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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 http://www.fletc.gov/legal.

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Law Enforcement Case Granted Certiorari by the United States Supreme Court for the October 2011 Term

Miranda

Howes v. Fields
Decision Below: 617 F.3d 813 (6th Cir. 2010)

Whether a prisoner is always "in custody" for purposes of *Miranda* any time he is isolated from the general prison population and questioned about a crime other than the one for which he is incarcerated.

The Supreme Court granted certiorari on January 24, 2011 and will decide the case during the October 2011 term.

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2010 Year-End Report on the Federal Judiciary

On December 31, 2010, the Supreme Court released its annual report on the Federal Judiciary. Chief Justice Roberts discussed the approval, in September 2010, of the Strategic Plan for the Federal Judiciary, and the challenges that exist in achieving the goals outlined in the plan.

Additionally, the 2010 Year-End Report documented the workloads of the various federal courts. All major areas of the federal judiciary had larger caseloads in 2010, with the exception of the federal courts of appeals, which experienced a 3% decrease in filings.

Criminal case filings in the federal district courts rose 2% to 78,428. The number of defendants in those cases grew 2% to reach an all-time high of 100,366. Filings of immigration cases rose 9% to 28,046. The number of defendants in those cases increased 8% to 29,149. The majority of the immigration cases, 73%, were filed in the five southwestern border districts and most of the immigration cases, 83%, involved charges of improper reentry by aliens.

Click **HERE** for the 2010 Year-End Report on the Federal Judiciary

Click **HERE** for the Strategic Plan for the Federal Judiciary

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CASE SUMMARIES

Circuit Courts of Appeals

2nd Circuit

U.S. v. Hassock, 2011 U.S. App. LEXIS 1757, January 28, 2011

Officers went to Hassock's apartment to conduct a knock and talk after they received information that he was unlawfully in possession of a handgun. Once at the apartment a woman answered the door and let the officers in. She told them that she and her boyfriend occupied the back bedroom and Hassock stayed in the front bedroom. The woman told the officers that she had just woken up, so she did not know who was in the apartment. She told officers that they could look around. Officers went into Hassock's bedroom and found a handgun under the bed.

The government argued that the officers seized the handgun during a valid protective sweep of the apartment. The court disagreed. The *Fourth Amendment* allows a limited protective sweep in conjunction with an in-home arrest when the officer possesses a reasonable belief, based on specific and articulable facts, that the area to be swept harbors an individual posing a danger to the officer or someone in the home. Additionally, this court allowed a protective sweep of a home when police entered pursuant to lawful process to accompany a person, who had a protective order against a roommate, when he went to their apartment to collect his belongings. Neither of these situations existed here. When Hassock did not answer the door, the "sweep" itself became a search for him that required a warrant, an exigency or authorized consent, none of which was present.

There is a split among the circuits regarding the proper basis for entry into a home when police conduct a protective sweep. The Ninth and Tenth circuits hold that the protective sweep doctrine applies only where entry has been made incident to an arrest in the home. The First, Fifth, Sixth, Seventh and D.C. Circuits have extended the doctrine to allow protective sweeps in non-arrest situations.

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

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3rd Circuit

U.S. v. Whitfield, 2010 U.S. App. LEXIS 24967, December 6, 2010

While on patrol with other officers, in an area known for drug sales, Officer Redd saw Whitfield and another person surreptitiously exchange something, then walk away from each other when they saw his police car. Officer Redd did not tell the other officers that he saw the hand-to-hand exchange, but told them to check-out the two men on the corner. Officer Rivera approached Whitfield, who put his hand in his pocket and refused to remove it when ordered. Officer Rivera grabbed Whitfield who admitted that he had gun.

Whitfield argued that the court could only analyze the facts Officer Rivera knew to determine if there was reasonable suspicion to seize him. Applying the collective knowledge doctrine to a *Terry* stop for the first time, the court held that the collective knowledge of all the officers involved, including Officer Redd, provided reasonable suspicion to believe Whitfield was involved in criminal activity. The court stated that it made sense to apply the collective knowledge doctrine to fast-paced, dynamic situations, where the officers work together as a unified and tight-knit team, noting that it would be impractical to expect an officer in such a situation to communicate to the other officers every fact that could be pertinent in a subsequent reasonable suspicion analysis.

The 1st and 7th Circuits agree.

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

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4th Circuit

Bellotte v. Edwards, 2011 U.S. App. LEXIS 520, January 11, 2011

Officers suspected that Bellotte possessed child pornography. Detective Edwards obtained a search warrant and executed a late night, no-knock entry into his home. The warrant did not provide for a no-knock entry, but the officers later claimed that exigent circumstances justified this type of entry. The officers did not find any child pornography and no charges were ever filed against Bellotte or his wife.

As part of the *Fourth Amendment's* reasonableness requirement, police must knock and announce their presence before forcibly entering a residence. No knock entries may be reasonable if exigent circumstances exist. However, police must have a reasonable suspicion that knocking and announcing their presence under the particular circumstances would be dangerous, futile or would allow the destruction of evidence.

The court held that the officers' no-knock entry was not justified because they failed to offer any particularized basis to believe that someone in Bellotte's home would react violently to a knock and announce.

The suspicion that Bellotte possessed a single photograph, suspected to be child pornography, without more, did not automatically provide a particularized basis for believing there was danger to the officers executing the warrant. Additionally, there was no indication that the Bellottes had any tendency to violence, and neither had a criminal record. The fact that the Bellottes each possessed a concealed carry weapons permit showed they were citizens in good standing who passed a background check. The court noted that a justifiable fear for officer safety must include more than a belief that a gun may be located within a home, but rather facts to indicate that someone inside the home might be willing to use it. The court also found that the officers involved had experience with no-knock warrants, and they could have sought one in this case. The court noted that after obtaining the warrant, the officers did not discover any new information that would have supported a no-knock entry.

The court held that the officers were not in entitled to qualified immunity stating, "A man of reasonable intelligence would not have believed that exigent circumstances existed in this situation."

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

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5th Circuit

U.S. v. Oliver, 2011 U.S. App. LEXIS 289, January 6, 2011

Oliver argued that federal agents illegally searched the contents of a cardboard box given to them by his girlfriend. Oliver left an unsecured cardboard box in the dining room of her apartment. When agents interviewed the girlfriend, she gave them the box, but did not tell them she had already examined its contents. The court held that the girlfriend's search of the box destroyed Oliver's reasonable expectation of privacy in it, and rendered the subsequent warrantless police search permissible under the *Fourth Amendment*. The court stated the girlfriend's search made the agents' warrantless search permissible, not whether the agents knew about it or not.

Editor's note: The court cautioned that his holding was limited to the unique facts of this case and was not intended to expand significantly the scope of the private search doctrine.

Oliver also argued that incriminating statements he made to the agents during his custodial interrogation should have been suppressed, claiming that he had not waived his *Miranda* rights. After agents arrested Oliver, he was advised him of his *Miranda* rights and given two forms. Oliver signed the first form acknowledging that he understood his rights, but he refused to sign the second form waiving those rights. Nevertheless, Oliver told the agents that he wished to answer their questions and he confessed to his role in a mail fraud and identity theft scheme.

A suspect may waive his *Miranda* rights if the waiver is made voluntarily, knowingly and intelligently. The mere refusal to sign a written *Miranda* waiver does not automatically make subsequent statements by a defendant inadmissible. The court held that the circumstances surrounding Oliver's arrest and interview established that Oliver's waiver was voluntary, even though he refused to sign the wavier form. Specifically: (1) agents provided Oliver with a copy of the *Miranda* warning waiver form and read it aloud to him as he followed along, (2) Oliver expressly told the agents that although he would not sign the *Miranda* waiver form, he would discuss the fraud scheme, (3) Oliver never requested an attorney, (4) Oliver was articulate, coherent and not under the influence of alcohol or drugs, and appeared to understand what was going on, (5) Oliver clearly understood his rights since he signed the first form that acknowledged this, and he had extensive experience with the criminal justice system, and (6) Oliver was not coerced in any way during the interview.

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

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U.S. v. Delgado, 2011 U.S. App. LEXIS 963, January 19, 2011

The court dismissed the conspiracy charge of the indictment because the government failed to introduce sufficient evidence to establish that Delgado entered into a conspiracy with anyone

other than the government informant. While it takes at least two people to form a conspiracy, an agreement must exist among co-conspirators who actually intend to carry out the agreed upon criminal plan. A defendant cannot be criminally liable for conspiring solely with an undercover government agent or a government informant, therefore, evidence of any agreement Delgado had with the government informant cannot support a conspiracy conviction.

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

*****

7th Circuit

Jones v. Clark, 2011 U.S. App. LEXIS 707, January 14, 2011

Officer Clark approached Jones, who is African-American, after receiving a report that a "person of color" was taking pictures of houses in an almost entirely white neighborhood. Jones was a meter reader for Commonwealth Edison (ComEd), and she used binoculars so she could take readings from a distance when she could not gain access to a yard. Clark approached Jones, who was dressed in a hat, shirt, pants, and a reflective vest, all emblazoned with a ComEd logo. Jones told Clark that she was meter reader and gave him two ComEd identification cards that contained her full name and photograph. Jones showed the binoculars to Clark and explained to him why she used them. When Jones turned to walk away, the officer asked her for her date of birth. Jones, after accusing Clark of harassing her, took a few steps away from him and took out her cell phone to call her supervisor. Clark called for back up. Officer Kaminski arrived and after a brief exchange with Jones arrested her for obstructing a peace officer.

When Clark first approached Jones, it was a consensual encounter, and he was entitled to ask her what she was doing. However, once Clark asked Jones for her date of birth, he conceded that she was not free to leave. At this point, the court found that the officers could not point to a single fact that led them to believe that Jones was engaged in criminal activity. Jones was dressed in a ComEd uniform, she told Clark that she was reading meters, she provided two forms of company identification, she explained her use of binoculars, and a resident confirmed that she had read the meter at his house.

The court held that the officers did not have reasonable suspicion to detain Jones, nor did they have probable cause to arrest her. The officers argued that they had probable cause to arrest Jones for obstructing a peace officer and disorderly conduct; however, the court stated that the only disorderly conduct in this case came from the officers. As a result, the court held that the officers were not entitled to qualified immunity from Jones's false arrest claim.

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

*****

U.S. v. Tinnie, 2011 U.S. App. LEXIS 861, January 18, 2011

Officers patrolling a high crime, gang, drug and gun activity area stopped the vehicle in which Tinnie was a passenger, at 11:30 p.m. on Friday night, because the multiple air fresheners hanging from the rearview constituted an "obstructive view." During the traffic stop, the officer ordered Tinnie out of the car, frisked him and discovered a handgun concealed on his person.

During traffic stops, officers may frisk the driver and any passenger upon reasonable suspicion that they may be armed and dangerous. The court held the totality of the circumstances justified frisking Tinnie. The officer was part of a unit that patrolled high crime areas and was familiar with the risk of gun possession in that area. Tinnie acted suspiciously by moving around nervously as the officers approached the car. After telling the officer that he did have an identification card, Tinnie told the officer, without checking his pockets, that he did not have an identification card. Tinnie told the officer that he was twenty-eight years old, but that did not match with the date of birth he had provided. When the officer asked Tinnie, twice, if he had any weapons on him, he remained silent, but when the officer asked him if he had any drugs on him, Tinnie immediately told him no.

The officer testified that when he asked Tinnie to step out of the car, he had already decided to frisk him. However an officer's subjective intent is irrelevant, and given all of the facts known to the officer, a reasonable officer would have believed the frisk was justified.

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

*****

8th Circuit

U.S. v. Craig, 2011 U.S. App. LEXIS 29, January 5, 2011

The court held that the marijuana and firearms initially discovered by the police during the illegal entry into Craig's home were admissible under the independent-source doctrine. The court found that the officers would have applied for a search warrant even if they had not seen those items in plain view while in the home. The court also found that even without this tainted information, there was probable cause to support the issuance of a search warrant for Craig's home.

The court held that Craig's voluntary statements to the Sheriff the next day were not subject to the exclusionary rule since the officers had probable cause to arrest him before they entered his home.

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

*****

U.S. v. Vinton, 2011 U.S. App. LEXIS 169, January 6, 2011

Vinton allowed officers to enter his home and search for a burglary suspect who had reportedly been there earlier in the day. Vinton asked an officer if their investigation had anything to do with guns. After the officer said yes, Vinton told him there were some guns in a closet and gave the officer permission to seize them, and to search the house for other weapons and drugs. The officers found several stolen firearms and a sawed-off shotgun in a bedroom. The officers arrested Vinton and transported him to an interview room at the police station. An officer advised Vinton of his *Miranda* rights, obtained a waiver and questioned Vinton who made several incriminating statements.

The court held that when Vinton made his pre-arrest statements he was not in custody; therefore, the officers were not required to advise him of his *Miranda* rights. The court found that Vinton

was not in custody because a reasonable person in his position would have felt at liberty to terminate the interrogation and ask the officers to leave. The court found that Vinton made the statements during a five-minute period, in his own home, and that this location was not indicative of the type of inherently coercive setting that normally accompanies a custodial interrogation. The court stated that the officer and Vinton were alone during the questioning and that Vinton was not restrained, threatened or coerced.

The court held that Vinton voluntarily consented to the search of his house. The officers did not raise their voices, draw their guns, or otherwise threaten or coerce Vinton. Vinton was unrestrained and rational when he consented to the searches.

The court held that Vinton's *Miranda* waiver was voluntary, knowing and intelligent. There was no evidence that the officers intimidated, coerced or threatened Vinton prior to or during his interview at the police station. An officer read the waiver form out loud to Vinton, who indicated that he understood his rights and agreed to waive them, and then he signed, initialed and dated a *Miranda* waiver form.

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

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U.S. v. Randolph, 2011 U.S. App. LEXIS 496, January 11, 2011

A plain-clothes officer saw Randolph driving a car. The officer knew Randolph from a previous drug investigation and recognized the car as belonging to another person involved in illegal drug activity. The officer followed Randolph and saw him pull over to the curb without using his turn signal. The officer called for a uniformed patrol officer to stop Randolph for this traffic violation.

The patrol officer arrived as Randolph got out of the car and began to walk away. The patrol officer stopped Randolph and brought him back to the car. Randolph denied owning the car, and denied that he had just gotten out of it. The patrol officer ran a criminal history check on Randolph as another officer looked through the passenger's side window. The officer saw a handgun lying on the driver's side floorboard. After the patrol officer confirmed that Randolph was a convicted felon, he arrested him and the other officer retrieved the handgun from the car.

The court held that the initial traffic violation for failure to use a turn signal provided probable cause to justify the stop, even if the officer was suspicious of other crimes.

After the officer saw the handgun, and the patrol officer confirmed that Randolph was a felon, they arrested him. Having seen the handgun on the floor of the car, the officer had probable cause to believe the car contained evidence of the crime for which Randolph was arrested; therefore, under *Gant* he was allowed to retrieve the handgun as part of the search incident to arrest.

The court held that even if the search of the car were unconstitutional, Randolph had no standing to challenge the search. Since Randolph repeatedly disavowed any ownership interest in the car and failed to show that he had a legitimate expectation of privacy in the car, he is precluded from claiming that the search and seizure of the handgun from the car violated his rights.

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

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Hart v. U.S., 2011 U.S. App. LEXIS 498, January 11, 2011

A federal grand jury indicted Block for three sex offenses and a warrant was issued for his arrest. A federal agent went to Block's home to arrest him. The agent had previously interviewed Block regarding the case, and they were familiar with each other. Block came out of the house but asked the agent if he could go back inside to finish cleaning his room before he was taken to jail. The agent agreed and Block went back inside. The agent heard a gunshot from the back of the house. When he went to investigate, he found Block dead from a self-inflicted gunshot wound to the head.

Block's mother sued the federal government. She alleged the federal agent did not adequately supervise, secure and detain her son after his arrest, which resulted in his suicide. The court dismissed her suit, holding that the discretionary function exception to the general waiver of sovereign immunity in the Federal Tort Claims Act (FTCA) applied.

The United States is immune from suit unless it consents. Congress waived the sovereign immunity of the United States by enacting the FTCA, under which the federal government is liable for certain torts its agents commit in the course of their employment. However, the FTCA does not waive immunity when a federal employee performs a discretionary function.

The agent complied with his agency's handbook, which granted him the discretion to afford Block some freedom of movement before transporting him to jail. While it is the mandatory duty of law enforcement officers to enforce the laws, the court held that a federal law enforcement officer's on-the-spot decisions concerning how to effectuate an arrest, including how best to restrain, supervise, control or trust an arrestee, fall within the discretionary function exception to the FTCA.

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

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U.S. v. Vanover, 2011 U.S. App. LEXIS 638, January 13, 2011

The court held that the defendant voluntarily, knowingly, and intelligently waived his *Miranda* rights before he made incriminating statements to the officers. The officers holstered their weapons after securing the premises; no one raised their voices or argued; the defendant was not under the influence of alcohol or drugs; the officers wore plain-clothes; although he was handcuffed, the defendant was in his own home, and he was calm and pleasant during the interview.

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

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U.S. v. Hambrick, 2011 U.S. App. LEXIS 1120, January 20, 2011

An informant, who had provided accurate information three times in the past, told police that Hambrick was in town to sell crack cocaine. He claimed that Hambrick would be driving a dark colored car, with Illinois license plates, and a missing gas-tank door, and that he would be going

to a specific area of town. The informant told police that in the past he had seen Hambrick remove crack cocaine from his buttocks and distribute it to others.

An officer saw Hambrick driving a vehicle that matched the description given by the informant in the area of town where the informant claimed he would be. The officer confirmed that Hambrick had a suspended driver's license and conducted a traffic stop. After arresting Hambrick for driving under suspension, officers searched his car and found marijuana residue and a digital scale covered in cocaine residue. Officers strip searched Hambrick at the jail and recovered crack cocaine from between his buttocks.

The court held that the officer lawfully stopped Hambrick because he was driving with a suspended driver's license. The search of Hambrick's vehicle was not a valid search incident to arrest under *Gant* since Hambrick was handcuffed in the back of a patrol car; therefore, he had no access to his vehicle while it was being searched. In addition, since Hambrick was arrested for driving under suspension, there was no reason to believe that his vehicle contained evidence of that offense. However, the officers had probable cause to search Hambrick's vehicle under the automobile exception to the warrant requirement. The informant had provided reliable information in the past; he supplied detailed information about Hambrick's vehicle and he correctly predicted where Hambrick would be driving.

The court held that officers recovered the drugs from Hambrick as part of a valid search incident to arrest. The strip search in this case was reasonable since it took place in an interrogation room at the police department, it was based on highly reliable information, and the officers allowed Hambrick to remove the drugs on his own, without touching him.

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

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9th Circuit

Byrd v. Maricopa County Sheriff's Department, 2011 U.S. App. LEXIS 86, January 5, 2011

The court held that the cross-gender strip search performed on Byrd at the detention facility violated his *Fourth Amendment* right to be free from unreasonable searches. The court held that the justification for conducting the strip search and the location where it occurred was reasonable. However, the manner in which the female cadet performed the strip search was not. The court noted that courts throughout the country have universally frowned upon cross-gender strip-searches, in the absence of an emergency or exigent circumstances. In this case, it was undisputed that no emergency existed. During the search, the female cadet twice moved Byrd's penis and scrotum aside and separated the cheeks of his buttocks to search inside his anus. While the dissent characterized the search as a pat-down, the court disagreed, stating that if the search were a true pat-down, it would probably have been reasonable.

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

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Huff v. City of Burbank, 2011 U.S. App. LEXIS 493, January 11, 2011

Four officers went to the Huffs' residence to investigate alleged threats made by their son at school. Two officers spoke to Mrs. Huff on the front steps while two officers stood near the sidewalk unable to hear the conversation. When Mrs. Huff turned and went into the house, the two officers who had been speaking to her followed her inside without her consent. The two officers on the sidewalk went into the house as well, believing that Mrs. Huff had consented to their entry. Once inside the home, Mr. Huff challenged the officers' authority to be there. The officers remained inside the home for five to ten minutes and left after they were satisfied that the Huffs' son had not threatened anyone.

The court held that the two officers who initially spoke with Mrs. Huff were not entitled to qualified immunity. Both officers were aware that they did not have probable cause to stop or detain Mrs. Huff or her son, and they knew they had not been given consent to enter the home. A reasonable officer in this situation may have been frustrated by being refused entry to the home; however, he would not have mistaken such a refusal or reluctance to answer questions as exigent circumstances, which would allow him to enter the home without a warrant.

The court held that the two officers who were standing on the sidewalk, although mistaken, were reasonable in believing that their colleagues had been given consent to enter the home. As a result, they were entitled to qualified immunity. No one told them the basis for entry into the home or told them that they should remain outside. Under those circumstances, a reasonable officer may have believed that his fellow officers had been given consent to enter the home.

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

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U.S. v. Basher, 2011 U.S. App. LEXIS 1064, January 20, 2011

Campers on National Forest Service land heard illegal gunfire coming from an adjacent undeveloped camping site. They also saw a campfire at the same site although there was a burn ban in effect. Two of the campers were off duty police officers, who went to the undeveloped campsite the next day to investigate.

Inside a vehicle at the campsite, officers saw a half-empty box of shotgun shells in plain view, and a smoldering campfire. The officers approached a tent and announced their presence. Basher and his son came out of the tent and when asked if he had a gun, Basher told the officers that there was a gun in the tent. The officer asked if Basher's son could retrieve the gun and Basher nodded his head in agreement then motioned for his son to get the gun. Basher's son retrieved a sawed-off shotgun from the tent. The officers arrested Basher.

The court held that the officers' interaction with Basher was a valid *Terry* encounter. The officers had reasonable suspicion to believe that criminal activity had taken place at Basher's campsite based on their first-hand observations from the day before and from witness statements. The officers were justified in asking about the presence of a gun since they were investigating a gun crime.

The court held that the officers were not required to *Mirandize* Basher before asking him about the presence of a gun since Basher was not in custody for *Miranda* purposes. He had not been formally arrested and there was no restraint on his freedom of movement to the degree associated

with a formal arrest. The officers did not display their weapons, there was no use of physical force and no threatening language was used. Even if Basher had been in custody when the officers asked about the presence of a gun, the court held that the public safety exception to *Miranda* would have applied. An officer's questioning of a suspect without a *Miranda* warning is proper if the questioning is related to an objectively reasonable need to protect the officer or the public from any immediate danger associated with a weapon. Basher had not been searched or handcuffed, and the officers had reliable information that there was a gun at the campsite.

The court held that there was no *Fourth Amendment* violation concerning the retrieval of the weapon. The officer asked Basher for consent and he voluntarily nodded his head in agreement.

Finally, the court held that the warrantless entry by the officers into the campsite was not a violation of the *Fourth Amendment*. While Basher had a reasonable expectation of privacy inside his tent, the court found that he had no expectation of privacy in the campsite, and that the area outside of the tent was not curtilage. The campsite was not well defined and it was open to the public and exposed.

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

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U.S. v. Gonzalez-Diaz, 2011 U.S. App. LEXIS 1382, January 24, 2011

The defendant was convicted of being "found in" the United States following deportation, in violation of *8 U.S.C. § 1326*. The defendant argued that he was not "found in" the United States because his unlawful presence in the United States ended when he entered Canada on June 19, and because he was under official restraint when he re-entered the United States on June 20.

The court held that the defendant was "found in" the United States because he had never been legally admitted into Canada. The defendant's unlawful legal presence in the United States was not affected by his brief physical presence in Canada. The defendant was never legally in Canada and he was in some form of police custody throughout his physical presence there. He therefore remained "in" the United States until June 20 when he was "found" by the Customs and Border Protection agents and arrested.

Additionally, the defendant was not under official restraint when he was arrested because after having been denied legal entry into Canada, he was not entering the United States from a foreign country.

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

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10th Circuit

U.S. v. Wilkinson, 2011 U.S. App. LEXIS 904, January 18, 2011

Under the collective knowledge doctrine, an officer may lawfully detain a suspect when he is requested to do so by another officer, even if the requesting officer does not provide any details concerning the grounds for the stop. The collective knowledge doctrine applies to traffic stops for misdemeanors as well as stops for felonies.

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

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U.S. v. Polly, 2011 U.S. App. LEXIS 864, January 18, 2011

Officers involved in a narcotics surveillance operation conducted a traffic stop on Polly after they saw him commit two minor traffic offenses. Even if the officers were primarily interested in furthering their drug investigation, the court held that the traffic stop was valid because the officers saw Polly commit two traffic violations.

Polly consented to a search of his person and officers recovered crack cocaine. The court held the officers obtained Polly's consent voluntarily because the officers did not have their weapons drawn, they used a conversational tone when speaking to him, Polly was in a public place, and there were only two officers present.

After arresting Polly, officers drove his vehicle to the police station where they searched it and discovered crack cocaine, and other drug paraphernalia. The court held that the search of the vehicle was justified by the automobile exception to the warrant requirement. Officers had previously purchased drugs from Polly as part of a controlled buy, Polly appeared to be fleeing after he saw the officers during their surveillance, which resulted in his two traffic violations, and the officers had just found crack cocaine on him after he got out of this vehicle.

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

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