
THE FEDERAL LAW ENFORCEMENT - INFORMER -

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

Welcome to this installment of *The Federal Law Enforcement Informer (The Informer)*. The Legal Training Division of the Federal Law Enforcement Training Centers' Office of Chief Counsel is dedicated to providing law enforcement officers with quality, useful and timely United States Supreme Court and federal Circuit Courts of Appeals reviews, interesting developments in the law, and legal articles written to clarify or highlight various issues. The views expressed in these articles are the opinions of the author and do not necessarily reflect the views of the Federal Law Enforcement Training Centers. *The Informer* is researched and written by members of the Legal Division. All comments, suggestions, or questions regarding *The Informer* can be directed to the Editor at FLETC-LegalTrainingDivision@dhs.gov. You can join *The Informer* Mailing List, have *The Informer* delivered directly to you via e-mail, and view copies of the current and past editions and articles in *The Quarterly Review* and *The Informer* by visiting <https://www.fletc.gov/legal-resources>.

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The Informer – December 2019

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FLETC Office of Chief Counsel Podcast Series

Fundamentals of the Fourth Amendment – A 15-part podcast series that covers the following Fourth Amendment topics:

A Flash History of the Fourth Amendment What is a Fourth Amendment Search? What is a Fourth Amendment Seizure? Fourth Amendment Levels of Suspicion Stops and Arrests Plain View Seizures Mobile Conveyance (Part 1 and Part 2)

Exigent Circumstances Frisks Searches Incident to Arrest (SIA) Consent (Part 1 and Part 2) Inventories Inspection Authorities
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FLETC Informer Webinar Schedule

1. Law Enforcement Report Writing (1-hour)

Presented by Mary M. Mara, Attorney-Advisor/Senior Instructor, Federal Law Enforcement Training Centers, Artesia, New Mexico.

The importance of a well-written police report cannot be overstated; it represents an officer's first, best, and sometimes only opportunity to clearly and plainly set forth all of the relevant facts of a case as well as the factors that went into the officer's decision-making process. While a well-written police report provides a solid foundation for subsequent criminal and civil litigation, a poorly written report can undermine an officer's credibility, sabotage criminal prosecution, and expose the officer and his or her department to scrutiny, criticism, and protracted civil litigation. This webinar will review the significance of effective report writing and offer tips to improve this critical skillset.

Wednesday, January 15, 2020: 3 p.m. EST / 2 p.m. CST / 1 p.m. MST / 12 p.m. PST

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2. Deliberate Indifference and 109A Felonies (1-hour)

Presented by Robert Duncan, Attorney-Advisor/Senior Instructor, Federal Law Enforcement Training Centers, Artesia, New Mexico.

Sexually based offenses, when committed in areas of federal jurisdiction such as in Indian County or federal enclaves, e.g. military installations and federal prisons, are known as 109A Felonies (Title 18 United States Code Chapter 109, which includes Sections 2231-2237). This webinar will outline the elements of federal sexual offenses, distinguish between "acts" and "contact" as defined by 18 U.S.C. Section 2246, and discuss the intersection of 109A felonies and liability for "deliberate indifference" under the Eighth Amendment in a correctional setting.

Wednesday, January 29, 2020: 3 p.m. EST / 2 p.m. CST / 1 p.m. MST / 12 p.m. PST

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CASE SUMMARIES

Circuit Courts of Appeal

First Circuit

United States v. Roman, 942 F.3d 43 (1st Cir. 2019)

Federal agents seized three kilograms of cocaine from an individual who subsequently agreed to work as a confidential source (CS) and provide information about a drug trafficking organization. In a written statement, the CS stated that the cocaine seized from him was delivered to his business located in Springfield, Massachusetts by Jamil Roman.

Approximately one week later, DEA Special Agent Smith joined the investigation. Agent Smith was not present when the CS gave his statement, was not informed of the existence of the statement, nor did any other DEA report reference the statement. After two months of investigating the drug trafficking organization, Agent Smith drafted an affidavit supporting search warrant applications for seven locations connected to the investigation. These locations included Roman's business, TWC, located in Holyoke, Massachusetts and his suspected primary residence located in Chicopee, Massachusetts. Based on the warrant affidavit, a magistrate judge issued search warrants, which were executed four days later. During the execution of the warrants, agents seized \$468,560 in cash, a firearm, and photographic identification documents.

The government charged Roman with two drug offenses. Roman filed a motion to suppress evidence seized by the government pursuant to the search warrants.

First, the district court granted Roman's motion to suppress the evidence seized from the search of his business, TWC. The district court found that Agent Smith's affidavit contained material misrepresentations and omissions made with reckless disregard of the truth, without which a finding of probable cause would not have been made. Specifically, the district court found that the CS's statement that he had received the drugs at Roman's Springfield business, not at TWC, was accurate, and Agent Smith's statement in the affidavit that the CS "would obtain kilogram quantities of cocaine" at TWC was false. In addition, the district court concluded that Agent Smith's failure to divulge the CS's original written statement was a material omission. Finally, the district court found that the statement in the affidavit that Roman was "a known cocaine trafficker" was "conclusory" and was not supported by any evidence.

As a result, the district court removed statements from the reformed affidavit for a lack of evidentiary support, to include that the CS "would obtain kilogram quantities of cocaine" at TWC and that Roman was "a known cocaine trafficker." The court also reformed the affidavit by altering statements that indicated that the drug transaction occurred at the CS's business address in place of the false statement that the transaction had occurred at TWC. In light of these changes, the district court held that the reformed affidavit failed to establish probable cause to search Roman's business, TWC.

Next, the district court held that the reformed affidavit did not support a finding of probable cause to search Roman's residence. The district court noted that the remaining information in the reformed affidavit did not create a sufficient link between criminal activity and Roman's home.

Specifically, the district court found that the affidavit failed to include evidence of: the length of time Roman had engaged in drug trafficking; information that directly connected his residence with drug activity; nor any evidence that Roman ever had left or returned to his residence in connection with drug transactions. As a result, the district court suppressed the evidence seized from Roman's residence.

On appeal, the government argued that the reformed affidavit sufficiently established probable cause to search Roman's home.

The First Circuit Court of Appeals disagreed. The court held that an application for a warrant "must demonstrate probable cause to believe (1) a crime has been committed—the 'commission' element, and (2) enumerated evidence of the offense will be found at the place searched—the so-called 'nexus' element." Here, the court held that the reformed affidavit did not contain sufficient evidence to directly tie drug activity to Roman's residence. The court noted that affidavit lacked information from the CS or any other source connecting drug activity to Roman's home. Specifically, the CS did not indicate that he believed Roman conducted drug-related business from or kept drug-related evidence at the home, nor that any meetings of the conspiracy or drug deals had occurred there. Instead, the court found that the government's argument depended entirely on inferences in the affidavit made by Agent Smith, drawn largely from facts stricken by the district court. Consequently, as the reformed affidavit failed to establish probable cause to search Roman's residence, the court concluded the evidence seized during the search was properly suppressed by the district court.

For the court's opinion: <https://cases.justia.com/federal/appellate-courts/ca1/18-1914/18-1914-2019-11-05.pdf?ts=1572987605>

United States v. Moran, 944 F.3d 1 (1st Cir. 2019)

Police officers suspected that Bryan Moran was storing drugs in a storage unit that belonged to his sister Alysha. Officers accompanied Alysha to the storage unit where Alysha gave the officers consent to search. After Alysha opened the unit, she told the officers that several black, opaque plastic bags belonged to Bryan while the boxes containing Christmas decorations belonged to her. Although it was not clear whether Alysha gave express consent to search Bryan's bags, it was undisputed that she did not limit her consent or object to any portion of the search. The officers searched the plastic bags and discovered fentanyl.

The government charged Bryan Moran with possession with intent to distribute fentanyl. Moran filed a motion to suppress the fentanyl as fruit of an illegal search of the plastic bags, in violation of the Fourth Amendment. Moran argued that he had a reasonable expectation of privacy in the bags and that Alyssa had neither the actual nor the apparent authority to consent to their search. The district court disagreed and denied his motion. Moran appealed.

A third party may consent to the search another person's effects if the third party has "common authority" over the property to be searched. A third party has common authority if he or she has mutual use of the property. Consequently, the government was required to establish that the third party, Alysha, had mutual use of the contents of the bags to validate her consent to search.

Against this backdrop, the First Circuit Court of Appeals held that the government failed to provide any evidence that when Moran left his bags in Alysha's storage unit he had relayed to her

that she could open the bags and gain access to their contents. The court added that Alysha had failed to demonstrate to the officers that she had mutual use of the content of the bags, despite the fact that she retained access to the bags within the storage unit. As a result, the court held that Alysha did not have actual authority to consent to a search of the bags.

The court further held that Alysha did not have apparent authority to consent to a search of the bags. When an officer obtains consent to search from a third party whom the officer reasonably, but mistakenly believes possesses common authority over the property, that consent will be valid, despite the fact that the fact that the third party lacked actual authority to give consent.

Here, the court held that the officers' belief that Alysha had authority to consent to a search of the bags was not objectively reasonable. The court noted that Alysha explicitly told the officers that the bags in the storage unit belonged to her brother. However, after obtaining this information, the officers did not attempt to clarify if Alysha had mutual use of the bags, which would have given her actual authority to consent to the search. The court's holding was in accord with the holdings of several other federal circuits, which suggested that when faced with ambiguous facts relating to a third party's authority to consent to search, officers should attempt to investigate further before relying on that consent.

For the court's opinion: <https://cases.justia.com/federal/appellate-courts/ca1/18-1876/18-1876-2019-11-27.pdf?ts=1574886605>

Fifth Circuit

Garza v. Briones, 943 F.3d 740 (5th Cir. 2019)

At approximately 1:43 a.m., several police officers responded to a 911 call from a truck stop. The caller reported that a man, later identified as Tomas Garza, was sitting alone in front of the truck stop's bar playing with a pistol and holding what appeared to be a wine bottle and a plastic bag.

Officer Martinez arrived first and saw Garza holding a black handgun. Officer Martinez repeatedly ordered Garza to drop the gun; however, Garza did not do so. Instead, Garza continued to move the firearm around in different directions while making facial gestures at Officer Martinez. A short time later, other officers arrived and observed Officer Martinez ordering Garza to drop the gun. Garza did not acknowledge the officers and he did not drop the gun. The officers formed a semi-circle around Garza with their weapons drawn. Several patrol cars equipped with dash cameras were parked nearby with their flashing lights activated.

At approximately 1:49 a.m., an off-duty security guard from the truck stop told Lt. Rodman that Garza's pistol was a BB gun. He told Lt. Rodman he knew this because he had held the BB gun earlier that day. Lt. Rodman did not communicate this information to the other officers because he could not verify the information. The other officers believed that Garza's gun was real firearm.

At approximately 1:50 a.m., Garza raised his gun and pointed it in Officer Martinez's direction. Officer Martinez yelled at Garza to stop, but he did not do so. Officer Martinez fired his weapon at Garza. At that point, the other officers, believing that Garza was going to shoot at Officer Martinez, opened fire. The officers fired on Garza until he fell to the ground and stopped moving. The shooting lasted approximately eight seconds. Each officer fired at least one shot, 61 shots

were fired in total; Garza was struck by 18 of those shots. Garza died from his wounds. Dash-camera footage from the patrol cars confirmed that Garza had pointed his gun at Officer Martinez.

The plaintiff, an administrator of Garza's estate, sued the officers under 42 U.S.C. § 1983 claiming that the officers violated the Fourth Amendment by using excessive force against Garza. The officers filed a motion to dismiss the case based upon qualified immunity. After the district court granted the officers qualified immunity, the plaintiff appealed.

First, the plaintiff argued that a reasonable jury could have found that Garza never pointed his gun at the officers but was, instead, simply drinking alcohol and playing with a gun. The plaintiff based this argument on the following: alleged inconsistencies in the officers' recounted versions of the incident; a series of still photos showing that Garza's gun was not pointed at the officers; and a witness' account who claimed that Garza never pointed his gun at the officers.

While the court is generally required to accept the facts as alleged by the plaintiff when it determines whether officers are entitled to qualified immunity, the court is not bound to accept a plaintiff's version of the facts when those facts are "blatantly contradicted" and "utterly discredited by video recordings." In this case, the Fifth Circuit Court of Appeals found that the dash-camera footage, which confirmed the officers' account of the incident, directly contradicted the plaintiff's account. The court added that even if the video evidence did not directly contradict the plaintiff's version, a reasonable officer in any of the defendants' shoes would have believed that Garza posed a serious threat to their safety, regardless of the direction in which he pointed the gun before the officers shot him.

Second, the plaintiff argued that the officers' use of force was unreasonable because Garza was wearing headphones and listening to music; therefore, he was unable to hear the officers' commands to drop the gun.

The court disagreed. The court stated that the relevant question was not why, subjectively, Garza did not comply with the officers' commands to drop the gun, but instead, whether the officers' belief that Garza posed a threat of serious physical harm was objectively reasonable. Even if Garza could not hear the officers, the court found that it was not reasonable to suggest that he was not aware of the presence of more than a dozen officers with their firearms drawn and squad cars with lights flashing surrounding him. Regardless of why Garza did not drop the gun, the court held that it was objectively reasonable for the officers to conclude that his non-compliance was a threat to their safety.

Third, the plaintiff claimed that it was unreasonable for the officers to shoot Garza until they could determine that Garza, not Officer Martinez, fired the first shot.

Again, the court disagreed. The court noted, "the law does not require officers in a tense and dangerous situation to wait until the moment a suspect uses a deadly weapon to act to stop the suspect."

Finally, the plaintiff argued that the number of shots fired and the number of times Garza was struck by gunfire, by themselves, were enough to render the officers' use of force unreasonable.

The court rejected this argument. The court cited [Plumhoff v. Rickard](#), in which the Supreme Court held that "if police officers are justified in firing at a suspect in order to end a severe threat to public safety, the officers need not stop shooting until that the threat has ended. In this case, the officers stopped firing when Garza fell to the ground and was no longer a threat. The fact

that the officers fired 61 shots in eight seconds, by itself, did not render the use of force objectively unreasonable.

The court recognized that even though the officers learned after the shooting that Garza was holding a BB gun, the gun's appearance was almost indistinguishable from a handgun. In addition, the court commented that even though the security guard told Lt. Rodman that Garza's pistol was a BB gun, Lt. Rodman did not have enough time to verify this information before Garza pointed his pistol at the officers. Consequently, the court held that the totality of the circumstances established that it was reasonable for the officers to believe that Garza posed a serious threat to them; therefore, the officers did not violate the Fourth Amendment by shooting him.

For the court's opinion: <https://cases.justia.com/federal/appellate-courts/ca5/18-40982/18-40982-2019-11-25.pdf?ts=1574728214>

Seventh Circuit

United States v. Eatman, 942 F.3d 344 (7th Cir. 2019)

Four police officers were dispatched to a domestic disturbance at an apartment building. The dispatch to the officers reported that Micha Eatman: had physically assaulted his girlfriend, was trying to gain access to her apartment, had the means to evade law enforcement, and that he might have a gun.

When the officers arrived, they saw Eatman pounding on the door to an apartment demanding entry. The officers ordered Eatman to back away from the door and put his hands on the wall. After Eatman complied, one of the officers frisked Eatman and found a loaded handgun in his waistband. The officer seized the handgun and handcuffed Eatman.

The officers interviewed Eatman's girlfriend, who refused to sign a criminal complaint against him. When the officers asked Eatman if he had a Firearm Owners Identification card or a conceal-and-carry license, Eatman told the officers the gun belonged to his girlfriend and that he took it to keep it away from their children. The officers transported Eatman to the police station, where a background check revealed that Eatman was a convicted felon. The government charged Eatman with unlawful possession of a firearm by a felon.

Eatman filed a motion to suppress the handgun. Eatman argued that the officers lacked reasonable suspicion to believe that he was armed and dangerous; therefore, the frisk violated the Fourth Amendment. Eatman further argued that the officers arrested him without probable cause when they handcuffed him without knowing whether he could lawfully possess the handgun.

The district court disagreed and denied Eatman's motion. On appeal, Eatman conceded that the officers had reasonable suspicion to frisk him. However, Eatman argued that he was arrested upon being handcuffed and, at that moment, the officers did not have probable cause. Eatman claimed that because his prior felony convictions were only discovered as a result of this illegal arrest, his status as a felon should have been suppressed.

The Seventh Circuit Court of Appeals disagreed. In [Terry v. Ohio](#), the Supreme Court held that police officers may conduct investigatory stops of individuals based on reasonable suspicion of criminal activity, a standard lower than probable cause. In addition, police officers may use "reasonable means to effectuate an investigatory stop, including but not limited to the use of

handcuffs.” While handcuffing a suspect does not automatically mean that the suspect is under arrest, the use of handcuffs during an investigatory stop must be reasonable.

In this case, the court held that the use of handcuffs was reasonable and did not constitute an arrest because the officers had reason to believe Eatman might be combative or try to escape given that he had allegedly assaulted his girlfriend. The fact that the officers handcuffed Eatman after seizing the handgun did not eliminate the further need to control a volatile situation to allow the officers to speak to the girlfriend. The court agreed with the district court, which held that Eatman’s arrest occurred only after he could not produce registration for the handgun.

For the court’s opinion: <https://cases.justia.com/federal/appellate-courts/ca7/18-2525/18-2525-2019-11-01.pdf?ts=1572642016>

Eighth Circuit

United States v. Davis, 943 F.3d 1129 (8th Cir. 2019)

A police officer stopped a vehicle near Onawa, Iowa for speeding. As the officer approached the vehicle, he encountered Noah Pope, the driver, and Dylan Davis, asleep in the passenger seat. The officer asked both men for their licenses and the vehicle registration. Pope told the officer that they did not have a registration for the vehicle because it was a rental car. Pope also told the officer that he did not have a copy of the rental agreement and that a friend had rented the car for them in Georgia. Pope stated that the vehicle was due back the next day and that neither man was listed on the rental agreement. As Pope rummaged through his backpack in an attempt to locate his driver’s license, the officer saw several small baggies in Pope’s backpack. The officer noticed that Pope was nervous, shaky, and breathing heavily and suspected that Pope was trying to hide a baggie from view.

When the officer noticed a long gun-case in the backseat, he asked the men what it contained. Davis told the officer that the case contained a “nine millimeter” and gave the officer consent to examine the weapon. The officer opened the case and found a loaded pistol. When asked why he was traveling with a gun, Davis told the officer that he did not want to leave it in his own car at home. The officer took the pistol, Pope’s driver’s license, and Davis’ information to his patrol vehicle to request a check on each item from dispatch. In addition, the officer contacted the rental company and asked that a representative authorize a tow request, which in turn would permit the officer to conduct an inventory search of the vehicle.

After the officer issued Pope a speeding ticket, he told Pope and Davis that the vehicle would be towed at the request of the rental company. The officer directed the men to exit the vehicle and with the assistance of another officer commenced an inventory search. During the search, the officer found a glass pipe under the driver’s seat which contained methamphetamine residue. The officer then arrested Pope and Davis. The officer continued searching the vehicle and found methamphetamine, marijuana, and drug paraphernalia.

The government charged Davis with a several criminal violations. Davis filed a motion to suppress the evidence seized from the vehicle. The district court granted Davis’ motion. The district court held that: (1) the officer violated the Fourth Amendment by unreasonably prolonging the duration of the traffic stop without reasonable suspicion; and (2) by searching the vehicle pursuant to an unlawful pretextual inventory. On appeal, the government did not challenge the

district court's finding that the inventory search was pretextual but instead argued that Davis lacked standing to object to the search of the vehicle.

While the Fourth Amendment prohibits unreasonable searches and seizures, only individuals who possess a reasonable expectation of privacy in the place to be searched may bring a Fourth Amendment challenge. Generally, a passenger in a vehicle who does not claim a property or possessory interest in the vehicle lacks a reasonable expectation of privacy in that vehicle. As a result, even where a search violates the Fourth Amendment, a passenger without such an interest in the vehicle cannot challenge its search or suppress any evidence thereby discovered.

The Eighth Circuit Court of Appeals found the following facts: (1) at the time of the stop, Davis was asleep in the passenger seat; (2) Davis did not have a driver's license; (3) Davis did not claim to have driven the vehicle; (4) Davis had not been permitted to drive the vehicle or exercise control over the vehicle in any way. Consequently, the court held that as a passenger without a property or possessory interest, Davis did not have a reasonable expectation of privacy in the vehicle.

Next, the court recognized that while Davis lacked standing to challenge the search, he could challenge the stop. Specifically, if Davis could establish that he was unreasonably seized during the stop and then show that the unlawful stop caused the officer to conduct the unlawful pretextual inventory search, the evidence discovered in the vehicle may be suppressed.

When an officer conducts a traffic stop, everyone in the vehicle is seized under the Fourth Amendment, not just the driver. In addition, the duration of a traffic stop is limited to the time required to complete the purpose of the stop. However, the duration of the stop may be extended beyond this time if the officer develops reasonable suspicion of criminal activity.

Here, the court held that within ten minutes of encountering Pope and Davis, the officer established reasonable suspicion that the men were engaged in drug trafficking. First, Pope had several small baggies in his backpack, one of which he appeared to try hiding from the officer. Second, Pope was extremely nervous. Third, neither Pope nor Davis was listed on the vehicle's rental agreement and the person that rented the vehicle was not present. Fourth, the vehicle contained a loaded firearm. Based on the totality of the circumstances, the court held that the officer established reasonable suspicion to extend the duration of the traffic stop; therefore, Davis was not unreasonably seized in violation of the Fourth Amendment.

For the court's opinion: <https://cases.justia.com/federal/appellate-courts/ca8/18-2975/18-2975-2019-11-27.pdf?ts=1574872223>

Ninth Circuit

United States v. Ped, 943 F.3d 427 (9th Cir. 2019)

In April 2016, Nicholas Wilson was released from the custody of the California Department of Corrections and placed on post-release community supervision, a status similar to parole. The terms of Wilson's supervision permitted officers to search Wilson's "residence [or] any other property under [his] control . . . without a warrant day or night." Upon his release, Wilson told his probation officer that he lived at his family home on Eliot Street in Santa Paula, California. Wilson's mother and his brother, Anthony Ped, also lived in the home. On two subsequent

occasions, police officers went to the Eliot Street home and spoke to Wilson's mother, who confirmed that Wilson lived there.

In June 2016, Wilson's probation officer provided the Santa Paula Police Department with a list of names and addresses of persons living in Santa Paula who were subject to supervision. The list included Wilson and the Eliot Street address. The next day, however, Wilson was arrested on unrelated charges and held at the Ventura County Jail, where he remained for three months. Upon his release, Wilson told his probation officer that he would be living in Newbury Park, California. The probation officer did not verify the new address, nor did he update the list he had previously given the Santa Paula Police Department.

Approximately ten days after Wilson's release, officers of the Santa Paula Police Department randomly selected Wilson for a routine search of individuals on supervised release. Not knowing of Wilson's move to Newbury Park, the officers went to the Eliot Street address. As the officers approached the house, they heard a commotion inside, pushed open the door, and saw Ped holding a methamphetamine pipe. Both Ped and his mother told the officers that Wilson no longer lived there. The officers did not believe Ped nor his mother and searched the residence, finding seven firearms. Ped admitted that the weapons were his and that he had previously been convicted of a felony.

The government charged Ped with several criminal offenses, including possession of a firearm by a felon. Ped filed a motion to suppress the evidence discovered in his house. Ped argued that it was unreasonable for the officers to believe that Wilson lived in the Eliot street residence based on probation officer's list that was three months old. The district court denied Ped's motion and he appealed.

Parolees have a diminished expectation of privacy and they may be subject to warrantless searches of their homes without a warrant or suspicion that they are involved in criminal activity. This diminished expectation of privacy exists even if other people live in the parolee's house. However, to protect the interests of third parties, "officers must have probable cause to believe that the parolee is a resident of the house to be searched."

In this case, the Ninth Circuit Court of Appeals held that the officers had probable cause to believe that Wilson lived at the Eliot Street address when they searched it. The court found that the most significant circumstance establishing probable cause was the list provided to the police by the probation officer, which stated that Wilson had reported living at the Eliot Street address. The court recognized that at some point, a reported address would become so old that it would no longer be reasonable for officers to rely on it. However, in this case, the officers had no reason to believe that Wilson's reported address suggested that it was likely to be transitory. In addition, the court concluded that, given the timeframe, it was reasonable for the officers to believe that Wilson still lived at the Eliot Street address

Finally, although Wilson told his probation officer a few days before the search that he would be living in Newbury Park, the officers conducting the search did not know this. The court noted that an assessment of probable cause takes into account "the totality of the circumstances known to the officers at the time of the search." Although the officers could have conducted additional inquiries to confirm that Wilson still lived at the Eliot Street address, the court held that they were not required to do so in this case because they reasonably relied on the list provided by the probation officer. Citing the Supreme Court in [Heien v. North Carolina](#), the court noted that "to

be reasonable is not to be perfect, and so the Fourth Amendment allows for some mistakes on the part of government officials.”

Ped further argued that even if the officers had probable cause when they arrived at the Eliot Street address, it was unreasonable for them to search the residence after he and his mother told the officers that Wilson no longer lived there.

Again, the court disagreed. As long as the officers had information establishing probable cause, the court held that the officers were entitled to proceed unless “presented with convincing evidence that the information they had relied upon was incorrect.”

The court found that neither Ped’s nor his mother’s statements were “convincing evidence,” as neither provided an alternate address for Wilson. Further, Ped’s efforts to discourage the search occurred moments after having been discovered with a methamphetamine pipe, constituting a viable motive to fabricate. The court concluded that these statements did not undermine the information that the officers had previously received.

For the court’s opinion: <https://cases.justia.com/federal/appellate-courts/ca9/18-50179/18-50179-2019-11-15.pdf?ts=1573841013>

Tenth Circuit

United States v. Williams, 942 F.3d 1187 (10th Cir. 2019)

In August 2015, United States Department of Homeland Security Special Agent Kyle Allen received a letter stating that Derrick Williams, an American citizen, had been arrested in Germany for violating weapons laws. In addition, the letter stated that it was unclear how Williams entered Germany in 2015 as he had been banned from the country in 2011 after being discovered living there on an expired visa. According to the letter, Williams’ ban extended through the Schengen Area, which is an area comprised of 26 European states that have abolished all passport and other types of border control at their mutual borders. Despite this ban, Williams told German law enforcement in 2015 that he had already travelled through Belgium, France, Iceland, and the Netherlands, all Schengen member states, and that he planned to travel to Morocco next.

Based on the information contained in this letter, SA Allen began investigating Williams and discovered that Williams had domestic felony convictions for trespassing, unlawful use of a financial instrument, fraud, and escape. The escape charge arose when Williams fled the United States in 2007 while serving a community corrections sentence. Williams was convicted of these offenses in 2011 after being deported from Germany to the United States.

On November 13, 2015, terrorist cells operating in France and Belgium launched a large-scale attack in Paris, France. The terrorists, who claimed allegiance to the Islamic state, were of Moroccan descent. Subsequently, SA Allen's supervisors requested that he review his open investigations. Accordingly, SA Allen reviewed Williams' file and, though he did not have specific information linking Williams to terrorist activity, he placed a “lookout” on Williams in the United States Customs and Border Patrol (CBP) enforcement system.

On November 24, 2015, Williams boarded an international flight in Paris bound for the Denver International Airport (DIA). While going through customs at DIA, Williams’ passport triggered multiple “lookout” alerts in the CBP enforcement system. As a result, CBP officers escorted

Williams to DIA's secondary screening area and notified SA Allen. Prior to arriving at DIA to interview Williams, SA Allen reviewed Williams' customs declaration form. SA Allen noticed that Williams had not listed Germany as one of the countries visited but instead had only listed Belgium, France, and Morocco.

During the interview, SA Allen repeatedly asked Williams if he had traveled to other European countries not listed on his customs declaration form. Williams was evasive and never admitted to having been in Germany. Williams also gave vague answers concerning his time in Belgium. At the end of the interview, SA Allen told Williams that his electronic devices, a laptop and a smartphone, would be searched. When SA Allen asked for the devices' passwords, Williams refused to provide them. Afterward, two forensic computer specialists unsuccessfully attempted to bypass password requirements and login to Williams' devices. Consequently, SA Allen told Williams that his devices would need to be taken to another site and would be returned to him later. SA Allen asked Williams where the devices should be returned and Williams gave his address as 3333 Curtis Street. SA Allen noticed this address did not match the address that Williams had listed as his home address on the customs declaration form nor his most recent passport application. SA Allen allowed Williams to leave.

The next day, a computer forensics agent used a software program to bypass the password on Williams' laptop. Within three minutes, the agent found a folder with a title suggesting that it contained child pornography. The agent immediately stopped his search and notified SA Allen. SA Allen obtained a warrant to conduct a full forensic search of the laptop, which revealed thousands of images and videos of child pornography.

The government charged Williams with two child pornography-related offenses. Williams filed a motion to suppress the evidence obtained from his laptop. Williams argued that the evidence discovered pursuant to the search warrant was discovered only because of the forensic agent's warrantless search. Williams claimed that the forensic agent's warrantless search violated the Fourth Amendment because the government lacked reasonable suspicion to believe that he was involved in criminal activity. The district court disagreed and denied Williams' motion. Williams appealed to the Tenth Circuit Court of Appeals.

First, the court refused to decide whether all searches of personal electronic devices at the border must be supported by reasonable suspicion.

Second, the court recognized that when the government establishes reasonable suspicion that an individual is involved in criminal activity, the Fourth Amendment permits a border search of that individual's personal electronic devices.

Finally, the court held that the totality of the circumstances established reasonable suspicion that Williams was involved in criminal activity; therefore, the warrantless search of his laptop by the forensics agent did not violate the Fourth Amendment.

First, Williams' criminal history contained border-related offenses. Second, SA Allen knew that Williams had been in Germany prior to his return to the United States; however, Williams did not list Germany as one of the countries visited on his customs declaration form. Third, Williams was returning to the United States on a one-way ticket originating in Paris, the site of devastating terrorist attacks less than two weeks earlier and his travel itinerary included Belgium, France, and Morocco, three countries linked to the attacks. Fourth, Williams had been arrested in Germany in 2015 for violating weapons laws. Finally, Williams attempted to distance himself from his

electronic devices by providing one address on his customs declaration form and giving SA Allen a different address when asked where his devices should be returned.

Williams further argued that even if the border agents had reasonable suspicion that he was engaged in criminal activity, they were limited to investigating violations of customs laws and preventing contraband from entering the United States. Williams claimed that because the border agents did not suspect him of committing a customs-related crime, they were prohibited from searching his electronic devices.

The court disagreed. The court noted that “the Fourth Amendment does not require [law enforcement] officers” [to ignore] suspicious circumstances.”

For the court’s opinion: <https://cases.justia.com/federal/appellate-courts/ca10/18-1299/18-1299-2019-11-14.pdf?ts=1573765269>
