

APPENDIX

2022 WL 500550

Only the Westlaw citation is currently available.

United States Court of Appeals, Tenth Circuit.

UNITED STATES of America, Plaintiff - Appellee,

v.

Michael James BOSMAN, Defendant - Appellant.

No. 21-1076

|

Filed: February 18, 2022

(D.C. No. 1:19-CR-00213-RM-1) (D. Colorado)

Attorneys and Law FirmsCandyce Cline, [Brian Michael Dunn](#), Office of the United States Attorney, Denver, CO, for Plaintiff - Appellee.[Howard A. Pincus](#), Office of the Federal Public Defender, Denver, CO, for Defendant - Appellant.Before [MATHESON](#), [EBEL](#), and [PHILLIPS](#), Circuit Judges.**ORDER AND JUDGMENT ***

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with [Fed. R. App. P. 32.1](#) and [10th Cir. R. 32.1](#).

[Scott M. Matheson, Jr.](#), Circuit Judge

*1 On the morning of March 7, 2019, three police officers were dispatched to arrest Albert Stuart, who was asleep in the front seat of a car parked in a motel parking lot. Defendant-Appellant Michael James Bosman was asleep in the back seat. While one of the officers was arresting Mr. Stuart, the other officers told Mr. Bosman to exit the car so they could identify him. When Mr. Stuart informed them Mr. Bosman was armed, the officers ordered Mr. Bosman at gunpoint to leave the car. They threatened to shoot him for any errant movement. Mr. Bosman fell out of the car, and a gun fell on the ground behind him. Mr. Bosman was charged for unlawfully possessing a firearm as a felon under [18 U.S.C. § 922\(g\)\(1\)](#).

Mr. Bosman moved to suppress the firearm, claiming the officers used excessive force when they told him to exit the car. The district court denied his motion. He entered a conditional guilty plea under [Federal Rule of Criminal Procedure 11\(a\)\(2\)](#) and appealed the denial of his suppression motion. Exercising jurisdiction under [28 U.S.C. § 1291](#), we affirm.

I. BACKGROUND**A. *Factual History***¹

¹ Because Mr. Bosman does not contest the district court's factual findings, we rely on those findings as well as the officers' body camera footage. See ROA, Vol. III at 202-07; ROA, Vol. IV Attachments A-C.

At around 9:00 a.m. on March 7, 2019, Colorado Springs Officers Gilman, Hallas, and Sandoval responded to a tip that Mr. Stuart was asleep in a Chevrolet Impala in the parking lot of a motel in a high-crime area. Mr. Stuart had an outstanding felony arrest warrant for multiple counts of identity theft and property offenses.

Upon arrival, the officers activated their body cameras and approached the car. ROA, Vol. IV Attachments A-C. There were bystanders in the vicinity of the parking lot. ROA, Vol. III at 206. Mr. Stuart was asleep in the front passenger seat. Another man—later identified as Mr. Bosman—was asleep in the back seat, which was cluttered. *Id.* at 208.

Officer Hallas knocked on the passenger window, awakening Mr. Stuart. ROA, Vol. IV Attachment A at 00:37-47. Officer Hallas ordered him out of the car. *Id.* Officer Gilman was standing slightly behind Officer Hallas and took his firearm out but pointed it downwards (in the “low ready” position). ROA, Vol. III at 74. The officers told the two men to put their hands up, and both men complied. ROA, Vol. IV Attachment A at 00:45; ROA, Vol. III at 202-03.

Officer Hallas opened the passenger door, which triggered the car alarm. ROA, Vol. IV Attachment A at 00:55-1:05. He asked Mr. Stuart if there were any weapons in the car. *Id.* Mr. Stuart quickly looked back toward Mr. Bosman but did not give a clear answer. *Id.*; see also ROA, Vol. III at 203. Officer Hallas again asked if there were weapons in the car, and Mr. Stuart said no. ROA, Vol. IV at 00:55-1:05; ROA, Vol. III at

203. Mr. Stuart exited the car, and Officer Hallas handcuffed him. ROA, Vol. IV Attachment A at 01:03-20. He then led Mr. Stuart toward the patrol vehicle. *Id.*

*2 Officer Gilman moved to the open front passenger seat door and began speaking with Mr. Bosman, who remained in the back seat on the driver's side. *Id.* at 01:37-50. By this point, Officer Sandoval had moved to the rear driver-side door. *Id.* In a conversational tone, Officer Gilman explained they were trying to identify him and instructed him to exit the car with his hands on his head. *Id.* Officer Gilman warned him against reaching toward his waist. *Id.* at 1:45-46.

While he was being arrested, Mr. Stuart alerted Officer Hallas that he had a gun, so Officer Gilman moved to the patrol car to help Officer Hallas. ROA, Vol. IV Attachment B at 00:08-58. After finishing the arrest, Officer Gilman returned to the open passenger door and instructed Mr. Bosman to open the door. ROA, Vol. IV Attachment A at 02:35-03:09. His tone remained conversational, and his gun remained in the low ready position. *Id.*; ROA, Vol. III at 204.

At that moment, Mr. Stuart told Officer Hallas that Mr. Bosman also had a gun. ROA, Vol. IV Attachment B at 01:54-56. Officer Hallas shouted to the other officers, "he's got a gun too, supposedly." ROA, Vol. IV Attachment B at 01:56-58. Officer Gilman pointed his gun at Mr. Bosman and said, "We have information that you might be armed." ROA, Vol. IV Attachment A at 03:37-40. Officer Gilman also warned Mr. Bosman that if his arm moved in a frightening way, he would probably get shot. *Id.* at 03:40-46. Mr. Bosman then opened the door, which triggered the car alarm again. *Id.* at 03:48-56. Officer Gilman told Mr. Bosman to follow Officer Sandoval's commands, relocated to the driver's side of the car, and pointed his gun at Mr. Bosman. *Id.* at 03:57-04:06. Officer Sandoval also took out his gun and pointed it at Mr. Bosman. *Id.*

Officer Sandoval told Mr. Bosman that if his hands shifted beneath his shoulders, he would shoot him. *Id.* at 04:00-15. Officer Sandoval holstered his weapon, grabbed one of Mr. Bosman's wrists, and instructed him to leave the car while keeping his hands up. *Id.* at 04:15-06:05. As Officer Sandoval guided Mr. Bosman out of the car, Mr. Bosman fell out onto the ground. *Id.* at 04:15-25. A gun fell behind him on the ground. *Id.* at 04:15-30. After securing Mr. Bosman, the officers retrieved the gun. *Id.* at 04:30-06:05.

B. *Procedural History*

Mr. Bosman was charged with possession of a firearm by a convicted felon under 18 U.S.C. § 922(g)(1). He moved to suppress the firearm, arguing the officers acted unreasonably under the Fourth Amendment by pointing their guns at him and threatening to shoot him.

The district court denied his motion. It explained the officers were making a felony arrest in a high-crime area. At first, they thought no firearms were present. But after Mr. Stuart left the car, he told the officers that he was armed and that Mr. Bosman also had a gun. The officers said the back seat of the car was cluttered. Based on these circumstances, the court recognized an officer safety concern. It concluded the officers acted aggressively but reasonably when they pointed their guns at Mr. Bosman, threatened to shoot him for stray movement, and ordered him to exit the car.

Mr. Bosman conditionally pled guilty under [Federal Rule of Criminal Procedure 11\(a\)\(2\)](#). He timely appealed the district court's denial of his suppression motion.

II. DISCUSSION

Mr. Bosman challenges the district court's denial of his motion to suppress. He does not contest the Officers' authority to order him out of the car. Instead, he argues the Officers acted unreasonably under the Fourth Amendment by pointing their guns at him and threatening to shoot him for sudden movements.

A. *Standard of Review*

*3 We review "de novo a district court's determination of the reasonableness of a search and seizure under the Fourth Amendment." [United States v. Dennison](#), 410 F.3d 1203, 1207 (10th Cir. 2005). "We look at the totality of the circumstances in reviewing the denial of the motion to suppress." *Id.* "[W]e accept the factual findings of the district court unless they are clearly erroneous, and view the evidence in the light most favorable to the district court's determination." *Id.* (quotations omitted).

B. Legal Background

The Fourth Amendment protects individuals from “unreasonable searches and seizures.” U.S. Const. amend. IV. A person is seized under the Fourth Amendment when “the police conduct would have communicated to a reasonable person that he was not at liberty to ignore the police presence and go about his business.” *Florida v. Bostick*, 501 U.S. 429, 437 (1991) (quotations omitted). But “the protection of the Fourth Amendment does not guarantee against *all* seizures.” *United States v. King*, 990 F.2d 1552, 1556 (10th Cir. 1993) (quotations and alterations omitted). Rather, it protects “only against *unreasonable ...* seizures.” *United States v. Sharpe*, 470 U.S. 675, 682 (1985).²

- ² The Fourth Amendment applies against state law enforcement officials as incorporated through the Due Process Clause of the Fourteenth Amendment.

Mapp v. Ohio, 367 U.S. 643, 655 (1961).

A law enforcement officer, “for the purpose of investigation, may briefly detain a person on less than probable cause,” *King*, 990 F.2d at 1557; see *United States v. Sokolow*, 490 U.S. 1, 7 (1989), and may also “conduct a limited search for weapons for his or her own protection,” *King*, 990 F.2d at 1557; see *Adams v. Williams*, 407 U.S. 143, 145-46 (1972). But the officer’s action must be “justified at its inception” and “reasonably related in scope to the circumstances which justified the interference in the first place.” *Terry v. Ohio*, 392 U.S. 1, 20 (1968).

The police may seize a person to “ensure the safety of the public and/or the individual, regardless of any suspected criminal activity” and may seize an individual’s weapon “in order to ensure [his or] her own safety during the encounter,” *King*, 990 F.2d at 1560-61.

Evaluating “the reasonableness of [a] seizure depends on a balance between the public interest and the individual’s right to personal security free from arbitrary interference by law officers.” *United States v. Brignoni-Ponce*, 422 U.S. 873, 878 (1975). “[O]ur evaluation is guided by ‘common sense and ordinary human experience.’ ” *King*, 990

F.2d at 1562 (quoting *Sharpe*, 470 U.S. at 685). But in assessing whether an officer’s action was reasonable, we “should not indulge in unrealistic second-guessing.”

United States v. Montoya de Hernandez, 473 U.S. 531, 542 (1985) (quotations omitted). “The question is not simply whether some other alternative was available, but whether the police acted unreasonably in failing to recognize or to pursue it.” *Sharpe*, 470 U.S. at 687.

C. Analysis

After carefully reviewing the record, including the officers’ body camera footage, we agree with the district court that their actions were reasonable. The officers were effectuating a felony arrest of Mr. Stuart, who was in the same car as Mr. Bosman. They initially asked Mr. Stuart if there were any weapons in the car. Mr. Stuart said no. But after Mr. Stuart left the car, he revealed he was armed and that Mr. Bosman also had a gun. Only then did the officers, reacting to new information and an escalating situation, point their guns at Mr. Bosman.

*4 Perhaps most significant, the officers had no knowledge of where the gun was located. As the district court found, the back seat of the car was cluttered, so there were numerous places where Mr. Bosman could reach for the weapon and thus pose a safety risk to the officers. The officers also had identified bystanders in the vicinity, adding to safety concerns. Under these circumstances, the officers did not act unreasonably by pointing their guns at Mr. Bosman and threatening to shoot for wayward movement.

Mr. Bosman makes two arguments. Both lack merit.



First, his reliance on *United States v. King* is misplaced. There, an officer was directing traffic after an accident when the defendant began honking his horn repeatedly. *King*, 990 F.2d at 1555. When the officer approached the car, the defendant apologized for the commotion. *Id.* The officer noticed a pistol on the defendant’s person and immediately drew her revolver and pointed it at the defendant. *Id.* Because the state permitted individuals to have guns in their cars, and because the initial interaction stemmed from the officer’s effort to move traffic, we held the officer’s action was unreasonable under the circumstances. *Id.* at 1563. Mr. Bosman argues the officers here had similar safety concerns,

so their actions also were unreasonable. We disagree. The circumstances in the two cases differ significantly.

In *King*, the officer knew exactly where the firearm was located at all times during her interaction with the defendant. Here, the officers were not aware that Mr. Bosman had a gun until Mr. Stuart alerted them. So it was reasonable for them to take additional precautions once they learned about the gun, especially because they did not know where it was located.

Moreover, the officer in *King* was directing traffic and had no reason to be on higher alert when she noticed the defendant's gun. But the officers here were effectuating a felony arrest of someone in the same car as Mr. Bosman. Although both the defendant in *King* and Mr. Bosman may have complied with instructions from law enforcement, the officers here were on higher alert when they began interacting with Mr. Bosman. They pointed their guns at him only when they suddenly learned he was armed and did not know where the gun was located.

King is therefore inapposite.

Second, Mr. Bosman contends the officers should have simply commanded him to get out of the car. But doing so may have put them at greater risk given the circumstances. And we cannot base our determination of reasonableness solely on “whether some other alternative was available.”  *Sharpe*, 470 U.S. at 687. We thus decline Mr. Bosman's request that we engage in the “unrealistic second-guessing” that the Supreme Court has warned against.  *Montoya de Hernandez*, 473 U.S. at 542 (quotations omitted).

III. CONCLUSION

We affirm.

All Citations

Not Reported in Fed. Rptr., 2022 WL 500550

1 any reason to do it. And Gilman thought, for some reason, that
2 he did. And it wasn't based on any objective fact, other than
3 the fact that the Travel Lodge isn't a nice place and that
4 there's a lot of cases there.

5 So, Your Honor, I think, from the outset, this was
6 unreasonable and I would ask you to grant the motion.

7 *THE COURT:* All right. Let me first go through the
8 factual findings, although, to some extent, as we've all
9 recognized, the video is the video. There are a few things on
10 the video that are clarified by the testimony, and certainly I
11 have already expressed my conclusions and findings, with
12 respect to when Officer ... Sandoval drew his weapon, and that
13 it was not at the outset, despite what it appears.

14 I'm going to use the Gilman video as, essentially, my
15 reference point in -- in saying what happens, because time is
16 important here, and the problem is that if you start bouncing
17 back and forth between the different videos, they are coming on
18 at different times, so they have got different timestamps, so
19 I'm referring to everything through the Gilman lens, if you
20 would.

21 Essentially, about 45 seconds after the video begins,
22 because it begins in the car, in the -- in the patrol car, but
23 about 45 seconds after you have the commands that are being
24 given by the officers outside, *hands up*. You have, as shown,
25 Corporal Hallas at the door, Corporal -- excuse me, Officer

1 Hilman -- Gilman, not Hilman, on the passenger side, to the
2 rear, for the most part, essentially, in the vicinity of the
3 rear wheel, and what I mean by that is he is not behind the
4 trunk. And you have, initially, Sandoval directly across from
5 the front of the vehicle, but over the course of proceedings,
6 he works his way down to the driver's side of the vehicle. At
7 about 59 seconds, the door is opened. At about 1:03, the
8 question is put, *Are there any weapons in the car?* I cannot
9 hear the answer, and there is an answer. The only reason I say
10 that, I took things a certain way, Mr. Dunn did, as well, I
11 think in his Reply or his Response, he said there was no
12 answer. There was an answer. I just can't tell what it is.

13 In this respect, the answer, as relayed by
14 Officer Gilman, was something to the -- to the effect of a
15 negative response, and I credit that, because when you see what
16 Corporal Hallas did next, it was something along the lines of
17 *That's okay, just come on out of the car,* and that's not the
18 response you would have gotten had there been a positive or
19 affirmative response to *Are there weapons in the car?*

20 At about 1:14, the individual, Mr. Albert Stuart, and
21 I believe the correct spelling S T U A R T, is placed under
22 arrest. At that point, about 1:37, and again these are
23 approximations, because when you look at the timestamp and when
24 you can get the thing paused, at about 1:37 Gilman says to
25 Mr. Bosman, who is now the only remaining person in the car,

1 we're trying -- *We have to figure out who you are. We're going*
2 *to have you step out.* And he begins to give him instruction,
3 on how to unlock the door and step out. Nothing about this is,
4 again, it's all on the video, but it's not being yelled or
5 screamed or it's, frankly, a regular conversational tone.

6 The weapon remains out, it appears, and I conclude, on
7 basis on what I can see, that it is not pointed, quote, at
8 Mr. Bosman. Having said that, it is clearly visible, and
9 although there's been no testimony from Mr. Bosman as to what
10 he saw or didn't see -- nope. You have to pick a number -- you
11 have to pick a number ... yeah. I want you further away.

12 Again, I have got people from my 2 o'clock, and I am
13 being the wedding coordinator and spacing them out in the
14 courtroom.

15 But in any event, he is simply telling him the
16 procedures to follow to get out of the car, and then you hear
17 the word *Gun*, and his response to that is *Just hold tight*, and
18 he leaves to go over to the corporal, to assist with
19 Mr. Stuart.

20 At about 2:46 he is back at the Impala, and frankly
21 they pick up where they left off. The discussion is not
22 anymore agitated, but it is, *Is that door locked, sir*, and then
23 discussion about whether it's open or not. He tries to open
24 it. Eventually, they give instructions as to how to get the
25 door open, and he is telling him to turn and face his partner

1 and unlock the door, and you hear the statement, *He has got a*
2 *gun, supposedly,* or words to that effect. Whatever is on that
3 video.

4 At that point, the gun -- the gun's position alters.
5 It is certainly in a more aggressive. Having said that, I
6 don't believe that it is a direct full-on barrel point at
7 Mr. Bosman, but nonetheless, he also says, *We have information*
8 *that you might be armed, if you -- if you move your hands in a*
9 *way somewhere where I'm frightened, you may get shot;* words to
10 this effect.

11 About 30-seconds later he is eventually starting to
12 open the door and come out. And Sandoval then draws his gun as
13 the door opens, and says, *I have a gun pointed at you, if your*
14 *hands drop below your shoulders I will shoot you.* He then puts
15 his weapon back in his holster, places his hands on top of the
16 head -- excuse me on top of the hands of Mr. Bosman's, whose
17 hands are on Mr. Bosman's head, and you call it what you want,
18 they slide him out of the car, drop him out of the car, guide
19 him out of the car. He is lowered out of the car, and gravity
20 being gravity, it is not as if he simply steps out. There is
21 some degree of falling that is involved and he contacts the
22 ground.

23 The second he is sliding out of the car you can hear
24 the plink. They acknowledge that it is the gun. And you can
25 see the gun seconds thereafter. They cuff him. There is a --

1 at about 4:47, a statement by one of the officers, 41, *We have*
2 *another gun.* You can obviously see it. They check his
3 pockets. They eventually get him on his feet. They further
4 check his pockets. At that point, and it seems that there's a
5 lot going on, at this point, from whether or not they are going
6 to do -- they move him from the back of the Impala over to the
7 police car. He gets bonked on the head, when someone opens the
8 trunk of the police car, because he is -- he is standing too
9 close.

10 Gilman, at some point, after Mr. Bosman is over at the
11 police car, goes around the parking lot and is looking in other
12 cars, looking to make sure that there isn't anyone else that
13 might be putting them in danger or someone else that they may
14 know about.

15 The question about whether or not I credit the parking
16 lot as being -- well, I credit the location as being a
17 high-crime area; I do. The question about whether or not there
18 are other people on the vicinity of the parking lot; I do. If,
19 for no other reason than, I think, at least, Corporal Hallas
20 mentioned seeing people near the -- the doorway of the motel
21 and perhaps in the windows, and there is a point where one of
22 the officers is -- says something about a woman being there,
23 and *I will talk to you later.* So, there's someone that, in the
24 course of this, is there.

25 In terms of whether or not I credit the statement that

1 there's someone there wearing a gun; I do not. It's -- it's
2 the kind of thing that I believe if it were the case, there
3 would have been at least some advisement of fellow officers, of
4 the circumstances, particularly in an elevated situation where
5 you have now got two guns and two persons coming from a car.

6 Additionally, what do I find? I find that they went
7 there to effectuate a felony arrest on Albert Stuart, who was
8 positively identified as being in the car. There was another
9 individual, but, frankly, the evidence seems to suggest, and I
10 so find, that the officers' best information was that the other
11 individual, Kevin, and I forget his last name, was not in the
12 car, but in the hotel, or somewhere else, whatever -- however
13 you want to define that. And I don't think that it is fair to
14 parse this up into little bits and pieces, the way that we're
15 all doing, and what I mean by that is, there are three officers
16 there. The conduct of one of the officers is clearly different
17 from the conduct of the other two, but the notion that
18 therefore, he acts alone, I don't really find that to be
19 persuasive, to some extent, because there's an officer in the
20 cover position with his gun drawn, Corporal Hallas is able to
21 not -- to be less aggressive because he knows he is has got
22 cover.

23 It is the same thing with Sandoval on the other side.
24 To separate them out, and say this officer did X, that officer
25 did Y, third officer did Z, and because Z was so different from

1 X and Y, Z is wrong. I just don't -- I just don't think that
2 that's a fair evaluation of the circumstances.

3 Do I find that this was an arrest at the outset? Yes,
4 it was an arrest of Mr. Stuart, at the outset; that's what they
5 were there for. They were there to effectuate a felony arrest.
6 What we also have, however, is that there was a second person
7 in the car, Mr. Bosman. That car was a relatively small car.
8 The individuals were asleep in the car, in the -- in the bright
9 of day, middle of the morning, 9 o'clock. I don't know if
10 that's the middle, depends on when you get up.

11 It is a car that -- whose interior was less than
12 pristine. You can see, on the front seat, that there is at
13 least a drinking cup, there's a center console, there's a glove
14 box, there's a coat that remains behind. The area where
15 Mr. Stuart was taken from, it appears as if there's a bag or
16 something on the -- on the floor. At least an insignia that
17 you can see, that suggests that.

18 I do credit the description of the backseat of the car
19 as containing loose items and at least two backpacks, and they
20 are all -- it's not a large area, it's not a large car, and it
21 is an area from which a person could conceivably reach to
22 anything.

23 So, the question becomes, essentially this, do the
24 officers have the right to have one officer in a cover position
25 with a firearm drawn to effectuate a felony arrest? My answer

1 to that is yes.

2 Second question, once they have that person removed
3 from the vehicle, but still on the scene, is it now an arrest
4 of Mr. Bosman, because that officer did not holster his weapon?
5 And I don't think it is.

6 I don't see it that way. Certainly what the officers
7 were saying to Mr. Bosman is not consistent with. What they
8 are saying is they want to identify him, have him step out of
9 the car. It is certainly not unreasonable that you don't just
10 leave someone when you are effectuating a felony arrest, just
11 leave someone behind and turn your back on him. Especially
12 when you know that car may be subject to some further search in
13 connection with the evidence of -- with the arrest of
14 Mr. Stuart.

15 All that I'm saying is, it is a brief time and a
16 matter of -- of several seconds, 30, 20, we argue about whether
17 it's 13, 20, 30, but it is a matter of mere seconds from the
18 time that Mr. Stuart is removed from the time at which
19 Mr. Bosman is told, *Look, we're trying to identify you. We*
20 *have to get you out of the car*, and then the word gun is
21 called, and the situation remains frozen, Sandoval stays --
22 maintains his position, we have Gilman go over to Corporal
23 Hallas to see whether assistance is necessary. He comes back
24 to the car and again picks up where he left off. Again, no
25 change in voice or attitude or projection, and says, in

1 essence, *We're going to get you out of the car. Here is how I*
2 *want you to open the door,* and then we hear *He has a gun too,*
3 and I understand counsel's position about *supposedly,* that word
4 was used, but the clear import, the only import is, *He has a*
5 *gun.* The indication, the available evidence on the ground is
6 he has a gun, that's what this guy is saying. Gilman has seen
7 the gun that the other guy has. He has gone over there and
8 watched -- the other guy being Mr. Stuart -- and watched the
9 circumstance get under control, when the first gun call is
10 announced.

11 So he comes back, and at that point there are some
12 harsh words, some very harsh words, along the lines of, *If you*
13 *do something stupid we're going to shoot you,* and one can take
14 those however one wants to take those. They're -- they were
15 said, they are aggressive, but their content and their meaning
16 is also clear. It is designed to avoid having a circumstance
17 develop where, in light of the new information that Mr. Bosman
18 is armed, they respond properly or improperly, by firing, if he
19 acts in a particular way.

20 He comes out of the car, the gun is found. I don't
21 have him under arrest at that point. I think they have the
22 right to remove him. I think officer safety is an issue from
23 the time of the execution of a felony arrest warrant, in a
24 high-crime area, in a car with -- which is -- at least the
25 passenger compartment has lots of places where things could be

1 concealed, separate and apart from whether you could conceal
2 something on the individual. Do I think that it is appropriate
3 for officer safety that one officer have his firearm in a ready
4 position, stationed at a rear? Yes, I do. I think it's
5 appropriate.

6 Do I think that that changes over the course of the 13
7 to 30 seconds that Mr. Stuart is removed from the car and no I
8 don't. At that point, this is still a fluid circumstance.
9 They have he got one individual removed, you have another
10 individual who is associated with him, to what extent unknown,
11 and you are simply trying to remove him from the car. Can you
12 do that for officer safety or are you required to simply, I
13 don't know, walk away or just ask him to get out of the car and
14 communicate with him?

15 I think that you can, in fact, have him removed from
16 the car, and that you -- the circumstances weren't escalated in
17 any degree. They were simply a continuation of this process,
18 which evolved, and as it evolved, it got more and more indicia
19 of dangerousness to it. First, by virtue of the fact that
20 Stuart is said to have a gun, and then shortly thereafter, by
21 virtue of the fact that Mr. Bosman is said to have a gun, and
22 in fact when they remove him from the vehicle, it immediately
23 hits the ground. It is immediately seen.

24 I don't find that he has been placed under arrest. I
25 don't find that there's an illegal arrest at any one of these

1 junctures, and I think that the overall conduct of the police,
2 as a collective, is reasonable, and so I deny the motion.

3 Having said that, I understand and don't quarrel with
4 the motion being filed, and I also understand that, ultimately,
5 it is not a frivolous motion, but at the end of the day, I
6 think it comes down to a circumstance where in effectuating a
7 felony arrest on a person in a car that is cluttered and that
8 has another individual in it, maintaining control over that
9 circumstance is appropriate, and that the fact that one officer
10 had his gun in a cover position, is not an excessive
11 maintenance of control of that situation.

12 Once they receive the issue of -- the concerns about
13 the guns, I grant you there's no constitutional rule that if
14 there's one, there's two, but I do think that, without delving
15 into such semantics, that the circumstances have now become
16 much more enhanced, in terms of the officers' legitimate
17 concerns.

18 A gun comes out of that car, these people are
19 together, at the very least, do they have the right to -- do
20 they have a legitimate officer safety concern, and I think that
21 they do. And then when the next thing is that guy is armed, to
22 me, it's beyond dispute, at that point, that officer safety
23 concern is absolutely valid, absolutely justified, and that the
24 conduct, in response to that, while objectively harsh in terms
25 of the language used, does not exceed constitutional bounds in

1 any way, shape or form of.

2 So, that's where we are. Those are my findings. The
3 motion is -- is denied on that basis, and again, I think that
4 counsel will keep their copies of -- of the exhibits and we
5 will see where we go from here.

6 Before I move on to where we are next, let me give
7 Mr. O'Hara the opportunity to make any further record to
8 protect your. --

9 MR. O'HARA: Thank you very much, Your Honor. I did
10 want to make one factual -- object to one of the Court's
11 factual findings, which was, and I don't know if the Court
12 specifically noted that whole time, prior to Gilman initiating
13 his conversation with Mr. Bosman, but the Court stated that the
14 weapon was not pointed by Officer Gilman at Mr. Bosman. I
15 believe that the evidence of Sandoval and Hallas supported the
16 idea that at certain points during that initial period that the
17 weapon was pointed at the vehicle and potentially --

18 THE COURT: And -- and -- I suppose I can clarify
19 that, because even in your objection, you're highlighting the
20 give and take here. At various points in time, someone will
21 say the gun wasn't pointed at Mr. Bosman, and then you will
22 say, yes, it was pointed at the vehicle. He is not the Impala,
23 the Impala is not him. My suggestion that it was not in the
24 direction of the vehicle is not what I was intending to say.
25 In terms of whether or not it was pointed at the vehicle, in a

1 broad sense, one holding the gun in the ready position, is,
2 essentially, at various points in time the barrel of that gun
3 is going to be at that vehicle, and certainly when he comes
4 around Gilman to the door to talk to Mr. Bosman, even though
5 it's still in the ready position, it is clearly at the vehicle.

6 What I'm talking about and what I meant and what I
7 clarify, if I was confused before or confused others, is that
8 it was not, if you would, barrel pointed directly at
9 Mr. Bosman, so that, if in fact, the trigger happened to be
10 squeezed, at that moment, it would have taken him out. It was
11 in his vicinity, I give you that, but pointed directly at him,
12 I don't see that. At least until there is the announcement of
13 the second weapon, and at that point I don't deny that weapons
14 were pointed in his direction.

15 MR. O'HARA: Then I think the last thing I will say,
16 Your Honor, is I think there's evidence to support that the
17 weapon was pointed at Mr. Bosman, both with Officer Gilman's
18 own report that he held him at gunpoint, even though he
19 explained that, as well as the testimony of Officer Sandoval
20 and Corporal Hallas. Thank you. I have nothing further.

21 THE COURT: You and I would absolutely agree on this,
22 what we've got is a video.

23 MR. O'HARA: Yes.

24 THE COURT: And how you look at that video will tell
25 you how things are, and what we don't have is any testimony

**Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001**

Scott S. Harris
Clerk of the Court
(202) 479-3011

May 6, 2022

Mr. Howard A. Pincus
Fed Pub. Def. for Dist. CO & WY
633 17th Street
Suite 1000
Denver, CO 80202

Re: Michael James Bosman
v. United States
Application No. 21A690

Dear Mr. Pincus:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to Justice Gorsuch, who on May 6, 2022, extended the time to and including June 20, 2022.

This letter has been sent to those designated on the attached notification list.

Sincerely,

Scott S. Harris, Clerk

by

Susan Frimpong
Case Analyst