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Geofence Warrant

The Police Department began investigating a string of carjackings and robberies that had occurred. Later that night, a masked man used the stolen car to rob a gas station in the area. The police obtained video surveillance of the area where the suspect dumped the stolen vehicle, and the video showed the suspect getting into another car to make his escape. The getaway vehicle's license plate was registered to Stacey Gilbert, the sister of Johnnie Davis's girlfriend, Portia Gilbert.

Detective prepared and presented a Geofence warrant to Google, seeking information on Google devices and accounts located within 120 to 300 hundred feet of six locations around the time of the carjacking and robbery occurred. The times and locations corresponded with video surveillance that captured the suspect in action.

Google responded to the warrant by providing an anonymized list of devices and accounts that connected to its services at the times and locations designated in the warrant. Detective analyzed this data and identified three devices relevant to the investigation. Google unmasked those devices, i.e., disclosed the identifying information, and Detective determined that only one device appeared to be related. Specifically, Google identified a Gmail account open on a device in the getaway car as it was captured by video surveillance in the area where the carjacking took place. The device belonged to Portia Gilbert, and the Gmail account was registered to Gilbert's daughter. Police determined that the vehicle was rented to Johnnie Davis. The police used the cell phone number Davis listed in the rental agreement to obtain a warrant that allowed police to track the phone in real-time.

The next day, Detective and other officers sought and executed search and arrest warrants for Davis and the residences he was known to frequent. Detective arrested Davis on eight state charges related to the string of robberies and carjackings. Davis raised three issues in his appeal. Of importance here, he argued the trial court erred in allowing the evidence obtained from the Geofence warrant. He said that he had Fourth Amendment standing to challenge the Geofence warrant because the search invaded his reasonable expectation of privacy. Those arguments, and others, were rejected by the Court of Appeals.

Issue:

Did the Defendant have Fourth Amendment standing to challenge the Geofence warrant? **No**.

Geofence Warrant:

A Geofence warrant is a specific type of warrant used to collect information on the presence of a cell phone or other device within a specific area during a set time frame, typically corresponding with the timing and location of a crime. These warrants seek data from a company, like Google, that has access to device location through the company's users. Geofence warrants are particularly useful when investigators know the location and time of a crime but cannot identify a suspect.

Geofence warrants served on Google have typically followed a three-step process. First, law enforcement specifies the geographic area and timeframe for the search, directing the company where and when to gather data. Second, the company provides law enforcement with an anonymized list of users or devices that match the warrant's temporal and geographical criteria. Third, law enforcement analyzes that information and requests that the company "unmask" certain users and release further identifying information. Law enforcement then uses that identifying information to determine whether any of the users may be connected to the crime.

The Fourth Amendment protects "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." The basic purpose of the Fourth Amendment "is to safeguard the privacy and security of individuals against arbitrary invasions by government officials." *Camara v. Mun. Ct. of City and Cnty. of S.F.*, (S.Ct.1967).

Thus, Fourth Amendment protection "extends to anything or place with respect to which a person has a 'reasonable expectation of privacy.' " *California v. Ciraolo*, (S.Ct.1986)). Conversely, "an individual's Fourth Amendment rights are *not* infringed—or even implicated—by a search of a thing or place *in which he has no reasonable expectation of privacy*." Fourth Amendment standing is nothing more than "a useful shorthand for capturing the idea that a person must have a cognizable Fourth Amendment interest in the place searched before seeking relief for an unconstitutional search." *Byrd v. United States*, (S.Ct.2018). In the present case, the data collected was from Defendant's girlfriend's cellphone, not his.

Court's Ruling:

"Whether and when a Geofence warrant affects a person's reasonable expectation of privacy is an issue of first impression for our Circuit. … We now turn to whether Davis has Fourth Amendment standing to challenge the search of Google's records. The Fourth Amendment's protections extend to any thing or place with respect to which a person has a 'reasonable expectation of privacy.' We thus answer the standing question by deciding whether Davis has a cognizable Fourth Amendment privacy interest in the place, items, or property searched under the Geofence warrant. We hold that he does not."

"We will start with the third -party doctrine. A Geofence warrant authorizes the government to search information in the database of a communications company, not in the possession of the user. Ordinarily, a person cannot challenge the search of a third party, even if it divulges 'information he voluntarily turned over to that third party.' *Smith v. Maryland*, (S.Ct.1979); *see Alderman v. United States*, (S.Ct.1969) ('Fourth Amendment rights are personal rights which ... may not be vicariously asserted.'). The government routinely makes informal requests and issues subpoenas to businesses to get information about their customers, such as bank records. The background presumption in our law is that the government may access voluntarily disclosed electronic data in the same way without implicating an individual's privacy interest. *See United States v. Trader*, (11th Cir. 2020) (third-party doctrine allows government to find email address and internet protocol address that were disclosed to Kik [Messaging]). In other words, we start from the presumption that an individual like Davis cannot challenge a search of Google's records."

"Davis argues that, notwithstanding Google's status as a third party, he has a privacy interest that allows him to challenge this Geofence warrant. Specifically, he argues that he possessed a privacy interest in the tracking of his movements through the movements of his girlfriend's phone. We disagree. We consider the applicability of three individual privacy interests and hold that none of them apply to the Geofence search at issue in this appeal."

"First, and most obviously, the third-party doctrine does not apply to a search of a person's private information in the possession of a third party if that person did not voluntarily disclose that information to the third party. The Supreme Court has recognized that we have a privacy interest in the 'digital content on

cell phones.' *Riley v. California*, (S.Ct.2014). But, under the third-party doctrine, this interest is not protectable if the individual voluntarily disclosed that information to the third party that is the target of the search."

"In the usual case, we would need to assess whether the information in Google's possession was voluntarily disclosed. But we need not address that question here because the Geofence warrant revealed a third party's Gmail account registered in someone else's name on a phone that Davis did not own or exclusively use. *Even if a person has a privacy interest in the data on his own phone, he does not have that interest in the data on someone else's phone*."

"Second, Davis argues that a Geofence warrant may invade an individual's reasonable expectation of privacy if it effectively tracks that individual's movements over an extended period of time. The Supreme Court has held that a person has a reasonable expectation of privacy in the whole of his physical movements that may be implicated by near-constant electronic surveillance. *See Carpenter v. United States*, (S.Ct.2018); *United States v. Jones*, (S.Ct.2012). Because we are so attached to our cell phones, 'when the Government tracks the location of a cell phone' for an extended period, 'it achieves near perfect surveillance, as if it had attached an ankle monitor to the phone's user.' *Carpenter*."

"Again, however, this Geofence warrant doesn't implicate those Fourth Amendment concerns. As the [trial] court explained, the scope of this search was far more restricted than 'near perfect surveillance.' That is, the Geofence warrant captured only information within 33 feet of specific locations for fifteen to forty minutes at each location. One of our sister circuits recently agreed that a limited search via a Geofence warrant served on Google that seeks a user's location history does not implicate the same privacy concerns raised in *Carpenter*. See, *United States v. Chatrie, No. 22-4489,* (4th Cir. July 9, 2024)."

"Third, it is axiomatic that a person has a reasonable expectation of privacy in his home. *See Kyllo v. United States*, (S.Ct.2001). And that reasonable expectation of privacy generally prevents the government from using new technology 'to explore details of the home that would previously have been unknowable without physical intrusion.' Of course, the Geofence warrant here did not seek data from Davis's home or any other area in which Davis had a reasonable expectation of privacy. The warrant sought Google user location information for *six public locations and up to 300 feet around those areas*. To the extent the warrant returned information about someone's private property, it was not Davis's. Accordingly, Davis cannot establish that he had a reasonable expectation of privacy based on the areas searched via the Geofence warrant."

"To sum up, Davis lacks standing to challenge this Geofence warrant. The background presumption is that an individual has no standing to challenge the search of records that he voluntarily gave to a third party. And no arguable exception to that presumption applies here. The mere fact that Google may have reviewed Davis's Google account is irrelevant *if Google did not disclose information about that account to law enforcement*. Because the Geofence warrant did not implicate Davis's expectation of privacy in anything, he lacks Fourth Amendment standing to challenge it. AFFIRMED."

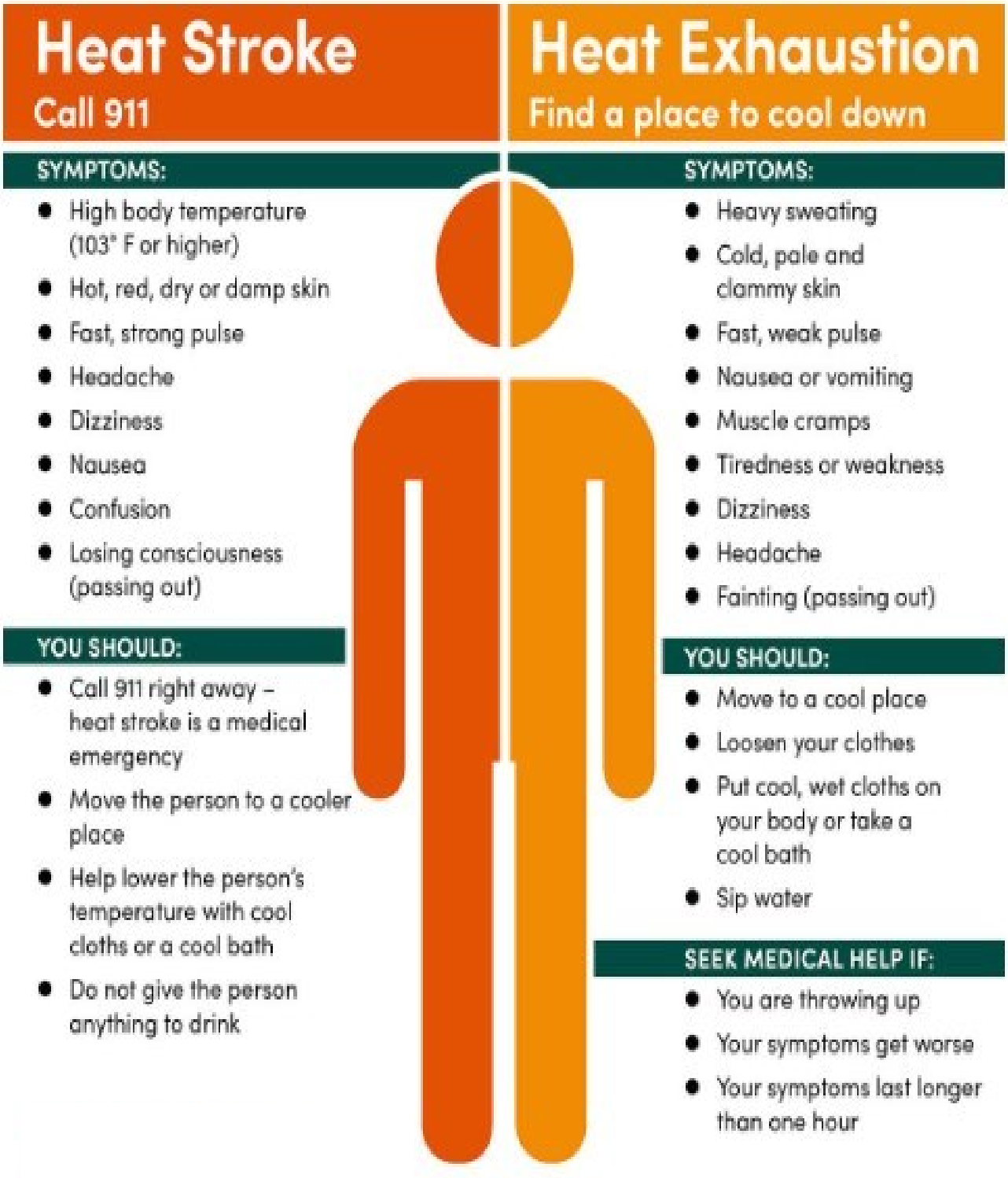
Lessons Learned:

It would appear that Davis outsmarted himself. By using his girlfriend's cell phone, he undoubtedly believed he was leaving no self-incriminating evidence. While in reality, he was forfeiting his standing and Fourth Amendment rights.

Further, it is clear that had the Geofence warrant implicated Davis's personal records or cell-phone, he would have had a basis to assert a Fourth Amendment standing challenge. He would still have to overcome the presumption that an individual cannot challenge the search of records that he voluntarily gave to a third party, in this case, Google.

According to data released by Google, Geofence warrants 'recently constituted more than 25% of all U.S. warrants' received by the company. Google disclosed that it received 982 Geofence-warrant requests in 2018.... In 2019, the number of Geofence warrants received by Google increased by a further 755% over the previous year to 8,396. In 2020, the last year for which specific statistics are publicly available at the time of writing, Google received 11,554 Geofence warrants. See, Amster & Diehl, *Against Geofences*, 74 Stan. L. Rev. at 389–90.

United States v. Davis
U.S. Court of Appeals, 11th Cir.
(July 30, 2024)



Source: MercyOne, Iowa

Recent Case Law

False Friend Statement

An elderly husband and wife were found bound, gagged, and dead in their Broward County home. Their jewelry was stolen. Police arrested Michael Marotta's accomplice as a suspect after DNA from blue painter's tape and rope from the crime scene matched his DNA.

After the co-defendant's arrest, he and the lead detective spoke. He told the Detective he could get Marotta to confess if the Detective placed him in a room with Marotta. He also told Detective, "We deserve the death penalty." Detective placed Marotta in a room with his accomplice to confirm whether the co-defendant was telling him the truth, not necessarily to draw Marotta's confession. The co-defendant was the "architect" of this plan and the detective "allowed it to be done." Detective testified he told Marotta that the co-defendant wanted to speak with him. Marotta had not received his *Miranda* warnings at this point.

During their talk, Marotta provided incriminating comments about the double homicide, burglary, and robbery. When the co-defendant asked Marotta how deep he buried the stolen jewelry, Marotta said it was deep enough. At a later point, Marotta expressed worry over providing a DNA sample to police.

Detective entered the room and brought Marotta into a separate room out of the co-defendant's presence. This exchange was also recorded. Marotta told the lead detective that he had no problem talking all night to the police. After asking Marotta for identifying and background information about his relationship with his accomplice, Detective read *Miranda* warnings to Marotta, who did not invoke his rights. Marotta said he voluntarily went in to talk to the co-defendant.

At this point in the interview, Marotta shared differing stories and events that occurred on the day of the murders. After claiming to have visited a friend on the day of the murder and not being in the victims' condominium complex, Marotta eventually confessed to having played a role in the double homicide, robbery, and burglary. After providing details of the victims' murders, Marotta declared: "I'm living with it for days.... I can't take this anymore."

Pre-trial, Marotta moved to suppress his statements made to Detective, arguing those statements were the product of an illegal detention and coercion. The trial court denied the motion to suppress, determining in pertinent part: 1. the detective placed Marotta in the room with the co-defendant to determine whether the co-defendant's allegations were true; 2. "Marotta was not forced to go into the room with the co-defendant"; and 3. "Marotta's statement to the co-defendant was not obtained in violation of his *Miranda* rights notwithstanding the co-defendant's role as a state agent."

On appeal, those rulings were affirmed.

Issue:

Did the police violate Defendant's Fifth Amendment privilege against self-incrimination by not reading to him *Miranda* warnings before he was subject to an interview by the co-defendant with the lead detective's approval **No.**

Self-Incrimination:

The fundamental privilege against self-incrimination is protected under the Federal and Florida Constitutions. Under *Miranda*, defendants are entitled to "prophylactic warnings before any custodial interrogation." *Miranda v. Arizona*, (1966). *Miranda* warnings are designed to preserve the privilege against "incommunicado interrogation of individuals in a police-dominated atmosphere, resulting in self-incriminating statements." "The safeguards provided by *Miranda* apply only if an individual is in custody and subject to interrogation. **Where either the custody *or* interrogation prong is absent, *Miranda* does not require warnings**." *Gordon v. State*, (4DCA 2017).

Peterson v. State, (Fla. 2012), is instructive here. A few days after a murder, the police arrested one of Peterson's cohorts, Jimmie Jackson, for driving on a suspended license. While Jackson was in custody, he agreed to call Peterson to ask about the murder. During their initial conversations, Peterson made a number of incriminating statements, implying that he had killed Andrews.

The trial court in denying

Defendant's motion to suppress his statements ruled: "It appears unquestionable to me that this is not a custodial interrogation. We have a person who is acting for the police, but he arranges a meeting with the Defendant wherein it is clear that the Defendant is thinking that this is his friend or cohort, and [Jackson] is pretending to be his friend or cohort. There is nothing here indicating that the police had summoned the Defendant for this meeting at all. It's just devoid of anything to support that."

"There is absolutely nowhere in any of the evidence I have heard today where the suspect was confronted with evidence of his guilt. It is just the opposite, really. He is conspiratorially giving evidence of his guilt without anyone even questioning him in many instances. And then whether the suspect is informed that he is free to leave the place of questioning, the tape ends with the Defendant saying I'm going to get a cigarette."

The Florida Supreme Court agreed with the trial court's assessments of the facts and said, "Under both the United States and Florida Constitutions, Defendants cannot be 'compelled' to be witnesses against themselves in any criminal matter. This constitutional guarantee 'is fully applicable during a period of **custodial interrogation**.' *However, police are not required to give Miranda warnings to every potential suspect- these warnings apply only to in-custody interrogations*."

Marotta's dialogue with his accomplice is similar to situations in which a co-defendant agrees with police to make a controlled call to a Defendant. Such controlled calls may be employed to obtain incriminating responses from the defendant. See, *Brooks v. State*, (4DCA 2019); *Nunn v. State*, (4DCA 2013).

Court's Ruling:

" 'Interrogation occurs when a State agent asks questions or engages in actions that a reasonable person would conclude are intended to lead to an incriminating response.' *State v. McAdams*, (Fla. 2016). See, *Rhode Island v. Innis*, (S.Ct.1980) ('The *Miranda* safeguards come into play whenever a person in custody is subjected to either express questioning or its functional equivalent.'). 'Volunteered statements of any kind are not barred by the Fifth Amendment ....' See, *Miranda*."

"Most conversations and confessions in a police interrogation room are admissible as evidence because it has long been held that inmates do not have a reasonable expectation of privacy in jail. Unless police provide specific or deliberate assurances of privacy, suspects generally have no expectation to privacy while in police custody. See, *Davis v. State*, (Fla. 2013). 'In most cases, conversations between suspects and undercover agents do not implicate the concerns which produced *Miranda*.' *State v. Russell*, (5DCA 2002)."

"In *Illinois v. Perkins*, (S.Ct.1990), the U.S. Supreme Court upheld the admission of a 'jailhouse confession' made to an undercover law enforcement agent posing as a cellmate and made clear that 'conversations between suspects and undercover agents do not implicate the concerns underlying *Miranda*.' The court held: 'The essential ingredients of a 'police-dominated atmosphere' and compulsion are not present when an incarcerated person speaks freely to someone whom he believes to be a fellow inmate. Coercion is determined from the perspective of the suspect. When a suspect considers himself in the company of cellmates and not officers, the coercive atmosphere is lacking.' "

"Thus, *Miranda* warnings are not required when the suspect is unaware that he is speaking to a law enforcement officer and gives a voluntary statement."

"*Miranda* forbids coercion, not mere strategic deception by taking advantage of a suspect's misplaced trust in one he supposes to be a fellow prisoner. Thus, 'ploys to mislead a suspect or lull him into a false sense of security that do not rise to the level of compulsion or coercion to speak are not within *Miranda*'s concerns.' "

"The rationale underlying *Perkins* is 'quite broad [and] applies not only to undercover police officers, but also to private citizens who act as agents of law enforcement.' *Halm v. State*, (2DCA 2007). 'Deception which takes advantage of a suspect's misplaced trust in a friend does not implicate the right against self-incrimination ....' *Alexander v. Connecticut*, (2d Cir. 1990)."

"Here, Marotta had no reason to believe the co-defendant was acting on behalf of the police. Moreover, the police did not recruit and direct the co-defendant to be a false friend and coerce a confession out of Marotta. Rather, the co-defendant volunteered to speak with Marotta, who in turn, volunteered a confession."

"Consequently, the co-defendant did not 'interrogate' Marotta, nor did the dialogue amount

to the 'functional equivalent' of interrogation; rather, they shared a casual conversation. Marotta did not confess in a 'police-dominated atmosphere,' and thus, did not implicate the concerns underlying *Miranda* when he spoke with the co-defendant. Marotta's confession is admissible because he did not have a reasonable expectation of privacy in the police interview room with the co-defendant, *as the police did not actively assure him of privacy*."

"The trial court did not abuse its discretion in denying Marotta's motion to suppress his pre-*Miranda* statements made to the co-defendant as their discussion was not a custodial interrogation. **Affirmed**."

Lessons Learned:

The Florida Supreme Court best summed up the basis for the police-suspect relationship as: "All that is required of interrogating officers…is that they be honest and fair when addressing a suspect's constitutional rights." *State v. Glatzmayer*, (Fla. 2001). The officer is prohibited from misleading the suspect as to his legal position or his rights.

In *State v. Calhoun* (4DCA 1985), Calhoun, an inmate, was brought to an interview room. After speaking with officers about a case in which he was a suspect, and after being advised of his *Miranda* rights, Calhoun asked to speak with his brother *privately*. The brother, who was also an inmate, was brought into the room and their conversation was recorded. When officers returned to the room, Calhoun invoked his right to remain silent and his right to counsel. Although the officers terminated the interview, they then returned Calhoun's brother to the interview room so that the brothers' conversation could be recorded for investigative purposes. *Unlike the present case, the officers agreed that the brothers could have a **private** conversation.* The Fourth District affirmed the trial court's decision to suppress the recorded conversations, stating:

"We agree with the State that the Defendant usually would not have a reasonable expectation of privacy in the 'jailhouse' or even in the interview room. However, we agree with the trial judge that the cases cited by the State are distinguishable on this record. The facts of this case reveal that the **Defendant had a clear expectation of privacy because such an expectation was *deliberately fostered by the police officers***. In this case, the Defendant's response to hearing his *Miranda* rights was that he would like to talk to his brother privately before talking to the officers. The police ostensibly complied with his request, brought in his brother, and exited the room *giving every indication that the conversation was to be secure and private*. Consequently, it was a justified expectation of privacy."

Marotta v. State
4th D.C.A.
(July 31, 2024)

Constitutional Use of Force

Officer Garrett Rolfe arrested Charles Johnson, Jr. for DUI. Defendant was uncooperative, combative, argumentative, refused to perform roadside tests, and lastly, resisted being placed in handcuffs. The 11th Circuit in its opinion, set out a more detailed recitation of the underlying facts, relying on body camera and dashcam footage that Rolfe attached to his lawsuit response. Suffice it to state Officer Rolfe had to take the Defendant to the ground to subdue and handcuff him. Defendant claimed he suffered a broken collar bone. He sued the officer and City for excessive use of force. The trial court dismissed his case, as did the 11th Circuit on appeal.

Issue:

Under the totality of the circumstances, did Officer Rolfe use unnecessary, excessive force, in effecting the DUI arrest? **No**.

Reasonable Force:

The Fourth Amendment provides a "right of the people to be secure in their persons ... against unreasonable ... seizures." This right "encompasses the plain right to be free from the use of excessive force." The Fourth Amendment's objective reasonableness standard governs the excessive force inquiry. *Graham v. Connor*, (S.Ct.1989). "With respect to a claim of excessive force ... not every push or shove, even if it may later seem unnecessary in the peace of a judge's chambers, violates the Fourth Amendment."

In determining the reasonableness of the force applied, courts will look at the fact pattern from the perspective of a reasonable officer on the scene with knowledge of the attendant circumstances and facts, and balance the risk of bodily harm to the suspect against the gravity of the threat the officer sought to eliminate. *McCullough v. Antolini*, (11th Cir. 2009). A court must look at the "totality of the circumstances" in making this assessment. *Tennessee v. Garner*, (S.Ct.1985).

The Supreme Court has

identified a non-exhaustive list of factors to consider under the totality of the circumstances, including "the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest for flight." Other considerations are "the need for the application of force, the relationship between the need and the amount of force used, the extent of the injury inflicted, and whether the force was applied in good faith or maliciously and sadistically." *Baker v. City of Madison, Alabama*, (11th Cir. 2023).

"The calculus of reasonableness must embody the allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation." *Graham v. Connor*, (1989).

Court's Ruling:

In his civil rights violation lawsuit, the Defendant characterized his behavior and actions at the stop as totally appropriate, respectful, and did not otherwise provide Rolfe "with a legal basis to use force against him." The 11th Circuit, however, noted: "The body camera and dashcam footage that Rolfe attached to his Answers tell a different story than the one Johnson alleged in his complaint."

"We now turn to whether the videos established that Rolfe was entitled to qualified immunity on Johnson's federal excessive force claim. 'Where [the] video is clear and obviously contradicts the plaintiff's alleged facts, we accept the video's depiction instead of the complaint's account, and [we] view the facts in the light depicted by the video.') As explained below, we affirm the [trial] court's determination that Rolfe is entitled to qualified immunity because no constitutional violation occurred."

"While it is true that Johnson's underlying offense of driving under the influence of alcohol is a misdemeanor, [under GA law], the … *Graham* factors all weigh in favor of finding that Rolfe's tackle was reasonable."

"Rolfe pulled Johnson over late on a rainy night on I-85—a major highway—and attempted to get Johnson to perform various sobriety tests after discovering an open container under Johnson's seat. After Johnson was continuously noncompliant, Rolfe informed Johnson that he would have to place him under arrest based on the facts that Johnson 1. was clocked going 30 miles per hour over the speed limit in unsafe road conditions, 2. had an open container of alcohol in his car, and 3. was exhibiting signs of impairment. Rolfe then attempted to handcuff Johnson and repeatedly told him to place his hands behind his back and not to pull away. After continuing not to comply, Johnson resisted by jerking his right arm away from Rolfe, at which point Rolfe tackled Johnson to the ground. *Given Johnson's inebriated state, the proximity to cars speeding by on a major interstate at night in wet conditions, and the risk of a multi-story fall off the ledge of the highway, Johnson's actions placed the lives of himself, Rolfe, his passenger, and other drivers on the highway in danger."*

"There is no indication that Rolfe acted maliciously in tackling Johnson—indeed, Rolfe asked Johnson if he needed an ambulance when Johnson told Rolfe that his shoulder was dislocated. And while Johnson now alleges that his collarbone was broken in the tackle, he admits that his 'injuries were not severe.' Based on these facts, we find Rolfe did not use excessive force in detaining Johnson. See*, Charles v. Johnson,* (11th Cir. 2021) (finding that an officer did not use excessive force when he made an arrest by tackling a suspect who ignored commands to place his hands behind his back and pulled away from the officer's grip to prevent handcuffing); *Durruthy v. Pastor*, (11th Cir. 2003) (determining that two arresting police officers did not use excessive force when they pulled an arrestee to the ground in an attempt to handcuff him)."

"Because we conclude that Rolfe did not use excessive force in tackling Johnson, there was no constitutional violation. We therefore conclude at the first step of our analysis that Rolfe was entitled to qualified immunity, and we do not address the second prong—whether the law was clearly established."

"It is clear from the video that Rolfe's tackle of Johnson was not done with the intent of injuring Johnson. Instead, Rolfe was attempting to arrest a non-compliant and resisting Johnson. As discussed above, immediately after securing Johnson, Rolfe helped him to his feet; and when Johnson expressed concerns regarding his shoulder, Rolfe asked him if he wanted Rolfe to call an ambulance. Nothing in this interaction indicates that Rolfe intended to injure Johnson when he tackled him. Accordingly, Rolfe is entitled to official immunity on

Johnson's state-law claims. AFFIRMED."

Lessons Learned:

The Supreme Court has held that "the right to make an arrest . . . necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it." See, *Graham.* The Court also considers, among other factors, the proportionality of the use of force to the need for force. Specifically, the Court evaluates factors such as: 1. the need for the application of force, 2. the relationship between the need and the amount of force used, and 3. the extent of the injury inflicted.

In, *Hawkins v. Carmean*, (11th Cir. 2014), the court ruled: "As an initial matter, the [trial] court repeatedly notes that twenty-one seconds after Officer Carmean approached Hawkins' vehicle, she opened Hawkins' door, instructed Hawkins to get out of the car, and placed her under arrest. To a layperson, twenty-one seconds may appear to be a short period of time; however, for a police officer facing 'circumstances that are tense, uncertain and rapidly evolving,' *twenty-one seconds could be the difference between life and death*."

"Indeed, in 2009, eight police officers were killed and 5,479 were assaulted during traffic-related investigations. [Citing DOJ statistics]. … Importantly, the Supreme Court has recognized that officer safety during a traffic stop is 'both a legitimate and weighty' concern, noting that, 'according to one study, approximately 30% of police shootings occurred when a police officer approached a suspect seated in an automobile.' *Pennsylvania v. Mimms*, (S.Ct.1977) (quoting *Adams v. Williams*, (S.Ct.1972))."

"Thus, while the circumstances of this case did not, in hindsight, ultimately present a life-or-death situation for Officer Carmean, it is important to do more than pay lip service to the potential danger a police officer faces during a traffic stop. This is especially true given that a police officer can be killed or injured in a matter of seconds or even less."

Johnson v. City of Atlanta
U.S. Court of Appeals, 11th Cir.
(July 12, 2024)