



REMOVING A DRUNK DRIVER FROM CAR VS. THE FOURTH AMENDMENT

August 2017

For duplication & redistribution of this article, please contact Law Enforcement Risk Management Group by phone at 317-386-8325.
Law Enforcement Risk Management Group, 700 N. Carr Rd. #595, Plainfield, IN 46168

Article Source: http://www.llrmi.com/articles/legal_update/2017_boude_v_heady.shtml

©2017 [Brian S. Batterton](#), J.D., Legal & Liability Risk Management Institute

On May 5, 2017, the Eighth Circuit Court of Appeals decided *Boude v. Heady et al.*ⁱ, in which the court discussed whether an officer violated the Fourth Amendment when he forcibly removed Boude, who was intoxicated, from the driver's seat of her car. The relevant facts of *Boude*, taken directly from the case, are as follows:

Boude was addicted to huffing aerosol spray cans, which intoxicated her. On March 17, 2012, Raymore Police Officer Joseph German was dispatched to "check on a person in their vehicle" in the parking lot of a Sonic restaurant. Arriving, German found Boude behind the wheel of her vehicle, an SUV. Seeing she was "not completely coherent," he summoned medical assistance.

The next day, Boude huffed two times and then drove to the Sonic restaurant. On patrol, German and Heady heard a radio dispatch about a motorist potentially in need of assistance. The dispatcher's description matched Boude's SUV from the previous day. Heady knew about German's encounter with Boude the day before, and began to search for the car. Within minutes, he saw a SUV matching the description. Stepping out of his patrol car, Heady motioned and told Boude to stop her SUV. Boude stopped. Heady approached the open driver-side window. German arrived within one minute of the stop. His dash camera recorded the events.

Heady asked Boude how much she huffed that day. She said "not much." Heady told her to turn the car off. Boude reached for the gearshift of the SUV. As she reached, the car's brake lights turned on. Heady said "no, no, no," reached through the front window, turned off the ignition, and took the keys. Heady told Boude to step out of the car. She failed to comply. Heady physically removed her, placed her on the ground, and handcuffed her. Boude later pled guilty to driving while intoxicated, a misdemeanor. She claims injuries from the arrest, requiring spinal surgery and physical therapy.ⁱⁱ

©2017 Article published in the free LLRMI E-Newsletter

Link to article online: http://www.llrmi.com/articles/legal_update/2017_boude_v_heady.shtml
<http://www.llrmi.com> | <http://www.patctech.com>

Boude subsequently sued Officer Heady for excessive force under the Fourth Amendment when he removed her from her vehicle. The district court granted summary judgment to Officer Heady based on qualified immunity. Boude appealed the grant of qualified immunity to Heady to the Eighth Circuit Court of Appeals. [Note: Boude also sued under state law but this article will not cover state law claims.]

The issue before the court of appeals was whether it was reasonable under the Fourth Amendment for Officer Heady to forcibly remove Boude, who was intoxicated, from the driver's seat of her vehicle, after he had shut off her vehicle and taken her keys.

The court first noted Eighth Circuit precedent on point to this issue and stated

Officers are "justified in using force to remove a driver, whom they believed to be impaired, from his vehicle after he refused to comply with their order to exit it." *Schoettle v. Jefferson Cty.*, 788 F.3d 855, 860 (8th Cir. 2015). *Accord Wertish v. Krueger*, 433 F.3d 1062, 1066 (8th Cir. 2006) (holding that when a driver failed to comply with an officer's orders to get out of the vehicle, it was objectively reasonable for the officer to pull the driver from the truck and handcuff him).ⁱⁱⁱ [emphasis added]

The court then examined facts of Boude's case relevant to the issue at hand. First, the court noted that Officer Heady was familiar with Boude's huffing incident at Sonic the day before. Next, the court noted that Boude admitted to the officers the day of this incident that she had huffed. Third, the officer saw brake lights on Boude's SUV come on that is consistent with a possible attempt to shift gears to flee. Then, Officer Heady said "no, no, no," and reached in the vehicle, shut it off, and removed the keys. The officer gave Boude an order to get out of the car and when she refused, he forcibly removed her from the vehicle, put her on the ground and handcuffed her.

Boude argued that when she stepped on the brake she was attempting to ensure the car was in park prior to exiting the vehicle as she was told, but was never given the opportunity to comply. To this argument, the court stated

Boude's allegation that she "reached for the gear shift to make sure her vehicle was in park before she made any move to comply with Defendant's order that she turn the vehicle off." See *Harris*, 550 U.S. at 380. **However, qualified immunity does not depend on whether Boude was *in fact* attempting to flee when she reached for the gearshift; rather, the key is Heady's *objectively reasonable beliefs* under the circumstances. See, e.g., *Brown*, 584 F.3d at 496. See also *Graham v. Connor*, 490 U.S. 386, 396-97 (1989) (explaining objective reasonableness considers that "police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation"). **Here, assuming Boude's reach for the gearshift was innocent, Heady could still have an objectively reasonable belief that her movement was a non-compliant attempt to shift the car to drive and to flee. See *Carpenter v. Gage*, 686 F.3d 644, 650 (8th Cir. 2012) ("Even if Carpenter's motive was innocent, the deputies on the scene reasonably could have interpreted Carpenter's actions as resistance and responded with an amount of force that was reasonable to effect the arrest.").^{iv} [emphasis added]****

The court then held

Officers are "justified in using force to remove a driver, whom they believed to be impaired, from his vehicle *after* he refused to comply with their order to exit." *Id.* (emphasis added). Moments "after [Boude] refused to comply" with Heady's order to turn off the car, he was "justified in using force to remove" her. See *id.*^v [emphasis added]

Thus, the court of appeals affirmed the grant of qualified immunity to Officer Heady.

ⁱ No. 16-1183 (8th Cir. Decided May 5, 2017)

ⁱⁱ *Id.* at 2-3

ⁱⁱⁱ *Id.* at 4

^{iv} *Id.* at 4-5

^v *Id.* at 5