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# 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](mailto: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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## **FLETC Informer Webinar Schedule – November 2020**

### **1. Aerial Surveillance Operations and the Fourth Amendment (1-hour)**

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

This presentation will look at the issue of surveillance and what may constitute a violation of the Fourth Amendment. Among the cases that will be examined is the recent Federal District Court of Maryland decision in Leaders of a Beautiful Struggle v. Baltimore Police Department where the court denied the plaintiff's request for a preliminary injunction to prevent the Baltimore Police Department from implementing an aerial surveillance operation pilot program. We will also examine the 2018 Supreme Court decision Carpenter v. United States and compare these two areas of law.

**Wednesday, November 4, 2020: 3 p.m. Eastern / 2 p.m. Central / 1 p.m. Mountain / 12 p.m. Pacific**

To participate in this webinar, join us at: <https://share.dhs.gov/nov/>



### **2. Government Workplace Searches (1-hour)**

Presented by John Besselman, Senior Advisor for Training, Office of Chief Counsel, Federal Law Enforcement Training Centers, Glynco, Georgia.

This webinar will examine how public employees might create a Reasonable Expectation of Privacy (REP) in their workplaces (computers, cars, offices, etc.), and, if so, how the government can intrude on that REP. This course is recommended for government supervisors, the IG community, and those whose duties include internal investigations.

**Thursday, November 5, 2020 – 1:30 p.m. Eastern / 12:30 p.m. Central / 11:30 p.m. Mountain / 10:30 a.m. Pacific**

To participate in this webinar: <https://share.dhs.gov/govtworksearch/>



### **3. Kalkines and Garrity Overview (1-hour)**

Presented by John Besselman, Senior Advisor for Training, Office of Chief Counsel, Federal Law Enforcement Training Centers, Glynco, Georgia.

This webinar will examine these two important cases and how they affect the government's ability to obtain statements from its employees that may be suspected of criminal activity.

**Monday, November 16, 2020: 2:30 p.m. Eastern / 1:30 p.m. Central / 12:30 p.m. Mountain / 11:30 a.m. Pacific**

To participate in this webinar: <https://share.dhs.gov/fletclgd0124/>

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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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# CASE SUMMARIES

## Circuit Courts of Appeals

### **Fourth Circuit**

#### **United States v. Feliciano, 974 F.3d 519 (4th Cir. 2020)**

On October 28, 2017, Jaison Feliciano was driving his employer's bakery delivery truck on the George Washington Memorial Parkway (Parkway). A United States Park Police officer stopped Feliciano because he believed the delivery truck was a commercial vehicle, which are prohibited from driving on the Parkway without a permit. Based solely on his observation of a commercial truck on the Parkway, the officer stopped Feliciano.

During the stop, the officer smelled the odor of marijuana. When the officer mentioned the odor, Feliciano admitted that he had smoked marijuana earlier in the day. After Feliciano could not produce a permit allowing him to operate the truck on the Parkway, the officer ordered him out of the truck. At this point, the officer saw what appeared to be a pipe on the floorboard. The officer eventually found a small bag of marijuana in Feliciano's shoe. The government charged Feliciano with possession of marijuana and operating a commercial vehicle on the Parkway without a permit.

Feliciano filed a motion to suppress the evidence obtained during the traffic stop. The magistrate judge denied the motion and the district court subsequently affirmed that ruling. Feliciano then appealed to the Fourth Circuit Court of Appeals.

A traffic stop constitutes a seizure under the Fourth Amendment that must be justified by reasonable suspicion of criminal activity or some other exception to the warrant requirement. Reasonable suspicion to initiate a brief investigative traffic stop requires "a particularized and objective basis for suspecting the particular person stopped of criminal activity." In [Delaware v. Prouse](#), the Supreme Court held that, absent reasonable suspicion that a motorist is unlicensed or an automobile is unregistered or that either is otherwise subject to seizure for a violation of law, "stopping an automobile and detaining the driver in order to check his driver's license and registration of the automobile are unreasonable under the Fourth Amendment.

In this case, the officer testified that he stopped Feliciano's vehicle because "it was a commercial truck on the Parkway." The officer did not articulate any reason to suspect that Feliciano did not possess the requisite permit to drive a commercial vehicle on the Parkway. The court noted that the existence of the permit requirement did not, by itself, amount to reasonable suspicion that a particular driver failed to satisfy that requirement. Consequently, the court held that absent articulable suspicion that Feliciano lacked the required permit, the officer was not entitled to stop Feliciano's vehicle at his discretion to check whether Feliciano possessed a permit.

The court further held that the officer was not justified in stopping Feliciano to conduct a warrantless administrative inspection of the vehicle. While warrantless inspections of motor vehicles are authorized under some statutes and regulations, the officer did not stop Feliciano pursuant to any statute or regulation. Instead, the officer testified that he stopped Feliciano to determine whether he had the requisite permit to drive on the Parkway. The court held that the

officer could not justify the traffic stop by relying on a statute or regulation that was not the actual basis for the stop.

The court concluded that the officer lacked reasonable suspicion of criminal activity when he stopped Feliciana and that he failed to establish that he was conducting a valid administrative inspection of the vehicle; therefore, the traffic stop violated the Fourth Amendment. As a result, the court held that any evidence obtained during the stop, including the marijuana found in Feliciana's shoe should have been suppressed.

For the court's opinion: <https://cases.justia.com/federal/appellate-courts/ca4/18-4703/18-4703-2020-09-11.pdf?ts=1599849018>

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## **Sixth Circuit**

### **United States v. Snoddy, 2020 U.S. App. LEXIS 30512 (6th Cir. TN Sep. 24, 2020)**

On November 9, 2017, around 1:00 a.m., a Tennessee state trooper stopped Craig Snoddy for speeding. During the stop, the trooper discovered that there were State of Georgia warrants out for Snoddy's arrest, including some for drug crimes. As a result, the trooper arrested Snoddy on the Georgia warrants. Suspecting that Snoddy might have drugs in his car, the trooper asked Snoddy for consent to search the car. After Snoddy twice refused to consent to a search of his car, the trooper told Snoddy that he was going to have the car towed and that he was going to "do an inventory on the car."

For approximately the next twelve minutes, the trooper repeatedly asked Snoddy for consent to search the car, warning Snoddy that if he did not agree to a search, the car would be inventoried. Snoddy repeatedly denied consent. Approximately eight minutes after the arrest, while still attempting to obtain Snoddy's consent to search the car, the trooper called for a tow truck. Approximately five minutes after calling for the tow truck, the trooper began to inventory Snoddy's car. During the inventory, the trooper discovered approximately one pound of methamphetamine, two handguns, and a set of scales. The government subsequently charged Snoddy with drug and firearm offenses.

After the denial of his motion to suppress the evidence seized from his car, Snoddy and the government negotiated a plea agreement. Snoddy was convicted and sentenced per the plea agreement. However, in the plea agreement, Snoddy reserved his right to appeal the denial of his motion to suppress the evidence seized from his car.

On appeal, Snoddy conceded it was within the trooper's discretion to impound his car, and that conducting an inventory was required under Tennessee Department of Safety Policy (General Order 513). However, while acknowledging General Order 513, Snoddy argued that the decision to impound and inventory his car was a pretext for an investigative search, in violation of the Fourth Amendment. Specifically, Snoddy claimed that the trooper's subjective intent from the moment he was arrested was to search his car for criminal evidence.

Inventory searches are a well-defined exception to the warrant requirement of the Fourth Amendment. The Supreme Court has found that inventory searches of lawfully seized property are reasonable under the Fourth Amendment to: 1) protect the owner's property while it remains in the government's custody; 2) protect the officers against claims or disputes over damaged, lost,

or stolen property; and 3) protect the officers and others from potential dangers that the property may pose.

Concerning vehicles, an officer's decision to impound a vehicle must be done "according to standard criteria and on the basis of something other than suspicion of evidence of criminal activity" to be lawful under the Fourth Amendment. For a lawful inventory search of an impounded vehicle, the search must be conducted "according to standard police procedures" and not "for purposes of investigation."

Here, the Sixth Circuit Court of Appeals concluded that, regardless of the trooper's motivations and beliefs, he was going to have Snoddy's car towed no matter what. Snoddy was the sole occupant of the car, and the car would have been left out on the side of the highway, near an intersection in the middle of the night, where it could be stolen, vandalized, or hit by another vehicle. While the court acknowledged that "some of the evidence calls into question whether the inventory search was pretextual," the court concluded that, under the circumstances, it was objectively reasonable for the trooper to impound and inventory Snoddy's car.

For the court's opinion: <https://cases.justia.com/federal/appellate-courts/ca6/19-6089/19-6089-2020-09-24.pdf?ts=1600959615>

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**United States v. Baker, 2020 U.S. App. LEXIS 30513 (6th Cir. KY Sep. 24, 2020)**

After reviewing Kentucky's e-warrant system, a police officer in Madisonville, Kentucky discovered that a judge in a neighboring county had issued an arrest warrant a day earlier for Tyslen Baker for receiving stolen property. The e-warrant system indicated that Baker lived in Madisonville.

Based on this information, the officer contacted a fellow officer and the two men met to arrest Baker at the listed address, which appeared to be a hybrid residence and pawnshop-type business. As the officers approached the business's front door, a neon sign was flashing "open." Through the store's windows, the officers could see merchandise inside and a man walking around the store's register area. When the officers tried to open the door, they discovered that it was locked. After ringing the doorbell, a man came to the front door and voluntarily let the officers inside. Once inside, one of the officers asked the man if he was "Mr. Baker." The man said that he was, and the officer requested his driver's license for verification.

In response to this request, Baker walked through a door near the register, which indicated to the officer that Baker needed to go to another room to get his identification. The officer could not see what was beyond the door and was surprised by how fast Baker moved. According to the officer, when executing arrest warrants, officers should always maintain visual contact with arrestees to ensure they are not getting firearms. To keep watch of Baker, the officer followed him through the door without asking for his consent. The door led to a kitchen area and then another door led to what the officer described as an "office, bedroom, [and] entertainment area," where Baker retrieved his wallet.

As Baker handed the officer his identification, the officer saw a rifle sitting in the corner of the room. The officer asked Baker if he was a convicted felon and Baker confirmed that he was. At this point, the officer handcuffed Baker. While handcuffing Baker, the officer saw several jars in that appeared to contain marijuana. The officer then confirmed with his dispatch that the arrest

warrant for Baker was valid. When the officer searched Baker incident to arrest, he found crack cocaine in Baker's pocket.

Afterward, officers obtained a warrant to search Baker's residence where they found an additional quantity of crack cocaine, marijuana, methamphetamine, and firearms. The government charged Baker with drug and firearm-related offenses. Baker filed a motion to suppress the evidence seized from his residence. The district court denied Baker's motion and he appealed.

On appeal, Baker conceded that he gave consent for the officers to enter his residence's store area. However, Baker argued that his consent did not extend to the back room where the officer followed him when he went to retrieve his identification. As a result, Baker claimed that the officer was not lawfully present in the area from which he saw the rifle and jars of marijuana.

The Sixth Circuit Court of Appeals disagreed. In [Washington v. Chrisman](#), the Supreme Court recognized that "every arrest must be presumed to present a risk of danger to the arresting officer." Accordingly, the court held that it is reasonable under the Fourth Amendment "for a police officer, as a matter of routine, to monitor the movements of an arrested person, as his judgment dictates, following the arrest."

In this case, when the officer learned that the man was "Mr. Baker," he followed his department's standard practice and asked Baker for his identification to verify that he was the individual listed in the warrant. Baker then quickly left the store area through a door and the officer followed him into the back room. At this point, the court held that it did not matter whether Baker impliedly consented to the officer's entry into the back room or not. The court found that, by this point, the officer had a reasonable basis to conclude that the man was Baker; therefore, it was reasonable for the officer to monitor his movements inside the residence. The court added that after the officer lawfully entered the back room, the illegality of the rifle was immediately apparent after the officer learned that Baker was a felon, and the illegality of the marijuana was immediately apparent once the officer saw the jars. As a result, the court concluded that the officer was entitled to seize the rifle and marijuana under the plain-view doctrine.

Baker further argued that the evidence seized from his residence as a result of his arrest should have been suppressed because the affidavit supporting the arrest warrant did not establish probable cause that he had committed a crime.

Again, the court disagreed. The court declined to determine whether or not the state court judge properly found probable cause for the warrant to arrest Baker. Instead, the court held that the good faith exception to the exclusionary rule applied, concluding that "the affidavit seeking the warrant was not so recklessly bare bones as to trigger the exclusionary rule."

For the court's opinion: <https://cases.justia.com/federal/appellate-courts/ca6/19-5636/19-5636-2020-09-24.pdf?ts=1600959617>

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## **Seventh Circuit**

### **United States v. Green, 2020 U.S. App. LEXIS 29421 (7th Cir. IL Sep. 16, 2020)**

A security guard employed by AGB Investigative Services (AGB) stopped and searched Rumaël Green at a Chicago Housing Authority (CHA) public housing unit. After seizing a handgun from



Green, the security guard called the Chicago Police Department. The government subsequently charged Green with possession of a firearm by a felon.

Green filed a motion to suppress the firearm, arguing that the security guard violated the Fourth Amendment because he lacked reasonable suspicion to justify the search. The district court agreed. However, the district court nonetheless denied Green's motion because it held that the private security guard was not a government agent; therefore, he was not subject to the Fourth Amendment. Green appealed, arguing that the CHA delegated its municipal power to AGB, thereby making the security guard a governmental actor, bound by the Fourth Amendment.

The Fourth Amendment does not apply "to a search or seizure, even an unreasonable one, effected by a private individual who is not acting as an agent of the government or with the participation or knowledge of any government official."

In this case, the Seventh Circuit Court of Appeals found that Illinois law expressly categorizes CHA's police powers as distinct from its power to employ security personnel. Next, the court noted that the CHA contract with AGB labels AGB as an independent contractor. Finally, the court stated that it had previously decided the issue with regard to the actions of a CHA private security guard and saw no reason to depart from its earlier ruling. Specifically, in 1996, the court held that a private security guard, even when authorized to use deadly force in self-defense and arrest trespassers pending police arrival, was not a state actor for Fourth Amendment purposes. Consequently, the court held that the security guard in this case was contracted to perform private security functions and acted without any direct government involvement; therefore, the Fourth Amendment was not applicable.

For the court's opinion: <https://cases.justia.com/federal/appellate-courts/ca7/19-2330/19-2330-2020-09-16.pdf?ts=1600266617>

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## **Eighth Circuit**

### **United States v. Roberts, 2020 U.S. App. LEXIS 30222 (8th Cir. IA Sep. 22, 2020)**

On July 7, 2018, at approximately 4:22 a.m., two men shot another man as he emerged from a restaurant in Bettendorf, Iowa. After an extensive investigation, police officers obtained a warrant to search Martell Roberts's residence and a 2007 Dodge Durango for firearms, ammunition, and other evidence connected to the July 7th shooting.

On July 31, 2018, officers went to Roberts's residence to execute the warrant. After no one responded to repeated commands from the Emergency Response Unit's rescue vehicle, the vehicle's ram was used to open the door. Afterward, Roberts came out of the house where officers cuffed him in plastic zip-ties and placed him behind the armored vehicle while the residence was secured. After securing the residence, Bettendorf Police Lieutenant Majeske uncuffed Roberts and suggested that they talk in another officer's unmarked police vehicle parked less than fifty feet away. Roberts agreed and followed Lt. Majeske and Detective Payton to the car.

After forty-five minutes, Lt. Majeske told Roberts two firearms were found in the residence and asked where he got them. Roberts said he "guessed he was under arrest now." In response, Lt. Majeske told Roberts that he was not under arrest. At this point, Roberts told the officers that he had brought the guns into the residence from the Durango, where "Mike" had left them. Roberts

then said it “sounds like I'm going to jail, regardless, I'm going to jail.” The officers did not arrest Roberts, but Det. Payton read Roberts his Miranda rights, despite Roberts saying “you don't have to.” Det. Payton asked if Roberts wanted to continue to talk. Roberts replied, “Not really,” but continued the interview. Roberts eventually admitted driving a man he knew as “Sko” to the restaurant on the night of the shooting in the Durango. Roberts added that, after the shooting, Sko left the firearms in the Durango. The officers arrested Roberts three hours later.

The government charged Roberts with being a felon in possession of a firearm and ammunition. After being convicted, Roberts appealed the district court's denial of his motion to suppress the evidence seized from his residence and the incriminating statements that he made to the officers.

Roberts first argued that the evidence seized from his apartment should have been suppressed because the affidavit in support of the search warrant application did not establish probable cause.

The Eight Circuit Court of Appeals disagreed. A warrant is supported by probable cause if the totality of the circumstances demonstrates “a fair probability that contraband or evidence of a crime will be found in the place to be searched.” Here, the court found that the affidavit supported the search warrant application because it included information that investigators obtained from witnesses at the restaurant, and from video surveillance of the restaurant parking lot at the time of the shooting. The court concluded that the detailed affidavit provided the warrant-issuing judge “a substantial basis for finding probable cause” that evidence would be located at Roberts's residence and in the Durango.

Next, Roberts argued the statements he made to the officers in Det. Payton's vehicle while his residence was being searched should have been suppressed because the officers questioned him while he was in custody without first providing him with the required Miranda warnings.

Law enforcement officers must administer Miranda warnings before interrogating persons in their custody. A person is in custody for Miranda purposes when formally arrested or when the person's freedom of movement “is restricted to a degree akin to a formal arrest.” Absent a formal arrest, the issue of custody turns on whether a reasonable person in the suspect's shoes would have felt free to end the interview.

In this case, the court found that at the start of the questioning, Lt. Majeske and Det. Payton assured Roberts he was not under arrest, that he did not need to talk to the officers, and that he could stop at any time. After forty-five minutes, when Lt. Majeske told Roberts firearms were found in the residence, and Roberts said he “guessed he was under arrest now,” Lt. Majeske again told Roberts he was not under arrest. Finally, at one point, Lt. Majeske suggested that they continue the interview at the police station. When Roberts objected, Det. Payton told Roberts it was up to him and the questioning continued in the vehicle. The court concluded that the officers' assurances to Roberts that he was not under arrest and Roberts's decision not to terminate the interview suggested that Roberts had the ability to exercise his free will and that he was not restrained to the degree associated with a formal arrest.

Finally, Roberts argued that his statements should have been suppressed because they were involuntary. Roberts argued that his statements were involuntary because the officers: 1) pressured him to cooperate by offering to help him avoid eviction if he cooperated; 2) made it clear the only way to avoid arrest and potential prosecution as a shooter was to cooperate; 3) confronted him with the possibility of federal charges and losing his children and his job; 4) and halted the arrest process during the interrogation because Roberts “had more he wants to say.”

A person's statements to police officers will be deemed involuntary when they are obtained by "threats, violence, or express or implied promises sufficient to overbear the defendant's will and critically impair his capacity for self-determination."

The court agreed with the district court which held that none of the tactics utilized by the officers amounted to improper threats or promises that overbore Roberts's will. As the officers testified, they believed Roberts drove the Durango the night of the shooting but did not shoot the victim. As a result, in the interview, they tried to persuade Roberts to become a witness against the shooters and put psychological pressure on him to do so. The court concluded that Roberts understood his rights and carefully weighed the risks and benefits of incriminating cooperation throughout the protracted interview, showing that his will was not overcome at any point.

For the court's opinion: <https://cases.justia.com/federal/appellate-courts/ca8/19-3249/19-3249-2020-09-22.pdf?ts=1600788620>

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## **Ninth Circuit**

### **United States v. Ramirez, 2020 U.S. App. LEXIS 30635 (9th Cir. CA Sep. 25, 2020)**

As part of a child pornography investigation, agents with the Federal Bureau of Investigation (FBI) obtained a warrant to search Stefan Ramirez's residence and any vehicle registered to him located at or near the residence. When agents arrived to execute the warrant, they discovered that no one was home and that Ramirez's car was not there. Instead of executing the warrant, an agent decided to call Ramirez at work, claim to be a police officer investigating a burglary at the residence, and tell Ramirez he needed to return home to confirm what was taken.

When Ramirez arrived home, the agent told Ramirez his home had not been burglarized. Instead, the agent explained that he had used the ruse to induce Ramirez to come home and to speak to the agents about the FBI's child pornography investigation. During the subsequent forty-five minute interview, Ramirez confessed to viewing child pornography on his laptop. In addition, agents executing the warrant searched Ramirez's car and seized two laptops and two hard drives.

After the government charged Ramirez, he filed a motion to suppress the evidence seized from his car and his statements to the agents. Ramirez argued that the agents unlawfully used a ruse to create the authority to seize him, his car, and obtain incriminating statements, in violation of the Fourth Amendment. The district court denied Ramirez's motion and he entered a guilty plea to one child pornography-related offense, while preserving his right to appeal the district court's denial of his motion to suppress to the Ninth Circuit Court of Appeals.

First, the Ninth Circuit Court of Appeals found that the search warrant in this case gave the FBI limited authority to conduct searches and seizures. Specifically, the warrant only authorized the agents to search Ramirez's residence, and any vehicle located at or near the residence controlled by Ramirez or any other occupant of the premises. Significantly, the warrant did not authorize the agents to seize Ramirez nor search any vehicle located away from the residence. Instead, the agents justified their authority to seize Ramirez under [Michigan v. Summers](#), a case in which the Supreme Court held it was reasonable to detain the occupants located within the immediate vicinity of the premises during the execution of a search warrant. However, because Ramirez and his vehicle were not located at the residence when the agents arrived to execute the search warrant, they were not within the scope of the warrant at that time. Consequently, the court had to

determine if the agents' authority to detain Ramirez under Summers, which also brought his car within the scope of the search warrant, by using a ruse, was reasonable under the Fourth Amendment.

Next, concerning the use of ruses, the court recognized that while law enforcement may use "deceit" in certain circumstances, not every ruse is reasonable under the Fourth Amendment. The court found that law enforcement's use of deception is generally lawful when the ruse hides the officer's identity as law enforcement and facilitates a search or seizure that is within the officer's lawful authority. The court noted that undercover operations are a "classic example of permissible deception," explaining that government agents may conceal their identities as law enforcement to afford a suspect the opportunity to commit an offense and detect those engaged in criminal activity.

However, when law enforcement officers identify themselves as such, but mislead suspects as to their purpose and authority, the court will "take a closer look" at the reasonableness of the officers' use of deception. The court added that officers violate the Fourth Amendment if their authority to access the evidence in question was obtained by "misrepresenting the scope, nature, or purpose of a government investigation."

Applying these principles, the court held that the agents' ruse in this case "was not a permissible means to effect the search and seizure of Ramirez." By posing as police officers, the agents played on Ramirez's trust and reliance on their story that his home had been burglarized, which brought Ramirez and his car within the scope of the warrant, under Summers, when they were not otherwise within its scope. The court added that the agents had no acceptable government interest in using this ruse while the Ramirez's Fourth Amendment interest was high because the agents betrayed Ramirez's trust in law enforcement in order to lure him home to place him within the scope of the search warrant. As a result, the court held that the deceit employed by the agents in this case violated the Fourth Amendment.

For the court's opinion: <https://cases.justia.com/federal/appellate-courts/ca9/18-10429/18-10429-2020-09-25.pdf?ts=1601053477>

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## **Tenth Circuit**

### **Emmett v. Armstrong, 973 F.3d 1127 (10th Cir. 2020)**

In October 2015, several police officers, including Officer Shannon Armstrong, responded to two 911 calls reporting a fight at a wedding reception at the local Elks Club. When Officer Armstrong arrived, he was driving a marked police car with its blue and white lights flashing, he was dressed in his police uniform, and he was wearing a body camera. After Officer Armstrong exited his vehicle, he saw a group of people in the parking lot standing next to a pickup truck. Officer Armstrong ordered the group to "shut up and stand there." After one of the men in the group, responded, "That's not appropriate," Officer Armstrong handcuffed the man and placed him in the back of his police car. Afterward, Officer Armstrong asked a group of people who had been fighting and a woman told him, "Morgan Emmett." As Officer Armstrong walked back to the group near the pickup truck, one of the men, later identified as Morgan Emmett, began to walk away. At this point, Officer Armstrong yelled to the man, "Morgan, Morgan. Come here." Emmett glanced back but continued to walk away. Officer Armstrong followed Emmett, who

began running. Officer Armstrong chased Emmett for short distance, yelling “stop” once before catching up with Emmett, and then yelling “stop” once more as he tackled Emmett to the ground.

After Officer Armstrong regained his footing, he stood over Emmett, who lay on his back on the ground. Once Emmett was on his back, he became visibly relaxed, and he made no further movements indicating an attempt to run or fight back. Officer Armstrong attempted to grab one of Emmett's arms, and Emmett asked, “What the fuck are you doing?” Officer Armstrong responded, “When I tell you to stop, you stop! Roll over!” Emmett giggled while looking at Officer Armstrong, but he did not roll over. Officer Armstrong then said, “You're going to get tased!” and immediately tased Emmett in the abdomen for a single, five-second taser cycle. Approximately ten seconds had elapsed from the time Officer Armstrong tackled Emmett to the time he tased Emmett. Afterward, Officer Armstrong arrested Emmett for interfering with a police officer.

Emmett sued Officer Armstrong under 42 U.S.C. § 1983 claiming violations of his constitutional rights to be free from unreasonable seizures and excessive force. Officer Armstrong argued that he was entitled to qualified immunity. After the district court found that Officer Armstrong was entitled to qualified immunity on all of Emmett’s claims, Emmett appealed to the Tenth Circuit Court of Appeals.

First, Emmett argued that Officer Armstrong lacked probable cause to arrest him for interfering with a peace officer because Officer Armstrong did not verbally identify himself a police officer. The court explained that the Fourth Amendment does not require police officers to verbally identify themselves before arresting someone or otherwise requiring their compliance with an order. Instead, the court found that, under the Fourth Amendment, it must be objectively reasonable for an officer to believe the suspect knew he was an officer before the officer can require compliance from a suspect.

In this case, the court held while Officer Armstrong did not verbally identify himself as a police officer, that the totality of the circumstances established that it was objectively reasonable for Officer Armstrong to believe that Emmett knew that he was a police officer. First, when Officer Armstrong arrived on scene, he was in a marked police vehicle, with the lights on and flashing. Second, Officer Armstrong was wearing his police uniform. Third, after arriving, Officer Armstrong conducted “police action” in front of the crowd by issuing commands to several individuals and arresting another. Based on these facts, the court found that when Officer Armstrong ordered Emmett to stop, and Emmett did not comply, an objectively reasonable officer could conclude that probable cause existed to arrest Emmett for interfering with a peace officer. Accordingly, the court held that Officer Armstrong was entitled to qualified immunity because Emmett’s arrest did not violate the Fourth Amendment.

Second, Emmett claimed that Officer Armstrong’s use of his taser violated Emmett’s clearly established Fourth Amendment right to be free from excessive force. Specifically, Emmett claimed that it was unreasonable for Officer Armstrong to tase him without sufficient warning and after he had stopped actively resisting.

The court explained that in deciding whether Officer Armstrong was entitled to qualified immunity, it was bound to accept Emmett’s version of the story to the extent that it was not so discredited by other evidence that no reasonable jury could believe it. The court added that it would rely on the video footage from Officer Armstrong’s body camera only where it “blatantly contradict[ed]” Emmett’s story.

Applying this standard, the court found that under Emmett’s version of events, Emmett was lying on his back, relaxed and laughing and he was no longer attempting to flee or actively resisting when Officer Armstrong tased him. Next, applying the factors outlined by the Supreme Court in [Graham v. Connor](#) to Emmett’s version of events, the court held that Officer Armstrong’s use of the taser was objectively unreasonable.

The court found that the first Graham factor, the severity of the crime, weighed in Emmett’s favor, as interfering with a police officer is a “non-severe misdemeanor” punishable under Wyoming law by a fine of up to \$750 and no possibility of jail time. Similarly, the court found that the second Graham factor, the immediacy of the threat posed by the suspect to the officer or others, weighed in Emmett’s favor. When Officer Armstrong tackled Emmett, he had effectively neutralized any safety concerns arising from Emmett’s flight. Consequently, the court concluded the only “immediate threat” to safety was that arising from Emmett himself. However, under Emmett’s version of events, he was lying on his back on the ground, visibly relaxed, laughing, and had ceased any active resistance. In addition, the court noted that Officer Armstrong’s chase placed the two men away from any bystanders, and there were no allegations that any weapons were involved. The court found that the final Graham factor, whether the suspect was actively resisting arrest or fleeing, weighed in Emmett’s favor. Under Emmett’s version of events, Officer Armstrong tased him approximately ten seconds after tackling him; therefore, Emmett was no longer fleeing. In addition, although Emmett did not immediately comply with Officer Armstrong’s order to roll over, he was not actively resisting arrest at that point, and Officer Armstrong deployed his taser before he completed his “taser warning” to Emmett, which did not give Emmett time to modify his behavior and comply with Officer Armstrong’s orders.

The court concluded by adding that the video footage arguably could support either Emmett’s version of the events or Officer Armstrong’s version of the events. However, because it was bound to accept Emmett’s version events and because the video evidence did not “blatantly contradict” Emmett’s version, the court held that it was not objectively reasonable for Officer Armstrong to deploy his taser against Emmett; therefore, he was not entitled to qualified immunity.

The court further held that at the time of the incident, October 2013, it was clearly established under Tenth Circuit case law that the use of a taser by a police officer on a non-violent misdemeanor who is not actively resisting arrest is unreasonable.

For the court’s opinion: <https://cases.justia.com/federal/appellate-courts/ca10/18-8078/18-8078-2020-09-01.pdf?ts=1598986830>

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