



## FUGITIVE INVESTIGATIONS, WARRANTLESS HOME ENTRY AND THE FOURTH AMENDMENT

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On December 19, 2016, the Eleventh Circuit Court of Appeals of decided *Hill v. Orange County Sheriff et al.*<sup>1</sup>, which serves as an excellent review of Fourth Amendment law pertaining to warrantless home entry during fugitive investigations. The relevant facts of *Hill*, taken directly from the case, are as follows:

Around 10:30 AM on June 16, 2011, a man entered an Underground Station clothing store at a mall and asked an employee to get some shoes from the back of the store for him. When the employee went to the stock room to get the shoes, the man followed her there, pointed a gun at her, and struck her twice in the face before pushing her to the ground. While holding the employee at gunpoint, the man took \$300 from the cash register. Then, the man tied the employee's hands and legs, covered her mouth with tape, and locked her in the bathroom before leaving the store with the money and a pair of shoes.

Video surveillance footage from the Sears store in the same mall depicted a man entering Sears at 10:17 AM and leaving at 10:45 AM. When he left, the man ran toward a bus stop located on an access road. He was carrying what looked like Underground Station bags. The Orange County Sheriff's Office ("Sheriff's Office") used this footage to release photographs of the man for identification purposes. On June 21, the Sheriff's Office received several tips identifying the man as Collie P. White. That same day, the Underground Station employee selected White's photograph out of a line-up, identifying him as the perpetrator of the crime. The Sheriff's Office secured an arrest warrant for White on charges of robbery with a firearm (a first-degree felony), kidnapping with intent to inflict bodily harm or terrorize with a firearm (a life felony), aggravated assault with a firearm, and battery. The Sheriff's Office's Tactical Surveillance and Apprehension Team (the "Team"), led by Sergeant Ricky Stelter, commenced an investigation to locate and apprehend White.

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The very next day, June 22, 2011, the Sheriff's Office received a court order authorizing surveillance of White's cellular phone. This surveillance allowed the Sheriff's Office to get geolocation data for White's phone from his cellular phone carrier. By sending signals that communicate with White's phone through the carrier's phone towers—a process called "pinging"—the carrier could generate estimates of the phone's location within error rates measured in meters.

That same day, the Team received notification that White's phone had pinged from a street named Woodman Way in Orlando, Florida. Based on this information, the Team set up covert visual surveillance on Woodman Way and the surrounding area. Team officers communicated with each other from their covert locations via radio. While the Team surveilled the area, one officer announced over the radio that he had spotted White near a multi-family residence located at 1160 Woodman Way, and that White looked back at him through binoculars. Another Team officer drove his unmarked vehicle onto Woodman Way to confirm the identification, and promptly announced over the radio that he had seen White look in his direction before turning and rushing into 1160 Woodman Way.

Corporal Covelli, another officer on the Team, heard both of these announcements over the radio. He then heard Sergeant Stelter instruct the Team to enter the residence and apprehend White. Along with other officers, Corporal Covelli approached the residence. Adria Hill, an African-American tenant of one of the units in the building, had just locked her front door when she saw the officers approach at around 7:00 PM. The officers then used some sort of device to "bust in the door" and began their search. Hill asked one of the officers to produce a search warrant, but the officer told her they did not need one. The Team did not find White in Hill's home and believed that White escaped out the back door. Hill says that White was never in her home at any time that day. After searching Hill's home, the Team entered the homes of all but one of Hill's neighbors—each of whom was African-American—to search for White, but to no avail.<sup>ii</sup>

Hill filed suit against Corporal Covelli and the Orange County Sheriff. She alleged the corporal violated her rights under the Fourth Amendment when he entered her residence without a warrant or consent and alleged the Sheriff violated her rights by failing to train deputies such that that failure to train caused the violation of rights under the Fourth Amendment. The district court held that the Corporal Covelli did not violate the Fourth Amendment when he entered Hill's home and granted summary judgment in favor of the corporal and the sheriff. Hill appealed to the Eleventh Circuit Court of Appeals.

On appeal, the court first noted that they had to first examine whether Corporal Covelli violated the Fourth Amendment when he entered Hill's home without a search warrant. If he did not violate the Fourth Amendment, then the corporal is entitled to summary judgment. If they find that he did violate Hill's rights, they would next examine whether Hill's rights were clearly established such that another reasonable deputy in the same situation would have known he was violating the Fourth Amendment. If the right was not clearly established, then the corporal would be entitled to qualified immunity. If the was clearly established, then the case goes to a jury.

The court next examined the Fourth Amendment law regarding home entry. The court stated

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**The Fourth Amendment establishes a right against non-consensual warrantless entry into one's home unless probable cause and exigent circumstances exist. United States v. Ramos, 933 F.2d 968, 972 (11th Cir. 1991)...**

**Exigent circumstances may arise from a variety of situations, including when there is "hot pursuit of a fleeing felon, or imminent destruction of evidence, or the need to prevent a suspect's escape, or the risk of danger to the police or to other persons inside or outside the dwelling." Minnesota v. Olson, 495 U.S. 91, 100, 110 S. Ct. 1684, 1690 (1990) (quotation and citation omitted). Because the man who committed the crime here had escaped and gone several days without being apprehended by the police, this case does not involve hot pursuit. See Stanton v. Sims, 571 U.S. \_\_\_, 134 S. Ct. 3, 6 (2013) (per curiam) (explaining that the hot pursuit doctrine does not apply where there is "no immediate or continuous pursuit of [the suspect] from the scene of a crime" (quotation omitted)). But in any event, we determine whether exigent circumstances existed by looking at the totality of the circumstances. Gennusa v. Canova, 748 F.3d 1103, 1115 (11th Cir. 2014) (citing Missouri v. McNeely, 569 U.S. \_\_\_, 133 S. Ct. 1552, 1559 (2013)). Some of the factors we consider include the gravity of the offense with which the suspect was charged; whether there was reason to believe that the suspect was in the premises the officers entered and was armed; and whether delay could have allowed the suspect to escape or jeopardize the safety of the officers or the public. See Ramos, 933 F.2d at 972. Exigent circumstances are evaluated on an objective basis. United States v. Young, 909 F.2d 442, 446 (11th Cir. 1990).<sup>iii</sup> [emphasis added]**

The court then examined the facts of Hill's case in light of the rules above. First, they noted that the wanted person, White, was charged with serious, violent felonies, including armed robbery and kidnapping with a firearm. Second, they noted that Corporal Cavelli had good reason to believe that White was in Hill's residence because they tracked his cell phone to her building, deputies had spotted him at that building and seen him flee into 1160 Woodman Way. Thus, the court stated that, even assuming the deputies were wrong about White entering Hill's residence, "a reasonable officer in Corporal Cavelli's position would have strong reason to believe that White was inside Hill's home."<sup>iv</sup> Third, because White was charged with violent offenses involving a firearm, it was reasonable for deputies to believe he was armed and dangerous. Lastly, it was reasonable for Corporal Cavelli to believe that a delay in action could allow White to escape or cause harm to the officers or others.

Therefore, the court held that Corporal Cavelli did not violate Hill's rights under the Fourth Amendment when he entered her home without a warrant because it was reasonable to believe that exigent circumstances existed to support such entry. Thus, they affirmed the grant of qualified immunity to the corporal.

Hill also argued that Corporal Cavelli violated her equal protection rights under the Fourteenth Amendment when he entered her residence. Specifically, she alleged that he would not have entered the residences of Caucasian residents without a warrant.

The court examined the law pertaining to such equal protection claims and stated

**In order to prevail on a racial discrimination claim, a plaintiff must prove, among other things, that the state's actions were racially motivated. See City of Cuyahoga Falls v. Buckeye Cmty. Hope Found., 538 U.S. 188, 194, 123 S. Ct. 1389, 1394 (2003) ("We have made clear that proof of racially discriminatory intent or purpose is required to show a violation of the Equal Protection Clause." (quotation omitted) (alteration adopted)). Thus, to get past summary judgment on an equal protection claim, a plaintiff must produce enough evidence to allow a reasonable trier of fact to find racially discriminatory intent. See Redwing Carriers, Inc. v. Saraland Apartments, 94 F.3d 1489, 1496 (11th Cir. 1996)<sup>v</sup> [emphasis added]**

Here, the only evidence that Hill provided was to state that she and her neighbors, whose residences were also entered, were African-American. The court stated

[T]hat fact alone does not raise a genuine issue as to whether Corporal Covelli acted with discriminatory intent when he entered Hill's home under Sergeant Stelter's directions to apprehend a crime suspect.

Thus, the court affirmed the grant of summary judgment on the Fourteenth Amendment equal protection claim.

Lastly, the court examined whether the Sheriff was liable for failure to train his deputies regarding warrantless home entry. In order to hold a sheriff or county liable for the actions of its officers for failure to train, the plaintiff must allege sufficient facts to prove (1) that the plaintiff's constitutional rights were violated, (2) the sheriff or county knew of a need to train in a particular area, (3) the sheriff or county was deliberately indifferent to those known training needs, and (4) that deliberate indifference to the known training needs was the cause of the plaintiff suffering the constitutional violation.

Here, the court noted that since Corporal Cavelli had not violated Hill's constitutional rights, the claim against the sheriff must fail. Therefore, he is entitled to qualified immunity and summary judgment.

Thus, the court affirmed the decision of the district court in favor of Corporal Cavelli and the sheriff.

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<sup>i</sup> No. 16-11462 (11<sup>th</sup> Cir. Decided December 19, 2016)

<sup>ii</sup> Id. at 2-4

<sup>iii</sup> Id. at 7-8

<sup>iv</sup> Id. at 9

<sup>v</sup> Id. at 10