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The
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A MONTHLY LEGAL RESOURCE AND COMMENTARY FOR LAW ENFORCEMENT OFFICERS AND AGENTS

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The Informer – October 2021

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CASE SUMMARIES

United States Supreme Court

Rivas-Villegas v. Cortesluna , 2021 U.S. LEXIS 5311 (Oct. 18, 2021)

A 911 operator received a call from a 12-year-old girl reporting that she, her mother, and her 15-year-old sister had shut themselves into a room at their home because her mother's boyfriend, Ramon Cortesluna, was trying to hurt them and that he had a chainsaw. When Officer Daniel Rivas-Villegas and other officers arrived, they confirmed with the 911 operator that the girl and her family were unable to get out and that the 911 operator had heard "sawing" in the background.

Officer Rivas-Villegas and other officers knocked on the door and ordered Cortesluna to come to the front door. Cortesluna emerged from the house and walked toward the officers, with his hands up, as ordered by the officers. When Cortesluna stopped approximately 10 to 11 feet from the officers, they saw a knife sticking out from the front left pocket of Cortesluna's pants. An officer ordered Cortesluna to keep his hands raised, but Cortesluna began to lower them. At this point, an officer twice shot Cortesluna with a beanbag round from his shotgun. After the second shot, Cortesluna raised his hands over his head and got down on the ground as ordered by the officers. Officer Rivas-Villegas then straddled Cortesluna. He placed his right foot on the ground next to Cortesluna's right side with his right leg bent at the knee. He placed his left knee on the left side of Cortesluna's back, near where Cortesluna had the knife in his pocket. Officer Rivas-Villegas raised both of Cortesluna's arms up behind his back. Officer Rivas-Villegas was in this position for no more than eight seconds before standing up while continuing to hold Cortesluna's arms. At that point, another officer, who had just removed the knife from Cortesluna's pocket and tossed it away, came and handcuffed Cortesluna's hands behind his back. Rivas-Villegas lifted Cortesluna up and moved him away from the door.

Cortesluna brought suit under 42 U.S.C. §1983, claiming that Officer Rivas-Villegas used excessive force in violation of the Fourth Amendment. The district court held that Officer Rivas-Villegas was entitled to qualified immunity and dismissed the lawsuit. On appeal, the Ninth Circuit Court of Appeals reversed the district court, holding that Officer Rivas-Villegas was not entitled to qualified immunity "because existing precedent put him on notice that his conduct constituted excessive force." In reaching this conclusion, the court relied solely on LaLonde v. County of Riverside, a case decided by the Ninth Circuit in 2000. The court found that "both LaLonde and this case involve suspects who were lying face-down on the ground and were not resisting either physically or verbally, on whose back the defendant officer leaned with a knee, causing allegedly significant injury." Officer Rivas-Villegas appealed to the Supreme Court.

A police officer is entitled to qualified immunity when his or her conduct does not violate "clearly established statutory or constitutional rights of which a reasonable person would have known." A right is clearly established when it is "sufficiently clear that every reasonable official would have understood that what he is doing violates that right." Aside from an "obvious case," to show a violation of clearly established law, a plaintiff must identify a case that put the officer on notice that his or her specific conduct was unlawful. Consequently, to show a violation of clearly established law, Cortesluna needed to identify a case that put Officer Rivas-Villegas on noticed that kneeling on his back under similar circumstances was unlawful.

The Supreme Court held that neither Cortesluna nor the Ninth Circuit Court of Appeals identified any case that addressed facts like the ones at issue here. Instead, the Ninth Circuit relied solely on its precedent in LaLonde. However, the Court held that facts of LaLonde were materially distinguishable from the facts in this case; therefore, LaLonde did not apply.

In LaLonde, officers responded to a noise complaint at an apartment. After a short scuffle, officers knocked LaLonde to the ground and sprayed him in the face with pepper spray. At that point, LaLonde stopped resisting. However, while handcuffing LaLonde, an officer "deliberately dug his knee into LaLonde's back with a force that caused him long-term if not permanent back injury."

The Court concluded that the facts here, when considered in the context of Cortesluna's arrest, materially distinguished this case from LaLonde. First, in LaLonde, officers were responding to a mere noise complaint, whereas here they were responding to a serious alleged incident of domestic violence possibly involving a chainsaw. Second, LaLonde was unarmed, while Cortesluna had a knife protruding from his left pocket for which he had just previously appeared to reach. Third, body camera video showed that Officer Rivas-Villegas placed his knee on Cortesluna for no more than eight seconds and only on the side of his back near the knife that officers were in the process of retrieving. LaLonde, in contrast, testified that the officer deliberately dug his knee into his back when he had no weapon and had made no threat when approached by police. As a result, the Supreme Court reversed the Ninth Circuit's holding that Officer Rivas-Villegas was not entitled to qualified immunity.

For the Court's opinion: https://www.supremecourt.gov/opinions/21pdf/20-1539_09m1.pdf

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City of Tahlequah v. Bond, 2021 U.S. LEXIS 5310 (Oct. 18, 2021)

Dominic Rollice's ex-wife, Joy, called 911 and reported that Rollice was in her garage, that he was intoxicated, and that he would not leave. Joy told the 911 operator that Rollice did not live at the residence but that he only kept tools in her garage. Officers Josh Girdner, Chase Reed, and Brandon Vick responded to the call. All three knew that Rollice was Joy's ex-husband, was intoxicated, and would not leave her home.

Joy met the officers out front and led them to the side entrance of the garage. There the officers encountered Rollice and began speaking with him in the doorway. Rollice expressed concern that the officers intended to take him to jail. Officer Girdner told him that they were simply trying to get him a ride. Rollice began fidgeting with something in his hands and the officers noticed that he appeared to be nervous. Officer Girdner asked if he could pat Rollice down for weapons. Rollice refused.

As the conversation continued, Officer Girdner gestured with his hands and took one step toward the doorway, causing Rollice to take one step back. Rollice, still talking with the officers, turned around and walked toward the back of the garage where his tools were hanging over a workbench. Officer Girdner followed, with the other officers close behind. Rollice ignored the officers' commands to stop and continued walking toward the workbench at the back of the garage. When Rollice reached the workbench, he grabbed a hammer from the back wall and turned around to face the officers. Rollice grasped the handle of the hammer with both hands, as if preparing to swing a baseball bat, and pulled it up to shoulder level. The officers backed up, drawing their guns. At this point, the officers can be heard on body cameras yelling at Rollice to drop the

hammer. Instead of dropping the hammer, Rollice took a few steps to his right, coming out from behind a piece of furniture so that he had an unobstructed path to Officer Girdner. Rollice then raised the hammer higher back behind his head and took a stance as if he was about to throw the hammer or charge at the officers. In response, Officers Girdner and Vick fired their weapons, killing Rollice.

Rollice's estate filed suit against, among others, Officers Girdner and Vick, claiming that the officers violated Rollice's Fourth Amendment right to be free from excessive force. The district court held that the officers were entitled to qualified immunity and dismissed the lawsuit.

On appeal, the Tenth Circuit Court of Appeals reversed. The court concluded that a jury could find that Officer Girdner's initial step toward Rollice and the officers' subsequent "cornering" of him in the back of the garage recklessly created the situation that led to the fatal shooting, such that their ultimate use of deadly force was unconstitutional. The court further held that at the time of the incident, several Tenth Circuit cases clearly established that the officers' conduct was unlawful. The officers appealed to the Supreme Court.

The Supreme Court declined to decide: 1) whether the officers' conduct violated the Fourth Amendment in the first place; or 2) whether recklessly creating a situation that requires deadly force can itself violate the Fourth Amendment. Instead, the Court held that the officers did not violate any clearly established law.

The Court noted that none of the decisions relied upon by the Tenth Circuit Court of Appeals, most notably Allen v. Muskogee, "came close to establishing that the officers' conduct was unlawful." The officers in Allen responded to a potential suicide call by sprinting toward a parked car, screaming at the suspect, and attempting to wrestle a gun from his hand. In this case, Officers Girdner and Vick, by contrast, engaged in a conversation with Rollice, followed him into a garage at a distance of 6-10 feet, and did not yell until after he picked up a hammer. The Court held that the officers were entitled to qualified immunity, as the facts from Allen were so dramatically different from the facts here, they did not clearly establish that the officers' use of force in this case was unlawful.

For the Court's opinion: https://www.supremecourt.gov/opinions/21pdf/20-1668_19m2.pdf

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Circuit Courts of Appeals

First Circuit

United States v. Manubolu, 2021 U.S. App. LEXIS 27580 (1st Cir. ME Sep. 14, 2021)

At 2:48 a.m. on August 31, 2019, Officer Judson Cake of the Bar Harbor Police Department (BHPD) responded to a single car crash on Park Loop Road in Acadia National Park. When Officer Cake arrived at 2:56 a.m, he saw Praneeth Manubolu standing on the side of the road, talking into a cellphone. Off in the woods was a badly damaged car, which appeared to have hit a tree at high speed. A few minutes later, two other BHPD officers, Jerrod Hardy and Liam Harrington arrived. The crash had crushed the two male passengers in the back seat of the car, and the officers could not remove them. The officers managed to remove a female from the front passenger seat, and they began to perform CPR.

At approximately 3:34 a.m., National Park Service Ranger Brian Dominy arrived, and took the lead in the investigation. Ranger Dominy learned from EMTs, who had arrived shortly before him, that all three passengers had already died. At this point, Ranger Dominy determined that the crash scene needed to be photographed, the passengers needed to be identified, the medical examiner needed to be notified, and an accident reconstruction expert had to be summoned.

In the meantime, Officer Hardy spoke with Manubolu, who was being treated by EMTs. Officer Hardy observed that Manubolu's eyes were bloodshot and that there was an odor of alcohol coming from his breath. Manubolu admitted to consuming two shots of whiskey while at dinner earlier in the evening. The EMTs wanted to transport Manubolu to the hospital to check him for internal injuries and the officers agreed. Officer Hardy accompanied Manubolu to the hospital where he ordered a warrantless blood draw without Manubolu's consent at 4:24 a.m., which was approximately 90 minutes after the crash occurred.

In the meantime, Ranger Dominy remained at the scene, where he attempted to contact the on-call Assistant United States Attorney (AUSA) but the AUSA did not answer. Eventually, the AUSA called Ranger Dominy back at 4:45 a.m., and advised him to get a search warrant to obtain a blood sample from Manubolu.

The government charged Manubolu with three counts of manslaughter and other drunk-driving related crimes. Manubolu filed a motion to suppress evidence from the warrantless blood draw. At the suppression hearing, Ranger Dominy testified that he believed that exigent circumstances justified the warrantless blood draw. The district court disagreed and granted the motion, concluding there were no exigent circumstances present that permitted the officers to draw Manubolu's blood without first obtaining a search warrant. The government appealed.

A blood draw constitutes a search under the Fourth Amendment for which law enforcement officers must normally get a warrant. However, one of the exceptions to the warrant requirement is when an officer is faced with "exigent circumstances." The Supreme Court has recognized that when officers have probable cause to believe that the "imminent destruction or removal of evidence" will occur, exigent circumstances exist.

In drunk driving cases, a suspect's blood alcohol concentration (BAC) is naturally destructive, as it diminishes over time. Consequently, the Supreme Court has noted this natural destruction means that a significant delay in testing for BAC will negatively affect the evidentiary value of the BAC results because later draws allow for less precise estimates. Nonetheless, in Missouri v. McNeely, a routine drunk driving stop without an accident, the Court held that the dissipation of BAC does not alone create a "per se exigency." The Court commented that the dissipation of BAC is one factor to consider and that lower courts should also examine how the process of obtaining a search warrant could delay the timing of a blood draw. Subsequently, in Mitchell v. Wisconsin, the Court established a "spectrum" of exigencies that permits a warrantless blood draw when: (1) BAC evidence is dissipating; and (2) some other factor creates pressing health, safety, or law enforcement needs that would take priority over a warrant application.

The First Circuit Court of Appeals reversed the district court. First, the court found that while pressing health concerns alone would not necessarily have justified the exigency, the injuries to Manubolu and the fatalities at the accident scene reduced the number of police resources available to investigate the crash. Second, the court concluded that pressing investigative responsibilities existed, as Ranger Dominy, with limited resources, needed to document and collect evidence, coordinate with the medical examiner in identifying victims, and work with the accident

reconstruction expert when he arrived. Third, after Ranger Dominy could not reach the on-call AUSA to begin the telephonic warrant process and knowing that the traditional warrant process could take three to five hours, it was reasonable for him to believe that the evidentiary value to Manubolu's BAC decreased as time passed. In conclusion, the court added that it was not creating a per se exigency for late-night DUI stops because its holding did not rest solely on the unnecessarily long warrant procedure. Instead, the court reiterated that, given the totality of the circumstances, it was reasonable for Ranger Dominy to believe that exigent circumstances existed that justified the warrantless blood draw.

For the court's opinion: https://cases.justia.com/federal/appellate-courts/ca1/20-1871/20-1871-2021-09-14.pdf?ts=1631655007

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Second Circuit

United States v. McKenzie, 2021 U.S. App. LEXIS 27087 (2d Cir. NY Sep. 9, 2021)

Federal agents suspected that Oniel McKenzie was storing packages containing illegal drugs in storage units located within Mabey's Self Storage (Mabey's). The agents conducted a warrantless canine sniff outside of several storage units, and the canine alerted on Unit 296.

The next day, agents interviewed the manager at Mabey's, who told them that Unit 296 was rented to a person named Darrin Clark. Later that day, the agents obtained a warrant to search Unit 296, based, in part, on the canine's alert, and seized approximately 100 pounds of marijuana. The agents later discovered that Oniel McKenzie had presented a driver's license bearing the name "Darrin Clark" to law enforcement officers in a previous encounter.

Prior to his trial for several drug-related offenses, McKenzie filed a motion to suppress, among other things, the evidence seized from Unit 296. The district court denied the motion, ruling that the canine sniff outside of Unit 296 was not a search within the meaning of the Fourth Amendment. McKenzie appealed.

The Supreme Court has articulated two tests to determine when a search occurs under the Fourth Amendment. First, under the "property rights baseline" test, a search occurs when the government obtains information by physically intruding on persons, houses, papers, and effects. Second, a search occurs when the government intrudes upon a person's reasonable expectation of privacy.

The Second Circuit Court of Appeals recognized that a dog sniff outside a residence can be considered a search under the Fourth Amendment under both tests. However, the court added that whether the area outside a commercial storage unit is afforded the same protection under the Fourth Amendment, had not yet been decided in the Second Circuit.

First, under the "property rights baseline" test, the court held that McKenzie offered no evidence to suggest that the agents trespassed when they entered Mabey's facility. The court added that even if McKenzie had offered such evidence, any objection to the agents' trespass belonged to Mabey's, as McKenzie had no authority to exclude people from Mabey's property. The court concluded that because the agents did not violate McKenzie's Fourth Amendment rights by entering Mabey's and did not physically intrude on Unit 296 prior to obtaining a warrant, the canine sniff did not constitute a search under the Fourth Amendment.

Next, while individuals generally have a reasonable expectation of privacy in the internal spaces of storage units and commercial lockers, they do not have a reasonable expectation of privacy in the air outside these spaces. As a result, as long as the officer making an observation or canine conducting a sniff are legally present at their vantage points when their respective senses are aroused by incriminating evidence, a Fourth Amendment search has not occurred. In this case, the court found that the canine was legally positioned outside Unit 296, in an area accessible to Mabey's employees and anyone renting one of the hundreds of units in the facility. Under these circumstances, the court held that the canine sniff outside Unit 296 did not violate McKenzie's reasonable expectation of privacy.

For the court's opinion: https://cases.justia.com/federal/appellate-courts/ca2/18-1018/18-1018-2021-09-09.pdf?ts=1631197808

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Seventh Circuit

United States v. Soybel, 2021 U.S. App. LEXIS 26994 (7th Cir. IL Sep. 8, 2021)

W.W. Grainger, an industrial-supply company, was the victim of a series of cyber attacks against its computer systems in 2016. An internal investigation revealed that the intrusions all came from the same internet protocol "IP" address outside of Grainger's network. Grainger reported the IP address to the Federal Bureau of Investigation (FBI). The FBI determined that the address came from a high-rise apartment building where Edward Soybel, a disgruntled, former Grainger employee lived.

However, the FBI could not yet confirm that Soybel was responsible. The identified IP address came not from an individual unit but from the building's "master router" that distributed internet service throughout the building. The master router was, in effect, the middleman between the individual units and the rest of the internet. Each unit in the building had its own unique private IP address, but when an individual user accessed a website, only the master router's IP address would be visible to that website's servers. At the same time, the master router knew to which private IP address it should relay that website's traffic. Consequently, when an internet user in the building connected to Grainger's servers, only the master router could confirm the private IP address and, thus, the specific apartment unit that was responsible for the attacks.

To confirm its suspicions about Soybel, the government applied for an order under the Pen Register Act to install IP pen registers for the master router and Soybel's unit for 60 days. Under the order, the government sought to collect: (1) connections between the building's master router and Soybel's private IP address, along with external IP addresses that were accessed; and (2) the time that the connections occurred. The government's application specified that the pen registers would not record the content of any communications between IP addresses, an express limitation in the Pen Register Act. For example, the data the government would collect might show that an internet user connected to a Google IP address;however, it could not reveal the specific Google website accessed (i.e., YouTube or Gmail), let alone what the user was doing within that website.

After a district court judge granted the application, the building's internet-service provider then installed the pen registers in the building's mechanical room without entering Soybel's unit. The pen registers revealed that Soybel's private IP address attempted to connect to Grainger's computer network 790 times between September and November 2016. The government subsequently charged Soybel with violating the Computer Fraud and Abuse Act.

After being convicted, Soybel appealed, arguing that the use of pen registers violated his Fourth Amendment right to be free from unreasonable searches.

Under the Fourth Amendment, a search occurs when the government intrudes upon an individual's reasonable expectation of privacy. However, under the third-party doctrine, a person generally has no reasonable expectation of privacy in information he voluntarily turns over to third parties.

In [Smith v. Maryland](), the Supreme Court applied the third-party doctrine to the use of pen registers. In Smith, at the request of the police, a telephone company installed a pen register at its central office that recorded outgoing phone numbers dialed on the defendant's landline phone. The Court held that no search warrant was necessary because the officers had not conducted a Fourth Amendment search. The court noted that Smith "voluntarily conveyed numerical information to the telephone company and 'exposed' that information to its equipment in the ordinary course of business" and thus "assumed the risk that the company would reveal to police the numbers he dialed." As a result, the Court concluded that Smith had no reasonable expectation of privacy "in the phone numbers he dialed" even though he dialed them from his home.

In this case, the Seventh Circuit Court of Appeals applied the third-party doctrine and held that an IP pen register was analogous in all material respects to a traditional pen register. The court found that an IP address operates much like a phone number and, like telephone companies, internet service providers require that identifying information be disclosed in order to make communication among electronic devices possible. The court added that while a person does not "dial" another's IP address in the ordinary sense, information was routed through a third-party to complete the connection between the computer in Soybel's unit and the destination IP address. The court concluded that Soybel assumed the risk that, by connecting to Grainger's servers, this information would be revealed to law enforcement. Consequently, the court held that Soybel had no reasonable expectation of privacy in this data.

For the court's opinion: https://cases.justia.com/federal/appellate-courts/ca7/19-1936/19-1936-2021-09-08.pdf?ts=1631127643

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Eighth Circuit

United States v. Gastelum, 11 F.4th 898 (8th Cir. 2021)

In the early evening of April 7, 2018, an Arkansas State Trooper stopped Aldo Gastelum (Gastelum) on the interstate for making an unsafe lane change. When the trooper approached Gastelum, explained why he stopped Gastelum, and asked for Gastelum's license and insurance, Gastelum said the car was rented and supplied appropriate documentation.

During the ensuing video and audio recorded encounter, the trooper maintained a conversational, friendly tone. When asked where he was going, Gastelum said he rented the car he was driving in Houston to go to Chicago. Gastelum further claimed that he was a military veteran discharged in 2012 and was visiting reserve facilities in hopes of becoming an Army Reservist. Gastelum also said that he was a college student in California and was disabled after breaking a leg in a hit-and-run accident. When asked how Gastelum got from California to Houston, Gastelum did not respond directly, instead commenting further on reserve units in Houston. When asked about joining a reserve unit in California, Gastelum said he was interested in medical units in Houston

and San Antonio. Ultimately, Gastelum told the trooper that he planned to fly home to California when he reached Chicago.

Returning to his patrol car, the trooper confirmed Gastelum's license and identification information and reviewed the car rental agreement. The agreement showed that approximately six hours earlier, Gastelum paid $734.39 to rent the car for a one-way, one-day trip from Houston to Chicago.

Approximately 15 minutes after initiating the stop, the trooper returned to Gastelum's car with a printed warning citation. After commenting on the weather, the trooper remarked, "Okay, we're about done here." The tone of the conversation remained friendly as the trooper asked if Gastelum had luggage in the trunk. When Gastelum responded in the affirmative, the trooper asked for and received Gastelum's consent to look in the trunk. Upon searching, the trooper found a duffle bag and approximately 15 kilograms of cocaine, which resulted in Gastelum's arrest and ultimately a federal indictment charging Gastelum with possession of cocaine with intent to distribute.

Gastelum filed a Motion to Suppress arguing that the trooper violated his Fourth Amendment rights by detaining him after issuing the citation without any reasonable suspicion to extend the stop. The court disagreed.

Noting that the trooper had more than 25 years of law enforcement, attended at least two drug interdiction trainings per year for the previous ten years, and had participated in up to 100 traffic stops resulting in seizures, the court viewed the facts through the lens of the trooper's experience. In doing so, the court viewed Gastelum's stated purpose for traveling – visiting Army Reserve medical units in Houston and San Antonio in hopes of gaining a billet – with the same skepticism as the trooper. The court found Gastelum's explanation implausible given that Gastelum was driving a car in Arkansas six hours after renting it for a price higher than a round trip airline ticket to make a one-way, one-day, 12–15-hour drive to Chicago. The court further credited the trooper's view such facts were far more consistent with patterns that the trooper knew drug traffickers followed, which included transporting drugs in rental cars instead of via commercial flights without regard to the cost differential.

Moreover, the court credited the trooper's testimony that as an Air Force Reservist, the trooper knew that "individuals do not just drive up to reserve units seeking a billet." Given this knowledge, the court shared the trooper's doubt that a disabled California college student with readily accessible reserve units in his home state would spend the time and money to go to Houston and Chicago to find a billet. Finally, the court agreed that Gastelum's emphasis on his military background, the way Gastelum displayed military "props" on his front seat, and the emphasized military aspirations in an effort to evade questions about how Gastelum got to Houston was also suspicious.

Given the totality of these circumstances, the court concluded that the trooper had facts that supported a reasonable suspicion, under the totality of the circumstances, that Gastelum was involved in criminal activity that extended beyond an improper lane change. Consequently, the court found that the trooper's decision to detain Gastelum after issuing the citation was adequately supported.

For the court's opinion: https://cases.justia.com/federal/appellate-courts/ca8/20-3451/20-3451-2021-09-01.pdf?ts=1630510227

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Tenth Circuit

United States v. Kendall, 2021 U.S. App. LEXIS 29240 (10th Cir. CO Sep. 28, 2021)

While on patrol, Officer Kendal Rezac saw a Honda with only one working taillight. When he attempted to conduct a traffic stop, the driver, later identified as Arron Kendall, slowed to approximately ten miles per hour and continued to drive another eight blocks. During this pursuit, Officer Rezac saw Kendall "moving around a lot" inside the Honda while another officer saw Kendall "moving objects around on the passenger seat." Also, during the chase, police dispatch notified the officers that the Honda's license plate was registered to another vehicle, leading the officers to believe the Honda might have been stolen.

Eventually, Kendall stopped the Honda on the side of a public road. Officer Rezac, now joined by Officer Mitchell Cotten and Officer Nathan Lovan, ordered Kendall out of the Honda, handcuffed him, and secured him in the backseat of Officer Rezac's patrol car. During the stop, the officers learned that Kendall did not have a valid driver's license nor proof of insurance. The Honda was not reported stolen, but it was registered to someone other than Kendall. Kendall told the officers that he was in the process of buying the Honda from the registered owner. Kendall also told officers that he did not have insurance on the car. Officers called the registered owner twice, but there was no answer.

Officer Rezac decided to: (1) issue Kendall a non-custodial summons for the motor vehicle violations; and (2) tow the Honda because Kendall could not drive it, as it was apparently uninsured, and officers could not reach the registered owner. Pursuant to department policy, Officer Rezac obtained permission to tow the Honda. Afterward, and also pursuant to department policy, Officer Cotten started an inventory search of the vehicle.

During the inventory, Officer Cotten found a counterfeit $20 bill in the car's visor and an empty, concealed-carry handgun holster on the front passenger seat. At this point, Officer Rezac arrested Kendall for the counterfeit bill and transported him to the police station. Meanwhile, Officer Cotten continued the inventory search. When Officer Cotten opened the Honda's center console, he noticed that the bottom of the console was ajar and that it did not appear to be the bottom of the console. In addition, Officer Cotten saw a small plastic bag sticking out from beneath the panel at the bottom of the console. Officer Cotten lifted up the bottom panel and discovered an additional compartment containing one small plastic bag of methamphetamine and two bags of heroin.

After finding the drugs, Officer Cotten continued the search. In light of the empty handgun holster he had already found, he believed there was a firearm concealed somewhere in the vehicle, and so he searched places where a firearm could be stored. While searching the area of the front passenger seat, where he had found the handgun holster, Officer Cotten noticed that "the panel below the glove compartment was not flush with the other paneling, was hanging down slightly, and appeared to have been tampered with." Officer Cotten pulled on the bottom of the loose portion of the panel, revealing the butt of a handgun. Officer Cotten removed the rest of the panel and retrieved the gun, which officers later discovered had been reported stolen.

Afterward, while the vehicle was being loaded onto the tow truck, the registered owner returned the officers' calls. She confirmed the vehicle was not stolen, and that Kendall was in the process of buying it from her. Officer Cotten told the registered owner the vehicle was being towed; however, she did not attempt to stop the towing or offer to come to the scene to retrieve the vehicle.

The government charged Kendall with drug and firearm offenses. Kendall filed a motion to suppress the evidence seized from the Honda, but the district court denied his motion. Kendall eventually pled guilty; however, he reserved the right to appeal the denial of motion to suppress. On appeal, Kendall argued that impounding his vehicle constituted an unreasonable Fourth Amendment seizure and that Officer Cotten exceeded the scope of a valid inventory search.

The Tenth Circuit Court of Appeals disagreed. First, the court held that the impoundment of Kendall's vehicle was reasonable under the Fourth Amendment. The court concluded that the decision to impound Kendall's vehicle was a legitimate exercise of the police community-caretaking function because when the decision was made to impound the vehicle: (1) Kendall lacked a valid driver's license; (2) the officers were initially unable to contact the registered owner to determine whether Kendall had any legitimate connection to the vehicle, which might have allowed Kendall to arrange for a private tow; (3) the vehicle had inadequate taillights and was uninsured, so it could not have been legally operated; and (4) the vehicle was located on a public street.

Next, the court held that the search of Kendall's vehicle was reasonable. Inventory searches are an exception to the Fourth Amendment's warrant requirement. Such searches are reasonable because they serve several administrative purposes including: protecting an owner's property while it is in the custody of the police; ensuring against claims of lost, stolen, or vandalized property; and protecting the police and others from any dangerous items. In addition, an inventory search of a vehicle is reasonable under the Fourth Amendment as long as the search is made pursuant to "standard police procedures," and for the purpose of "protecting the car and its contents."

In this case, while searching the center console, a common place to store things, Officer Cotten noticed the loose bottom panel. From what he observed, the loose panel and a plastic bag sticking out from under the panel, it was obvious that the area underneath the loose bottom panel was also being used to store things. Based on these observations, the court concluded that it was reasonable for Officer Cotten to look under the panel to inventory what was stored there. Consequently, the court held that Officer Cotten's search of the area underneath the center console was a reasonable part of his inventory search, serving the administrative purpose of inventorying the contents of the vehicle.

However, unlike the center-console search, the court held that Officer Cotten's search of the interior panel beneath the glove box was not justified as an inventory search, as nothing that Officer Cotten observed indicated the area behind the panel was being used as a storage compartment. Instead, the ruled the search of this area was justified as an exercise of the officers' community-caretaking function, which is separate from an inventory search. Under the community-caretaking function, officers may search a vehicle that is being impounded if they have a reasonable belief that it might contain a firearm.

Here, the court concluded that Officer Cotten had a reasonable belief that Kendall's vehicle contained a firearm. First, he had found an empty, concealed-carry handgun holster on the front passenger seat. Second, during the initial pursuit, Kendall drove eight blocks at ten miles per hour before pulling over, during which time he appeared to be "moving objects around on the passenger seat." The court found that this fact, along with the empty gun holster on the front passenger seat, gave rise to reasonable belief that there was a firearm somewhere in the vicinity. In addition, pursuant to the department's standard inventory policy, the officers were required to inventory

any guns in an impounded vehicle and remove them for safekeeping. As a result, the court held that it was reasonable for Officer Cotten to search for a hidden firearm in the front-passenger-seat area.

For the court's opinion: https://cases.justia.com/federal/appellate-courts/ca10/19-1465/19-1465-2021-09-28.pdf?ts=1632841228

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