Department of Homeland Security
Federal Law Enforcement Training Center
Legal Training Division

October 2010

The Federal Law Enforcement -Informer-

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

Welcome to this installment of *The Federal Law Enforcement Informer (The Informer).* The Legal Division of the Federal Law Enforcement Training Center is dedicated to providing federal law enforcement officers with quality, useful and timely Supreme Court and Circuit Court 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 Center. *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 (912) 267-3429 or 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 the Legal Division web page at: http://www.fletc.gov/legal.

This edition of *The Informer* may be cited as "10 INFORMER 10".
(The first number is the month and the last number is the year.)

Join The Informer E-mail Subscription List

It's easy! Click HERE to subscribe, change your e-mail address, or unsubscribe.

THIS IS A SECURE SERVICE. No one but the FLETC Legal Division will have access to your address, and you will receive mailings from no one except the FLETC Legal Division.

In This Issue

Case Summaries

Circuit Courts of Appeals

CASE SUMMARIES

Circuit Courts of Appeals

1st Circuit

U.S. v. Santana-Perez, 2010 U.S. App. LEXIS 18772, September 8, 2010

The court affirmed the defendant's conviction for failing to obey a federal law enforcement officer's order to "heave-to" in violation of *18 U.S.C. § 2237(a)*. The court held that there was sufficient evidence to establish the defendant was aware of and understood the Coast Guard's orders to stop his boat.

The government presented testimony that the Coast Guard vessel activated its blue light, spot-light, blew its whistle and ordered the defendant to stop in English and Spanish over the loud hailer. After a twelve minute pursuit the defendant stopped only when he was warned that force would be used if he did not stop. Additionally, the defendant acknowledged in a post-arrest statement that he saw the "flashing lights" and admitted, "We were spotted by the Coast Guard and I tried to outrun them."

Click **HERE** for the court's opinion.

*****

Merlonghi v. U.S., 2010 U.S. App. LEXIS 19146, September 14, 2010

The court held that the federal agent was not acting within the scope of his employment when his vehicle collided with the plaintiff's motorcycle; therefore the plaintiff's lawsuit against the U.S. government under the *Federal Tort Claims Act (FTCA)* was properly dismissed.

Special Agent Porro, U.S. Department of Commerce, Office of Export Enforcement (OEE), was driving home from work in an unmarked government vehicle when he nearly collided with a motorcycle driven by the plaintiff's friend. The plaintiff drove his motorcycle alongside SA Porro's vehicle and the two men exchanged some unpleasant words. SA Porro drove away, but the plaintiff followed in his motorcycle yelling and screaming. The two men drove their vehicles back and forth towards each other, and at some point SA Porro took out his gun and displayed it to the plaintiff. After a few minutes of back and forth arguing with each other, SA Porro's vehicle swerved hard to the left striking the plaintiff's motorcycle. The plaintiff was thrown to the ground and suffered serious bodily injuries. SA Porro briefly stopped, straightened out some damage to his vehicle and sped away. After the collision SA Porro failed to contact his office or the police. He personally paid for the repairs to his vehicle even though government typically pays for the repair of damaged government vehicles. He later testified that he failed to report the accident to the OEE because, "It wasn't inside the scope of my employment."

Under Massachusetts law, to determine whether an employee's conduct is within the scope of his employment, the courts examine three factors: (1) Whether the conduct in question is of the kind the employee is hired to perform, (2) whether it occurs within authorized time and space limits, and (3) whether it is motivated, at least in part, by a purpose to serve the employer.

In determining that SA Porro was not within the scope of his employment the court held that, engaging in a car chase while driving home from work was not the type of conduct that OEE hired SA Porro to perform; the accident did not occur within "authorized time and space limits" because he was not at work, responding to an emergency, or driving to a work assignment, even if he was on call, and his actions were not motivated by a purpose to serve his employer.

In addition to the three-factor test, Massachusetts has a long-established "going and coming" rule, where travel to and from home to a place of employment is not considered to be within the scope of employment. The court did not decide whether or not a federal employee acts within the scope of his employment when he negligently causes an accident while simply commuting to or from work in a government vehicle since the undisputed facts of this case established that SA Porro was not merely commuting.

Click **HERE** for the court's opinion

*****

2nd Circuit

Richardson v. Superintendent of Mid-Orange Correctional Facility, 2010 U.S. App. LEXIS 19473, September 20, 2010

The court held that the witness's identification of Richardson at the police station was not unduly suggestive because it was voluntary and spontaneous. Unplanned or accidental encounters between a witness and a criminal suspect are not impermissibly suggestive, particularly where there is no indication to the witness that the individual was arrested as a suspect in the witness's case. The 3rd, 4th, 5th, 6th and 8th circuits agree.

Additionally, the court found that the witness's identification of Richardson as the shooter was reliable because he had sufficient opportunity to view him during the crime, only an hour or two elapsed between the commission of the crime and the confrontation at the police station, and the witness demonstrated a high degree of certainty when he identified Richardson as the shooter. Although the witness's lack of focus on Richardson's face weighed against reliability, the court held that this factor was not especially powerful, given how quickly and confidently the witness identified Richardson at the initial unprompted station-house confrontation.

Click **HERE** for the court's opinion.

*****

3rd Circuit

In The Matter Of The Application Of The United States Of America For An Order Directing A Provider Of Electronic Communication Service To Disclose Records To The Government, 2010 U.S. App. LEXIS 18689, September 7, 2010

The government applied for a court order pursuant to a provision of the *Stored Communications Act, 18 U.S.C. § 2703(d),* to compel a cell phone provider to produce a customer's "historical cell tower data," also known as cell site location information or "CSLI." The Magistrate Judge (MJ) denied the application, holding that, "CSLI that allows the government to follow where a subscriber was over a period of time is "information from a tracking device," deriving from an electronic communications service," and therefore cannot be obtained through a *§ 2703(d)* order." In holding that the CSLI was information from a "tracking device" the MJ required the government to establish probable cause to obtain a warrant as outlined in *Rule 41b* (*Fed. R. Crim. P.*).

The court held that CSLI from cell phone calls can be obtained under a *§ 2703(d)* order and that such an order did not require the traditional probable cause determination. Instead, as stated in *§ 2703(d)* the government must establish "specific and articulable facts showing that there are reasonable grounds to believe that the contents of a wire or electronic communication, or the records or other information sought, are relevant and material to an ongoing criminal investigation." The court concluded that this standard is a lesser one than probable cause.

The court additionally held that although *§ 2703(d)* allows for CSLI from cell phones to be obtained by a court order, the statute "as presently written gives the MJ the option to require a warrant showing probable cause." The court stated that this option should be used sparingly because Congress included the option of a *§ 2703(d)* order. In the present case the court found that on remand, if the MJ should conclude that a warrant is required rather than a *§ 2703(d)* order, it is imperative that she make fact findings and give a full explanation that balances the government's need for the information with the privacy interests of cell phone users.

Click **HERE** for the court's opinion.

*****

U.S. v. Mundy, 2010 U.S. App. LEXIS 19141, September 14, 2010

Philadelphia Highway Patrol officers stopped Mundy for a traffic violation and discovered that he was driving an unregistered vehicle in violation of Pennsylvania law. The officers impounded the vehicle and conducted inventory search of the vehicle pursuant to the department's "Live Stop Policy." During the inventory search, officers opened the locked trunk with key provided by Mundy, and discovered a grey plastic bag that contained a closed shoebox. The officer removed the shoebox and opened it, finding a brown paper bag and two clear plastic zip-lock bags filled with a substance that appeared to be cocaine. The officer opened the paper bag and found four more clear plastic zip-lock bags also containing a substance that appeared to be cocaine.

Mundy argued that the officer exceeded his authority when he searched the closed containers located in the trunk of the vehicle because the PPD Live Stop Policy did not specifically mention the opening of closed containers.

The court disagreed, holding that "standardized criteria or routine may adequately regulate the opening of closed containers discovered during inventory searches without using the words "closed containers" or other equivalent terms." The PPD Live Stop Policy sufficiently regulated the scope of the search by directing the officer to search all accessible areas of the vehicle, including the trunk, provided it was not forced open, to determine if it contained any personal property or effects. A search of unlocked containers that may hold such property or effects falls within the PPD Live Stop Policy's general directive and does not violate the *Fourth Amendment*.

Click **HERE** for the court's opinion.

*****

U.S. v. Pierce, 2010 U.S. App. LEXIS 20212, October 1, 2010

During the course of a traffic stop an officer requested that a K-9 officer perform an examination of the defendant's car. A trained narcotics dog, K-9 Cole, alerted to the exterior, passenger side of the defendant's car. As the handler walked Cole around the car, he entered the car through the open driver's door and alerted on the passenger seat and the glove box. The officers conducted a warrantless search of the car and when they opened the glove box they found approximately one kilogram of cocaine and twenty thousand dollars in cash.

The Supreme Court has held that an exterior canine sniff of a car during a lawful traffic stop does not constitute a "search" under the *Fourth Amendment*. It is well established that, looking at the totality of the circumstances, a dog's positive alert while sniffing the exterior of the car provides an officer with the probable cause necessary to search the car without a warrant. Cole's positive alert to the outside of the car provided officers with probable cause to conduct a warrantless search of the interior of the car.

Additionally, the court held that Cole's entry into the car and interior sniffs did not constitute a "search." In decisions that have held that an interior sniff was unconstitutional, the courts have concluded that the officer "facilitated or encouraged" the dog's entry into the car. In this case Cole jumped through an open door, left open by the defendant when he got out of his car, and in doing so acted instinctively and without facilitation by his handler.

Whether one reasons that Cole's entry into the car, and interior sniffs did not constitute a search, or that Cole's positive alert, when he was outside the car gave the officers probable cause to search the car, the result is the same; the officers conducted a constitutional search.

Click **HERE** for the court's opinion.

*****

4th Circuit

Henry v. Purnell, 2010 U.S. App. LEXIS 19823, September 24, 2010

Purnell attempted to execute a warrant for Henry's arrest. Henry fled on foot and Purnell gave chase. Purnell mistakenly drew his firearm, instead of his taser, and shot Henry in the elbow. Although not ruling on whether Purnell's mistaken use of his firearm was objectively reasonable, the court held that Purnell was not on notice that is conduct was clearly unlawful, therefore he was entitled to qualified immunity on Henry's *§ 1983* claim.

The court, however, reversed the lower court's grant of summary judgment on Henry's state-law claim and remanded the case to the district court.

Click **HERE** for the court's opinion.

*****

5th Circuit

U.S. v. Dowl, 2010 U.S. App. LEXIS 19076, September 13, 2010

The court held that the government presented sufficient evidence to support a conviction under *18 U.S.C. § 641*. Dowl submitted fraudulent applications to obtain government funds and used those funds for her personal use instead of to rebuild after Hurricane Katrina. Her scheme deprived the government of the fund's economic value for aiding homeowners' rebuilding effort after Hurricane Katrina.

Additionally, the wire transfer from the Small Business Administration (SBA) was sufficient to support Dowl's conviction for wire fraud. The use of wire communications need not be an essential element of a scheme to defraud, but may instead be incident to an essential part of the scheme. Dowl's scheme was not complete until she approved the transfer of funds that were distributed to her and the SBA.

Click **HERE** for the court's opinion.

*****

U.S. v. Gonzalez-Rodriguez, 2010 U.S. App. LEXIS 19574, September 21, 2010

Generally, a jury may infer that a defendant has knowledge of drugs in a vehicle when the defendant exercises control over the vehicle. However, when drugs are hidden in a secret compartment, guilty knowledge may not be inferred solely from the defendant's control of the vehicle because there is at least a fair assumption that a third party might have concealed the controlled substances in the vehicle with the intent to use the unwitting defendant as the carrier in a smuggling enterprise. In secret compartment cases, this circuit requires additional circumstantial evidence that is suspicious in nature and demonstrates guilty knowledge.

In this case there was sufficient suspicious circumstantial evidence to support the defendant's conviction. First, a packing house manager testified that it would have been almost impossible for the methamphetamine to be loaded into the defendant's trailer without detection at the warehouse where the load originated. Second, a witness testified that it would have been extremely difficult to unload the drugs from the trailer at the destination warehouse without detection. Third, there was a suspicious gap in time, from the time the defendant left the original warehouse, until the time he arrived at the Falfurrias immigration checkpoint where the Border Patrol Agents discovered the drugs. Fourth, the defendant had a key to the lock on the trailer and was able to open the trailer at the checkpoint. Finally, the 312.5 pound of methamphetamine that was seized was worth between ten and forty million dollars. A jury could reasonably infer that the defendant would not have been entrusted with such a large amount and high value of methamphetamine unless he knew he was part of the drug trafficking scheme.

Click **HERE** for the court's opinion.

*****

6th Circuit

U.S. v. Johnson, 2010 U.S. App. LEXIS 18734, September 8, 2010

The court reversed the defendant's conviction holding that the officers did not have reasonable suspicion that the defendant had committed, was committing, or was about to commit a crime when they stopped him; therefore any evidence seized as a result of the stop must be excluded.

Officers responded to a 4:00 a.m. 911 calls stating that "some people" connected with a blue Cadillac were "walking around" outside the caller's apartment. The officers saw the defendant carrying a bag and walking at a normal pace from a grassy area next to the caller's residence toward a white car on the street next to the residence. The officers ordered the defendant to stop but he did not respond, instead, he kept walking away from them. The defendant walked up to the white car, opened the passenger side door, threw the bag inside and stood outside the car. The defendant only complied with commands to raise his hands after the officers drew their weapons. The officers patted the defendant down, found a loaded gun and arrested him. After further searching the defendant the officers found crack cocaine and prescription pills.

Although the defendant was in a "high drug-trafficking area" and it was 4:00 a.m., the officer testified that he observed no conduct from the defendant consistent with drug activity. The court found that the 911 call was too vague and lacked any indicia of reliability. The caller only stated that people were walking around her home, not that she observed any incriminating behavior or that she suspected them of any criminal conduct in particular. The court further found that when the officers first observed the defendant he was walking toward the white car and he did not change his course or otherwise react suspiciously to their presence.

Even though the officers stopped an individual who turned out to be engaged in criminal conduct, the totality of the circumstances did not provide a "particularized and objective basis for suspecting the defendant of criminal activity." The *Fourth Amendment* does not allow a detention based on an officer's "gut-feeling" that a suspect is up to no good.

Click **HERE** for the court's opinion.

*****

U.S. v. Sliwo, 2010 U.S. App. LEXIS 18735, September 8, 2010

The court held that the government failed to present sufficient evidence to establish that the defendant knew he was involved in a scheme to procure marijuana, stating:

> It is a step too far to find that the defendant knew that marijuana was in the van simply because he was involved in the run-up to the acquisition of the marijuana and served as a lookout when the drugs were actually loaded into the van, even though he was not present to see the marijuana being loaded. No evidence was presented that demonstrated the defendant's knowledge that the purpose of the scheme was the acquisition of marijuana. The government only showed that the defendant was involved in a scheme, and the evidence of his participating in transporting the empty van and serving as a lookout would not allow a rational jury to find beyond a reasonable doubt that the defendant conspired to possess with intent to distribute marijuana.

Click **HERE** for the court's opinion.

*****

U.S. v. Montgomery, 2010 U.S. App. LEXIS 19058, September 13, 2010

The court held that the defendant's consent to search his home was voluntary, even though he had been administered morphine at the hospital. There is no *per se* rule that medication or intoxication defeats a person's capacity to consent to a search. It is just another factor to be taken into consideration when assessing the totality of the circumstances.

In this case the nurse testified that after administering the morphine to Montgomery that he remained alert and oriented before, during and after police questioning, and that the morphine did not affect his ability to answer questions.

Click **HERE** for the court's opinion.

*****

U.S. v. Howard, 2010 U.S. App. LEXIS 19127, September 14, 2010

The court held that even though the defendant's arrest was premature, the officers had reasonable suspicion to detain him. There was, at most, a ten minute wait for the officer to retrieve the drug-dog. The dog alerted on Howard's vehicle a few minutes after arriving. The length of this detention was reasonable.

The drug-dog's alert established probable cause to search Howard's vehicle. Because the search of the vehicle was supported by probable cause, independent of Howard's unlawful arrest, the cash inside the vehicle was properly seized.

The search warrant obtained by the police described Howard's property with sufficient particularity. Minor technical inaccuracies in the description will not render a search warrant unconstitutional. While the warrant described Howard's property as a single parcel, the property was actually made up of two parcels with two separate street addresses. The mobile home searched by the police was technically on the second parcel, which was inaccurate, but it was described with reasonable accuracy in the search warrant.

Click **HERE** for the court's opinion.

*****

Hoffner v Bradshaw, 2010 U.S. App. LEXIS 19747, September 23, 2010

The court held that Hoffner's statements to the officers complied with *Miranda* and were properly admitted at trial. When the officers first interacted with Hoffner he was not in "custody" for *Miranda* purposes. Hoffner was at a friend's house when the police burst in to execute a search warrant. The officers asked him some general questions regarding the victim's disappearance and Hoffner made incriminating statements. The court recognized that general on-the-scene questioning, as to facts surrounding a crime or other general questioning of citizens in the fact-finding process, does not implicate *Miranda*.

Additionally, the court held that other incriminating statements made by Hoffner were entirely "volunteered" by him and not given in response to police questioning, and therefore were not admitted in violation of *Miranda.*

Click **HERE** for the court's opinion.

*****

7th Circuit

U.S. v. Szymuszkiewicz, 2010 U.S. App. LEXIS 18815, September 9, 2010

The defendant was convicted under the *Wiretap Act (18 U.S.C. § 2511(1)(a)* for intentionally intercepting electronic communications sent to his supervisor. He obtained access to his supervisor's computer and set up a "rule" that forwarded all of the emails she received to his computer.

The court held that although the defendant did not learn anything worthwhile, the intentional interception of the emails was enough to support his conviction. The government did not have to establish that he obtained valuable information.

Additionally, under the *Wiretap Act* any acquisition of information using a "device" is an interception, to include obtaining access to an email inbox's contents by automated forwarding. The supervisor's computer, the off-site servers and the defendant's computer constituted "devices" under the *Wiretap Act*.

Click **HERE** for the court's opinion.

*****

U.S. v. Pineda-Buenaventura, 2010 U.S. App. LEXIS 19230, September 15, 2010

DEA agents obtained a search warrant for the defendant's downstairs apartment, Unit A. A different group of agents executed the search warrant, and not realizing that the upstairs apartment, Unit B, was a separate apartment, entered it. The agents saw the defendant and two other men sleeping in Unit B. The agents arrested the defendant and transported him to the police station while the two other men were taken outside. After a preliminary sweep, but before any contraband was found, the agents realized that Unit B was a separate unit, and not included in the search warrant. The agents obtained oral and written consent to search Unit B from the two men, who told them that they lived there. The agents searched Unit B and found one kilogram of cocaine under the defendant's bed.

The court held that the co-tenants' consent to search were valid. Forty five minutes elapsed between the time they were taken out of the apartment to when they gave they gave their oral consents. They were permitted to get dressed and they were not handcuffed. The agents told both men that they did not have to give the agents permission to search the apartment.

The court further held that the agents' illegal entry into Unit B did not taint the co-tenants' consent. Once the agents realized that entry into Unit B was a mistake, they withdrew and obtained valid consent to search.

Click **HERE** for the court's opinion.

*****

U.S. v. Orr, 2010 U.S. App. LEXIS 19941, September 27, 2010

The court rejected Orr's argument that the district court should have made the entrapment defense available to him, but even if it had, that it would have been futile. A successful entrapment defense requires proof of two elements: (1) government inducement of the crime and (2) lack of a defendant's predisposition to engage in criminal conduct.

Spaden's (an undercover police officer's fictional persona used as part of an undercover sting operation to investigate internet crimes) Yahoo profile did not contain any sexual information, yet without provocation Orr initiated contact with Spaden, and his first comment to her was an inquiry about sexually abusing her daughters. He subsequently made several statements to Spaden that showed his continuing interest in abusing Spaden's daughters. When the government simply invites the defendant to participate in the crime and does not employ any

pressure tactics or use any other type of coercion to induce the defendant, he is not entitled to an entrapment defense.

Further, all factors indicated that Orr was predisposed to commit the charged offenses, *18 U.S.C. § 2422(a)* and *(b)*, since he was the first one to suggest training Spaden's daughters, and he encouraged Spaden to acclimate the girls to sexual acts.

Click **HERE** for the court's opinion.

*****

8th Circuit

U.S. v. Seay, 2010 U.S. App. LEXIS 18738, September 8, 2010

The defendant was convicted of possessing a firearm while being an unlawful user of, or addicted to, a controlled substance in violation of *18 U.S.C. §§ 922(g)(3)* and *924(a)(2.)* He argued that *18 U.S.C. § 922(g)(3)* is unconstitutional following the Supreme Court's decision in *District of Columbia v. Heller*, 554 U.S. 570 (2008), claiming that the prohibition on firearm possession in *§ 922(g)(3)* violates his *Second Amendment* right to keep and bear arms.

The court noted that since *Heller*, many defendants have argued that *18 U.S.C. § 922(g)* or some subsection thereof, violates the *Second Amendment*, although none have succeeded. The court held that nothing in the defendant's argument "convinces us that we should depart company from *every* other court to examine *§ 922(g)(3)* following *Heller*. In passing *§ 922(g)(3)*, Congress expressed its intention to "keep firearms out of the possession of drug abusers, a dangerous class of individuals." "As such, we find that *§ 922(g)(3)* is the type of "longstanding prohibition on the possession of firearms" that *Heller* declared presumptively lawful."

Click **HERE** for the court's opinion.

*****

U.S. v. Perdoma, 2010 U.S. App. LEXIS 19066, September 13, 2010

A plainclothes officer approached Perdoma at a bus station and identified himself as a police officer. The officer told Perdoma that he was not under arrest and asked him if he would answer a few questions. During their brief conversation the officer smelled the odor of marijuana emanating from Perdoma. The officer asked Perdoma for identification, who reached for his wallet, then turned and ran from the officer. After a brief chase, another officer on duty at the bus station arrested Perdoma. The officers searched a bag that Perdoma had been carrying and discovered one pound of methamphetamine.

The court held that the officer's initial encounter with Perdoma was consensual noting that nothing about this initial encounter would have caused a reasonable person in Perdoma's situation to believe that he was not free to disregard the officer's questions and walk away. Once

the officer detected the odor of marijuana emanating from Perdoma he had probable cause to arrest him for marijuana possession.

The court further held that the search of Perdoma's bag was a valid search incident to his arrest. Perdoma argued that after he was restrained, and the bag was taken from him, it was "beyond his reach," and therefore could not be searched incident to his arrest. The court stated that although an officer may have exclusive control of a seized item, it does not mean that it has been removed from the arrestee's area of immediate control. In this case the search of the bag occurred in close proximity to where Perdoma was restrained, and he had already run from an officer once. Under these circumstances the bag was within "the area into which the arrestee might reach in order to grab a weapon or evidentiary items."

Since the search of a bag in a bus terminal did not involve "circumstances unique to the vehicle context," the Supreme Court's holding in *Gant* that the police may search an arrestee's vehicle for "evidence relevant to the crime of arrest" does not apply to the search of Perdoma's bag.

Click **HERE** for the court's opinion.

*****

9th Circuit

Thompson v. Runnels, 2010 U.S. App. LEXIS 18750, September 8, 2010

Police suspected that Thompson murdered his girlfriend. He agreed to go the police station for questioning. At some point Thompson's interrogation became "custodial" before he admitted any wrongdoing. The officers had not yet *Mirandized* Thompson, and they admitted to employing "sophisticated interrogation techniques to keep the interview going" and obtain incriminating statements. After Thompson gave his most detailed account of how he killed his girlfriend the officers *Mirandized* him. The officers then used Thompson's prior admissions to elicit further details and "hold him to his story."

The court held "the only reasonable inference from this interrogation sequence is that the officers deliberately withheld *Miranda* warnings until after obtaining a confession." The officers' deliberate withholding of *Miranda* warnings until after Thompson confessed rendered the subsequent warnings ineffective; therefore, Thompson's confession should have been suppressed.

Click **HERE** for the court's opinion.

*****

Delia v. City of Rialto, 2010 U.S. App. LEXIS 18836, September 9, 2010

The city suspected that Delia was abusing his off-work status by engaging in a home improvement project. Surveillance revealed that Delia had purchased several rolls of fiberglass

building insulation. Although Delia had been issued an off-duty work order, the doctor had not placed any activity restrictions on him.

During an internal investigation Delia refused to consent to a warrantless search of his home for the insulation. He also refused to go into his home and bring out the rolls of insulation for his supervisors' inspection when asked. Finally, Delia was ordered to go into his home and bring out the insulation for inspection, having been told that his failure to do so could result in his termination.

The court held that ordering Delia to go into his home and bring out the rolls of insulation for inspection was a warrantless compelled search that violated the *Fourth Amendment*. However his supervisors were entitled to qualified immunity since Delia had not demonstrated that they violated a clearly established right, such that the defendants would have known that their actions were unlawful.

Click **HERE** for the court's opinion.

*****

U.S. v. Bohn, 2010 U.S. App. LEXIS 19384, September 17, 2010

The court held that the federal government has the power under the *Property Clause* to enforce *36 C.F.R. § 4.2(b)* (failure to wear a helmet) on land over which it has only proprietary jurisdiction. Additionally, there was sufficient evidence that the defendant violated *36 C.F.R. § 2.32(a)(2)* (refusing to obey a lawful order), which applies on land administered by the National Park Service, over which the federal government has only proprietary jurisdiction. Finally, the defendant's conviction for refusing to obey a lawful order, after he refused to tell the NPS Ranger his last name, did not violate his *Fifth Amendment* right to remain silent. Answering a request to disclose a name is likely to be so insignificant in the scheme of things as to be incriminating only in unusual circumstances, and there were no unusual circumstances in this case.

Click **HERE** for the court's opinion.

*****

11th Circuit

U.S. v. Williams, 2010 U.S. App. LEXIS 19054, September 13, 2010

Based on the totality of the circumstances the officer had reasonable suspicion to believe that the occupants of the car had been involved in criminal activity, therefore he was justified in stopping the car in which the defendant was riding. When the officer saw a lone vehicle hurriedly pulling out of a high-crime housing project in the middle of the night within seconds of a gunshot, it was reasonable of him to suspect that the cars' occupants might have committed a crime.

Click **HERE** for the court's opinion.

*****