



## DOMESTIC DISPUTES, EXIGENT CIRCUMSTANCES AND THE FOURTH AMENDMENT



*Storey v. Taylor*

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On October 1, 2012, the Tenth Circuit Court of Appeals decided *Storey v. Taylor, et al.*<sup>i</sup> which is instructive regarding constitutional law related to police response to domestic disputes. In *Storey*, the Los Lunas, New Mexico Police Department received an anonymous call reporting a loud argument at Storey's residence. Sergeant Taylor and another officer were dispatched to investigate.

When the officers arrived at Storey's residence they heard no argument and saw no signs of violence. They knocked on Storey's door and he answered. The officer's belt tape recorder captured much of the conversation. During the conversation, Storey told the officers that he and his wife had argued, but that she was not home at that moment. The officers told Storey that a neighbor had called the police. The officers explained that they were there to make sure Storey and his wife were safe. They then asked Storey what he was arguing about. Storey then refused to answer that question and when the officers told him he must, he replied that he did not have to tell them anything. At this point, Sergeant Taylor ordered Storey to step outside of the house and Storey refused. Sergeant Taylor then told Storey he would arrest him for violating a New Mexico obstruction statute if he did not comply. According to Storey's version of events, at this point, Sergeant Taylor pulled him out of the house and arrested him.

During the exchange, at some point, Mrs. Storey returned home and entered the home through the garage. She came outside and met with the officers after Storey was arrested.

Storey filed suit claiming, among other things, that the officers violated his *Fourth Amendment* right against unreasonable seizures because they arrested him in his home without a warrant or exigent circumstances. The district court granted summary judgment to Taylor. Storey appealed the grant of summary judgment to the Tenth Circuit Court of Appeals.



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At the outset, the Tenth Circuit noted several rules that apply to this case. First, the court stated

To enter a home and seize an individual for a routine investigatory purpose, police must have exigent circumstances and probable cause, or a warrant, ... *Armijo ex rel. Armijo Sanchez v. Peterson*, 601 F.3d 1065, 1073 (10th Cir. 2010).<sup>ii</sup>

Second, the court stated

In determining whether the risk of personal danger creates exigent circumstances, we use a two-part test: "whether (1) the officers have an objectively reasonable basis to believe there is an immediate need to protect the lives or safety of themselves or others, and (2) the manner and scope of the search is reasonable." *United States v. Najjar*, 451 F.3d 710, 718 (10th Cir. 2006). In determining whether officers had an objectively reasonable basis, "[w]e evaluate whether the officers were confronted with reasonable grounds to believe there was an immediate need 'guided by the realities of the situation presented by the record' from the viewpoint of 'prudent, cautious, and trained officers.'" *Id.* (quoting *United States v. Anderson*, 154 F.3d 1225, 1233 (10th Cir. 1998)). This inquiry "is essentially one of reasonable belief." *Id.* (citing *United States v. Gay*, 240 F.3d 1222, 1227 (10th Cir. 2001)).<sup>iii</sup>

Third, the court noted, that even if no crime is committed, there are some situations that allow police action based upon the "community caretaking" role. The court stated

A warrantless arrest may also be justified if the arresting officer was acting in a "community caretaking" role. "We have recognized that, in fulfilling their duties, police officers may exercise functions—'community caretaking functions'—wholly separate and apart from detecting, investigating, or acquiring evidence of a crime." *Lundstrom*, 616 F.3d at 1120.<sup>iv</sup>

Under the community caretaker role, a detention must meet three criteria which are as follows:

1. The detention must be based upon specific and articulable facts which reasonably warrant an intrusion into the individual's liberty.
2. The government's interest must outweigh the individual's interest in being free from arbitrary governmental interference.
3. The detention must last no longer than is necessary to effectuate its purpose, and its scope must be carefully tailored to its underlying justification.<sup>v</sup>

With the above rules in mind, the Tenth Circuit then set out to determine if there was probable cause to arrest Storey for a violation of *N.M.S.A. 1978 § 30-22-1(D)*, which makes it illegal to "resist or abuse any ... peace officer in the **lawful** discharge of his duties" when he refused to obey the officer's command to come outside his home.<sup>vi</sup> Sergeant Taylor argued that he had probable cause to arrest Storey for this offense when he refused to come outside of his home when ordered by the sergeant. However, the Tenth Circuit stated

The problem with Taylor's argument is it relies on the assumption that the order in question was itself lawful. Absent exigent circumstances, Taylor had no basis on which to order Storey out of his house. Clearly, Storey disobeyed Taylor's order to step out of

the house. **But a sufficiently coercive order requiring an individual to leave his own house counts as a seizure subject to the protections of the Fourth Amendment.** *Lundstrom*, 616 F.3d at 1124; see also *Kentucky v. King*, 131 S. Ct. 1849, 1862, 179 L. Ed. 2d 865 (2010).<sup>vii</sup> [emphasis added]

In light of the above rule, the Tenth Circuit stated that the only way that Sergeant Taylor's order for Storey to exit his home would be "lawful," would be if the order was supported by exigent circumstances.

The Tenth Circuit then examined whether the circumstances in this case gave rise to exigent circumstance necessary to support the command for Storey to exit his home.

The court first stated

**A report of a domestic argument—standing alone—does not demonstrate exigent circumstances per se.** *United States v. Davis*, 290 F.3d 1239, 1244 (10th Cir. 2002). **Thus, officers responding to a report of a domestic dispute must point to something beyond the mere fact of an argument to demonstrate an "objectively reasonable basis to believe there is an immediate need to protect the lives or safety of themselves or others."** *Najar*, 451 F.3d at 718. **Either additional depth and detail in the report, or additional facts learned in the course of the investigation, are required to support the exigency.** See *United States v. Martinez*, 643 F.3d 1292, 1297 (10th Cir. 2011).<sup>viii</sup> [emphasis added]

The Tenth Circuit also examined a factually similar case, *Lundstrom v. Romero*, also from the Tenth Circuit.<sup>ix</sup> In *Lundstrom*, an anonymous caller reported to police that he heard sounds of a woman screaming and a toddler being beaten in the plaintiff's backyard. An officer was dispatched to check the welfare of the child. When the officer arrived, she heard a high pitched voice but no other noises that indicated there was an on-going altercation. The officer knocked and the plaintiff answered the door. When the officer told the plaintiff the purpose of her visit, the plaintiff stated that there were no children at that location, shut the door, and refused to open it or come outside. Ultimately, over the phone, another officer ordered the plaintiff to go outside; he complied and was arrested. Officers searched the house to complete the welfare check and then let the plaintiff go (un-arrested him). The plaintiff filed suit and the Tenth Circuit held that the officer violated the *Fourth Amendment* in that case. Regarding *Lundstrom*, the Tenth Circuit stated

We found the plaintiff was unlawfully seized when he complied with the order to exit his house. We found the officers had no probable cause because "nothing indicated he had done anything wrong and he did not pose a threat to the officers." *Id.* at 1124. We also found no exigent circumstances that would justify the seizure because nothing known to the officers (apart from the anonymous caller) indicated the presence of a child in the house. Significantly, we noted that the plaintiff denied the presence of any children; the officers did not observe any children; and another occupant of the house, who was detained outside, likewise claimed there were no children in the house. We also found the law on this point was clearly established, making qualified immunity inapplicable.<sup>x</sup>

The Tenth Circuit then examined the relevant facts of Storey's case. First, they noted that the police received an anonymous call of a domestic argument. Second, when the police arrived, they did not hear an argument, as it had ended. Third, there were no visual or audible indications of past violence

or on-going violence. Fourth, Storey answered the door and admitted to being in a previous argument with his wife, but said she had since left. Last, while the officers were talking to Storey, the saw his wife return home and saw nothing that suggested her safety was at risk.

The court noted that Storey's case was similar to Lundstrom's. Taylor argued that several cases support his argument that exigent circumstances were present in *Storey*. However, the court stated

All of those cases, however, involved some significant facts in addition to a report of a domestic dispute.

- *United States v. Holloway*, 290 F.3d 1331, 1338 (11th Cir. 2002) — reports of gunfire from two independent sources. Gunfire, obviously, is more indicative of exigent circumstances than a loud argument between spouses.
- *Tierney v. Davidson*, 133 F.3d 189, 192 (2d Cir. 1998) — before entering the dwelling, officer conferred with two witnesses on the scene, who reported "screaming and banging" continuing until the officer arrived. The officer also saw broken glass, indicating recent violence.
- *Schreiber v. Moe*, 596 F.3d 323, 330 (6th Cir. 2010) — investigating officer heard ongoing shouting as he approached the dwelling, and was greeted "with a slew of profanities."
- *United States v. Brooks*, 367 F.3d 1128, 1134 (9th Cir. 2004) — caller reported sounds of an argument and physical beating in a hotel room, not just arguing. In addition, the investigating officer personally spoke with the caller in the hotel lobby to confirm the report and gather additional information before proceeding to the hotel room.
- *Fletcher v. Town of Clinton*, 196 F.3d 41, 47 (1st Cir. 1999) — police did not observe any signs of ongoing violence. But they did observe two individuals in the home, one of whom they knew had a restraining order against the other based on recent threats of violence. Thus, unlike Taylor, the officers in *Fletcher* were privy to additional facts that made violence more likely.

In summary, all of these cases involved credible evidence known to the officers of physical abuse or additional corroborating circumstances that increased the potential for violence. That is not the case here.<sup>xi</sup>

The Tenth Circuit also examined two United States Supreme Court cases that address the issue of exigent circumstances. In *Ryburn v. Huff*<sup>xii</sup>, officers went to a juvenile's home to investigate threats that he was going engaging in a future shooting at his school. When officers arrived, the juvenile's mother initially failed to answer the door. When she finally came outside, when asked if there were guns in the house, she fled back inside. Officers entered her home behind her. The Supreme Court held that the mother's demeanor and evasive actions, combined with the serious nature of the threat provided the officers with a reasonable belief that an imminent threat of violence was present. The court, comparing this case to *Storey*, noted that Storey did not involve a serious crime nor were there any sudden, unexplained movements in response to a question about weapons.

Additionally, in *Brigham City v. Stuart*<sup>xiii</sup>, officers responded to a loud party call and observed a physical fight in progress in the residence. They entered without consent or a warrant to stop the

fight. The Supreme Court upheld the warrantless entry based on exigent circumstances and held that the officers lawfully entered because they reasonably believed an injured person inside may need help and the violence was on-going. The court then noted that, in *Storey*, there were no observable facts to indicate that violence was on-going or anyone inside needed help.

The Tenth Circuit then held

**In sum, a report of a loud argument—without more—that has ceased by the time an officer arrives, although relevant to the exigent circumstances inquiry, does not alone create exigent circumstances to justify a warrantless arrest.** And, unlike in the cases cited by Taylor, there are no additional facts that would significantly increase the likelihood of violence. Accordingly, viewing the facts in the light most favorable to Storey, we find Storey's arrest was not justified by exigent circumstances.<sup>xiv</sup> [emphasis added]

Further, because the loud argument alone will not create sufficient exigent circumstances to justify a warrantless arrest, the order to exit the house was not lawful. Likewise, the loud argument alone will not justify a warrantless, non-consensual entry into private premises.

The last argument made by the officer was that the community caretaking duty justified the order for Storey to exit the home. To this argument, the Tenth Circuit stated

This argument, however, fails for the same reason as Taylor's exigent-circumstances argument: the facts do not show a likelihood of violence such that Taylor's actions were necessary to protect the safety of Storey, his wife, the officers, or others. See *Lundstrom*, 616 F.3d at 1124; cf. *Brigham City*, 547 U.S. at 406. Thus, there were no "specific and articulable facts" to justify the intrusion on Storey's liberty. *Garner*, 416 F.3d at 1213... Absent additional facts indicating a greater possibility of violence, a loud argument between spouses does not suffice to justify a warrantless seizure within the home.<sup>xv</sup>

As such, the Tenth Circuit held that the officer's conduct in this case was a violation of the *Fourth Amendment*.

The final issue for the court to decide was whether the law on this type of incident clearly established such that another reasonable officer in the same situation would have known that the conduct was unlawful. If the law is clearly established, the officer is not entitled to qualified immunity from suit; if the law is not clearly established, the officer is entitled to qualified immunity. The Tenth Circuit stated

In *Lundstrom*, we found the legal principles underlying the plaintiff's *Fourth Amendment* rights to be clearly established. See *Lundstrom*, 616 F.3d at 1125. Here, "[i]t was similarly established that community caretaking detentions must be based on specific articulable facts warranting an intrusion into an individual's liberty. It was also unambiguous that a police officer must have probable cause to arrest an individual." *Id.* And it was also clear that exigent circumstances were required. *Armijo*, 601 F.3d at 1070. Accordingly, Taylor is not entitled to qualified immunity.<sup>xvi</sup>

As such, the Tenth Circuit reversed the district court's grant of summary judgment for the officer and the case may proceed to a jury.

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**Note:** *Court holdings can vary significantly between jurisdictions. As such, it is advisable to seek the advice of a local prosecutor or legal adviser regarding questions on specific cases. This article is not intended to constitute legal advice on a specific case.*

## **CITATIONS:**

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<sup>i</sup> No. 11-2180, 2012 U.S. App. LEXIS 20471 (10<sup>th</sup> Cir. Decided October 1, 2012)

<sup>ii</sup> Id. at 7

<sup>iii</sup> Id. at 8-9

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

<sup>v</sup> Id. at 9-10 (citing United States v. Garner, 416 F.3d 1208, 1213 (10th Cir. 2005) (citation, alterations, and quotation marks omitted).

<sup>vi</sup> Id. at 10, fn 6

<sup>vii</sup> Id. at 10-11

<sup>viii</sup> Id. at 12

<sup>ix</sup> 616 F.3d 1108 (10<sup>th</sup> Cir. 2010)

<sup>x</sup> Id. at 14-15

<sup>xi</sup> Id. at 15-17

<sup>xii</sup> 132 S.Ct. 987 (2012)

<sup>xiii</sup> 547 U.S. 398 (2006)

<sup>xiv</sup> Storey at 19

<sup>xv</sup> Id. at 20

<sup>xvi</sup> Id. at 20-21