

UPDATE

NEW YORK STATE SHERIFFS' ASSOCIATION



*Decisions of Interest to Sheriffs, Undersheriffs
and Supervisors*



October 9, 2025

Federal District Court in Western New York Upholds Arrest and Plain View Seizure of Laser Pointer Aimed at Incoming Aircraft

On Oct. 16, 2024, Crapsi was indicted for aiming a laser pointer at an aircraft. He moved the court to suppress physical evidence seized from his bedroom immediately upon arrest, and post-arrest statements. A magistrate judge's report (R&R) recommended denying suppression based on Crapsi's arrest but granting the motion to suppress the laser pointer seized from his bedroom and the fruit of that poisonous tree. On de novo review (where the judge reviews the case again, without necessarily relying on the Magistrate's report) the court adopted the recommendation of finding Crapsi's arrest supported by probable cause, but denied suppression of the laser pointer. Exigent circumstances authorized the officers' entry into Crapsi's bedroom without a search warrant where they observed the laser pointer, in plain view, on Crapsi's bed. Police camera footage made clear that the officers did not move or manipulate anything on the bed. However, the court suppressed Crapsi's statements and actions---about how to use the laser pointer---after an officer asked him a question about how to use the laser pointer, and handed it to Crapsi.

CRAPSI'S ARREST

As noted, the federal Magistrate found that the officers had probable cause to arrest Crapsi, and the District Court agreed.

The court set forth the usual guidelines:

- ☐ Probable cause to arrest requires that the totality of facts and circumstances known to the police permit a person of reasonable caution to conclude that there is a fair probability that the person to be seized has committed or is committing a crime.
- ☐ Probable cause does not require the more-likely-than-not showing demanded by the preponderance standard.

At the time of the arrest, police had learned these facts:

1. The pilot of a Delta flight reported that someone had pointed a laser towards his aircraft while he was landing;
2. The pilot reported that the laser had come from the general direction of the defendant's home;
3. Nearly contemporaneous with the pilot's report, the defendant's neighbor reported seeing a laser shining through the defendant's window on multiple occasions; and
4. The neighbor reported seeing the laser shining towards the sky.

This was sufficient, said the court, to meet the standard for probable cause. And, the court said that exigent circumstances required that the arrest be made before a warrant could be obtained: pointing a laser at an aircraft is dangerous, and waiting for an arrest warrant could have risked the lives of hundreds of airline passengers. So, the court adopted the finding of the Magistrate recommending that this Court deny Crapsi's motion to suppress any and all evidence connected to his arrest.

THE LASER POINTER

When the officers arrested Crapsi, they seized a laser pointer from his bedroom. The prosecutor argued that the laser was properly seized because exigent circumstances permitted the officers to accompany Crapsi to his room and, once there, they saw the laser in plain sight. The Magistrate had determined that there were no “real time” exigencies at the time of the search, and noted by then Crapsi had already left his bedroom, eliminating the chance that he could destroy the laser or point it at an aircraft. And, the Magistrate said that the government failed to

explain why officers could not have secured the bedroom until they obtained a search warrant, either in person or by telephone.

But the prosecutor argued that the officers could not be sure that Crapsi would not return to his bedroom to retrieve something, particularly given that he had already left and returned to his bedroom on one occasion. Further, the officers did not know when Crapsi would be released from custody, thereby giving him an opportunity to return home and destroy the laser (or use it again). In fact, the trial judge noted, Crapsi after being booked and given an appearance ticket was released less than two hours after his arrest.

The court concluded that the seizure of the laser pointed was lawful.

- First, the Court found that the exigency exception allowed the officers to accompany Crapsi to his bedroom to get his clothes to ensure that he did not take, hide, or destroy evidence. The court cited other court cases holding that among the most common exigencies found to validate entry into a home with probable cause but without a warrant is the need to prevent the destruction of evidence and that other exigencies may include the need to reenter or remain in the premises for the purpose of having the arrestee appropriately clothed. For example, the court referred to a drug case, where the court said that “a warrantless entry into residence where any delay in arresting the suspects would be likely to result in the destruction of evidence, particularly the cocaine, which could be disposed of easily, by being flushed down the bathroom toilet”, validated the police actions. So here, the officers had legitimate reason to be in Crapsi's bedroom with him; and where the initial intrusion that brings the police within plain view of the seized article is supported by one of the recognized exceptions to the warrant requirement, the seizure is legitimate.
- Second, although it is true, as the Magistrate found, that the officers did not seize the laser pointer until after Crapsi had left the room, that does not change the fact that their initial intrusion into the room was authorized by exigent circumstances. And the officers did not search the room but saw the laser pointer almost

immediately after Crapsi left. In addition, the situation at that time was still “relatively fluid” in that the officers did not know when Crapsi would return.

- For all those reasons, the Court found that because the circumstances met the exigency exception, the officers were not required to obtain a warrant to go to Crapsi's room.
- The court also questioned whether the laser pointer was in plain sight. The Court carefully reviewed body camera footage and, based on that review, found that the government clearly established that the laser pointer was in plain view.
 - The camera footage shows Crapsi leaving the bedroom and one of the officers saying "looks like he's all set here."
 - The officer then says: "is it on his bed...just look to see if it's right here in plain sight."
 - The officers walked over to the bed and shined their flashlights on it. Almost immediately, an officer says: "Yeah, this is it right here. That's the one. You can tell how it's got that danger warning on it because it's a high intensity laser."
 - It was clear from the video that the officers did not move or manipulate anything on the bed.
 - For all those reasons, this Court disagreed with the Magistrate and denied Crapsi's motion to suppress the laser pointer.

CRAPSI'S STATEMENTS

A. Demonstration of How to Use the Laser Pointer

Following Crapsi's arrest, he was taken to a police booking room and seated on a bench as officers entered and exited the room. Because Crapsi is deaf, the officers asked him the routine booking questions by writing back and forth. After that, Crapsi remained seated on the bench while several officers stood around a desk and talked a few feet away. One of the officers removed the laser pointer from its box and shined it away from Crapsi; another officer then asked for the laser pointer, and the first officer handed it to him. The officers did not address or question Crapsi, but Crapsi spontaneously interjected, speaking and using his hands to demonstrate how to use the laser pointer.

An officer then asked Crapsi a clarifying question about what he was demonstrating, and Crapsi answered. The officer handed the laser pointer to Crapsi, who demonstrated how to use or adjust it. The officers took the laser pointer back from the Crapsi, put it back together, and returned it to its box.

The court had to determine whether the “demonstration” violated Crapsi's rights under the Fifth Amendment.

- Miranda warnings are required not only for formal interrogation but also when the defendant is subjected to the functional equivalent of questioning.
- To determine whether police conduct was functionally equivalent to interrogation, courts consider the conduct in light of the totality of the circumstances and assess whether the police should have known that their actions were reasonably likely to elicit an incriminating response. In other words, if --- prior to being given a Miranda warning --- the defendant was subjected by the police to words or actions that the police should have known were reasonably likely to elicit an incriminating response from him, that violates the Fifth Amendment. *Innis*.

The prosecutor argued that the officers' conduct, as well as their positioning in a circle away from Crapsi, demonstrates that they had no reason to believe that their conduct would elicit a response from Crapsi. This Court agreed, but only “up to a point”. More specifically, the Court said that Crapsi's initial spontaneous interjection into the officers' conversation --- where he used his hands to instruct the officers about how to use the laser pointer --- was not in response to anything the officers did or said that was reasonably likely to elicit an incriminating response. The court relied on earlier cases which have held that there is no Fifth Amendment violation where the defendant “'blurted' out his statement to the detective” such “that his statement was 'spontaneous' and not 'triggered by police conduct which should reasonably have been anticipated to evoke a declaration from the defendant'”. But one of the officers then did two things:

he asked Crapsi a question, and he handed Crapsi the laser pointer, which was, of course, the alleged instrumentality of the offense. Those actions --- asking Crapsi a question about how to use the laser pointer and handing it to him --- were reasonably likely to elicit an incriminating response, and the officers should have known as much.

So, the court denied suppression as to Crapsi's initial interjection but granted suppression for all statements and actions following the officer's asking Crapsi a question and handing him the laser pointer.

Other Statements of the Defendant

After Crapsi was given a Miranda warning at the police station, the officers left the room and Crapsi spoke with his mother. The court ruled that statements to third parties that are not part of an interrogation are not covered by Miranda, and thus Miranda does not apply to incriminating statements made to private persons in the absence of police subterfuge or intimidation.

US v CRAPSI, September 12, 2025 Western District Court of New York

Search of Auto in Non-Enclosed Driveway Found Valid, Not Part of the Home's Curtilage

In a suburb of Pittsburgh, Pennsylvania, Ronell Moses was driving through his neighborhood when Officer Dustin Hess passed him going the opposite direction. Officer Hess had his patrol vehicle windows rolled

down and he could smell burning marijuana wafting from Moses' car. Officer Hess also noted Moses' car windows were tinted beyond the legal limit. Hess turned and followed Moses to his home, where Moses pulled into the driveway and stopped.

Officer Hess parked at the end of the driveway and walked up to Moses' car. After confirming Moses had been smoking marijuana, the officer asked to search Moses' car. Moses declined, but Officer Hess searched it anyway and found a loaded gun in the center console, which turned out to have been stolen. Since Moses was a felon on probation, Officer Hess arrested him for possessing a gun and ammunition.

Moses asked the court to suppress the evidence from the search, arguing Officer Hess violated the curtilage of his home by walking up the driveway. The trial court denied Moses' motion to suppress. Moses entered a conditional plea of guilty, preserving his right to appeal.

The court of appeals held Officer Hess did not invade the curtilage because the driveway was not an extension of Moses' home. The court cited three bases for its decision: "First, a holistic view shows that this patch of driveway was not an extension of Moses's home. Second, the *United States v. Dunn* factors confirm that belief. And third, reasoning from the purpose of the curtilage rule confirms it too: A reasonable officer would not expect to learn more about the inside of Moses's home by walking up the driveway than he could by standing on the street."

In *United States v. Dunn* (480 U.S. 294 (1987)), the Supreme Court held the scope of curtilage is determined by "whether the area in question is so intimately tied to the home itself that it should be placed under the home's 'umbrella' of Fourth Amendment protection." The *Dunn* decision laid out four analytical factors to help decide whether an area counts as curtilage:

- How close the area is to the house.
- Whether the area was enclosed with the house.
- Whether the homeowner apparently used it for domestic activities.

- How much the homeowner shielded the area from the view of people passing by.

In more recent cases, the Supreme Court has applied its “daily experience” test to help with such a determination: “for most homes, the boundaries of the curtilage will be clearly marked, and the conception defining the curtilage — as the area around the home to which the activity of home life extends — is a familiar one easily understood from our daily experience.”

The appellate court noted Officer Hess didn’t get anywhere close to Moses’ house. Moses pulled only 20 to 30 feet into a 70-foot-long driveway. There was no enclosure clearly separating the part of the driveway where Officer Hess stood from the open front yard. There was no sign that the driveway was used for anything other than parking cars, including no sign of “domestic activity” in the driveway. Finally, even though there was a row of low bushes along the street, nothing prevented a passerby from seeing clearly into the driveway.

Moses also claimed 18 U.S.C. § 922(g)(1), which prohibits possession of a firearm and/or ammunition by a felon, violates the Second Amendment. As have many other courts, the court of appeals disagreed. The appellate court upheld Moses’ conviction.

United States v. Moses, 2025 WL 1840675 (3rd Cir. 2025)

2nd Circuit Court of Appeals Upholds Protective Sweep and Search Warrant for Items Observed During the Sweep

Defendant Limberatos was convicted for aggravated identity theft, and appealed his conviction to the 2nd Circuit Court of Appeals. He challenged the district court's denial of his motion to suppress evidence that was seized from his garage after he was arrested at his residence on the morning of October 10, 2019, pursuant to a lawfully obtained arrest warrant.

Before addressing the substance of Limberatos's argument on appeal, we note that there were competing accounts of the arrest that the parties presented to the district court.

Limberatos maintained that after he answered his door that morning, law enforcement officers immediately placed him under arrest and put him into a law enforcement vehicle, which all in all, "took no more than one minute." He further contended that, upon his removal from his residence but before the issuance of a search warrant that afternoon, ten to fifteen law enforcement agents searched his home and garage.

An FBI officer, Mulloy, who served as the affiant on the search warrant application to seize the evidence from Limberatos' home, provided a different version of how the arrest unfolded. Mulloy testified that when Limberatos answered the door that morning, he was partially clothed, so

officers did not immediately remove him from the residence. Instead, they placed Limberatos under arrest inside the front foyer of his residence, and while Mulloy remained in the foyer with Limberatos, other officers performed a protective sweep to assess whether there were any individuals in the residence that were a threat to the officers. During that protective sweep, the officers entered the garage because the garage was accessible through a door in the kitchen and the kitchen could be entered from the front foyer without the need to open a door. Once the officers completed the protective sweep, Mulloy took Limberatos upstairs to get dressed and then brought him back downstairs.

When Mulloy returned to the downstairs area of the home, an officer who had performed the protective sweep alerted Mulloy that he had observed potential evidence during the sweep of the garage. Upon receiving that information, Mulloy himself went into the garage and saw the following evidence in plain view: a card encoder, storage devices, a cutting tool, a safe, and a BMW that Limberatos had been captured on camera using as part of a skimming operation. Mulloy accordingly alerted the lead investigator on the case, took photographs of the evidence that was in plain view, and applied for a search warrant. Once the search warrant was issued that afternoon, the officers searched Limberatos' home and seized the evidence from the garage.

The court was faced with these competing accounts, but gave credence to Mulloy's version. The district court found, among other things, that while Limberatos was in the foyer, the officers performed a protective sweep, which could lawfully encompass "all immediately adjoining areas to the front foyer." The district court determined that the garage was one such "immediately adjoining space" because the kitchen was visible from and connected to the front foyer without the need to pass through a closed door and the kitchen had a door that opened into the garage. The district court also credited Mulloy's testimony that the officers entered the garage during the protective sweep and then saw the BMW and other skimming equipment in plain view, which were ultimately seized after the officers obtained a search warrant that afternoon.

Accordingly, the district court concluded that the law enforcement officers entered the garage as part of a lawfully conducted protective sweep incident to a lawful arrest. And because the search of the garage was permissible, Mulloy had a lawful basis upon which to provide the magistrate with his October 10, 2019 affidavit in support of the search warrant application and, in turn, the magistrate judge had a valid basis upon which to issue the warrant.

In sum, the district court held that the search conducted pursuant to the search warrant did not violate Limberatos' Fourth Amendment right to be free from unreasonable searches and seizures and his suppression motion was accordingly denied.

On appeal, Limberatos claimed that the district court erred in denying his suppression motion because no exigent circumstances justified the search of his garage. But the Circuit disagreed:

“That argument misses the mark. The legality of the search hinges not on whether exigent circumstances existed but on whether the officers were permitted to enter the garage as part of a protective sweep. It is well-established that when arresting a person in a residence, officers may perform a protective sweep incident to the arrest to protect themselves or others. The permissible scope of that search, however, is limited...[for example] the scope of a protective sweep is narrowly confined. Specifically, officers are permitted, as a precautionary matter and without probable cause or reasonable suspicion, to look in closets and other spaces immediately adjoining the place of arrest from which an attack could be immediately launched.”

The Circuit Court said that there was no error in the district court's conclusion that the garage was an immediately adjoining space to the foyer where Limberatos was arrested and that area could be searched during a protective sweep. In addition, the record supports the district court's finding that the garage was a space immediately adjoining the

foyer, as Mulloy testified that the kitchen and foyer were connected (without a closed door in the way) and the garage was accessible through a door in the kitchen (noting a similar case where it was found proper to sweep a primary bedroom that was adjacent to the hallway where the defendant was arrested since the hallway and living room were not divided by a wall and thus the primary bedroom was an immediately adjacent space to the living room). So, the court said that the officers were permitted to search the garage as part of the protective sweep.

Limberatos also argued that Mulloy himself entered the garage after the protective sweep was completed, and this constituted an independent violation of the Fourth Amendment. The court did not accept that argument, either:

“Even if we assume that Mulloy should not have entered the garage after the protective sweep, we discern no harm that resulted to Limberatos. That is so because Mulloy's search of the garage mimicked the proper protective sweep that came before it: Mulloy entered the garage only after being alerted by an officer who performed the protective sweep that evidence had been observed in the garage. Mulloy's search thus intruded upon Limberatos' privacy no more than the permissible protective sweep that preceded it, and the officer who performed the protective sweep could have easily substituted for Mulloy and provided the exact same information to the magistrate judge in order to obtain the search warrant. In such circumstances, we conclude that Mulloy's search of the garage was harmless.”

In sum, because the protective sweep of the garage was permissible and the officers saw evidence of a crime in plain view during that protective sweep, there was probable cause for the issuance of the search warrant. Accordingly, the Circuit Court upheld the legality of the protective search and the subsequent search warrant in this case.

US. v Constantinescu, August 14, 2025, 2nd Circuit Court of Appeals

Northern District Court of New York Rules that Pistol Permit Applications Must Be Open to Non-Residents of the State

New York requires a carry license for the concealed and open carrying of firearms, but according to the plaintiffs in this case New York's licensing scheme is "an extreme outlier among the states" because at least 27 states do not even require a permit to carry a concealed firearm in public, while the vast majority that do require permits will issue permits to out-of-state residents. They alleged that New York is different from other states because it does not accept or recognize permits issued by other states, whereas most other states do.

Plaintiffs' complaint concerns a specific provision of New York's firearm licensing scheme which states as follows:

"Applications shall be made and renewed, in the case of a license to carry or possess a pistol or revolver ... to the licensing officer in the city or county, as the case may be, where the applicant resides, is principally employed or has his or her principal place of business as merchant or storekeeper. . . ." (N.Y. Penal Law § 400.00(3)(a)).

Plaintiffs, residents of Massachusetts and Connecticut, made the argument that an out-of-state individual who does not reside in New York or is not principally employed, or does not have his or her principal place of business as merchant or storekeeper in New York, cannot even apply for a permit to exercise the right to public carry.

The court noted that according to the defendant State Police Superintendent, eight counties—Broome, Franklin, Hamilton, Bronx,

Kings, New York, Queens, and Richmond—accept firearm applications from out-of-state applicants who are not principally employed in New York. He suggested as a remedy that Plaintiffs should simply apply in one of those counties, but the court rejected that defense, noting that this would require out of state applicants to “engage in empty formalities before they can invoke their constitutional rights”, and as such would wrongly reduce the Second Amendment to a second-class right.

The court conducted a detailed review of the Bruen case and historical tradition of firearms regulation, since “that delimits the outer bounds of the right to keep and bear arms.” The Bruen Court was clear in its instruction to the district courts when undertaking a constitutional analysis of a state's gun control legislation: *courts must rely on history to inform the meaning of constitutional text rather than make empirical judgments about the costs and benefits of firearms restrictions.* The court focused on that part of the Bruen holding which held that confining the right to bear arms to the home would make little sense given that self-defense is the central component of the Second Amendment right itself. As stated in Bruen, the Second Amendment guarantees an individual the right to possess and carry weapons in case of confrontation, and confrontation can surely take place outside the home. Although the need for armed self-defense is perhaps most acute in the home, Bruen did not suggest that the need was insignificant elsewhere. Many Americans hazard greater danger outside the home than in it. For example, the Supreme Court has commented that a Chicagoan is a good deal more likely to be attacked on a sidewalk in a rough neighborhood than in his apartment on the 35th floor of the Park Tower.

The court found no legislative history which supports restricting non-residents from applying for a firearm license in New York, and specifically said that an in-state residency or employment requirement for firearms licensing, is not “entirely consistent with this Nation's historical tradition of firearm regulation.”

It noted, too, that as of 2022, New York has adopted a “shall issue” licensing regime, where authorities must issue concealed-carry licenses

whenever applicants satisfy certain threshold requirements, without granting licensing officials discretion to deny licenses based on a perceived lack of need or suitability. The court here said that some exceptions to the right to bear arms have been recognized by the Supreme Court and other federal courts. While not reviewing all of these exceptions, the court pointed out a few:

- One well established exception concerns the dangerousness of (1) the weapon or (2) the individual wielding the weapon. For instance, the Second Circuit recently held that Congress has a legislative power, consistent with the Second Amendment, to disarm categories of persons presumed to be dangerous.
- Likewise, the Supreme Court recently held that when a restraining order contains a finding that an individual poses a credible threat to the physical safety of an intimate partner, that individual may—consistent with the Second Amendment—be banned from possessing firearms while the order is in effect.
- In addition to persons perceived as dangerous, the scope of the Second Amendment does not extend to weapons that were not in common use during historical periods. This can include short-barreled shotguns and machine guns, said the court. Additionally, historical tradition supports restrictions at sensitive places including where children congregate, like schools, summer camps, and places of worship.
- The Second Circuit has recently held that historical tradition supports certain character requirements for obtaining a firearm license.

In the case at bar, the court simply said that there is a lack of historical tradition to support the notion that states can exclude out-of-state applicants. Since none of the plaintiffs could be denied a firearm license pursuant to the above (or other) exceptions, and given the lack of supportive historical tradition for restricting firearm licenses to out-of-state residents, it held that the statute is unconstitutional as applied to Plaintiffs, who were denied and prohibited from getting a license in New York.

Guided by the Supreme Court's holding in Bruen, the Court granted Plaintiffs' motion for summary judgment and concluded that the New York firearm statute is unconstitutional under the Second Amendment. It said that the State cannot point to a single law from the Founding or framing tradition that wholesale blocked nonresidents from participating in a general firearms licensing scheme, and that opening the application process to nonresidents does not limit New York's ability to regulate who receives a license based on other measured parameters. Nonresidents are simply afforded the same chance guaranteed to residents to exercise their Second Amendment rights.

Accordingly, the court:

1. Ordered that the challenged sections of N.Y. Penal Law § 400.00 are unenforceable, unconstitutional, and violate the Second and Fourteenth Amendments to the United States Constitution;
2. Ordered that New York must permit residents of other states to apply for and be issued permits to carry firearms in New York; and
3. Enjoined Defendants and all other officers, agents, servants, employees, and persons under the authority of the State, from refusing to accept applications from, and refusing to issue permits, to otherwise eligible persons who are not residents of the State of New York.

Higbie v James, Northern District of New York, August 20, 2025

Unsubstantiated Allegations of Misconduct and Minor Bookkeeping Errors Not Required to be Disclosed to the Defendant

Defendant was arraigned on a felony complaint charging him with aggravated unlicensed operation of a motor vehicle in the first degree and other charges. Defendant moved to dismiss alleging the Brooklyn District Attorney's failed to produce underlying Giglio records for allegations of police misconduct. The motion was denied. The court held that an allegation with a disposition of complaint not substantiated or "complainant unavailable" could not be used to impeach the officer since the truthfulness and reliability of the misconduct allegations could not be tested at trial through cross-examination. The court also found that the substantiated allegation against an officer that he failed to prepare a memo book entry was not probative of his truthfulness and honesty, and the underlying Giglio records were not material.

The issue for the court in this case was whether the People's failure to produce underlying records for certain police officer misconduct allegations rendered their certificate of compliance ("COC") invalid. The records not produced included:

- allegations of "abuse-search of premise" which were deemed exonerated
- allegations of "abuse-stop" where the disposition was "complainant unavailable"
- and the substantiated allegation that a police officer failed to prepare a memo book entry.

The court noted that CPL 245.20(1)(k) provides that the prosecutor must disclose all evidence that tends to impeach the credibility of a testifying prosecution witness. In denying the defendant's motion to dismiss the charges against him, the court said that where police misconduct allegations are exonerated, there is no good faith basis for cross-examination by the defendant's counsel and as such it is not evidence or information that tends to or has an inclination to impeach a police witness. Nor would an exonerated allegation demonstrate that the witness has been guilty of prior immoral, vicious or criminal conduct bearing on credibility. Accordingly, the People's failure to produce the underlying records for the exonerated allegation did not render their COC invalid.

In the case where the complainant was not available, again the court said that there exists no basis to impeach the officer, since the truthfulness and reliability of the misconduct allegations could not be tested at trial through cross-examination. And, it said that with an unavailable witness, it would be impossible to demonstrate that the underlying misconduct allegations relate to the offenses charged in the instant case or are exculpatory to defendant. Accordingly, the People's failure to provide defendant these underlying records did not render the People's COC invalid.

Finally, the court said that the substantiated allegation against the officer that he failed to prepare a memo book entry is not probative of his truthfulness or honesty. Similarly, other courts have come to the same conclusion in cases where the officer failed to properly voucher or safeguard a prisoner's property, created slightly inaccurate property vouchers, lost department equipment, and failed to timely notify his bureau of his lost department radio. So, the court said that the underlying Giglio records for this substantiated allegation were not material, as they would not tend to impeach the credibility of a testifying prosecution witness, and were not subject to automatic discovery pursuant to CPL 245.20(1)(k)(iv).

People v Balogun, NYC Criminal Court, August 4, 2025

Court Refuses to Require That Defendants Must Have An Individualized Review of Whether Restraints are Proper at Arraignment

In this proposed class action, Plaintiff sought a declaratory judgment and permanent injunction against the New York City Police Department ("NYPD") on behalf of himself and all others similarly situated. The proposed class consisted of all people who are or will be handcuffed by the NYPD at their criminal court arraignment in New York City based on the NYPD's arraignment restraint policy. The stated purpose of the Policy is as follows:

Purpose: To guide members of service (MOS) on the use of prisoner restraints at court arraignments. Pursuant to Patrol Guide 210-01, Department policy provides that prisoners should be handcuffed with their hands behind their back, when practical. MOS may exercise discretion to apply or not to apply restraints at arraignment, depending on individual circumstances presented, including safety and/or security concerns.

The Policy states, in bold letters, that **HANDCUFFS SHOULD ONLY BE REMOVED AT OR AFTER THE MOMENT A PRISONER APPEARS IN PERSON BEFORE THE JUDGE AND IS PRESENT AT THE ARRAIGNMENT TABLE/PODIUM, ABSENT EXCEPTIONAL CIRCUMSTANCES**"

The Policy lists thirteen "Safety and Security Factors" that officers may consider when exercising discretion regarding handcuffing, but emphasizes that, absent exceptional circumstances, "[p]risoners should

always be handcuffed when moved within the detention areas," and that officers may only exercise discretion "to remove handcuffs or keep them on during the court arraignment" once the criminal defendant reaches "the arraignment table/podium to appear before the judge/court".

Plaintiff argued here that the policy is to handcuff each person's wrists behind their back when officers escort them to arraignment, from the moment the officers and the accused person enter the courtroom until they reach the arraignment podium or table before the judge...and to keep nearly all people handcuffed for the duration of the arraignment proceeding. The complaint further alleges that, in practice, this policy results in "near-universal handcuffing of people throughout their arraignments".

And, the plaintiff asserted that the NYPD's failure to provide any individualized, on-the-record rationale to the court for keeping someone handcuffed throughout their arraignment or to obtain the court's approval to keep them handcuffed violates the due process rights of every person arraigned on criminal charges in New York City.

Court Decision

In *Deck v. Missouri*, the United States Supreme Court held that the Fifth and Fourteenth Amendments to the United States Constitution prohibit the use of physical restraints visible to the jury absent a trial court determination, in the exercise of its discretion, that they are justified by a state interest specific to a particular trial.

The New York State Court of Appeals later confirmed that a criminal defendant during a jury trial has the right to be free of visible shackles, unless there has been a case-specific, on-the-record finding of necessity under both federal and New York state constitutional law, but that the court's failure to articulate a specific reason on the record constitutes a harmless evidentiary error when, in light of the totality of the evidence, there is no reasonable possibility that the error affected the jury's verdict. After that decision, the Court of Appeals reiterated in *People v. Best* that "a trial court that restrains a defendant during criminal proceedings must

state a particularized reason for doing so on the record," but again affirmed that failure to do so constitutes a harmless constitutional error where evidence of guilt is overwhelming and there is no reasonable possibility that it affected the outcome of the trial. The Court also held that these principles apply "with equal force to nonjury trials".

Following these cases, New York courts have held that the right to an individualized court determination regarding restraint is implicated during other guilt phases of a criminal prosecution, including:

- when a criminal defendant testifies before a grand jury
- during reading of the verdict and polling of jurors
- during post-conviction hearings and probation revocation hearings

So, every stage of prosecution where New York courts have held that Best is implicated include, at a minimum, a factfinding hearing. This is not coincidental or arbitrary. The presumption of innocence is, foundationally, evidence in favor of the accused. "Visible shackling undermines the presumption of innocence because it suggests to the jury that the justice system itself sees a need to separate a defendant from the community at large."

But the presumption of innocence is a doctrine that allocates the burden of proof in criminal trials; it has no application to a determination of the rights of a pretrial detainee during confinement before his trial has even begun. The presumption of innocence does not apply at the pretrial phase because it is not an evidentiary stage of the proceeding and there is no factfinder.

So, the court was not persuaded that the right to an individualized court determination regarding restraint is implicated at arraignment as a matter of course.

And, as both parties conceded, after arrest, a criminal defendant remains physically and legally in police custody before and during arraignment. Generally, law enforcement has discretion to determine when handcuffing a suspect or criminal defendant in its custody is required to maintain

public safety, and the NYPD policy provided clear direction and guidance to police officers regarding when handcuffing of criminal defendants at arraignment is required to ensure the safety of all persons.

Balancing the need to ensure courtroom security and safety for all individuals in the courtroom with the lack of prejudice to the criminal defendant during the approach to the arraignment, this court found no compelling reason to expand the scope of earlier cases to impose an affirmative duty on law enforcement officers transporting arrestees to arraignment. During the "podium stage," when the defendant is before the court, the court unquestionably controls the proceeding and bears responsibility for ensuring that the criminal defendant is afforded due process, not the police. Here, NYPD's policy did not attempt to override the authority of the arraigning court, so this court denied the plaintiff's request for class certification and granted summary judgment in favor of NYPD.

Allen v The City of New York, July 3, 2025

**Second Circuit Court of Appeals Holds that
Inmates Have No Established Right to Specific
Gender Affirming Care, Officers Entitled to
Qualified Immunity**

Plaintiff Veronica-May Clark is a transgender inmate in the Connecticut prison system claiming that corrections officials violated the Eighth Amendment by failing to provide certain treatments for gender dysphoria, including stronger hormone therapy and a vaginoplasty. The Second Circuit Court of Appeals, in a 2-1 decision, concluded that the corrections officials should have received qualified immunity: "Inmates

have no clearly established right to be treated by gender-dysphoria specialists or to receive specific treatments for gender dysphoria”, said the court.

Facts

Clark, then known as Nicholas Clark, was convicted of murder, assault, burglary with a deadly weapon, and violation of a protective order in 2009. As part of that offense, Clark broke into his ex-wife’s house, severely disfigured her with a pipe, and beat her new partner to death. Clark is serving a 75-year sentence without the possibility of parole in the Connecticut prison system.

In April 2016—more than seven years into that sentence— prison clinicians learned that Clark identified as a transgender woman. A health-care provider at the correctional facility diagnosed Clark with gender dysphoria the next month. In July, 2016, Clark attempted self-castration with a nail clipper. Shortly afterward, prison officials transferred Clark to a high-security prison for adult men with significant mental-health issues.

Clark asked prison officials for various gender-dysphoria treatments. He was referred to a mental-health Advanced Practice Registered Nurse, but unsatisfied with that treatment, filed a grievance complaining of continual denial of access to transition-related healthcare.

He also submitted requests for hormone therapy, laser hair removal, and a vaginoplasty. His request was denied. Clark met with other medical personnel about his medical issues, and also received care from an outside doctor, who recommended hormone therapy and other medications.

It was undisputed that Clark suffered from severe gender dysphoria. But the court said that how to treat that disorder is not settled in the scientific and medical community.

In April 2019, Clark sued Defendants, alleging deliberate indifference in violation of the Eighth Amendment and intentional infliction of emotional distress for failure to provide adequate and necessary medical treatment for gender dysphoria.

The federal found that prison officials deprived Clark of adequate care, delayed hormone treatment, and denied a vaginoplasty. The court then said that prison officials acted with “subjective indifference” to Clark’s needs because it was obvious that the failure to refer Clark to a qualified provider would perpetuate his acute anguish. The district court concluded that Defendants were not entitled to qualified immunity. Although it noted the Supreme Court’s instruction that clearly established rights cannot be overly general so as to make a rule of virtually unqualified liability simply by alleging violation of extreme abstract rights, it nonetheless found that Defendants had violated the clearly established right to be free from deliberate indifference to serious medical needs.

DISCUSSION BY THE SECOND CIRCUIT

Defendants argued that they are entitled to qualified immunity because Clark had no clearly established right to specific gender dysphoria treatments and their actions were objectively reasonable. The Second Circuit agreed.

Eighth Amendment Violations

The Eighth Amendment prohibits the infliction of “cruel and unusual punishment.” The US Supreme Court has held that “deliberate indifference to serious medical needs of prisoners constitutes the unnecessary and wanton infliction of pain proscribed by the Eighth Amendment, whether the indifference is manifested by prison doctors in their response to the prisoner’s needs or by prison guards in intentionally denying or delaying access to medical care. But objective indifference is not enough to violate the Eighth Amendment: a prison official cannot be found liable under the Eighth Amendment unless the official knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn

that a substantial risk of serious harm exists, and he must also draw the inference.

Clearly Established Law

A Government official's conduct violates clearly established law when, at the time of the challenged conduct, the contours of a right are sufficiently clear that every reasonable official would have understood that what he is doing violates that right. The Supreme Court has repeatedly told courts not to define clearly established law at a high level of generality, instead emphasizing that clearly established law must be particularized to the facts of the case. "We do not require a case directly on point, but existing precedent must have placed the statutory or constitutional question beyond debate." The rule must be settled law, which means it is dictated by controlling authority or a robust consensus of cases of persuasive authority. It is not enough that the rule is suggested by then-existing precedent.

Clearly Established Rights in Deliberate-Indifference Cases

In addition to being firmly settled, the clearly established rights at issue must be sufficiently particularized to an inmate's individual circumstances. Specificity is necessary because qualified immunity focuses "on whether the officer had fair notice that her conduct was unlawful." Even in deliberate-indifference cases, "to be clearly established, a right must be sufficiently clear that every reasonable official would have understood that what he is doing violates that right." The district court here erred by conducting its qualified immunity analysis at too high a level of generality. It defined the relevant right as "the right to be free from deliberate indifference to serious medical needs." But such a right "is far too general a proposition to control this case", the Second Circuit concluded.

Other courts have rejected broad framings of rights to gender dysphoria treatment. For example, the Seventh Circuit held in a similar case—i.e., addressing qualified immunity from an inmate's Eighth Amendment claims based on the denial of sex-reassignment surgery after hormone

treatment—that the “proper inquiry is whether then-existing case law clearly established a constitutional right to gender-dysphoria treatment beyond hormone therapy.”

In sum, Supreme Court precedent requires courts “not to define clearly established law at a high level of generality” lest defendants are subjected to liability without fair notice that their conduct is unlawful. The district court’s overbroad framing excludes any reference to gender dysphoria or the specific treatments that Clark demanded for that condition. It also avoids the near unanimous weight of authority holding that there is no right to an inmate’s preferred gender-dysphoria treatments. The proper inquiry here, said the court, is whether there is a clearly established right to a specific course of gender-dysphoria treatment, including hormone therapy and sex reassignment surgery. The answer is no.

No Right to Specific Gender-Dysphoria Treatments

Neither the Supreme Court nor this Court has recognized, much less clearly established, any constitutional right to specific gender-dysphoria treatments.

- First, the Supreme Court has never addressed the medical care owed to transgender inmates under the Eighth Amendment.
- Second, this Court has not recognized any right to gender dysphoria treatment or denied qualified immunity in similar cases. The only Second Circuit case to address similar issues is *Cuoco v. Moritsugu*, in which a transgender detainee who had been taking hormones before imprisonment alleged that prison medical officials withheld estrogen in violation of prison policy and the Constitution. There, the court found no constitutional violation in withholding such treatment, even though Cuoco suffered visible symptoms of withdrawal and threatened suicide.
- Third, most other circuits have rejected deliberate-indifference claims for denial of specific gender-dysphoria treatments.

Given the disagreement surrounding gender-dysphoria care, the court here said that “it simply cannot be said that every reasonable official would believe that providing lifestyle accommodation, psychotherapy, antidepressants, and a delayed course of low-dose hormones violated Clark’s Eighth Amendment rights. There is no intentional or wanton deprivation of care if a genuine debate exists within the medical community about the necessity or efficacy of that care.”

So, the Circuit Court held that the district court improperly denied qualified immunity to Defendants because there is no clearly established right to specific gender-dysphoria treatments. Accordingly, the order of the district court was reversed, and the case was remanded with instructions to grant Defendants’ motion for summary judgment on qualified-immunity grounds.

Clark v Valletta, United States Court of Appeals For the Second Circuit, October 6, 2025