

**IN THE MAYFLOWER DISTRICT COURT
FOR THE DISTRICT OF CLARK COUNTY**

State of Mayflower,

Plaintiff(s).

v.

Weimerican_Boz,

Defendant(s).

Case No.: CR-0002-24

Before: Hon. Albert Wellesley

**MEMORANDUM OPINION AND
ORDER**

MEMORANDUM OPINION AND ORDER ON MOTION TO DISMISS

Comes now defendant Weimerican_Boz, by and through their counsel, filed a motion to dismiss which has been pending in this court. The motion was filed on September 9, 2024, during the preliminary hearing scheduling period. The government (hereinafter referred to as the “State”) filed a response on September 14, 2024 with leave from the court as given in an Order on the same date. This memorandum opinion and order is made in response to the motion to dismiss.

I. Nature of the Case and Subsequent Proceedings

This case involves the State pursuing a criminal prosecution against Weimerican_Boz, a peace officer with the City of Lander Police Department (hereinafter the “LPD” or “LCPD” and the defendant as the “movant”). The State filed a complaint alleging the movant has committed four criminal offenses: Evasion (1 M.S.C. § 1307), Hit and Run (1 M.S.C. § 3204), Reckless Driving (2 M.S.C. § 1212), and Excessive Speeding (2 M.S.C. § 1215). The State intends to obtain a full, complete information charging the defendant with these four offenses after the

preliminary hearing. The movant has pleaded not guilty to all four offenses and is now undergoing proceedings in this Court.

II. The Motion to Dismiss: Movant's First Background Account & Position

Movant claims that on August 31, 2024, he was performing his duties as a peace officer. He was responding to an urgent, high-priority police emergency call that involved a potential threat to public safety. State Trooper ParkRangerBilly of the Mayflower State Police observed the movant's vehicle and engaged their emergency lights and sirens in an attempt to stop the movant. Movant believed that this would impede them from exercising their duty as a peace officer and continued to drive to the site where the emergency call was made. The movant then got into a small collision, but was not attempting to flee from the scene of officers surrounding them – the collision was merely incidental.

Movant formally requested to the court that it dismisses all four offenses and the proceedings entirely. Movant asserts four grounds: firstly, that the movant was justified under the “lawful duty exception” where a peace officer may engage in acts that otherwise is unlawful when performing police duties and cites *Graham v. Connor* in support of this; secondly, the exigent circumstances doctrine applies, because the movant was attempting to prevent greater harm and the actions following that prevention is necessary to achieve that, citing *Brigham City v. Stuart*; thirdly, there lacks *mens rea* for all four offenses alleged because of his intent to carry out his law enforcement duty; and fourthly, that there may be certain procedural deficiencies.

In support of their first ground, movants assert that they were acting, in good faith, and within their duty as a peace officer by responding to an emergency police call. To respond to the call, it was necessary for the movant to engage in activities which are otherwise not permitted.

Movant cites *Graham v. Connor*, 490 U.S. 386 (1989), as its authority in support. Movant further claims the objective reasonableness standard should be factored considering the issues raised here.

In support of their second ground, movants assert that their actions were necessary to prevent further harm and end the endangering of members of the public, and that this is covered under Exigent Circumstances. *Brigham City v. Stuart*, 547 U.S. 398 (2006), was cited in support of this view, which affirmed the existence of peace officers' exigent circumstances to enter a premise without a warrant, that exigent situation being where a person is at serious risk of harm. This ruling meant that the movant was not obligated to follow Title 2 of the State Code and standard protocols since he had a qualifying, exigent circumstance.

In the third ground, movants' assert that the first two points render the *mens rea* absent on all four offenses; because he was carrying out his duty as a peace officer, the defendants have a significantly higher chance of being acquitted at trial.

The movants' final ground raises procedural issues which have not been made specific.

III. The Motion to Dismiss: State's Response

The State responded to the Motion to Dismiss on September 14, 2024. In their response, the State challenged all grounds: in the first ground, movant failed to properly support the existence and validity of the "lawful duty exception" that they raised, and that *Graham* was largely inapplicable, owing it to be a Fourth Amendment issue. The State believes, as well, it is not appropriate to confront the issue at the preliminary hearing, but at trial; in the second ground, the State raises similar points they mention in their challenge to the first ground, but for *Brigham*; in

the third and fourth ground, the State believes that it is not appropriate to hear at the preliminary hearing, but at trial.

IV. Reasons: Motion to Dismiss; Analysis

The first and second grounds are closely related, and it seems appropriate to consider them together.

FACTS

On August 31, 2024, the movant was seen operating a vehicle, with the plate number BGT-136, identified to be an unmarked police vehicle registered to the City of Lander Police Department (the “unmarked vehicle”). The unmarked vehicle was seen speeding 30 miles per hour above the established speed limit of 70 miles per hour (approximately 110 miles per hour, hereinafter as the “alleged speed”) on the expressway. Witness Trooper ParkRangerBilly (hereinafter “Trooper Billy”) established the speed by way of pacing with the unmarked vehicle at the alleged speed, and this positively confirmed his suspicion that the movant was speeding way beyond the limit. Trooper Billy at this time then engaged in a hot pursuit of the unmarked vehicle until it reached Mersea, where Trooper Billy and other officers then exited their vehicles and apprehended the unmarked vehicle, discovering an LCPD officer as a passenger and the movant as its driver, identified with a red arm band.

ISSUES

Principally, the court is tasked with finding whether the movant’s conduct is justified under the “exigent circumstances” doctrine, or whether it was justified under a “lawful duty” exception. Following that, determining the existence of mens rea on the charges and considerations made to procedural defects on the State’s case.

RULES; LEGAL FRAMEWORK; ANALYSIS

The Fourth Amendment demands that search and seizures, and act qualifying act under the Fourth Amendment, to be reasonable. It is presumed that acts under the Fourth Amendment without it being accompanied by a warrant invalid, and it is commonly known as the “warrant requirement” to the Fourth Amendment. Exceptions exist to this requirement, of which exigent circumstances the court is concerned about in this case.

It is necessary to state that exigent circumstances make a positive presumption on law enforcement first: that they were acting within the remit and duties of a peace officer, and otherwise have probable cause to act in the way they did. To show that this is not the case, one must show no exigency exists that would justify such conduct from law enforcement.

An exigent circumstance is provided as a circumstance that “would cause a reasonable person to believe that entry (or other relevant prompt action) was necessary to prevent physical harm to the officers or other persons, the destruction of relevant evidence, the escape of the suspect, or some other consequence improperly frustrating legitimate law enforcement efforts.” *United States v. McConney*, 728 F.2d 1195 (1984). It is a more generalized exception in comparison to other qualifying exceptions under the Fourth Amendment.

To determine whether the movant’s conduct can be justified under exigent circumstances, the court must look at whether exigent circumstances could be claimed reasonably. Firstly, there are three important exceptions from *Missouri v. McNeely*, 569 U.S. 141 (2013), that make up exigent circumstances, but not strictly the only exceptions, are:

1. whether there was a need to render emergency aid to a person, and entry into such person's house is necessary (commonly known as the emergency aid exception; this covers the second ground);
2. whether there was a hot pursuit to be engaged; or
3. whether there was a need to prevent the destruction of evidence, among other things by the burning of it with fire.

The court must assess whether the movant acted in a manner consistent with one of these exceptions. If not, then the court must look at other situations in which the movant may claim exigent circumstances. The Supreme Court affirmed that peace officers had qualifying exigent circumstances, where the exigency was created by peace officers – and that their conduct was not in violation of the Fourth Amendment if the creation of the exigency did not involve the violation or threat of violation of the Fourth Amendment. *Kentucky v. King*, 563 U.S. 452 (2011). It is important to consider whether movant's conduct, firstly, could reasonably be a police-created exigency and if so, was it lawfully created? The applicability is discussed later. *Brigham's* objective reasonableness is also considered to determine whether exigent circumstances may exist as well, for any other potential situation in this case. To determine objective reasonableness in this case would require analyzing the facts and comparing them.

Statutory considerations are not made and instead reserved for the movant's trial. It is more appropriate to consider them after the State presents its case at trial – it is not warranted here as it could prejudice the defendant by limiting the options of other plausible defenses he brings to trial; at this moment, none of the facts insinuate against.

There are times in which exigent circumstances support the need for effective law enforcement, and that it may outweigh other circumstances. *Johnson v. United States*, 333 U.S.

10, 14-15 (1948). The court must consider cases which support this view for a complete analysis, which begins below.

ANALYSIS

Since cases evaluating exigent circumstances hold law enforcement interests to a significant degree, and that they are inherently unique, courts have consistently relied on assessing exigent circumstances cases by considering the totality of the circumstances surrounding the movant's conduct. *McNeely*, at 149, *referencing from Brigham*, at 406.

In weighing the evidence as provided, to the circumstances presented, the court cannot find that the movant had qualifying exigent circumstances.

ANALYSIS: ONE-OF-THREE EXCEPTIONS

The movant failed to raise any specific events for the court to consider in its argument – they merely mentioned that such exceptions exist for the movant, but has provided no facts, or at the minimum, anything on its face, to show that his conduct qualified under exigent circumstances. This has not prevented the court from analyzing the claims anyway, and the burden still weighs on the State to show probable cause.

Turning to the hard facts, the court must determine whether the movant meets any one of the three exceptions commonly held for exigent circumstances.

Was there a need to render “emergency aid”?

Plainly from Exhibit A in the Discovery Bundle, all that can be observed is the movant driving their service car at a high speed on the expressway and maintaining high speed until they stop at the parking lot behind the Mersea Town Square. One can assume that the movant may

have been engaging in that response, without their emergency lights turned on, because of a serious emergency call received from dispatch that involved a victim with a serious injury or threat of harm of serious injury, or that they have earlier witnessed an incident involving a suspect who is known to the movant as being armed and dangerous, and the emergency lights would have been detrimental to apprehend such suspect. These assumptions are not supported—there is a lack of an emergency call about the supposed incident to the movant or any witness peace officers at the time, nor any testimony or material (including the testimony of Trooper Billy) that would suggest this. Both the state and the movant did not disclose or request such material in discovery. From the perspective of a reasonable and prudent person, it is not plausible to conclude that the movant needed to render emergency aid.

Was there a need to engage in a “hot pursuit”?

Exhibit A does not show the movant engaging in a pursuit with anyone in the first place. Granted, the clip in Exhibit A does begin after some time, and so there is a possibility it may have missed a possible pursuit movant was engaging in, but in the absence of—what is, in my opinion, a crucial aspect of the evidence—either the movant is expected to disclose that a pursuit was being engaged at the time this motion was filed or brought up directly, and likewise for the State to disclose that information if it was available to them. Trooper Billy did not make mention of this either in their testimony, and no other material suggests this was the case. The court cannot draw any observations from the movant not getting out of the unmarked vehicle to engage in a foot pursuit of a potential suspect; doing so would lead to the court making dangerous, unnecessary and prejudicial assumptions – this type of pursuit is thus not given any regard at this stage, without the presence of any material to support this observation. No reasonable person, then, can make the conclusion a vehicular hot pursuit was likely.

Was there a need to prevent the destruction of evidence?

The evidence submitted by the State only concerns the movant's supposed recklessness and high-speed operation of an unmarked vehicle. Where there was anything to suggest destruction of evidence, it would have been disclosed at discovery by the State or requested by the movant, or the movant introducing such a fact to be considered by the court. If it existed, then the previous conclusion made on the lack of foot pursuit would also be wrong, and the movant may be successful in its exigent circumstances defense even just under the hot pursuit exception. There is a lack of material supporting this view.

ANALYSIS: POLICE-CREATED EXIGENCY

The movant did drive at a high speed with an unmarked vehicle, but did not engage in foot pursuit, did not turn on their emergency lights to warn bystander vehicles and stop a vehicle that is violating traffic laws, nor can reasonably be suspected to have been engaging in law enforcement duties based on the facts as presented so far. It does not meet any of the three exceptions, and there is no other potential exigent circumstance arising from the facts. No *King* issues are considered in respect of the facts and the movant's arguments since there is nothing to show that a police-created exigency exists.

ANALYSIS: OBJECTIVE REASONABLENESS, OR THE LACK THEREOF

The court would approach this by looking at the totality of the circumstances and from the view of a reasonable officer as required in *Graham*. However, there are many prerequisites missing – movant fails to provide any facts or arguments for the court to consider; there is a lack of a police report or any testimony to support the movant, a lack of *Terry* facts (see *Terry v. Ohio*, 392 U.S. 1 (1968)), and a lack of hard evidence and excuses supporting the

movant's position. Without the existence of the specific facts to support an objective reasonableness position, it is not safe for the court to conclude that the movant had an objectively reasonable belief that would qualify the movant's conduct to qualify under exigent circumstances – a mere mention of it is insufficient.

CONCLUSION

It is unlikely that the movant will be successful in its exigent circumstances claim – there is no exception for the movant, and the movant would have a higher chance of success in a statutory defense.

V. ORDER

Movant's grounds on its Motion to Dismiss is rejected and the Motion is **DENIED**.

SO ORDERED.

In Lander, Mayflower, this 18th day of October 2024.


HON. ALBERT WELLESLEY