bottom line: if the individual is in custody for any offense, questioning that person and eliciting an incriminating response about a crime is a violation of the person’s Fifth Amendment rights.

If a person is in custody, and you’re going to ask them questions about something that might be used against them in a criminal matter, you must warn him.

THE UNITED STATES SUPREME COURT DECIDES WHETHER POLICE CONDUCT A SEARCH BY OBTAINING A PERSON'S CELL PHONE LOCATION HISTORY



Context

Over the past 15 years, the United States Supreme Court (USSC) has addressed the increase in technology with the use of cellular telephones. The USSC has issued decisions on police officers conducting a search of a cell phone incident to arrest and obtaining historical cell-site location information.

Location history for a cell phone is a time-stamped record of every place a cell phone has been. The user can access a “timeline” where he has traveled and when, and receive real-time updates about his daily commute, taking advantage of maps and recommendations based on his usual movements. Location history only stops if a user affirmatively stops it.

Does an officer conduct a “search” by obtaining location history for a cell phone?

***Chatrie v. United States*, United States Supreme Court, June 29, 2026**

Facts

A man robbed a credit union in Virginia. He presented the teller with a handwritten note demanding \$100,000 and threatened to hurt the teller and her family if she did not comply. He warned her that he had “boys on the lookout outside.” When the teller replied that she did not have access to that amount of money, the robber brandished a firearm. The robber ordered everyone in the bank to the ground and forced the bank’s manager to open the safe and put \$195,000 into a bag. The man then left on foot with the money.

Police officers responded to the scene and began an investigation. They learned that the robber had approached the credit union from a corner of an adjacent church, appearing to talk on a cell phone. The police could not gather any more evidence and the robber remained at large.

The police then applied for a geofence warrant directed to Google. The application described the cell-phone location data Google collects and explained how that data could lead to identifying the robber, possible accomplices, or additional witnesses to the crime. The application stated that success was particularly likely because the robber appeared to use his phone when he entered the credit union and may have been speaking with an accomplice. The proposed geofence warrant was a circle with a radius of 150 meters surrounding the credit union.

The warrant application described the three-step process that the police would follow to obtain location information. At step one, Google would produce location data for all cell phones within the geofence in a one-hour period of time. At step two, officers would attempt to narrow down the list of devices by reviewing the time-stamped location coordinates and comparing that against known time and location information specific to the crime. For that narrowed list, Google would provide additional data for cell phone locations both inside and outside the geofence for a two-hour period. At step three, police would narrow down the list by comparing this additional information regarding travel and time against the known time and location information specific to the crime.

A judge issued the warrant and the officers executed it. At the third step, the police narrowed the list to three users. One of the three was Chatrle. The location data showed that he entered the geofence area about ten minutes before the robbery and headed toward a residential area of town immediately after leaving the bank.

Chatrle was charged with robbery and related firearm offenses. He moved to suppress the information that the police had obtained from Google. He argued that the police had acquired data through a Fourth Amendment search and the warrant authorizing the search was invalid.

Federal District Court

The trial court agreed with Chatrle but still denied the motion to exclude the location data. The trial court concluded that the good-faith exception to the exclusionary rule permitted the admission of the location data.

Fourth Circuit Court of Appeals

The Court of Appeals found that the government did not conduct a search because Chatrle did not have a reasonable expectation of privacy in location history data that he voluntarily exposed to Google.

The Court also found that the good-faith exception applied and ruled against Chatrle.

The United States Supreme Court granted Chatrle's appeal to decide the question of whether police officers conducted a search when they obtained Chatrle's location data from Google.

United States Supreme Court

The United States Supreme Court (USSC) stated that the Fourth Amendment provides that the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures shall not be violated. The Amendment's basic purpose is to safeguard the privacy and security of individuals against arbitrary invasions by government officials. That purpose is central to decisions about whether a Fourth Amendment "search" has occurred. When an individual seeks to preserve something as private and his expectation of privacy is one that society is prepared to recognize as reasonable, then government intrusion into that private sphere generally qualifies as a search.

The USSC discussed its decision in *Carpenter v. United States*, 585 U.S. 296. In that case, the USSC held that accessing cell-site location information (CSLI) constituted a search because individuals have a reasonable expectation of privacy in their physical movements. The Court reasoned that CSLI proves a detailed and encyclopedic portrait of a person's whereabouts. Because people compulsively carry their cell phones all the time, the Court explained a cell phone tracks nearly exactly the movements of its owner and follows him not only through public thoroughfares but into private residences, doctor's offices and other potentially revealing locales.

Everything *Carpenter* relied on to find law enforcement conducted a search when they accessed CSLI records applies to police accessing location history data. First, location history data provides an even more fine-tuned picture of a person's movements, pinpointing location to within twenty meters. Second, location history allows police to reconstruct people's coming and goings in any area, enabling absolute surveillance of any number of people. Third, location history implicates personal privacy rights more than CSLI because location history is more the cell phone users own. Google users regularly employ location history as a personal journal. In that way, location history resembles other private materials- e.g. emails, documents, photographs, or calendars- that even if stored on Google's servers, a user reasonably views as his own and expects to be shielded from the government.

The USSC held that a person has a reasonable expectation of privacy in records about his cell phone's location and police intrude on that constitutionally protected interest when they demand the information. It does not matter if the time period scrutinized was only two hours nor does it matter that the materials obtained were handed over by a third-party tech company.

The USSC ruled that when the government accesses location history information it conducts a "search" under the Fourth Amendment. The Court sent the case back to the Court of Appeals to decide whether the search was reasonable.

Training Tips:

1. In this case, the United States Supreme Court only decided whether a search occurred. The Court of Appeals has to decide the issue of whether the search warrant was proper and possibly whether the good-faith exception applies.

We will keep you informed as soon as we know the decision.

2. The United States Supreme Court has issued three decisions regarding the Fourth Amendment and cell phones: *RILEY V. CALIFORNIA*, *CARPENTER V. UNITED STATES*, and this case.

Let's look at the two prior decisions.

3. ***RILEY V. CALIFORNIA*, 573 U.S. 373 (2014):**

A police officer stopped Riley's car for expired registration tags. During the stop, the officer learned that Riley had a suspended driver's license. After Riley was arrested, he was searched and the police found a "smart phone." The officer accessed information in the phone relating to Riley's association with gang activity. Two hours after his arrest, a detective went through Riley's phone and found evidence connecting Riley to a gang shooting. Riley was charged with various crimes arising from evidence the police obtained on his cell phone.

The USSC ruled that cell phones cannot be searched incident to a lawful arrest. The Court found that there are two justifications for the search incident to arrest exception. The first justification is to protect the officer from any weapons the offender may have on him. The second justification is to prevent the destruction of physical evidence.

The Court found that modern cell phones contain vast quantities of personal information. The justifications for a search incident to an arrest are not implicated with a cell phone.

The Court held that officers must generally secure a warrant before conducting such a search.

4. **CARPENTER V. UNITED STATES, 585 U.S. 296 (2018)**

The police arrested four men in connection with a series of armed robberies. One of the men confessed to the crimes and gave police his cell number and the numbers of the other participants. The FBI used this information to obtain court orders for records from the cell phones. The records included date and time of calls, and the approximate location where the calls began and ended, based on their connections to cell towers-cell site location information (CSLI). Carpenter was charged with several offenses. He moved to suppress the CSLI evidence and argued that the government needed a warrant to obtain his cell phone records.

The USSC acknowledged that the Fourth Amendment protects not only property interests, but also reasonable expectations of privacy. Expectations of privacy in this age of digital data do not fit neatly into existing precedents, but tracking person's movements and location through extensive cell-site records is far more intrusive. The Court declined to extend the "third-party doctrine"-a doctrine where information disclosed to a third party carries no reasonable expectation of privacy-to CSLI.

Additionally, the third-party doctrine applies to voluntary exposure, and while a user might be abstractly aware that his cell phone provider keeps logs, it happens without any affirmative act on the user's part.

The Court held that the government would need a warrant to access cell-site location information.

5. Based on these decisions, officers should be careful when looking for evidence on a cell phone.

General Rule: Officers should obtain search warrants to search cell phones, to obtain cell site location history and location history.

6. The USSC noted that Google has changed the process for officers who want to obtain cell phone records and information. We strongly recommend you speak with your local prosecutor's office regarding this process and for assistance.
7. Justice Alito wrote a dissenting opinion. Justice Alito stated that the geofence procedure did not violate Chatrle's Fourth Amendment rights. Prior precedents hold that a defendant does not have a reasonable expectation of privacy in records that a company generates by virtue of a person's use of its services. This rule is known as the third-party doctrine.

More importantly, Justice Alito noted that the majority of the Court did not dispute the Court of Appeals' good-faith analysis. To overcome the good-faith exception, Chatrle would need to show that either (1) the affidavit supporting the geofence warrant was knowingly or recklessly false, (2) the magistrate rubber-stamped the warrant application, (3) the affidavit was bare bones, or (4) the warrant application was so facially deficient that no reasonable officer would rely on it.

The Court has never provided guidance on how to apply the Warrant Clause when the police request geolocation data from a third party. Accordingly, it would be nearly impossible for Chatrle to prove that the police here acted in bad faith.

WHAT IS A CONSENSUAL ENCOUNTER?



Context

Officers who seize a person need to have reasonable suspicion. Unfortunately, the courts have not given police officers a clear definition of what reasonable suspicion means.

If an officer has no reasonable suspicion, the officer must be careful to ensure that it is a consensual encounter. Officers must figure out how to do this in the street by using their “street smarts.”

People v. Reeves, 2026 IL App (4th) 251171-U

Facts

At about 1 a.m. a police officer observed a car parked on a dead-end road that ran east to west. At the end of the road, there was a short bump-out of pavement, or an apron, which was the beginning of a second street. The car was parked on this apron facing north toward an unpaved field. Due to the late hour, the secluded area in which the car was parked, and the car’s out-of-state plates, the officer’s suspicions were raised.

The officer parked his squad car on an angle to the car, and his headlights partially illuminated it. He did not park directly behind this car. Rather, he parked one and a half car lengths away and to the side of the car. The officer testified that it was not his intention to block Reeves’ car and that Reeves could have backed up without hitting the squad car. The officer angled his spotlight toward the car’s rear window. As he approached, he used his flashlight.

As the officer was a few feet away from the car, the rear door cracked open. The officer opened the door and saw Reeves and L.S. in the back seat. They both were naked from the waist down. The officer greeted the occupants and asked for identification and who owned the car. Reeves answered, “Mine, just came from New Jersey.” The officer responded, “Ok. Do you want to get your clothes on?”

As Reeves and L.S. got dressed, the officer kept his flashlight on the car’s interior. At one point Reeves told the officer that his shoes were in the front. The officer told him it was fine and to come on out.

Reeves handed the officer his identification and told the officer he was on vacation from New Jersey-and that he was visiting his girl, indicating to L.S. The officer and Reeves both laughed and the officer asked L.S. for identification. L.S. told the officer she did not have it with her, and the officer directed her to come to where he and Reeves were standing. L.S. walked over and the officer asked for her birthday. L.S. gave him a date that would make her 19. She told the officer that she was 18.

The officer received information from dispatch that Reeves' license was suspended. Reeves confirmed his license was suspended from various unpaid tickets.

The officer asked Reeves and L.S. how the two met since they were both from different states. The two told the officer they met online and are Facebook friends. The officer returned to his squad and attempted to run L.S.'s information through the system, but nothing came back.

After exiting his squad, the officer told Reeves he wanted to talk with him. The officer asked Reeves to show him how Reeves and L.S. met and allowed Reeves to retrieve his phone from the car. Reeves told the officer that he had been with L.S. for approximately a year and a half, although this was the first time they met in person. The officer asked Reeves how old L.S. is, and Reeves replied, "She's 16." He told the officer that he is 25. He also told the officer that L.S.'s parents are aware of the relationship but do not know she is out with him.

The officer asked Reeves, "Do they know their 16-year-old daughter is having sex with a 25-year-old?" and Reeves responded, "No." The officer stated, "You see how that could be a problem for you?" Reeves replied, "Yeah, I understand that." Reeves confirmed that he knew L.S. was 16 when he drove to Illinois.

The officer transported Reeves to the police station. While interviewing Reeves, the officer got the passcode to unlock Reeves' phone. The officer did not search the phone at that time and got a search warrant for it later.

Reeves was charged with aggravated criminal sexual abuse. Reeves asked the trial judge to suppress the evidence. He argued that the evidence obtained was a result of an unlawful seizure.

Trial Court

The trial court found that Reeves was legally parked and there was no observation of any illegal activity. The court stated that the encounter could have stopped with the officer asking, "Is everyone all right?" The court found that Reeves was unlawfully seized.

The court granted Reeves' request to suppress the evidence. The prosecution appealed.

Appellate Court

The Appellate Court stated that the Fourth Amendment to the United States Constitution protects the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures. The Fourth Amendment guarantee attaches where a search or seizure takes place. However, not every encounter between the police and private citizens constitutes a seizure.

Rather, police-citizen encounters are divided into three tiers: (1) a consensual encounter which involves no coercion or detention; (2) brief investigative detentions, which must be supported by a reasonable suspicion of criminal activity; and (3) an arrest which must be supported by probable cause.

A person is "seized" only when an officer by means of physical force or a show of authority has restrained the liberty of a citizen. Relevant factors to consider when determining if a seizure has occurred are (1) the

threatening presence of several officers, (2) the display of a weapon by the officer, (3) physical touching of the citizen, and (4) the use of tone or language to convey that compliance with the officer's requests is compelled. Where these factors are absent, the courts are more likely to find a seizure has not occurred.

The Appellate Court found that the necessary time frame to consider occurred from the time the officer parked his squad car to the time he determined that Reeves' license was suspended. At that point, the officer had probable cause to effectuate an arrest.

The Court stated that police officers are allowed to approach and question a person seated in a parked car without that encounter being labeled a seizure. Indeed, they are specifically allowed to ask for identification and ask potentially incriminating questions.

The Appellate Court found that none of the *Mendenhall* factors would indicate a seizure occurred. The officer never made physical contact with Reeves, he did not display a weapon, he spoke in a friendly and casual manner to Reeves and L.S, and there was only one officer on the scene. Additionally, the officer never turned on his flashing red and blue lights which could have communicated he was acting in an authoritative capacity.

The Court also found that the officer did not box in Reeves' car when he pulled behind and to the side of him. It was uncontroverted that Reeves would have been able to leave the scene if he had wanted to. The Court rejected Reeves' argument that the use of a flashlight and the squad's headlights amounted to a seizure. The use of headlights or a flashlight was not inherently coercive or a show of authority.

The Appellate Court concluded that the trial court was wrong in granting the motion to suppress the evidence. The Court reversed the trial court's decision and remanded the case for further proceedings.

Training Tips

1. Officers need to know the three tiers of police-citizen encounters. These tiers have been adopted by the Illinois Supreme Court and there are many decisions in Illinois that discuss these tiers.

The three tiers are:

1. a consensual encounter which involves no coercion or detention;
 2. brief investigative detentions, which must be supported by a reasonable suspicion of criminal activity; and
 3. an arrest which must be supported by probable cause.
2. Reeves argued that the initial encounter was an unlawful seizure. The Court discussed the MENDENHALL factors. These factors help courts determine whether police officers have or have not seized a person. All officers MUST know these factors:
 1. Threatening presence of several officers;
 2. Display of a weapon;
 3. Physical touching of the person;
 4. Officer's language or tone which indicates compliance is required.
 3. The Appellate Court addressed Reeves' argument that his statement to the officer suggested that he felt the officer was exerting some authority over him. Specifically, Reeves asked the officer for permission to exit the car and retrieve his shoes from the front seat.

The Appellate Court stated the question is whether a *reasonable* person would have believed he was free to terminate the encounter with the officer. It does not hinge on the subjective belief of the person involved.

Reeves was not physically prevented from leaving, and the officer did not demonstrate any coercive

behavior. Instead, the officer engaged in polite and informal conversation. The Court found that a reasonable person would not have believed himself unable to terminate the encounter.

4. The Appellate Court found that this case was factually identical to *People v. Luedemann*, 222 Ill.2d 530 (2006), a decision by the Illinois Supreme Court.

In that case, an officer saw the defendant sitting in the driver's seat of a parked car. The officer decided to question him after seeing him reach toward the floorboard of the passenger side and slump down six to eight inches in his seat when the officer drove past. The officer parked his car behind the defendant's, in the center of the street, facing the opposite direction from the defendant's car. As the officer approached, he saw an uncapped brown glass bottle on the floor in front of the passenger seat. While speaking to the defendant, he noticed his speech was slurred and his eyes were glassy and bloodshot. At that point, the officer moved his car to park directly behind the defendant, and other officers arrived on the scene. The defendant failed multiple field sobriety tests and admitted he had been drinking.

The Illinois Supreme Court stated that a seizure does not occur because an officer approaches an individual and asks questions. The Court found there was no seizure because the officer did not pull his car behind the defendant's car until he saw signs of intoxication, did not turn on his overhead lights, did not speak in a coercive tone or use coercive language, did not touch the defendant, or display a weapon. While the Court noted that the officer approached the defendant's car using a flashlight, the use of a flashlight does not constitute a seizure unless accompanied by other coercive behavior.

The Court held that Luedemann was not seized before seeing an open bottle and seeing signs of intoxication.

5. Consensual encounters (Tier 1) can become "seizures" depending on the specific facts and circumstances and the officer's conduct.

As the Court in *Luedemann* noted, "factors that courts have found indicative of a seizure of a parked vehicle are 'boxing the car in, approaching it on all sides by many officers, pointing a gun at the suspect and ordering him to place his hands on the steering wheel, or use of flashing lights as a show of authority.'"

WHEN CAN AN OFFICER BE SUED FOR AN ARREST?



Context

The vast majority of section 1983 lawsuits involve claims of violations of the Fourth Amendment. In a criminal case, if an officer conducts an unlawful search or seizure, any evidence he obtains will be lost (suppressed). An unlawful search or seizure can also lead to the officer and his department being sued under Section 1983 in federal court.

A police officer can be sued for making an arrest without probable cause. However, if an officer has probable cause to arrest a person, that is a defense to a Section 1983 lawsuit for an unlawful arrest.

***Echevarria v. Jackson*, 7th Circuit Court of Appeals, June 16, 2026**

Facts

A person called the police to report that someone had exposed himself in an area of a forest preserve. The caller described the suspect as a white male, about 30 to 40 years of age, dark hair, 6 feet tall, wearing a blue and white striped tank top with gray sweatpants and driving a gray Honda SUV. When an officer responded, he noticed a man staring at him and pulled up next to him to ask if he was the person who made the call. The man responded he was the caller and that he would be willing to sign a complaint. He also told the officer that the “suspect was still back there.”

The officer moved to the location identified by the man. The officer knew this area of the forest preserve was a place with frequent public indecency activity. He saw Echevarria who matched the description and asked him for identification. Echevarria asked if there was a problem, and the officer responded, “You bet your ass there’s a problem.” Echevarria said he suffered from post-traumatic stress disorder and that it was “hurting” him to not know why he was stopped. The officer noticed that Echevarria was sweating and nervous and attributed this condition to Echevarria being nervous.

The officer detained Echevarria and issued an ordinance ticket for public indecency but did not place Echevarria under arrest. After issuing the ticket, the officer requested permission from his supervisor to have Echevarria’s car towed pursuant to a local ordinance. To tow a vehicle under that ordinance, an

officer must have probable cause to believe the vehicle is subject to the ordinance- that is, he must have probable cause to believe the vehicle was used during the commission of a qualified offense. The supervisor approved the towing.

Echevarria testified that the officer called him a “sicko” and a “pervert” before the officer left the scene. He also said that the officer told him that if he ran, he would send his dog after him. Echevarria was detained for about 45 minutes when the officer attempted to find the man who made the complaint and have him sign the complaint. By this time, the man had left.

The only evidence in court against Echevarria was the audio of the call and the ticket the officer issued. The case against Echevarria was dismissed for a lack of evidence.

Echevarria sued the police officer under Section 1983. He claimed that the officer violated his Fourth Amendment rights when he was detained and cited for public indecency.

Federal District Court

The federal trial court granted summary judgment to the police officer. The trial judge found that the officer’s seizure of Echevarria and his vehicle were supported by probable cause, the malicious prosecution claim was supported by probable cause and that the officer’s comments were mere insults.

7th Circuit Court of Appeals

The Court of Appeals stated that Echevarria’s complaint had several claims: violation of the Fourth Amendment for unlawful seizure of his person and unlawful seizure of his property, malicious prosecution, and an intentional infliction of emotional distress.

Unlawful seizure of person: The Court of Appeals stated that probable cause exists when a police officer has a reasonable belief that the person to be detained has committed a crime. In assessing whether probable cause existed, courts look at the totality of the circumstances. The information relied upon by the officer must be reasonably trustworthy and lead a reasonably prudent person to believe that the suspect had committed an offense. To support probable cause, the information must contain sufficient indicia of reliability.

In this case, the complainant told dispatch that the suspect exposed himself “just now,” allowing a reasonable inference that the caller was an eyewitness. That inference was further supported by the officer finding Echevarria where the caller said he would be. Moreover, the area where the incident took place was known by the officer to be a common site for that type of activity. The witness was not anonymous because the officer spoke directly to him. Additionally, Echevarria was nervous and shaking and admitted that he matched the description of the suspect.

The Court found that the officer’s decision to seize Echevarria was supported by probable cause.

Malicious prosecution: A malicious prosecution claim requires showing that there was no probable cause. Because there was probable cause, the malicious prosecution claim was properly dismissed by the trial judge.

Unlawful seizure of property: The Court of Appeals stated that if a local ordinance allows seizure, the seizure must still meet constitutional standards. The Fourth Amendment standard for such seizures is reasonableness. Police can seize a vehicle under a seizure ordinance only if they have probable cause to believe the vehicle is subject to seizure.

In this case, the seizure ordinance permits the seizure of any vehicle that is used during the commission of an indecent exposure violation. The officer had probable cause to believe Echevarria committed the offense of indecent exposure and that he used his vehicle to transport himself to that public area.

The Court found that a reasonable officer could conclude that the vehicle was used during the commission of the offense and the seizure of the vehicle did not violate the Fourth Amendment.

Intentional infliction of emotional distress: Under Illinois law, conduct must be so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency to create liability for intentional infliction of emotional distress. The courts will consider the power and influence wielded by the harassing party, the likelihood that the threatened action could be carried out, the legitimate reasons one might have for making the offensive statements, and the defendant's awareness of the plaintiff's susceptibility to physical or mental stress. Behavior that might otherwise be considered rude, abrasive or inconsiderate may be deemed outrageous if the defendant knows that the plaintiff is particularly susceptible to emotional distress.

The Court found that the behavior by the officer could not be characterized as so extreme as to go beyond all possible bounds of decency, and to be regarded as intolerable in a civilized community. The comments, while unprofessional, crude, and insulting, could not be considered under the law as beyond the bounds of human decency.

The Court found that the officer's comments could not sustain a claim for intentional infliction of emotional distress.

The Court of Appeals affirmed the trial court's decision, and Echevarria's lawsuit was dismissed.

Training Tips

1. The malicious prosecution claim: In the June 2022 edition of CourtSmart, we discussed a very important case from the United States Supreme Court that addressed malicious prosecution claims.

THOMPSON V. CLARK, 596 U.S. 36 (2022)

Thompson's sister-in-law (who was apparently mentally ill) called 911 stating that Thompson was molesting his newborn (one-week-old) baby. Two emergency medical technicians (EMTs) arrived at Thompson's apartment. Thompson told the EMTs that no one from the apartment called 911. So, the EMTs left and contacted officers.

Four officers then arrived at the apartment and demanded entry. When Thompson told the officers that they needed a warrant to enter, the officers entered and arrested Thompson. Thompson spent the next two days in jail on charges of obstructing and resisting arrest.

The baby was taken to the hospital where it was determined that the baby had a slight diaper rash. The medical professionals found no signs of abuse.

Before trial, the prosecutor moved to dismiss the criminal case, and the trial judge dismissed it. No reason was given by the prosecutor or the judge for the dismissal.

The United States Supreme Court stated that a dismissal of a criminal case without comment can result in a cause of action for a plaintiff. So, the plaintiff in a Section 1983 action for malicious prosecution does not have to show a favorable termination of the criminal case- only that his prosecution ended without a conviction.

This is a great case for never taking the word of an EMT (or even a doctor) alone to create probable

cause (PC). You alone must decide if you have PC. You alone will be sued if you don't have PC. You cannot blame it on the EMTs.

2. Officers should read and review the discussion and cases addressing probable cause and arrest found in **The Illinois Officer's Legal Source Book, Volume II, pages 23-35.**

Found in Volume II, Section IV, starting at "Arrests/ custody without or without probable cause" and going to but not including "Excessive/unreasonable force cases.

eBook Link: <https://app.leotraining.com/ebooks/1/2404>

WHEN DOES AN OFFICER HAVE PROBABLE CAUSE TO ARREST A PERSON FOR DRIVING UNDER THE INFLUENCE OF ALCOHOL?



Context

In most driving under the influence (DUI) investigations, police officers will have a number of facts to look at before they decide to make an arrest. These include the suspect's driving, appearance, the odor of alcohol, field sobriety tests, etc.

Officers must have probable cause to make a lawful arrest. This determination is a practical, commonsense decision that requires a consideration of the totality of the circumstances.

***People v. Cervantes*, 2026 IL App (3d) 250214-U**

Facts

At 2:30 in the morning, a police officer saw a car drive over the white shoulder line, cross the line again while negotiating a curve in the road, and then touch the line twice after the curve. The officer activated his lights and made a traffic stop. The car pulled over and the officer determined that Cervantes was the driver.

The officer detected an odor of an alcoholic beverage and observed that Cervantes had bloodshot and glassy eyes. Cervantes was not slurring his speech, communicated clearly, and generally followed the officer's instructions. The officer found an open beer bottle inside the car.

Cervantes admitted to consuming four or five beers with friends after work. The officer asked Cervantes if he knew what time it was. Cervantes responded, "No, I understand." The officer again asked Cervantes if he knew what time it was, and Cervantes replied, "Yeah." When the officer asked again what time it was, Cervantes responded, "I don't know the exact time because I just drove off." The officer asked him to guess and Cervantes answered 11 p.m. or 12 p.m.

The officer administered three field sobriety tests: the horizontal gaze nystagmus (HGN), the walk and turn, and the one-leg stand. The officer observed and noted clues of impairment during all three tests. The officer asked Cervantes several times to submit to a preliminary breath test. Cervantes responded that he

was not refusing but that he was nervous because of the presence of other officers. The officer placed Cervantes under arrest for driving under the influence (DUI).

Cervantes was charged with driving under the influence of alcohol. He asked the trial court to suppress the evidence, claiming that the officer did not have probable cause to arrest him.

Trial Court

The court granted Cervantes' request to suppress the evidence. The trial court found the officer did not have probable cause to arrest Cervantes.

The prosecution appealed and argued that the officer had probable cause to arrest Cervantes for DUI.

Appellate Court

The Appellate Court stated that when an officer lacks probable cause to arrest, the defendant is entitled to have the resulting evidence suppressed. To determine whether probable cause existed, a court must determine whether a reasonable and prudent person, having the knowledge possessed by the officer at the time of the arrest, would believe that a person committed an offense. This standard requires the officer to have more than a mere suspicion but need not rise to the level of evidence sufficient to convict.

This determination is a practical, commonsense decision that requires a consideration of the totality of the circumstances. Probable cause in a DUI setting requires there be sufficient evidence to allow the officer to objectively and reasonably believe that as a result of the consumption of any amount of alcohol, a suspect's mental or physical faculties are so impaired that it reduces his or her ability to think or act with ordinary care.

The Appellate Court found that Cervantes' car crossed the shoulder line twice before swaying within the lane and touching the line two more times. Cervantes' eyes were bloodshot and glassy, and he had an alcoholic beverage on his breath. Cervantes admitted to drinking four or five beers and misstated the time of day by over two hours. Cervantes displayed clues of impairment during all three field sobriety tests. Finally, Cervantes refused to submit to a preliminary breath test which showed a consciousness of guilt.

The Court stated that even though Cervantes was not swaying, did not slur his speech and did not have trouble communicating with the officer, the other indicators sufficiently established probable cause to believe Cervantes committed a DUI.

The Appellate Court held that the officer had probable cause to arrest Cervantes for a DUI charge. The Court reversed the trial judge's decision.

Training Tips

1. Officers should know the factors that the courts will consider in determining whether an arrest occurred. In determining whether an arrest occurred, the court can consider many factors, including (1) the time, place, length, mood, and mode of the interrogation; (2) the number of police officers present; (3) any indicia of formal arrest or evidence of restraint; (4) the intention of the officers; (5) the extent of the officers' knowledge; (6) the focus of the officers' investigation; (7) the subjective belief of the detainee concerning his arrest status; (8) any statement or nonverbal conduct by the police indicating that the detainee was not free to leave; and (9) whether the detainee was told that

he was free to leave or that he was under arrest.

2. Remember that probable cause exists when the “totality” of the facts known to the officer are sufficient to lead a reasonably cautious person to believe a crime has been committed.
3. In this case, the Appellate Court found the following facts established there was probable cause to arrest Cervantes:
 1. Crossing the white shoulder line multiple times;
 2. Open bottle of beer in his car;
 3. Admitted to drinking four or five beers;
 4. Odor of alcohol on his breath;
 5. Had bloodshot and glassy eyes;
 6. Showed signs of impairment on all field tests;
 7. Refused to take a preliminary breath test.
4. It is hard to imagine how the trial court found that the officer did not have probable cause to arrest. As the Appellate Court noted, “to determine whether probable cause existed, a court must determine whether a reasonable and prudent person, having the knowledge possessed by the officer at the time of the arrest, would believe that a person committed an offense.

WHEN CAN AN OFFICER BE SUED FOR EXCESSIVE FORCE?



Context

A police officer's use of force is judged under the Fourth Amendment's standard of reasonableness. The courts have provided factors to look at in determining whether an officer's use of force is reasonable.

Officers who violate a person's constitutional rights can be sued in federal court pursuant to Section 1983.

Davis v. City of Elgin, et al., 7th Circuit Court of Appeals, July 9, 2026

Facts

The police received a report that Davis threatened his ex-wife and roommate with a shotgun while under the influence of alcohol. Dispatch called the ex-wife, and she confirmed that after an argument, Davis went into his bedroom and reappeared with what looked like a rifle. Davis laid the gun on the kitchen table and said that he should shoot her and her nephew. Though the gun was covered with a blanket, the ex-wife saw that Davis's finger was on the trigger. She then said that Davis was joking.

In response, the police sent officers, SWAT teams, an armored vehicle, a robot, negotiators and several high-ranking officers to Davis's home. The police surrounded the house unaware that Davis had gone to a neighbor's house and had fallen asleep. The police eventually reached Davis by phone, but Davis hung up. On a later call, Davis threatened to harm himself with a knife. An officer relayed to other officers that Davis was threatening to slit his own throat. Based on the calls with Davis, the officer believed that Davis threatened to hurt the officers, that he would release dogs on them, and that he would use knives against them.

A sergeant authorized the use of non-lethal weapons to subdue Davis when he came outside so that he would not retreat into the house. Eventually Davis came outside and refused to come down from the porch. An officer then fired at Davis with plastic ammunition, hitting Davis in the arm and snapping the bone in half. Davis went back inside the home.

Davis came out again about 10 minutes later. He attempted to demonstrate that he was not armed. He shouted at the officers and said, "So I want to know who's that (expletive) was who shot me because I

want to (bust or punch) his face in.” In response, the police shot him two more times, hitting his thigh. As Davis began to lower himself to the ground, an officer fired one more shot, which also hit Davis.

Davis pleaded guilty to disorderly conduct. Davis brought a lawsuit under 42 U.S.C. § 1983, alleging that the police violated his Fourth Amendment rights by using unreasonable and excessive force. The officers moved for summary judgment.

Federal District Court

The federal trial granted summary judgment for the officers.

7th Circuit Court of Appeals

The Court stated that qualified immunity offers police officers a shield to civil liability when they do not violate established statutory or constitutional rights that a reasonable person would have known. This shield is pierced when (1) officers violate the Constitution or a federal statutory right and (2) their conduct is clearly established as unlawful. As to the second step of the inquiry, the relevant inquiry is whether existing precedent placed the conclusion that the officer acted unreasonably in these circumstances beyond debate, unless the conduct was so egregious and unreasonable that no reasonable officer could have thought he was acting lawfully.

Davis argued that precedent clearly established that the conduct in this case was unreasonable because case law shows that using such a high level of force against an unarmed subject who poses no threat to the officers is unconstitutional. The Court stated that when an officer faces a situation in which he could justifiably shoot, he does not retain the right to shoot at any time thereafter with impunity. Regardless of whether we consider the four shots together, or the first one and the last here separately, Davis cannot carry his burden to show that the officers violated a clearly established right to be free from a particular use of force.

The officers had good reason not to want Davis to go back into the house, perhaps out of fear that he would grab a weapon. From the officers’ perspective, Davis had made threats with a gun earlier in the day, had knives during the standoff, had threatened suicide, and had made threats to the officers.

In this case, holding the officers accountable without any clearly established case law would risk punishing the officers for violating extremely abstract rights.

The Court of Appeals concluded that the police did not violate Davis’s clearly established Fourth Amendment rights. The Court affirmed the trial court’s decision and granted the officers qualified immunity.

Training Tips

1. Davis relied on the case of *Phillips v. Community Ins, Corp.*, 678 F.3d 513 (7th Circuit, 2012) to argue that the officers’ actions were clearly established as violating the Constitution.

In that case, police officers suspected Tamara Phillips of driving a stolen vehicle and driving under the influence of alcohol. They commanded that she get out of the car, but she did not follow the order. She was so intoxicated that the officers knew they were dealing with an arrestee of diminished capacity. It was clear that she was never actively resisting arrest. Nonetheless, from 40 to 50 feet away, an officer shot her with an impact weapon that had the force equivalent to a .44

magnum pistol. The Court in *Phillips* found that the officers used excessive force. Unlike this case, Phillips was no threat to herself, the officers, or to anyone else. She never exhibited any sort of aggressive behavior toward the officers before or after they located her car and made no attempt to escape.

Davis exhibited aggressive behavior toward the officers and admitted he was verbally abusive toward them. The United States Supreme Court has explained that reasonableness must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight and the calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments in circumstances that are tense, uncertain, and rapidly evolving.

Davis also argued that the trial court improperly distinguished the severity of his crime from that of Phillips. The police in Phillips were dealing with a car theft. After Phillips' vehicle did not match the stolen vehicle, that belief became objectively unreasonable. So, at the time the officers shot Phillips, they were only dealing with a drunk driver.

Here, the officers were told that Davis had threatened his ex-wife with a rifle. That she later said Davis was joking does not mean that the officers should have felt they were looking to arrest a suspect for a crime like drunk driving. Since the excessive force analysis requires a court to consider the reasonableness of the officers' actions in proportion to the threat posed, that is enough to show the actions were not clearly established as unconstitutional.

2. The Court of Appeals made reference to the GRAHAM V. CONNOR case. GRAHAM V CONNOR, 490 U.S. 386 (1989) was a decision by the United States Supreme Court and is one of the most important decisions regarding Section 1983 lawsuits and the Fourth Amendment.

In that case, Graham was suffering from an insulin problem and was driven by a friend to a convenience store to purchase some orange juice. Graham ran into the store but decided the line for the cashier was too long, so he ran back outside and got into the car. A police officer saw Graham hastily enter and leave the store. Believing that Graham may have just committed a robbery, the officer followed the car and made a traffic stop. Graham ran around the car twice and sat down on a curb. Other police officers arrived and handcuffed Graham. Graham told the officers to check his wallet for a diabetic decal. One of the officers told Graham to "shut up" and the officer slammed his head into the hood of the car. Four officers then threw Graham into a squad car. After checking with the store, it was determined Graham did not commit a robbery.

Graham sued the police under Section 1983. Eventually the case reached the United States Supreme Court.

In deciding whether an officer used excessive force in a certain situation, a court should consider several factors. These include **the severity of the crime, any threat posed by the individual to the safety of officers or other persons, and whether the individual is trying to flee or resist arrest.**

3. Excessive force is interpreted within the context of the Fourth Amendment. GRAHAM lists three ("non-exclusive") criteria that courts should look at when determining if officers used excessive force in a given situation. These criteria are:
 1. How serious is the crime?
 2. How serious is the threat?
 3. How serious is the resistance?
4. These are the GRAHAM factors, and EVERY officer must know these factors.
5. Qualified immunity basically means that there is no case on point that put officers on notice that their conduct violated the plaintiff's rights. By "on point" the courts require that a prior

case/decision must have basically the same facts as the case the court is considering. That is almost impossible. But officers still need to read and know the cases in this area.

6. Officers should read the GRAHAM V. CONNOR decision and the discussion of the use of force found in **The Illinois Officer's Legal Source Book, Volume II, pages 35-61.**

Found in Volume II, Section IV, starting at "Excessive/unreasonable force cases" and continuing up to but not including "Mentally ill suspects."

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