

Audio file

[10 circuit court of appeals MP3.mp3](#)

Transcript

00:00:00 Speaker 3

All right, our next case is 20 Dash 1259 Saint George versus City of Lakewood, and before we get started, we appreciate the CU Law's support of these types of efforts to provide representation out there. Mr Cushing in particular. I appreciate that we've had.

00:00:20 Speaker 3

Cases from your clinic in the last year or so.

00:00:23 Speaker 3

So again, I compliment you on your ability to put the program together and as I understand it, our first lawyer for the appellants, Mr.

00:00:33 Speaker 3

Saint George is Danielle Trujillo, is that correct?

00:00:36 Speaker 2

As Frank.

00:00:36 Speaker 3

You may you may proceed, Mr.

00:00:38 Speaker 3

Video.

00:00:39 Speaker 2

Thank you, your honors.

00:00:41 Speaker 2

May it please the court my name is Danielle Trujillo and I along with my Co counsel Mr Neil Sandhu, represent appellant Mr Eric Saint George are supervising attorney.

00:00:52 Speaker 2

Mr Matthew Cushing is on the line and available should questions arise with your permission, we would like to reserve 3 minutes.

00:00:59 Speaker 2

For Mr. Sandhu on rebuttal.

00:01:02 Speaker 2

Fundamentally, your honors this case asks us to determine whether a pro, say plaintiff, pleading plausible facts in a highly factual specific analysis can proceed past this threshold procedural bar because the District Court erred in failing to liberally construed.

00:01:22 Speaker 2

His pro safe pleadings at this preliminary motion to dismiss stage, the answer must be yes.

00:01:30 Speaker 2

For most Mr. Saint George alleged sufficient facts to succeed on each of the three gram factors and all four of the subsequent Larson factors. The first grand factor severity of the crime weighs in his favor because this court's jurisprudence demonstrates this factor.

00:01:51 Speaker 2

Is about more than just the crime as initially reported.

00:01:54 Speaker 2

For example, in Poly two, this court found that the first factor weighed in the Poly brothers favor, because by the time officers arrived on scene and had conducted their own independent investigation, they concluded one no exigent circumstances existed, and two.

00:02:14 Speaker 2

They did not have enough evidence or probable cause to effectuate an arrest.

00:02:19 Speaker 2

Despite agent trimmers contentions, we do not need to assume that the crime as initially reported had in fact been committed.

00:02:28 Speaker 2

Rather, we look to Poly two that this case is more like Poly two than it is Morris, because here Agent Trimmer does not contend that she had probable cause in Morris.

00:02:39 Speaker 2

The officer in that case mistakenly believed that he had probable cause, and as such, this court assumed that the crime had been committed.

00:02:47 Speaker 3

Let me let me interrupt here at the.

00:02:52 Speaker 3

You know, certainly, uh.

00:02:56 Speaker 3

The cops.

00:02:57

Yeah.

00:02:58 Speaker 3

She was an officer.

00:03:00 Speaker 3

Brennan was able to actually communicate with Mr Saint George and he identified him as a police officer and what instructed him to, you know, come out, come out of the out of the apartment and.

00:03:06 Speaker 2

Did.

00:03:16 Speaker 3

At that point, Mr.

00:03:19 Speaker 3

Saint George.

00:03:22 Speaker 3

Might have known that there was a U.S.

00:03:24 Speaker 3

citizen police encounter there investigating a reported crime, and at that point why and then things of course escalated from there.

00:03:35 Speaker 3

But at that point wasn't Mr.

00:03:38 Speaker 3

Saint George on notice that he was, you know, as a subject?

00:03:43 Speaker 3

Of a.

00:03:44 Speaker 3

You know, in the criminal investigation I just put it that way and you know had some duty to cooperate.

00:03:52 Speaker 2

No, your honor.

00:03:53 Speaker 2

He was not on notice and for two reasons.

00:03:56 Speaker 2

First, as he alleged in his complaint, Mr.

00:03:57 Speaker 3

Right?

00:03:59 Speaker 2

Saint George had been subject to a variety of noise complaints before, but he expected that officers investigating a crime would have identified themselves physically.

00:04:11 Speaker 2

They would have knocked on his door.

00:04:13 Speaker 2

They would have made themselves visible by turning on their squad lights or by showing them that in fact they physically existed and the second reason why he was not on notice is because even after Mr.

00:04:24 Speaker 2

Saint George attempted to confirm the identities of these black.

00:04:28 Speaker 2

Act unknown and threatening callers.

00:04:30 Speaker 2

The officer still did not identify themselves physically.

00:04:31 Speaker 2

1st.

00:04:31 Speaker 2

00:04:34 Speaker 2

Rather we see from the record 3 separate times when Mr.

00:04:37 Speaker 2

Saint George stepped out of his dwelling to confirm these identities.

00:04:42 Speaker 2

Each of these times the officers witnessed him do so, and yet they still refused to identify themselves .

00:04:48 Speaker 3

Video video of a weapon.

00:04:50 Speaker 2

He had a weapon the third time he stepped out your honor, and at this time he still was operating under a different set of facts.

00:04:59 Speaker 2

In fact, we can look to the 4th Larson Factor and in Mr St.

00:05:03 Speaker 2

Georges Manifest intentions.

00:05:05 Speaker 2

It would have been reasonable for the officers to conclude that his actions were.

00:05:11 Speaker 2

Impacted by what he thought were blocked.

00:05:14 Speaker 2

Unknown callers at best prank callers.

00:05:18 Speaker 2

At worst, individuals connected with the incident that had occurred earlier in the evening.

00:05:23 Speaker 3

It's going to be.

00:05:24 Speaker 3

It's going to be an objective standpoint.

00:05:26 Speaker 3

From the.

00:05:27 Speaker 3

You know the the vantage point of the officers under under both Graham and and Larson, right?

00:05:33 Speaker 3

So what?

00:05:33 Speaker 2

Absolutely.

00:05:34 Speaker 3

What?

00:05:34 Speaker 3

You know.

00:05:34 Speaker 3

Whether whether he was, what, whether he thought it was a you know a gang after him, or you know people associated with the.

00:05:39

Yeah.

00:05:43 Speaker 3

***** them, you know he made he made uh may have truly subjectively thought that, but you know the police don't know that.

00:05:52 Speaker 2

We're not asking you to examine his inner thoughts in this case, your Honor.

00:05:56 Speaker 2

Rather, his manifest intentions were illustrated in the words he spoke and the actions he took.

00:06:04 Speaker 2

He specifically said to the police you aren't out there after he had already tried to confirm their identities and we can look to this court holding in Poly 2 where this court confirms that it was reasonable for the officers in scene on in that case.

00:06:20 Speaker 2

To determine that the Poly brothers took the actions they did because they were worried and frightened in the middle of night in the middle of the night that these individuals arriving on their personal property were connected with the incident that had occurred earlier in the evening, and in fact the, like the Poly brothers.

00:06:40 Speaker 2

It was legal for Mr.

00:06:42 Speaker 2

Saint George to arm himself and to defend his property under Colorado State law.

00:06:48 Speaker 2

So this 4th manifest intentions factor weighs in his favor further.

00:06:54 Speaker 6

Let me let me ask you a couple of questions.

00:06:56 Speaker 6

I just want to make sure I get him in 'cause they're important facts and I haven't been able to discern what they are in the record.

00:07:01 Speaker 6

I've looked at the exhibits, it looks like a duplex as he came out around with the shotgun.

00:07:07 Speaker 6

Would he have gone behind the truck behind which, uh, agent tremor.

00:07:13 Speaker 6

I guess it was.

00:07:14 Speaker 6

What was or would he have gone the other direction in front of the truck?

00:07:18 Speaker 2

So as discerned from the complaint, your honor, he walked in the opposite direction around the other way, before even coming to Agent Trimmer.

00:07:28 Speaker 2

So it was in front of the truck.

00:07:31 Speaker 2

Anthony.

00:07:31 Speaker 6

OK, so would he have seen her by his natural course of his natural route.

00:07:37 Speaker 2

No, and he did not see her as alleged in the complaint.

00:07:41 Speaker 6

All right, second second question is did she fire from underneath the truck?

00:07:46 Speaker 3

No.

00:07:46 Speaker 6

By the tire.

00:07:48 Speaker 2

That's a more difficult question.

00:07:50 Speaker 2

Based on the pleadings, Your Honor, and perhaps that's one that we could answer if we proceeded past this procedural bar, which is the motion to dismiss.

00:07:59 Speaker 6

Well, he's struck in the leg and that's all we know.

00:08:02 Speaker 2

Yes, we know that Agent Tremor fired immediately after seeing him.

00:08:02 Speaker 6

Yeah.

00:08:06 Speaker 2

But we know that she had 6 minutes from the time when he stepped out of his house and he fired his warning.

00:08:14 Speaker 2

A pump action.

00:08:15 Speaker 2

She had 6 minutes at that time to identify herself.

00:08:19 Speaker 2

And yet she still chose.

00:08:21 Speaker 2

Not to.

00:08:22 Speaker 2

What we do know is that the presence of his weapon alone, especially for Larson Factor 2, is not dispositive in this case.

00:08:32 Speaker 2

We can look to this court holding in Wilson versus weeks for the proposition that the presence of a weapon alone does not satisfy the reasonableness inquiry.

00:08:42 Speaker 3

How many how many other officers were physically present at at the time the shot was fired per shot?

00:08:50 Speaker 2

Yes, your honor.

00:08:50 Speaker 2

So agent trimarans.

00:08:52 Speaker 2

Three other officers were still on scene.

00:08:55 Speaker 3

And they were uniformed, I presume.

00:08:57 Speaker 3

They were and they were in marked.

00:09:01 Speaker 3

Squad police cars.

00:09:03 Speaker 2

So their police cars were parked outside of the private residences gate.

00:09:07 Speaker 2

So at that time there was no way for Mr.

00:09:10 Speaker 2

Saint George to have discerned that those police cars actually existed, and that's alleged in the complaint as well.

00:09:17 Speaker 6

Right?

00:09:18 Speaker 2

Rather, when we have this weapon involved despite agent Tremors contentions, we can't rest on a weapon alone. It's the actions that Mr Saint George takes with the weapon that controls the analysis. We can look to the 4th Circuit's holding in Cooper versus Sheahan, which found.

00:09:38 Speaker 2

That it was unreasonable for an officer to use force even though the plaintiff in that case was holding a weapon because the weapon was pointed similarly to the case today at the.

00:09:39 Speaker 2

French fries.

00:09:39 Speaker 2

00:09:50 Speaker 2

Around further, the plaintiff in that case did not make verbal threats to the officer, and here too we see no verbal threats.

00:09:59 Speaker 2

Rather, what we have is Mr.

00:10:01 Speaker 2

Saint George sitting in his private residence, drinking a glass of wine, scrolling on the Internet after he just went to dinner.

00:10:10 Speaker 2

We know that.

00:10:10 Speaker 2

The officers have arrived on scene and we know that they have.

00:10:14 Speaker 2

Been there for over 2.

00:10:16 Speaker 2

Hours trying to corroborate the initially reported crime, but they have one.

00:10:22 Speaker 2

No exigent circumstances and two no probable cause because after their independent investigation they interviewed witnesses and witnesses confirmed they did not hear gunshots.

00:10:34 Speaker 2

They searched for shell casings.

00:10:36 Speaker 2

In the street and they did not find.

00:10:38 Speaker 2

Then rather what we know is that even the crime as initially reported had not been confirmed.

00:10:45 Speaker 2

And finally, and especially in regard to the procedural posture of this case today, your honors on this motion to dismiss what we know is Mr.

00:10:45 Speaker 2

And.

00:10:45 Speaker 2

00:10:54 Speaker 2

Saint George did not need to succeed on all of the grand factors.

00:10:58 Speaker 2

And each of the four Larson factors.

00:11:01 Speaker 2

But what he did do was plead plausible facts to state a claim the District Court erred in not giving weight to the finding that the third Graham factor clearly went in his favor.

00:11:13 Speaker 2

And the first Larson factor did so as well.

00:11:16 Speaker 2

When liberally construing his pro se pleadings, the District Court had enough evidence in the pages and pages of the complaint to see that the officer's actions on scene were in fact.

00:11:32 Speaker 2

Motivated by much of the context that they themselves had created by failing to identify themselves over the course of multiple hours by failing to warn Mr.

00:11:43 Speaker 2

Saint George before they shot him on sight.

00:11:46 Speaker 2

This conduct should be considered in the analysis as this court has found repeatedly first in Sevier, then in Allen, then in Rome, then in Poly two, it's the opposite.

00:11:58 Speaker 3

Are those the cases you rely on that this was a clearly established constitutional violation?

00:12:05 Speaker 2

Yes, your honor in total, but also Poly two is very clear on the matter.

00:12:11 Speaker 2

That's the reckless conduct of the officers on scene does in fact contribute to the analysis of what the objectively reasonable officer did.

00:12:22 Speaker 3

And the recklessness was the failure to physically present themselves.

00:12:26 Speaker 3

Mr Saint George.

00:12:27 Speaker 2

Yes, and that was the same recklessness that this court examined in Poly two as well as the 4th Circuit in Cooper versus Sheahan, and with your permission your honors.

00:12:37 Speaker 2

I would like to reserve the rest of my time for Mr Sandy Lam rebuttal.

00:12:41 Speaker 3

Thank you, good Clock management.

00:12:42 Speaker 3

OK, let's hear from Mr Meade then.

00:12:48 Speaker 4

Yeah.

00:12:51 Speaker 1

If it please, the court system working.

00:12:54 Speaker 3

We can hear you.

00:12:55 Speaker 1

And here instead you see me as well.

00:12:57 Speaker 3

May proceed, yeah, thank you.

00:12:58 Speaker 1

Thank you.

00:12:58 Speaker 1

00:13:01 Speaker 1

It's a police record Malcolm need or the law firm of Pollen Evans Bar number 11684 for the dependents out Belize.

00:13:10 Speaker 1

And before going further, allow me to commend the law students from the University of Colorado Boulder School of Law, or currently representing George.

00:13:20 Speaker 1

Doesn't the quality of their work, both on the brief and now in presentation, they clearly have bright legal careers ahead of them, no doubt about that.

00:13:27 Speaker 3

We concur with that.

00:13:29 Speaker 4

Yes.

00:13:33 Speaker 6

Yes.

00:13:34 Speaker 1

Bigram enlargement factors provide a convenient way to analyze the claim of excessive force.

00:13:41 Speaker 1

But when using these factors, we must be careful not to let the analysis become too mechanical.

00:13:47 Speaker 1

The central question in this case is whether a reasonable officer on the scene, considering the totality of the circumstances, would have had probable cause to believe her life was in immediate danger, thereby justifying the use of force.

00:14:04 Speaker 1

Remembering that officers are often forced to make split second judgments in circumstances that are tense, uncertain, rapidly evolving.

00:14:12 Speaker 1

Let's look at the totality of the circumstances known to Agent Trimmer.

00:14:17 Speaker 1

A woman calls the police at about 10:00 PM and reports that she was ***** assaulted.

00:14:23 Speaker 1

And that the assailant followed her with a gun and fired two shots, one into the air and a second at her.

00:14:24 Speaker 1

I live here with.

00:14:24 Speaker 1

00:14:30 Speaker 6

Is that right?

00:14:31 Speaker 6

I?

00:14:31 Speaker 6

I thought it was that she had said there was illicit ***** contact, not that she was ***** assaulted.

00:14:39 Speaker 6

In other words, she was acknowledging that she had been an ***** that evening.

00:14:44 Speaker 1

I I apologize, right, the exact phrase could have been elastic.

00:14:47 Speaker 1

***** contact, correct?

00:14:50 Speaker 1

But she also reports that they unfollowed her with a gun and fired two shots, one into the air and the other at her.

00:14:59 Speaker 1

Unless the police are grounds respect just like 4 things, one is the.

00:15:04 Speaker 1

Report of illicit illicit ***** assault.

00:15:07 Speaker 1

The other is the man possesses a gun.

00:15:09 Speaker 1

The man is like he used the gun to frighten or intimidate, and the man may have attempted to kill.

00:15:14 Speaker 1

The woman, fired the gun at her.

00:15:17 Speaker 1

In fact, the complaint in the opening long paragraph says she reported attempted murder.

00:15:23 Speaker 1

The police go to the man's apartment complex at around 10:15 PM.

00:15:28 Speaker 1

And before making contact, they conduct their preliminary investigation.

00:15:32 Speaker 1

They talked to the man's neighbors.

00:15:35 Speaker 1

Several say they heard one loud sound.

00:15:39 Speaker 1

One neighbor said it sounded like a firecracker or a car engine backfiring, but not like a gunshot.

00:15:45 Speaker 1

So this part of the investigation is Mint.

00:15:47 Speaker 1

The neighbors heard a loud bang, which may or may not have been a gunshot.

00:15:52 Speaker 1

Officers also searched the parking lot for bullet shells and find none.

00:15:55 Speaker 1

But this does not debunk the woman. 911 call as Plaintiff says.

00:16:00 Speaker 1

It would be difficult to find two small bullet shells in the parking lot or apartment complex during the day.

00:16:07 Speaker 1

This is night time.

00:16:09 Speaker 5

Yeah.

00:16:09 Speaker 1

And the illicit illicit ***** contact happened inside the apartment, so there would be no evidence of ***** contact in the parking lot.

00:16:19

Yeah.

00:16:20 Speaker 1

As a result of the investigation, the officers could neither confirm nor disprove woman.

00:16:25 Speaker 1

Report of being shot at and illicit contact.

00:16:30 Speaker 1

It feels like a moment, your honor.

00:16:31 Speaker 1

I still not used to the dry air of Colorado.

00:16:35 Speaker 4

Yeah.

00:16:42 Speaker 1

So the officers take their investigation to the next level.

00:16:46 Speaker 1

They call the suspect on the phone and try to talk to him while remaining hidden for their own safety.

00:16:52 Speaker 1

This is proper police procedure, but trying to communicate with the suspect from a safe position without doing anything with provoking violent response.

00:16:58 Speaker 5

Look people.

00:17:00 Speaker 1

Player falls down.

00:17:01 Speaker 1

Answer The first couple of calls, saying later at the caller ID was blocked.

00:17:05 Speaker 1

Plaintiff answers the third call and the police say this is the police.

00:17:09 Speaker 1

Please come outside and talk to us.

00:17:12 Speaker 1

The officer placed that phone call report.

00:17:12 Speaker 4

To.

00:17:14 Speaker 1

The plaintiff is upset, unsettled, and paranoid.

00:17:17 Speaker 1

Paranoid.

00:17:17 Speaker 1

00:17:18 Speaker 1

Plaintiff opens his front door, looks around, doesn't see anyone, and close the door.

00:17:18

Yeah.

00:17:23 Speaker 1

The complaint does not say that he stepped outside at that time.

00:17:26 Speaker 1

It just says he opened the door and looked around.

00:17:29 Speaker 1

Plaintiff sales of.

00:17:30 Speaker 3

How about how about?

00:17:31 Speaker 3

At that point, the police turning on their, you know, lights on the squad car.

00:17:36 Speaker 1

At that point, if they turned the lights on a squad car, they could have agitated him at a point where he could still jump back inside and obtain a weapon, as he did still up a third phone call.

00:17:47 Speaker 1

They want to remain hidden until he's out sufficiently outside of the apartment that he can't go back inside and armed himself with a shotgun as he did, unfortunately.

00:17:56 Speaker 6

Well hidden to do what I know that there's something in the record about one of the officers saying to grab him.

00:18:03 Speaker 6

They wanted him to come outside so they could grab him, but they have no basis to grab him, do they?

00:18:11 Speaker 1

Correct your honor.

00:18:12 Speaker 1

We make two points on that.

00:18:14 Speaker 1

Those allegations in the complaint.

00:18:17 Speaker 1

Our attempt by the plaintiffs to state something about the state of mind of the police.

00:18:17

Yeah.

00:18:23 Speaker 1

Which I do not believe constitutes a valid.

00:18:27 Speaker 1

Factual assertion in the complaints well.

00:18:29 Speaker 6

I'm just trying to figure out what were they doing it.

00:18:29 Speaker 1

Well, we make food.

00:18:32 Speaker 6

It seems to me like their conduct is not typical police behavior and will end up in this exact same result more often than not, which is a citizen is shot.

00:18:45 Speaker 6

When it didn't need to.

00:18:46 Speaker 1

Be well, actually your honor in the case of Allen versus Muskogee, Muskogee, this court discusses what is proper police procedure in this kind of setting.

00:18:57 Speaker 1

I believe they were responding to a domestic violence call, but the proper procedure is police should remain hidden for their safety.

00:19:05 Speaker 1

And try to contact the plaintiff in a neutral manner.

00:19:08 Speaker 1

A telephone call.

00:19:09 Speaker 1

It's a neutral manner.

00:19:10 Speaker 1

You don't want to.

00:19:11 Speaker 1

'cause this suspect to become more agitated than he already is while you're making contact as unfortunately happen.

00:19:19 Speaker 1

Last year or two years ago, January 2019, New Year's Eve in Castle Rock, where the Castle Rock Police Department sent Sheriff Dennis Parsons to investigate a complaint of domestic disturbance in an apartment complex Department. He he did what plaintiffs say you should do here. He walked up at the front door.

00:19:39 Speaker 1

And knocked on the front.

00:19:40 Speaker 1

Door and sadly he's no longer with us.

00:19:42 Speaker 1

He was blasted by a rifle through the door, so that is improper police procedure and even this court has said in *Al versus Muskogee*.

00:19:49 Speaker 1

The worst thing that police can do is walk up toward the house or to the front door and knock on the door in the middle of the night because it's just accepted that that scares whoever is inside the house, so you don't want to try to.

00:20:01 Speaker 1

Force yourself into their domestic domain, their house until you've made neutral contact what they were trying to do.

00:20:09 Speaker 1

Remain.

00:20:10 Speaker 4

Let me take a.

00:20:12 Speaker 4

Take it from a different perspective.

00:20:15 Speaker 4

Uhm?

00:20:19 Speaker 4

Seems to me everything they did.

00:20:23 Speaker 4

Was perfect for making.

00:20:26 Speaker 4

Plaintiff think that there were some people out there who wanted to get him, and we're claiming debris police.

00:20:33 Speaker 4

They said it over the phone, but they wouldn't show their faces do anything when he walked in front, even though he didn't have a gun at that time, there would be no danger in showing up at that point.

00:20:45 Speaker 4

If he then darted back.

00:20:46 Speaker 4

In the house might get a gun, then perhaps they should hide again.

00:20:51 Speaker 4

But I know we're not supposed to look at the.

00:20:56 Speaker 4

Subjective state of mind of the plaintiff.

00:21:00 Speaker 4

And maybe we can't even.

00:21:03 Speaker 4

A base.

00:21:06 Speaker 4

Liability.

00:21:08 Speaker 4

On claim that the officers were reckless, but we can say that.

00:21:15 Speaker 4

A reasonable officer.

00:21:18 Speaker 4

Would appreciate what they had been doing what.

00:21:23 Speaker 4

The person in the house would likely be thinking at that point.

00:21:28 Speaker 4

And you shouldn't, and they shouldn't fear him.

00:21:30 Speaker 6

Yeah.

00:21:33 Speaker 4

And they shouldn't just let him walk around for six minutes and then shoot him.

00:21:37 Speaker 3

Yeah.

00:21:38 Speaker 4

It should seem like a remarkable incident.

00:21:42 Speaker 4

I don't, so my bottom line is what do you think the officers should have thought?

00:21:49 Speaker 4

A person in the house would be thinking after the officers behavior.

00:21:54 Speaker 4

Calling saying, come out and then not identifying themselves when he opens the door and shows himself without a weapon, etc.

00:22:02 Speaker 4

What should they have thought?

00:22:05 Speaker 4

Uhm?

00:22:07 Speaker 1

Your question has so many layers you want her?

00:22:08 Speaker 1

Yeah, I'm not sure where to begin, but.

00:22:11 Speaker 4

That's why I was trying to put it in context, but my question is what should the officers have thought was going on and whether?

00:22:22 Speaker 1

Well, what the office did.

00:22:23 Speaker 4

The person in the house would be getting very paranoid about who's outside.

00:22:28 Speaker 1

OK, let me point out part of your question.

00:22:32 Speaker 1

I think hinges on the allegation that when the police called when the plaintiff answered the phone call and the police say this is.

00:22:39 Speaker 6

Please.

00:22:40 Speaker 1

Plaintiff.

00:22:42 Speaker 1

In the complaint says the caller ID was blocked.

00:22:45 Speaker 1

He never says the police knew that.

00:22:48 Speaker 1

Agent Trimmer did not make the phone call Agent Trimmer does not know the caller ID is blocked.

00:22:53 Speaker 1

So as far as Agent Trimmer knows the police have properly identified himself.

00:22:58 Speaker 1

Yes, they they they, the other officers have understood.

00:23:01 Speaker 4

Is there evidence that that the police when they call you their number shows?

00:23:08

Yeah.

00:23:08 Speaker 4

We know one way or the other.

00:23:10 Speaker 1

No, we did not run it.

00:23:11 Speaker 1

Don't know, and my position would be even if the caller ID was not blocked.

00:23:16 Speaker 1

All you're going to get is a phone number, but the Police Department you're not going to get a name Sergeant means on the phone, the phone number, unless he has the number memorized, he's still not going to know who's calling.

00:23:22 Speaker 4

Yeah.

00:23:22 Speaker 4

Eugene.

00:23:27 Speaker 4

OK.

00:23:28 Speaker 1

The second point is if Plaintiff really believes that the people who say we are the police or the phone are not the police.

00:23:35 Speaker 1

He's he has a very simple, peaceful remedy. Stay inside your apartment complex and dial 911. Call the police and say someone is outside impersonating the police and threatening me with that. They were threatening, but he's scared of them. He thinks there's trouble outside so.

00:23:48

Yeah.

00:23:52 Speaker 6

Did they suggest that they suggest that to him? Because obviously he's in a little bit of a state inside. Wondering if he's about ready to get run over by the pimp or whoever else did the police say trust us where the police in fact call 911 and they'll verify it.

00:24:09 Speaker 1

That allegation is not nickel plating or no.

00:24:11 Speaker 6

Well, it didn't happen, right?

00:24:13 Speaker 1

Or correct?

00:24:14 Speaker 1

No?

00:24:14 Speaker 1

Instead of doing the reasonable thing, he grabs his shotgun and goes outside on the hunt.

00:24:20 Speaker 1

This is not like Poly case where the suspect remained inside their house and were afraid of an imminent invasion in Poly, the police said we're coming in, we're coming.

00:24:29 Speaker 1

In the plaintiff thought somebody coming inside the house, the police here never said we're coming in, they said, please come outside with nothing in your hands.

00:24:39 Speaker 1

In response, Plaintiff says I have something in my hands which, in context is a threat.

00:24:45 Speaker 1

He's taunting the police.

00:24:47 Speaker 1

And then after the next phone call, it does come outside.

00:24:51 Speaker 1

Armed with a shotgun, the police said, come outside with nothing in your hands.

00:24:55 Speaker 1

Instead he comes out armed with a shotgun, a very deadly weapon.

00:24:59 Speaker 1

And then what does he do?

00:25:00 Speaker 1

He pumps the action loudly enough so that anyone in the vicinity can hear the shell being ejected.

00:25:06 Speaker 1

That is a threatening gesture is manifesting intent to go on the hunt after whoever is outside.

00:25:17 Speaker 1

Apologize for one more delay.

00:25:20 Speaker 3

Did the police have probable cause to make an arrest when they arrived at the at the apartment?

00:25:26 Speaker 1

They they did not, and nor is that required.

00:25:30 Speaker 1

Under

00:25:32 Speaker 1

Morris versus no.

00:25:34 Speaker 3

Yeah.

00:25:35 Speaker 1

Probable cause is not an element of an excessive force claim under any law as and the first ground factor focused on the severity of the crime at issue.

00:25:45 Speaker 1

It doesn't say the severity of the crime for which you have probable cause to make an arrest.

00:25:50 Speaker 1

It's the crime at issue.

00:25:52 Speaker 1

If you are intending to make arrest, you'd need probable cause.

00:25:55 Speaker 1

If you don't have probable cause, think about the claim breaks or for unlawful arrest.

00:26:00 Speaker 1

There's no claim here for unlawful arrest.

00:26:02 Speaker 1

The claim here is excessive force.

00:26:05 Speaker 1

In more resources, no.

00:26:06 Speaker 1

This part explained that.

00:26:08 Speaker 1

All the police need.

00:26:11 Speaker 1

What plaintiff must show an extended access?

00:26:12 Speaker 1

The force is a lack of grounds to do what the police are doing in.

00:26:18 Speaker 1

In Morris it was making arrests, but here they were on the scene to do an investigation to make if necessary and investig or stop or a Terry stop to make a Terry stop.

00:26:28 Speaker 1

You don't need probable cause to make an arrest, you just need reasonable grounds.

00:26:33 Speaker 1

To suspect a crime was committed, they had reasonable grounds based on the 911 call.

00:26:39 Speaker 1

And the crimes that were at issue back to their first grand factor are very severe crimes, including attempted murder.

00:26:45 Speaker 1

So the police have reasonable grounds to suspect attempted murder at the time they begin their investigation.

00:26:51 Speaker 1

That all changes when after player is asked to come outside with nothing in his hands.

00:26:57 Speaker 1

He comes out armed with a shotgun, pumps the action of the shotgun and then goes on the hunt.

00:27:01 Speaker 1

At that point, off Agent Trimmer begins to have reasonable grounds to fear for her own safety and that fear increases as he walks closer and closer to the pickup truck, to the point where Agent Shimmer can hear his footsteps on the gravel.

00:27:15 Speaker 1

She then has a second to decide what to do.

00:27:18 Speaker 1

Should she stand up and say I am the police and risk being blasted with a shotgun.

00:27:22 Speaker 1

Or does she shoot just stupid defend herself?

00:27:24 Speaker 1

She fires a shot in the leg out of self defense.

00:27:27 Speaker 1

At that point she had reasonable grounds to suspect to fear imminent fear for her safety.

00:27:34 Speaker 4

Any any of they could any of the officers have identified themselves during the six minutes without endangering themselves?

00:27:42 Speaker 1

Not without endangering those.

00:27:43 Speaker 1

At that point, he's armed with a shotgun, and he's pumped the action as a shotgun, manifesting intent to use it if he sees someone, presumably, but nobody at that point, nobody can step out.

00:27:54 Speaker 1

Out of a Bush.

00:27:55 Speaker 1

And safely say I'm the police do not risk being shot.

00:27:58 Speaker 1

That's why I started means does not interrupt the proceedings.

00:28:01 Speaker 1

Plaintiff says Sergeant Mains during this procedure of walking around the building should have stepped outside and said I'm the police.

00:28:06 Speaker 1

Don't go shoot agent trimmer.

00:28:07 Speaker 1

Well at that point, Sergeant major of exposed himself to being shot.

00:28:11 Speaker 1

The guy is armed with a shotgun which he's punted loudly to say it's live.

00:28:15 Speaker 1

It loaded and I can use it and the report is we already tried to use a gun against the ***** earlier in the evening.

00:28:22 Speaker 1

So the police are investigating a serious crime and the man has now escalated the thing.

00:28:26 Speaker 1

The situation by coming outside, armed with the shotgun, pumping the action shotgun and walking toward Flowers outside.

00:28:34 Speaker 3

All right Council, thank you your time's expired. We have some rebuttal time left and that's for Mr Sanhu.

00:28:42 Speaker 5

Your honors, may it please? The court under bottle? I'd like to focus on the element of danger. First. The there was no danger when the officers arrived on the scene, I point you to page 184, paragraph 16.5, when the officers admit there was no imminent threat to themselves, turning instead to the idea that there was danger when they're surrounding the house.

00:29:02 Speaker 5

This case has already been distinguished from active shooter cases by Judge Heartstones opinion in Valverde versus Dodge.

00:29:08 Speaker 5

Now they're really concerned a situation where an officer was coming around a car to a plaintiff who had a gun in his lap and who had already engaged with serious crimes.

00:29:18 Speaker 5

Judge Hart said that that case was distinguishable by parenthetical alone from Cooper versus Xiong, which involved the case where officers failed to identify themselves had created disturbance.

00:29:29 Speaker 5

Night on victims.

00:29:30 Speaker 5

Property and the individual plaintiff came out with a shotgun to investigate.

00:29:35 Speaker 5

Clearly by that line of cases and Polly cases, in which a plaintiff comes out with a gun, not pointing it at officers, but merely to investigate.

00:29:44 Speaker 5

A disturbance does not render this a case of officers being endangered by any means.

00:29:50 Speaker 5

Finally, I'd like to.

00:29:51 Speaker 5

Turn to the issue of recklessness, which again, I'll rely on Valverde Judge Hartz opinion.

00:29:57 Speaker 5

Judge Judge Hart said in that case that it would be reckless in some scenarios for officers to not announce themselves when they arrive on scene and the plaintiff doesn't believe the police are the one engaging with them specifically.

00:30:09 Speaker 5

It would be reckless to not announce yourself when the police knew that the individual they were dealing with was emotional.

00:30:14 Speaker 5

We're disturbed it was clear in this case that Eric said George did not believe it was the police who had contacted them.

00:30:22 Speaker 5

In fact, Sergeant Mueller communicated this point.

00:30:26 Speaker 5

Communicate at this point over the radio so all officers, including Agent Trimmer were aware of this despite this agent Trimmer and the rest of the officers took pains to disguise themselves and and approach the House without announcing their presence.

00:30:39 Speaker 5

These pains specifically were hiding their cars around the block, not turning their lights or takedown lights on on.

00:30:46 Speaker 5

Not enough in their presence and to your judges earlier questions, not not announcing their presence or grabbing Eric Saint George when he walked out of there.

00:30:54 Speaker 5

How's Eric Saint George?

00:30:56 Speaker 5

Uh, conformed with the officers demands on three separate occasions on the first call, he came outside with nothing in his hands.

00:31:04 Speaker 5

On the second call, he again came outside with nothing in his hands.

00:31:07 Speaker 5

In fact, the officer said the only thing in his hands with his cell phone on the 3rd call, he did walk outside with his shotgun, but two points on this.

00:31:14 Speaker 5

Form by time concludes.

00:31:16 Speaker 5

First, it is Mr.

00:31:17 Speaker 5

Saint George is right under Colorado law to both hold a weapon and defend his house against intruders.

00:31:23 Speaker 5

Secondly, when Mr.

00:31:24 Speaker 5

Saint George did realize that it wasn't intruders, but police calling his house, he laid down his weapon immediately.

00:31:31 Speaker 5

In fact, prior to that he called the police after he'd been shot, 'cause he continued to believe.

00:31:36 Speaker 5

That it wasn't police officers arriving at its door.

00:31:38 Speaker 5

It was people coming to exact revenge because the officers recklessly created the circumstances which led up to this.

00:31:44 Speaker 5

And because they used excessive force, we ask you to reverse the lower court and remand this case for further proceedings.

00:31:50 Speaker 5

Thank you.

00:31:51

Yeah.

00:31:51 Speaker 3

Thank you all so we appreciate your arguments.

00:31:53 Speaker 3

Again, thank you Mr Cushing for supervising the students.

00:31:57 Speaker 3

We always are appreciative to get these types of presentations and with that Council and student our excuse the case shall be submitted.