

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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CASE SUMMARIES

United States Supreme Court

Kentucky v. King, 2011 U.S. LEXIS 3541, May 16, 2011

Officers set up a controlled buy of crack cocaine outside an apartment complex. After the deal, the suspect went into the apartment building. Officers followed the suspect into a breezeway where they saw two apartments, one on the left and one on the right. The officers did not see which apartment the suspect entered. The officers smelled marijuana smoke emanating from the apartment on the left as they approached the door. One of the officers knocked loudly on the door and announced, “Police, police, police.” The officers did not demand entry or threaten to break down the door. As soon as the officer started banging on the door, he heard noises that led him to believe that drug related evidence was being destroyed inside the apartment. At this point, the officers announced they were going to enter the apartment and they kicked down the door. Once inside the apartment the officers performed a protective sweep and recovered marijuana and powder cocaine in plain view. Officers eventually entered the apartment on the right and found the suspected drug dealer who was the initial target of their investigation.

One well recognized exception to the warrant requirement applies when the exigencies of the situation makes the needs of law enforcement so compelling that a warrantless search is objectively reasonable under the *Fourth Amendment*. The need to prevent the imminent destruction of evidence has been identified as one of the exigencies that may justify the warrantless search of a home. Where, as here, the police do not create the exigency by engaging or threatening to engage in conduct that violates the *Fourth Amendment*, warrantless entry to prevent the destruction of evidence is reasonable.

When officers who do not have a warrant knock on a door, they do no more than any private citizen might do, and the occupant has no obligation to open the door or speak to them. It was only after the officers knocked on the door and announced, “Police, police, police,” did the exigency arise. Because the officers did not violate or threaten to violate the *Fourth Amendment* by demanding entry, or threatening to enter the apartment, the court held that the exigency that arose afterward justified the officers’ warrantless entry into the apartment.

Click [HERE](#) for the court’s opinion.

Camreta v. Greene, 2011 U.S. LEXIS 4061, May 26, 2011
(consolidated with *Alford v. Greene*)

A child protective services worker and a police officer interviewed a nine-year-old girl at school regarding allegations that her father was sexually abusing her. The girl’s mother sued Camreta and Deputy Greene claiming that the interview violated her daughter’s *Fourth Amendment* rights since it was conducted without either a warrant or the parents’ consent.

The Ninth Circuit Court of Appeals held that the interview violated the girl's *Fourth Amendment* rights, but that Camreta and Deputy Greene were entitled to qualified immunity. Camreta and Greene appealed the portion of the court's holding that they violated the girl's *Fourth Amendment* rights by conducting their interview without a warrant or the parents' consent.

Although Camreta and Greene prevailed by having received qualified immunity, the Supreme Court held, as a matter of procedure, that they had the right to appeal the Ninth Circuit's ruling on the *Fourth Amendment* issue.

However, the Supreme Court declined to rule on whether or not the girl's *Fourth Amendment* rights were violated in this case, finding the matter moot. The court noted the interview occurred nine years ago, the girl was now living in another state and she was about to graduate from high school. There was no chance that she would be seized in a school in the Ninth Circuit and questioned about allegations of sexual abuse. As a result, the Supreme Court vacated the Ninth Circuit's holding as to this issue, and the *Fourth Amendment* question remains unanswered.

Click [HERE](#) for the court's opinion.

Circuit Courts of Appeals

1st Circuit

U.S. v. Booker, 2011 U.S. App. LEXIS 8925, May 2, 2011

An assault statute that allows for an individual to be convicted if he recklessly causes bodily injury or offensive physical contact to another person qualifies as a misdemeanor crime of domestic violence under *18 U.S.C. § 922(g)(9)*. The statutory definition of a misdemeanor crime of domestic violence is not limited to circumstances where an individual acts intentionally or knowingly.

Additionally, the court held that *18 U.S.C. § 922(g)(9)* did not violate the defendant's right to bear arms under the *Second Amendment* since it substantially promotes an important government interest in preventing domestic gun violence.

The 7th Circuit agrees.

Click [HERE](#) for the court's opinion.

U.S. v. Reynolds, 2011 U.S. App. LEXIS 9926, May 17, 2011

Officers went to Bradford's home after he complained that Reynolds had been staying with him, but failed to pay her share of the rent. Bradford told the officers that Reynolds possessed two firearms. The officers entered Reynolds's bedroom and asked her if she had any guns. Reynolds answered yes and pointed to the headboard of the bed behind her. The guns were not visible. One of the officers went to the headboard, opened a compartment within it, and removed two guns. After learning that Reynolds had been involuntarily committed to a mental hospital a

month prior, the officers seized the guns and left. Reynolds was later charged with two firearms offenses.

The court held that Reynolds gave the officer implied consent to search the headboard after she gestured to the headboard when answering “yes” to whether she had any guns. This gesture demonstrated that Reynolds understood the officer intended not only to learn of the existence of the weapons, but also to find them.

Additionally the court held that Reynolds’s consent was voluntary. The search was minimally coercive and that there was no evidence that Reynolds was affected by any underlying illness during the search. She was responsive, lucid and cooperative with the officers during the encounter.

Click [HERE](#) for the court’s opinion.

U.S. v. McGregor, 2011 U.S. App. LEXIS 10883, May 27, 2011

The court held that the officers had reasonable suspicion to justify a *Terry* frisk of the defendant and his vehicle for weapons. The defendant and the three passengers had just driven away from a hospital where two fellow gang members had been brought after being shot. All four had prior criminal histories, and the defendant had a conviction for a firearms offense. The defendant exceeded the speed limit, ran a red light, and all four occupants appeared to be nervous when the officers approached them. It was reasonable to believe that the four men were out to seek revenge against a rival gang, and therefore were armed.

During his frisk of the passenger compartment of the vehicle, the officer noticed an alarm magnet on the dashboard below the car stereo. Based on his training and experience, he knew that this object could be used as a switch to activate a door on a hidden compartment in the vehicle. The officer lifted the lid to the center console, removed several CDs, and pried open a small panel that provided access to the emergency-brake cables, which had been glued shut. The officer found a handgun and crack cocaine in this area. Later at the police garage, another officer figured out how to use the magnet to trigger the system that allowed access to the hidden compartment.

When conducting a vehicle frisk, an officer must confine his search for weapons to accessible areas of the vehicle. The court held that the hidden compartment was an accessible area of the vehicle and could be searched by the officer. The hidden compartment could be opened in a matter of seconds; therefore, anything concealed inside it was readily accessible to those in the passenger compartment.

Click [HERE](#) for the court’s opinion.

Mlodzinski v. Cormier, 2011 U.S. App. LEXIS 11117, June 2, 2011

The court held that the officers were entitled to qualified immunity after they detained the plaintiffs for forty-five minutes in handcuffs during the execution of a search warrant. Without deciding whether the officers violated the plaintiff’s *Fourth Amendment* rights, the court stated

that if there was a violation, it was not so clear as to give the officers fair warning that their conduct was unlawful.

The court, however, declined to grant qualified immunity to two officers who pointed their firearms at two individuals who were present during the execution of the search warrant. A reasonably competent officer would not have thought that it was permissible to point an assault rifle at the head of an innocent, non-threatening, and handcuffed fifteen-year-old girl for seven to ten minutes. This was far beyond the time it took to secure the premises, arrest, and remove the only suspect.

Regarding the second woman, it was objectively unreasonable for the officer to point his assault rifle at her head after she was handcuffed and lying partially nude in bed. The woman was not the suspect, she was not trying to resist, flee, or dispose of any contraband or weapons, and she was completely compliant with all orders.

Click [HERE](#) for the court's opinion.

2nd Circuit

Wood v. Ercole, 2011 U.S. App. LEXIS 9108, May 4, 2011

The court found that Wood's videotaped statement was taken after he told the officer "I think I should get a lawyer." This request was unambiguous, as evidenced by the fact that the officer replied "ok," provided Wood a telephone, then left the room, presumably to allow a more private conversation between counsel and client. Consequently, the interrogators had an obligation to stop all questioning after Wood asserted his right to counsel. Admission of Wood's videotaped statement at trial violated his *Fifth and Fourteenth Amendment* rights.

Click [HERE](#) for the court's opinion.

4th Circuit

Noel v. Arston, 2011 U.S. App. LEXIS 11110, June 2, 2011

After a nine-day trial, a jury found that police officers executing a search warrant for narcotics did not violate the *Fourth Amendment* when they performed a no-knock entry into a residence and fatally shot a woman who was reaching for a firearm.

The court held that the district court gave the jury the proper instruction concerning the officers' use of force when it stated, "The correct standard, for all claims that law enforcement officers have used excessive force should be analyzed under the *Fourth Amendment* and its reasonableness standard."

The court also held that the district court's jury instruction properly discussed the need for both the officers' entry itself and their post-entry conduct to be reasonable. Additionally, the district court stated that the reasonableness of an officer's conduct in executing a search warrant, including the use of force, must be judged from the perspective of a reasonable officer on the

scene, and not with the 20/20 vision of hindsight. The district court's jury instruction made clear that the reasonableness requirement governed the entire search, not just one segment of it.

Click [HERE](#) for the court's opinion.

5th Circuit

U.S. v. Flores, 2011 U.S. App. LEXIS 9111, May 4, 2011

The court held that the good-faith exception to the exclusionary rule applied and that the defendant's motion to suppress was properly denied. Although an officer included mistaken information in the search warrant application, there was no evidence that he did so in bad faith or that the officers that executed the warrant were reckless or dishonest in their reliance on the warrant. Along with the mistaken information, the officer that drafted the warrant application also included accurate information that he obtained from his own research.

Click [HERE](#) for the court's opinion.

U.S. v. Cantu, 2011 U.S. App. LEXIS 10219, May 19, 2011

The court held that the officer's warrantless search of Cantu's handbags, during a traffic stop, violated the *Fourth Amendment*. Although the driver consented to search of the vehicle, he had neither the actual nor the apparent authority to consent to a search of his passenger's property. The officer had no authority to search inside Cantu's closed bags without her consent, which he neither sought nor obtained, and he knew the bags he was searching belonged to her.

After her arrest, while being transported to jail, Cantu made incriminating statements to the officer, without having been properly *Mirandized*. Approximately 4.5 hours later, DEA agents met with Cantu, *Mirandized* her, obtained a valid waiver and obtained a written confession from her.

The court held that the DEA interrogation and resulting confession were not tainted by the arresting officer's earlier *Miranda* violation while transporting Cantu to the jail. There was little continuity between the two interrogations. The arresting officer asked his questions in his patrol car, while different personnel working for a different agency conducted the later DEA interview in a different location. There was a 4.5-hour break between the two interrogations and the DEA agents, in their interview, did not exploit or refer back to Cantu's earlier statements.

Additionally, the court refused to suppress Cantu's written confession to the DEA agents based on the arresting officer's illegal search of her bags. The court held that the illegality of the search was clear however, the connection between the evidence it produced and Cantu's confession to the DEA agents was weak. There was nothing to indicate that the discovery of a small amount of marijuana in the bags compelled Cantu to confess to possession of a large quantity of cocaine later found hidden in the vehicle. Further, Cantu was provided *Miranda* warnings, interviewed by different officers from a different agency and approximately seven hours had passed between the search of Cantu's purse and the receipt of her written confession.

The full circumstances of the DEA interrogation served to purge the taint of the earlier illegal search.

Click [HERE](#) for the court's unpublished opinion.

6th Circuit

U.S. v. Galaviz, 2011 U.S. App. LEXIS 9441, May 6, 2011

The court held that the officers lawfully seized the gun from the defendant's car under the plain-view and automobile exceptions to the warrant requirement. Even if the arresting officer lacked reasonable suspicion to seize the defendant, other officers discovered the gun before he was arrested. The officers discovered the gun because it was in plain view, not because of anything the defendant said or anything the arresting officer found on him after his detention.

The court found that the gun was in plain view because: (1) the officers were lawfully in a position from which to see the gun. The defendant's car was parked in a short driveway, and given the characteristics of it, the driveway could not be considered to be within the curtilage of the house; (2) the incriminating nature of the gun was immediately apparent because the officers were clearly able to identify the object protruding from beneath the driver's seat as part of a handgun. State law prohibits carrying a pistol in a vehicle without a firearms license and places the burden of establishing possession of a license on the defendant; (3) after the officers saw the gun in the car, which constituted a violation of state law; they had probable cause to conduct a warrantless search of the car to retrieve the gun. This gave the officers the lawful right to access the interior of the car, and therefore satisfy the requirements for a plain-view seizure of the gun.

Click [HERE](#) for the court's opinion.

U.S. v. Lucas, 2011 U.S. App. LEXIS 9549, May 11, 2011

Police received information from a reliable confidential informant that Lucas was growing marijuana inside his home. Two officers went to Lucas's home to conduct a knock and talk interview. Lucas invited the officers inside, where they immediately smelled the odor of burnt marijuana and saw a marijuana pipe on a shelf. One of the officers asked Lucas to sign a consent form to allow them to search the house for narcotics related evidence. After Lucas hesitated, the officer told him that he had probable cause to obtain a search warrant for the house and that he planned to apply for one. Lucas then signed the consent to search form.

The officers found marijuana plants in a closet and a digital camera on a stand near the closet. An officer reviewed the digital images on the camera because he knew that marijuana growers often took photographs of their plants as they were growing. After finding images of the marijuana plants on the digital camera, the officer noticed a laptop computer and a handwritten marijuana plant "grow-chart" on a desk. The officer searched the laptop for images of the marijuana plants and for any spreadsheet similar to the handwritten "grow-chart." Lucas did not object to the search of the computer or try to withdraw his consent to search. The officer searched a thumb-drive that was connected to the computer and found thumbnail images of child pornography. He viewed six or seven images to confirm that he had discovered child

pornography, and then he stopped his search so they could obtain a search warrant for the computer.

The court first noted that the knock and talk procedure used by the police is a legitimate investigative technique aimed at obtaining a suspect's consent to search. The court held that after Lucas invited the officers into his home, their observations, coupled with the information provided by the reliable confidential informant, provided probable cause to search the home for narcotics-related evidence. The officer's warning that a search warrant would be sought if Lucas did not grant consent to search was a proper statement that did not taint the subsequent search.

The court found that Lucas's consent to search was not obtained by coercion. The officer clearly told Lucas that he could refuse to consent to the search and that he could ask the officers to stop the search at any time. His initial hesitation when first asked to give consent to search indicated that Lucas knew he had a right to refuse the search and that he contemplated exercising that right.

The court held that the search of Lucas's computer fell within the scope of the consent to search the home for narcotics-related evidence. The officers had already found narcotics related evidence that justified their limited search for the same or similar drug-related records or photographs on the computer. Additionally, Lucas saw the officer searching his computer and he did not object, clarify the scope of his consent or withdraw his consent. There is no evidence that the officer exceeded the scope of Lucas's consent to search for evidence related to a narcotics violation. When the thumbnail images appeared on the screen, the officer enlarged just a few of them to be certain he was looking at child pornography. After he was convinced of the unlawful nature of the images, the officer immediately stopped his search so a search warrant could be obtained.

Click [HERE](#) for the court's opinion.

7th Circuit

U.S. v. Norris, 2011 U.S. App. LEXIS 9222, May 5, 2011

The court held that the information provided in the search warrant affidavit established probable cause to search the defendant's house and person for drugs. The affidavit was based on information provided by two confidential informants who had worked with the police in the past and had proven to be reliable. Additionally, the officer corroborated information provided by the informants by conducting surveillance on the defendant's home. The affidavit, taken as a whole, established the informants' reliability and contained sufficient timely and detailed information to constitute probable cause that the defendant was engaged in an ongoing drug trafficking operation making it likely that he had cocaine in his home and on his person.

The court also held that it was reasonable for the officer to use his taser on the defendant after he ignored their commands to stop, and reached into his waistband after he threw a crumpled paper bag onto the sidewalk. The officers' actions were reasonable because the defendant exhibited behavior consistent with and intent to discard evidence and he engaged in actions that suggested he was reaching for a weapon. When the taser stopped cycling, the defendant rolled onto his side and the officers found a small pistol on the ground underneath him.

Click [HERE](#) for the court's opinion.

8th Circuit

U.S. v. Gaines, 2011 U.S. App. LEXIS 9412, May 4, 2011

The *Fourth Amendment* requires that a wiretap application under *18 U.S.C. § 2518 (Title III)*, and subsequent wiretap orders, identify only the telephone line to be tapped and the particular conversations to be seized.

The court found that the agent's affidavit and the district court's wiretap order complied with the particularity requirement of the *Fourth Amendment* because they both identified the particular telephone to be tapped and the particular conversations, those concerning drug trafficking, to be seized.

Click [HERE](#) for the court's opinion.

9th Circuit

Doody v Ryan, 2011 U.S. App. LEXIS 9102, May 4, 2011

The court held that the *Miranda* warnings provided to Doody were defective because the detective downplayed the warnings' significance, deviated from an accurate reading of the *Miranda* waiver form, and expressly misinformed Doody about his right to counsel.

While informing Doody of the right to counsel, the detective deviated from the form containing the juvenile *Miranda* warnings, and ad-libbed that Doody had the right to counsel if Doody was involved in a crime. The implication from this improperly qualified, unclear and confusing warning was that Doody only had the right to counsel if he were involved in a crime. Under these circumstances, if Doody invoked his right to counsel, it would be the same as admitting his involvement in a crime. Doody was never clearly or reasonably informed that he had the right to counsel.

Additionally, the lower court's ruling that Doody's confession was voluntary was unreasonable, in light of the police audiotapes that reflected the relentless, nearly thirteen-hour interrogation of a sleep-deprived juvenile by a tag team of detectives, without the presence of an attorney, and without the protections of proper *Miranda* warnings.

Click [HERE](#) for the court's opinion.

Garcia v County of Merced, 2011 U.S. App. LEXIS 9184, May 5, 2011

The court held that the officers were entitled to qualified immunity against Garcia's claim that they violated his *Fourth Amendment* rights for arresting him after he smuggled methamphetamine into the county jail to one of his clients. The officers carefully evaluated the information provided by the confidential informant, corroborated it, then applied to a judge for

permission to use a controlled substance in order to conduct a reverse sting operation. Prior to the reverse sting operation the officers consulted with two deputy district attorneys who approved of this plan. The officers did not take Garcia into custody on the informant's information alone, but waited to see what his contact with Garcia would produce.

Click [HERE](#) for the court's opinion.

10th Circuit

U.S. v. Harrison, 2011 U.S. App. LEXIS 9555, May 11, 2011

Federal agents suspected that Harrison was illegally selling firearms and drugs out of his apartment. Two agents went to the apartment to conduct a knock and talk with Harrison in an attempt to gain consent to search the apartment. One of the agents told Harrison they had received a tip that there were drugs and a bomb inside the apartment. They stated that their boss had sent them to investigate to see if there was any threat or danger to the community. Harrison consented to a search of the apartment. The agents found a gun in the apartment and arrested Harrison.

The court agreed with the lower court, which held that the deceitful tactics used by the federal agents to gain consent to search the apartment rendered Harrison's consent to search involuntary. Not all deception or trickery will render a search invalid. An undercover office may gain entry into a person's home by deception and purchase narcotics with no violation of the *Fourth Amendment*. However, in this case, Harrison knew he was opening his home to law enforcement officers who had expertise in explosives. The court agreed with the lower court, which found that the false statements by the agents implied that a bomb may have been planted in the apartment and that Harrison was in danger. The agent's comment to Harrison that they were not interested in a small bag of "weed" emphasized that a bomb, not drugs was the focus of their concern. As a result, Harrison had two choices. He could deny consent to search and accept the risk that a bomb had been planted in the apartment or consent to the search. Under these circumstances, any consent to search obtained was coercive.

Click [HERE](#) for the court's opinion.

U.S. v. Trestyn, 2011 U.S. App. LEXIS 9605, May 11, 2011

Believing that Trestyn had an improperly displayed registration number on the license plate of his vehicle, an officer conducted a traffic stop. Once the officer approached the vehicle, on foot from the rear, he reasonably could have observed the registration number and realized that Trestyn was not in violation of the law. The court held that the officer's subsequent detention of the vehicle and its occupants to question them about their travel plans and to request their drivers' licenses exceeded the scope of the stop's underlying justification. At this point, the officer no longer had an objectively reasonable articulable suspicion that a traffic violation had occurred or was still occurring. The officer should have explained to Trestyn the reason for the initial stop and then allowed them to continue on their way.

Click [HERE](#) for the court's opinion.

U.S. v. Creighton, 2011 U.S. App. LEXIS 9697, May 12, 2011

An inventory search should promote three administrative purposes: (1) the protection of the owner's property while it is in police custody, (2) the protection of the police against claims or disputes over lost or stolen property, and (3) the protection of the police from potential danger.

The court held that the inventory search of the defendant's luggage was conducted pursuant to the police department's "Standard Operating Guidelines" and that these guidelines were sufficient to serve the purposes of a legitimate inventory search.

Additionally, the court agreed with the lower court, which held that the defendant lacked standing to challenge the officers' entry into the motel room where they observed incriminating evidence in plain view. Prior to the entry by the police, the defendant knew that the hotel management had claimed the rent was overdue and had told the registered occupant to pay or vacate the premises. An individual's expectation of privacy in a hotel room generally ends upon expiration of the rental period. By remaining in the hotel room beyond the rental period, the defendant gave up any expectation of privacy in that room.

Click [HERE](#) for the court's opinion.

11th Circuit

U.S. v. Lanzon, 2011 U.S. App. LEXIS 9112, May 4, 2011

The court held that the officers had probable cause to search the defendant's vehicle under the automobile exception to the warrant requirement. The defendant participated in online chat-room conversations, with an undercover police officer, in which he expressed a desire to have sex with the undercover officer's fourteen-year-old "daughter". He agreed to meet the officer at a specific time and place and to bring condoms and peppermint candy for the daughter.

The defendant drove his vehicle to the designated meeting place at the agreed-upon time and approached the officers who were posing as father and daughter. After arresting the defendant, the officer searched him but found no condoms or peppermint candy on his person. The officer used the defendant's keys to enter and search his vehicle. Inside the vehicle, he found condoms and a mint-flavored lubricant. Based on the totality of the circumstances, there was a fair probability that evidence of a crime would be found in the defendant's vehicle.

Additionally, it was irrelevant that the officer characterized the search of the defendant's vehicle in his incident report as an inventory search. An officer's subjective reasons for a search do not control the legal justifications for his actions, as long as objective circumstances justify the search. Here, the officers had probable cause to search the defendant's vehicle in accordance with the automobile exception.

Click [HERE](#) for the court's opinion.
