regulations did not clearly proscribe the behavior exhibited by Tobey; they merely prohibit any passenger from "interfering" with screening personnel or "attempt[ing] to circumvent" the security process, neither of which had occurred. Therefore, Tobey had set forth a plausible claim that his First Amendment rights were violated. (In so holding, the Court of Appeals essentially reversed the district court's dismissal of Tobey's Fourth Amendment wrongful seizure claim; however, that issue could be reexamined in subsequent proceedings).

The Appeals court was next required to determine if Tobey's rights were "clearly established" at the time of his arrest—would it be obvious to a reasonable officer that his actions were unlawful? In that regard, the majority found overwhelming precedent on Tobey's side: peaceful, silent, nondisruptive protest is resolutely protected in public places. The mere fact that Tobey had removed his shirt could not move protected speech into the realm of prohibited disruption; indeed, the TSA defendants conceded that if Tobey's message had been written on his t-shirt, they would have had no grounds to call for police action.

Noting Ben Franklin's admonition to the effect that those who give up liberty in exchange for safety deserve neither, the majority said "We take heed of his warning and are therefore unwilling to relinquish our First Amendment protections—even in the airport."

Circuit Judge Wilkinson strenuously objected, calling the result unwise and unfair. He questioned how TSA agents could be expected to discharge their duties under threat of suit for making close judgments while trying to protect the public. It was precisely this type of governmental function that had been granted the protection of qualified immunity for more than four decades: "I regret that a doctrine so essential to the performance of public functions has been reduced to hollow and formulaic recitations that signal only its demise." Wilkinson was particularly incensed at the proposition that Tobey's rights were "clearly established," noting that the passenger had cited "not one—not even one–case that would have afforded these agents anything resembling fair notice of what might be expected of them..."

Tobey v. Jones, no. 11-2276 (4th Cir. Jan. 25, 2013).

Driving In Tandem As Probable Cause For Drug Arrest?

In March 2010, an Arkansas trooper on Interstate 30 noticed Glen Allen driving an SUV at 75 miles an hour in a 70 mile per hour zone. The officer followed Allen, observing that the SUV appeared to be rented; it was new, clean, had untinted widows and no car dealership logo. The SUV was trailing a white minivan, which also appeared to be a rental. Both vehicles bore Texas plates.

The officer knew that the tandem formation could be indicative of drug transport and that Interstate 30 was a conduit for drugs from Texas. He pulled alongside the minivan to observe the driver and it swerved across the fog line. The officer initiated a traffic stop. Approaching the minivan, he saw several large bales covered by blankets in the back of the vehicle and detected a powerful smell of "green" marijuana. The minivan driver was arrested.

The officer broadcast news of the marijuana arrest, describing Allen and the SUV and saying that they were likely involved with the minivan. Another officer soon identified Allen's SUV and stopped him "for investigative reasons" to see if he had a connection to the minivan. When it was determined that both vehicles had been rented from the same Texas location on the same day, Allen was arrested on conspiracy to distribute.

Allen moved to suppress the evidence from each vehicle, arguing that law enforcement had no probable cause for either traffic stop. The district court found that Allen lacked standing as to the stop and search of the minivan; he had no reasonable expectation of privacy in that vehicle. It also found probable cause to stop Allen because he had been observed exceeding the speed limit by the first officer. Allen appealed.

The Eighth Circuit Court of Appeals affirmed the denial of Allen's motion to suppress. The Circuit Court made note of Allen's contention that speeding could not have been the basis for his being stopped; Allen argued that the first officer had not stopped him for speeding and had not mentioned speeding when he subsequently broadcast notice of the minivan and the marijuana arrest. But the Eighth Circuit found ample justification for Allen's stop on *Terry* grounds. A warrantless *Terry* stop is valid only if police have a "reasonable and articulable" suspicion that criminal activity is afoot. Police may draw "rational inferences" from specific facts and may rely on information "provided by other officers" or "known to the team" conducting the investigation.

Allen's fact situation provided Arkansas police with ample grounds for a *Terry* stop. The Eighth Circuit cited a Tenth Circuit opinion which upheld a stop and arrest on virtually identical circumstances: "Sufficient evidence that two vehicles are driving in tandem plus evidence that one vehicle contains contraband can provide probable cause sufficient to support arresting the driver of the other vehicle." (citation omitted). *United States v. Glen Allen*, no. 12-1663 (8th Cir. Feb. 04, 2013).

Preference For In-State Teaching Experience Does Not Impair Interstate Travel

In 2006, Pennsylvania's Steel Valley School District hired Patrick Connelly as a sixth-grade teacher. Connelly had nine years of teaching experience, all in Maryland. He received credit for one year of experience and was given an annual salary approximating $39,000. Had Connelly's past teaching been in Pennsylvania, he would have been credited with nine years' experience and received about $8,500 more in starting salary. By the 2010-2011 school year, his salary was $22,000 less than if he had received the nine years' credit. He sued the District, asserting that its preference for in-state experience impaired his ability to travel interstate, an Article IV privilege and immunity applied to the States under the Fourteenth Amendment, and denied him equal protection.

The district court dismissed Connelly's case. It found the District's scheme legal because it was based on location of teaching experience, not residency. He appealed to the Third Circuit, which upheld the District's policy of not granting equal credit for out-of-state teaching experience.

A primary factor in the case was the applicable standard of review. Connelly argued that strict scrutiny applied

to the creation of a separate class of teachers; the District posited that a rational basis test was applicable. Strict scrutiny would only apply if a "fundamental right" had been trammeled—here, the right was interstate travel. The fundamental right of interstate travel is manifested in three ways: the right to move freely between states, the right to be treated amicably when present as a visitor inn a second state, and the right, once establishing residency in a new state, to be treated equally with other state residents.

The third of these tests would seem to be implicated in Connelly's case. But the Circuit Court articulated that only in the case of durational requirements for generally available state-provided benefits did strict scrutiny apply: for example, laws which imposed a one-year residency requirement for welfare benefits or access to hospital care or voting rights. Otherwise, rational basis applied. "When the receipt of a government benefit is conditioned on factors other than duration of residency, we apply rational basis review to determine whether the right to travel has been unconstitutionally burdened."

The Third Circuit found that Connelly was being treated no differently than other Pennsylvania residents similarly situated. If, for example, a teacher lived in Gettysburg but taught in nearby Frederick, Maryland, he would not receive credit for the Maryland experience if he subsequently took a teaching job in Pennsylvania. The preference for Pennsylvania experience was rationally related to the State's interest in having teachers who were familiar with Pennsylvania's curriculum and educational standards. *Connelly v. Steel Valley School District*, No. 11-4206 (3d Cir. Jan 24, 2013).

911 Call Creates "Exigent Circumstances" Justifying Warrantless Entry

In December 2008, Susan Stricker, an attorney and registered nurse, called 911 in Cambridge Township, Michigan. Her 20-year old son Andrew had overdosed on drugs, could not speak and was having difficulty moving. Andrew had previously been arrested on heroin charges, so Township police and officers from Lenawee County responded, along with EMS personnel. Andrew's parents initially allowed entry to their home, but once they realized that law enforcement personnel were among the group, they required all the responders to leave, locked their front door and claimed that their son was fine. As the evening progressed they became increasingly belligerent and refused to allow entry without a warrant.

Police had observed Andrew in the house and determined that he was in a very precarious state. Ultimately, they broke down the front door. Officers conducted a sweep of the home and located Andrew hiding in the basement. He was taken to the hospital by EMS personnel, where he admitted to having used heroin and taken multiple Xanax capsules. His father was found trying to run down the basement stairs and his mother was located in a locked bedroom. Each was handcuffed and brought to the precinct house; they were initially charged with resisting arrest but the charges were dropped.

The family brought suit under Section 1983 against the Township, the County, and various officers of the Township, the County and the State in their individual and official capacities, alleging Fourth Amendment violations including warrantless entry, unreasonable search, unreasonable seizure and arrest and excessive force.

The Sixth Circuit affirmed the lower court's grant of summary judgment for the defendants. Warrantless entry into the home was constitutional due to "exigent circumstances." A substantial group of precedents including *Brigham City v. Stuart*, 547 U.S. 398 (2006) delineate that the officer's subjective intent is irrelevant if objective grounds exist to justify entry. A 911 call is an objective indication that emergency conditions exist within the home. A victim may need immediate assistance and medical personnel may need protection.

Similarly, the sweep of the home did not violate the Fourth Amendment. Where the parents were acting aggressively and where a drug overdose was involved, protection of medical personnel and the need for more information about the drugs were justification for the officers' search of the premises.

Plaintiffs' arguments that they had been arrested without probable cause were also unpersuasive. When they refused to cooperate with officers who had a legitimate need to enter the premises under exigent circumstances, and attempted to hide within the home to evade police, plaintiffs created probable cause for officers to conclude that they were obstructing lawful police activity.

Finally, plaintiff's claims of excessive force failed. Pointing a gun or taser at persons who are actively trying to evade police capture is not proscribed. Handcuffing them, however "roughly," is not actionable unless some lasting injury results. *Stricker v. Township of Cambridge*, no. 11-1998 (6th Cir. Jan. 14, 2013). ML

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