
THE FEDERAL LAW ENFORCEMENT - INFORMER -

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

Welcome to this installment of *The Federal Law Enforcement Informer (The Informer)*. The Legal Training Division of the Federal Law Enforcement Training Centers' Office of Chief Counsel is dedicated to providing law enforcement officers with quality, useful and timely United States Supreme Court and federal Circuit Courts of Appeals reviews, interesting developments in the law, and legal articles written to clarify or highlight various issues. The views expressed in these articles are the opinions of the author and do not necessarily reflect the views of the Federal Law Enforcement Training Centers. *The Informer* is researched and written by members of the Legal Division. All comments, suggestions, or questions regarding *The Informer* can be directed to the Editor at (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 <http://www.fletc.gov/training/programs/legal-division/the-informer>.

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Free FLETC Informer Webinar Series Schedule

February 2014

(See the bottom of page 4 for instructions on how to participate in a webinar)

1. Government Workplace Searches

John Besselman provides an explanation of the law that regulates the government's ability to search in the workplace. Who has a reasonable expectation of privacy in the workplace, how is it established, and how can it be overcome, are some of the questions that will be answered. If this area of the law is new to you or you are interested in a refresher, this course is right for you.

1-hour webinar presented by John Besselman, FLETC Legal Division.

Date and Time:

Thursday February 6, 2014: 2:30 pm EST

To join this meeting: <https://share.dhs.gov/govtworksearch/>

2. *Kalkines and Garrity* Overview

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

1-hour webinar presented by John Besselman, FLETC Legal Division

Date and Time:

Friday February 7, 2014: 1:00 pm EST

To join this meeting: <https://share.dhs.gov/garrity/>

3. Warrantless Searches and Seizures under Exigent Circumstances Part II

1-hour webinar presented by Bruce-Alan Barnard, FLETC Legal Division

Dates and Times:

Monday February 10, 2014: 1:00 pm EST

To join this meeting: <https://share.dhs.gov/bab0210>

Wednesday February 26, 2014: 1:00 pm EST

To join this meeting: <https://share.dhs.gov/bab0226>

4. Search Incident to Arrest – Digital Devices in a Post-Gant World

1-hour webinar presented by Mikell Henderson, FLETC Legal Division

Dates and Times

Monday February 10, 2014: 3:00 pm EST

To join this meeting: <https://share.dhs.gov/cellphonessia021014/>

Friday February 28, 2014: 1:00 pm EST

To join this meeting: <https://share.dhs.gov/cellphonessia022814/>

5. Understanding the Inspection Search

1-hour webinar presented by John Besselman, FLETC Legal Division

John Besselman examines the administrative-inspection search. This common and varied search enables enforcement agencies of all types to protect the public from harms, though its scope and purpose is sometimes misunderstood and misapplied.

Date and Time:

Thursday February 13, 2014, 2014: 9:30 am EST

To join this meeting: <https://share.dhs.gov/inspections/>

6. Use of Force Refresher:

This course will cover the *Fourth Amendment's* objective reasonableness test for seizing free citizens. It will cover the United States Supreme Court's analysis in *Graham v. Connor*, when deadly force and intermediate weapons are reasonable, and the defense of qualified immunity.

Date and Time:

Monday February 24, 2014: 1:30pm EST

To join this meeting: <https://share.dhs.gov/uof-refresher>

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2. If you have a HSIN account, enter with your login and password information.
3. If you do not have a HSIN account click on the button next to “Enter as a Guest.”
4. Enter your name and click the “Enter” button.
5. You will now be in the meeting room and will be able to participate in the webinar.
6. Even though meeting rooms may be accessed before a webinar, there may be times when a meeting room is closed while an instructor is setting up the room.
7. Meeting rooms will be open and fully accessible at least one-hour before a scheduled webinar.
8. Training certificates will be provided at the conclusion of each webinar.

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Law Enforcement Cases Granted Certiorari by the United States Supreme Court for the October 2013 Term

Search Incident to Arrest – Cell Phones

United States v. Wurie

Decision Below: [728 F.3d 1 \(1st Cir. 2013\)](#)

Police officers arrested Wurie and seized two cell phones from him. Officers searched the call log on one of the phones and determined the phone number labeled “my house” was associated with a nearby apartment. Officers connected Wurie to the apartment, obtained a warrant, and searched the apartment finding drugs and firearms.

Wurie filed a motion to suppress the evidence from his apartment, arguing the officers violated the *Fourth Amendment* by opening his cell phone and accessing the call log to determine the phone number associated with the “my house” caller identification reference.

The court held the search incident to arrest exception does not authorize the warrantless search of data on cell phones seized from individuals arrested by the police. The court recognized a modern cell phone is not like a purse, wallet or other type of container an officer might typically find on an arrestee. A cell phone has the ability to store a large amount of highly personal information such as photographs, videos, text messages and emails. Allowing the police to search the data on a cell phone without a warrant any time they conducted a lawful arrest would create a serious and recurring threat to the privacy of countless individuals.

The issue before the Supreme Court is whether the *Fourth Amendment* permits the police, without obtaining a warrant, to review the call log of a cell phone found on a person who has been lawfully arrested.

The Court is expected to hear oral arguments on a yet to be determined date in April 2014.

Riley v. California

Decision Below: [No. DO59840, \(Cal. App. 4th Dist. Feb. 8, 2013\)](#), 2013 WL 475242.

Police officers arrested Riley and searched the cell phone he was carrying incident to arrest. The officers discovered photographs and videos on Riley’s phone that were admitted against him at trial. Riley was convicted. In an unpublished opinion, the California Court of Appeal held the warrantless search of Riley’s cell phone incident to his arrest was lawful.

The issue before the Supreme Court is whether evidence admitted at Riley’s trial was obtained in a search of Riley’s cell phone that violated his *Fourth Amendment* rights.

The court is expected to hear oral arguments on a yet to be determined date in April 2014.

CASE SUMMARIES

Circuit Courts of Appeals

1st Circuit

United States v. Campbell, 2013 U.S. App. LEXIS 25585 (1st Cir. Me. Dec. 23, 2013)

A man entered an electronics store and purchased two video gaming systems, paying with a credit card. After the man left, a second man entered the store and attempted a similar purchase, but both credit cards he presented were declined. The name on both declined credit cards was the same name as the one on the credit card presented by the first man. After the second man left, a third man entered the store and expressed an interest in purchasing a video gaming system. The clerk refused to sell him anything and suggested the man try another nearby store. After the third man left, the clerk saw him get into a vehicle with the first two men and drive away. The clerk called the police and provided descriptions of the three men and a description of their car and license plate number. The clerk told the police the men were likely going to the other store she had recommended.

A police officer drove through the parking lot of the second store and saw an unoccupied vehicle matching the description provided by the clerk. While watching the vehicle, the officer saw three men matching the descriptions provided by the clerk from the electronics store, carrying bags of merchandise. The men got into the vehicle and left. The officer followed the vehicle and conducted a traffic stop in a hotel parking lot. The driver, Barnes, told the officer the vehicle was rented. Another officer arrived, and spoke to Campbell, who was sitting in the back seat. Campbell initially told the officer he had been to the electronics store, but later denied being there. When the officer asked Campbell about using credit cards at the electronics store Campbell replied, “what cards, what credit cards.” After receiving consent to search the vehicle, officers found fifty identification and credit cards and three wallets in the vehicle. The three men, Barnes, Campbell and Porteous, were charged with a variety of offenses related to their fraudulent use of the credit cards and identifications. All three were convicted.

On appeal, Campbell and Porteous argued the evidence obtained from the vehicle and their statements to the officers should have been suppressed because the officers unlawfully stopped their vehicle and did not provide *Miranda* warnings before speaking to the men.

The court disagreed. The stop occurred after the police received a report from a store employee who suspected the three men had engaged in credit card fraud. The clerk gave the officer specific information concerning her encounter with the men to include that two of the men had attempted to use credit cards bearing the same name. The clerk also described the men, their vehicle and the probable location of their next stop. The police corroborated some of this information by locating the three men who fit the clerks’ description coming out of the same store mentioned by the clerk and driving the same vehicle the clerk described. As a result, the officer established reasonable suspicion to conduct a *Terry* stop and detain the three men to investigate the possibility of credit card fraud.

Following the stop, the court further stated Campbell never claimed to be the renter of the vehicle and Porteous later denied he was the one who had rented it. Because neither Campbell nor Porteous established a reasonable expectation of privacy in the vehicle, the court held they did not have standing to object to the search of the vehicle by the officers.

Finally, the court held the officers were not required to provide *Miranda* warnings to Campbell and Porteous before questioning them, prior to their arrest. Generally, police officers are not required to give *Miranda* warnings during *Terry* stops. However, *Miranda* warnings are required “as soon as the suspect’s freedom of action is curtailed to a degree associated with a formal arrest.” Here, the court ruled the circumstances surrounding the stop would not be viewed by a reasonable person as the functional equivalent of a formal arrest. First, the men were questioned in a neutral location, a parking lot. Second, there was no indication the police to suspect ratio was overwhelming to the men, as there were four or five police officers on the scene questioning the three men, and no more than two officers questioned each man at any time. Third, neither Campbell nor Porteous was physically restrained during the questioning. Finally, the duration of the questioning was brief and related to the reason for the stop.

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

2nd Circuit

United States v. Taylor, 736 F.3d 661 (2d Cir. N.Y. 2013)

Police arrested Taylor and interviewed him three hours later. After waiving his *Miranda* rights, Taylor confessed to the officers. The next day, Taylor was interviewed again, and after waiving his *Miranda* rights, confessed a second time. During the first interview, Taylor was dozing off and according to the officers had to be “re-focused” during the two to three hour interview. During the second interview, Taylor fell asleep several times and had to be awakened to be interviewed.

Taylor argued his two confessions should have been suppressed because his statements to the officers were not made voluntarily. Taylor claimed he was mentally incapacitated during the interviews because of the quantity of Xanax he had ingested immediately before his arrest.

Regarding Taylor’s first confession, the court agreed, holding Taylor did not voluntarily confess to the officers. An officer testified that during the first interview, “Taylor’s body was somewhat shutting down,” and that “his body was giving up on him.” While Taylor may have been coherent at times, as the interview progressed, it became clear to the officers that Taylor was in and out of consciousness while giving his statement, and in a trance or a stupor most of the time when not actually asleep. Consequently, Taylor’s statement was not voluntary and should have been suppressed.

The court further held Taylor’s second confession should have been suppressed because it was tainted by Taylor’s involuntary first confession. Taylor’s second confession came less than one day after the first confession and during that interval, Taylor was hospitalized or unconscious most of the time. In addition, the officers testified Taylor fell asleep several times during the second interview and had to be awakened to complete the interview. This evidence of Taylor’s continued incapacity along with the taint of his prior confession rendered Taylor’s second *Miranda* waiver and confession involuntary.

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

United States v. Aguiar, 2013 U.S. App. LEXIS 24803 (2d Cir. Vt. Dec. 13, 2013)

In January 2009, federal agents installed a GPS tracking device on Aguiar's car without a search warrant. Data obtained from the tracking device was admitted against Aguiar at trial. Aguiar argued the warrantless installation and subsequent monitoring of the tracking device violated the *Fourth Amendment*. The trial court disagreed, the GPS evidence was admitted and Aguiar was convicted.

Following Aguiar's conviction, in January 2012, the United States Supreme Court decided *U.S. v. Jones*. In *Jones*, the court held "the Government's installation of a GPS device on a target's vehicle, and its use of that device to monitor the vehicle's movements, constitutes a 'search'" for *Fourth Amendment* purposes. *Jones* left unanswered the question of whether the warrantless use of GPS devices would be "reasonable, and thus lawful, under the *Fourth Amendment* where officers have reasonable suspicion, and indeed probable cause" to conduct such a search.

Following *Jones*, the First, Fifth and Ninth Circuit Courts of Appeals and district courts for the District of Massachusetts and the District of Rhode Island have applied the good-faith exception to allow evidence obtained from pre-*Jones* warrantless searches to stand. However, the Third Circuit Court of Appeals, district courts for the Eastern District of Missouri, Eastern District of Kentucky and the Northern District of Mississippi have not applied the good-faith exception.

Here, the court held that when the agents installed and monitored the GPS device, they relied in good faith on *U.S. v. Knotts*. In *Knotts*, decided in 1983, the United States Supreme Court held the warrantless use of a tracking device to monitor the movements of a vehicle on public roads did not violate the *Fourth Amendment*. Because the beeper technology used in *Knotts* was sufficiently similar to the GPS technology used by the government in this case, the court held the agents relied in good faith on *Knotts* in placing the GPS device on Aguiar's vehicle.

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

3rd Circuit

George v. Rehiel, 2013 U.S. App. LEXIS 25604 (3d Cir. Pa. Dec. 24, 2013)

George arrived at the Philadelphia International Airport for a scheduled flight to California to begin his senior year in college. At the security checkpoint, George emptied his pockets and handed over a set of approximately 80 handwritten Arabic-English flashcards to a Transportation Security Administration (TSA) screener. The flashcards contained words and phrases such as "day before yesterday," "fat," "thin," "really," "nice," "sad," "summer," "pink," and "friendly." However, the flashcards also contained the words "bomb," "terrorist," "explosion," "attack," "battle," "kill," "to target," "to kidnap," and "to wound." After seeing the flashcards, the TSA screener took George to another screening area where a second TSA employee swabbed George's cell phone for explosives and searched his carry-on items. A TSA supervisor arrived within 30 minutes and questioned George for another 15 minutes. George claimed he was using the flashcards to learn Arabic vocabulary. In addition to discussing the flashcards, the TSA supervisor commented about a book that had been found in George's carry-on luggage that was critical of United States' foreign policy. During the interview, a Philadelphia police officer arrived, handcuffed George and took him to the Airport Police Station where he was detained in a cell for more than four hours. The Philadelphia police officer contacted the FBI Joint Terrorist Task Force (JTTF) who sent two federal agents to interview George.

The JTTF agents interviewed George for 30 minutes before concluding he was not a threat, and allowed George to leave.

George sued the two Philadelphia police officers, three TSA employees, two JTTF agents and the United States government. In part, George claimed the three TSA officials and the two JTTF agents violated the *Fourth Amendment* by subjecting him to an unreasonable search and seizure. George also claimed the federal officials detained him in retaliation for possessing the Arabic language flash cards and because of the content of the book he was carrying, in violation of the *First Amendment*.

The court held the three TSA employees and two JTTF agents were entitled to qualified immunity because George could not establish any individual federal official violated his *Fourth Amendment* rights. First, the court ruled that once the TSA screeners found the Arabic-English flashcards, it was reasonable to conduct a brief investigation. The court stated, “it is simply not reasonable to require TSA Officials to turn a blind eye to someone trying to board an airplane carrying Arabic-English flashcards with words such as ‘bomb,’ ‘to kill,’ etc.” In addition, George failed to establish an agency relationship between the TSA officials and the Philadelphia police officer that handcuffed George and took him away. Specifically, George could not show the TSA officials had any control over the decision by the Philadelphia police officer to detain George at the Airport Police Station for over four hours. Second, the court found the JTTF agents went to the Airport Police Station at the request of the Philadelphia Police. After questioning George for 30 minutes, the agents concluded George was not a threat and allowed him to leave. The court held it was reasonable for the JTTF agents to question George for this brief period to determine if he was a threat and that the JTTF agents were not involved in George’s allegedly unconstitutional seizure and detention by the Philadelphia Police.

The court further held the federal officials were entitled to qualified immunity on George’s *First Amendment* retaliation claim. Even though George had a right to possess the flashcards and book he was carrying, that did not mean the TSA screeners had to ignore their content or refrain from investigating him further because of the words they contained. A reasonable person could believe these items raised the possibility that George might pose a threat to airline security. In addition, because the TSA officials’ search and questioning of George during the screening did not violate the *Fourth Amendment*, the court felt it would be “hard-pressed” to find that it could result in a *First Amendment* retaliation claim.

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

4th Circuit

United States v. Robertson, 736 F.3d 677 (4th Cir. N.C. 2013)

A person called the police department and reported three African-American males in white t-shirts were chasing an individual who was holding a firearm. When police officers arrived, they saw a group of six or seven individuals in a nearby sheltered bus stop. Three of the individuals were African-American males wearing white shirts. Robertson was also in the bus shelter, but he was wearing a dark colored shirt. While three or four officers dealt with the males in the white shirts, another officer focused on Robertson. The officer stood in front of Robertson, who was seated and blocked on three sides by the walls of the bus shelter. The officer asked Robertson if he had anything illegal on him, but Robertson remained silent. The officer then waved Robertson forward while at the same time asking Robertson if he would consent to being searched. Robertson stood up, turned

around and raised his hands. The officer searched Robertson and recovered a firearm from him. Robertson was arrested for illegal possession of a firearm.

Robertson argued the firearm should have been suppressed because he did not consent to being searched by the officer. Instead, Robertson claimed, when he stood up, turned around and raised his hands, he was complying with an order issued by the officer.

Even after exclusively relying on the facts taken from the officer's testimony, the court agreed with Robertson. The officer's questioning was immediately accusatory, with the officer's first question being whether Robertson had anything illegal on him. After Robertson responded with silence, the officer waved Robertson forward and asked to conduct a search. The officer blocked Robertson's exit and never told Robertson he had the right to refuse the search. The officer's initial, accusatory question, combined with the police dominated atmosphere in the bus shelter, clearly communicated to Robertson that he was not free to leave or to refuse the officer's request to conduct a search. Robertson's behavior was not a clear voluntary invitation to be searched, but rather a begrudging surrender to the officer's order.

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

United States v. Dargan, 2013 U.S. App. LEXIS 25613 (4th Cir. Md. Dec. 24, 2013)

Police officers suspected Reginald Dargan was involved in the armed robbery of a jewelry store and obtained a warrant to search his residence. Attachment A to the warrant listed items subject to seizure, including among other things, "indicia of occupancy." During the search, officers seized a purchase receipt for a Louis Vuitton belt. The receipt was found in a bag located on top of a dresser in Dargan's bedroom. The receipt indicated the belt cost \$461.10 and the buyer, who identified himself as "Regg Raxx," purchased the belt with cash the day after the jewelry store robbery. Dargan was later convicted of the robbery.

On appeal, Dargan argued the seizure of the belt receipt violated the particularity requirement *Fourth Amendment* because the receipt did not fall under any of the items specifically listed Attachment A, which outlined the scope of the search warrant.

The court disagreed. First, the officers were lawfully in Dargan's residence, pursuant to the search warrant. Second, the officers were justified in opening the bag on top of the dresser in Dargan's bedroom to determine whether it contained any of the items they were authorized by the warrant to seize. Third, Attachment A to the search warrant, which listed the items subject to seizure, included "indicia of occupancy, residency of the premises . . . including but not limited to, utility and telephone bills and cancelled envelopes." Police officers may seize an item pursuant to a warrant even if the warrant does not expressly mention or specifically describe the item. Here, the officers conducting the search could have plausibly believed the occupant of the premises was also the purchaser identified on the belt receipt discovered in the bedroom. The receipt, which listed the buyer as "Regg Raxx," therefore constituted at least some indication of occupancy and fell within the terms of Attachment A.

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

6th Circuit

Hocker v. Pikeville City Police Dep't, 2013 U.S. App. LEXIS 24930 (6th Cir. Ky. 2013)

Hocker's girlfriend called 911 at 10:30 p.m. and told the operator Hocker had appeared at her house in violation of a protection order. The girlfriend said Hocker was intoxicated, suicidal and had just left her home in a red car. Police officers spotted Hocker's car driving with its lights off and attempted to conduct a traffic stop. However, Hocker led police officers on a high-speed chase for seven miles before pulling onto a darkened gravel road. Two officers exited their patrol cars with guns drawn and ordered Hocker to show his hands and turn off his car. Instead, Hocker put his vehicle in reverse and rammed one of the police cars, pushing it thirty feet towards a ditch. During this time, one of the officers briefly had his arm trapped in the door of the police car as it swung shut after the collision. The second officer opened fire on Hocker's car and when the first officer freed his arm, he opened fire. The officers fired twenty shots, hitting Hocker nine times. After Hocker was convicted and received a ten-year sentence in state court, he sued the officers for excessive use of force.

The court held the officers were entitled to qualified immunity because their use of force was reasonable under the circumstances. First, Hocker, who was possibly drunk and suicidal, posed a threat to anyone on the road after he refused to stop for the officers and continued to drive on a winding road, with his lights off, at speeds between 70 and 80 miles per hour. Second, after Hocker stopped, he rammed a police car while an officer was standing behind the car's open door, temporarily trapping the officer and pushing the police car thirty feet. In addition, a second officer had to move out of the way to avoid being struck by the police car as it was pushed towards him. Only after these direct risks to their own safety did both officers fire at Hocker's car. The court noted the officers' responses to the risks created by Hocker's actions were the kinds of split-second judgments that officers must make in tense, uncertain and rapidly evolving circumstances that sometimes occur in the line of duty.

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

7th Circuit

United States v. Starnes, 2013 U.S. App. LEXIS 25588 (7th Cir. Ill. Dec. 23, 2013)

Police officers arranged an undercover controlled purchase of crack cocaine from a lower level apartment of a two-story house. Three days later, officers obtained a search warrant that described the premises to be searched as a "two story, two-family dwelling, white with black trim, located on the west side of the street with the numbers '922' appearing on the front of the residence with the lower apartment being located on the ground floor." In addition, the officers knew a few hours before the planned raid a shooting had occurred at the house and that two aggressive pit bulls lived on the premises.

After knocking on the front door and receiving no response, the officers forced their way into the house. Once inside, the officers saw two open doors, one leading to the first-floor apartment and one leading to an upstairs apartment. The officers also encountered a pit bull that initially ran up the stairs toward the upper apartment, but then changed direction and charged at the officers. After shooting and killing the dog, an officer conducted a protective sweep on the upstairs apartment. As the officer ran through the kitchen of the upstairs apartment, he saw mixing bowls, several large

chunks of an off-white substance, some scales and rubber gloves. In the bedroom, the officer found Starnes and a woman. The officer escorted Starnes and the woman downstairs. While one of the officers left to seek a second warrant to search the upstairs apartment, the other officers searched the lower apartment. The officers seized various firearms, ammunition and drug paraphernalia from the lower apartment. After executing the second search warrant on the upstairs apartment, the officers seized Starnes' identification cards, cocaine, cash and additional drug trafficking paraphernalia. The government indicted Starnes on several drug and firearm offenses.

Starnes moved to suppress the evidence seized from the upstairs apartment. Starnes argued the first search warrant did not cover the officer's entry into the upstairs apartment and there had been no lawful reason for the officers to enter that area.

The court disagreed, holding the officers were entitled to conduct a protective sweep of the upstairs apartment. A protective sweep is a quick and limited search of premises conducted to protect the safety of police officers and others and is an exception to the *Fourth Amendment's* warrant requirement. For a valid protective sweep, the officers must have a reasonable belief the area to be swept contains someone who could pose a threat to them. Here, it was reasonable for the officers to believe there might be someone in the upstairs apartment who posed a threat to them. First, the officers knew a shooting had occurred on the premises earlier that day. Second, the officers knew two aggressive pit bulls were on the premises, but they had only encountered one of the dogs. Third, once inside the premises, the officers discovered two open doors that allowed internal access between the two apartments. Fourth, the officers did not know whether there were other access points between the two apartments. Finally, the officer conducting the sweep only looked in places where a person could hide. Once the officer discovered Starnes and the woman, he moved them to the first floor and secured the upstairs apartment until the second search warrant was obtained.

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

8th Circuit

United States v. Diaz, 736 F.3d 1143 (8th Cir. Mo. 2013)

Federal agents believed Diaz was hired to transport cocaine in his truck. While conducting surveillance, the agents saw Diaz take a suitcase they believed contained cocaine from his truck into a hotel room. After Diaz came out of the hotel room without the suitcase, three agents followed him to restaurant where they asked Diaz if he would cooperate with their investigation. Diaz admitted to delivering the suitcase to the hotel room, but he denied being involved in any criminal activity. Diaz agreed to go back to the hotel with the officers and was left unhanded in the back of an unmarked police car for twenty minutes while the agents conducted a knock and talk interview at the hotel room. During the knock and talk, the agents obtained consent to search the suitcase from one of the men in the hotel room. After the agents discovered cocaine in the suitcase, they released Diaz. Several months later, a grand jury indicted Diaz for conspiracy to distribute and possession with intent to distribute cocaine.

Diaz argued his statements to the officers and the seizure of the cocaine should have been suppressed because he was in custody when the agents questioned him and he had not been given *Miranda* warnings.

The court disagreed, finding Diaz was not in custody when the agents interviewed him. First, there was undisputed testimony the agents were armed but their weapons were not visible to Diaz when they talked to him. Second, when the agents approached him, Diaz voluntarily agreed to talk to the agents, and the interview occurred in a public location. Third, there was no evidence the officers surrounded Diaz, used coercive tactics or restrained Diaz's freedom of movement in any way. Finally, at the end of the encounter, the agents did not arrest Diaz. The court found a reasonable person in Diaz's position would have felt free to terminate the encounter with the agents and leave. As a result, Diaz was not in custody for *Miranda* purposes when he made the statements to the agents.

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

United States v. Goodale, 2013 U.S. App. LEXIS 25756 (8th Cir. Iowa Dec. 30, 2013)

Goodale was living with a woman and her thirteen-year-old son. After the boy showed his mother a history of gay teen pornography sites on Goodale's laptop computer, the mother took the computer to the police. While being interviewed, the boy opened the laptop, and demonstrated that the phrase "gay teen porn" auto-populated when he typed "ga" in the search box. A police officer moved the laptop and touched the keypad for approximately 17 seconds during this process. The boy also described to the officer how Goodale sexually abused him and Goodale's thirteen-year-old nephew. The officer seized Goodale's laptop and obtained a warrant to search it two days later. Goodale was convicted and sentenced to life in prison.

On appeal, Goodale argued the police seized and searched his computer in violation of the *Fourth Amendment*.

The court disagreed, holding the private search exception applied. A search or seizure, even an unreasonable one, conducted by a private individual does not violate the *Fourth Amendment*, as long as the person conducting the search or seizure is not acting as an agent of the government or with the participation or knowledge of any government official. Here, after discovering a history of teen pornography sites, the mother took Goodale's computer to the police where the boy showed the officer the laptop's web history. This search was neither instigated nor performed on behalf of the police. In addition, while the officer touched the laptop during this time, there was no evidence to show the officer's viewing of the contents on the computer went further than the boy's search.

The court further held the continuing seizure of Goodale's computer until the search warrant was obtained was lawful to prevent the destruction of evidence. The officer had probable cause to believe Goodale's laptop contained evidence of child pornography based on the boy's statements about the computer's internet history and allegations of sexual abuse. In addition, Goodale knew about the investigation and could have destroyed the evidence if he had been allowed to retain the computer.

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

9th Circuit

United States v. Valdes-Vega, 2013 U.S. App. LEXIS 25607 (9th Cir. Cal. Dec. 24, 2013)

Border Patrol Agents stopped Vega 70 miles north of the U.S.–Mexico border. Vega’s pickup truck had Mexican license plates, he was driving 90 miles-per-hour on the highway while the other vehicles were driving between 70 and 80 miles-per-hour, he was weaving in and out of traffic and he did not make eye contact with an agent after the agent pulled his police car alongside the passenger side of Vega’s truck. Vega consented to a search of his truck and the agents found approximately eight kilograms of cocaine.

The agents testified the justification for the stop was their belief that Vega’s behavior was consistent with the behavior of alien and drug smugglers who encounter law enforcement officers in that area.

The district court denied Vega’s motion to suppress the cocaine, finding the Border Patrol Agents had reasonable suspicion to stop Vega’s truck.

The three-judge panel of the Ninth Circuit Court of Appeals disagreed, holding the totality of the circumstances did not provide the agents with reasonable suspicion to believe Vega was smuggling drugs or aliens. According to the court, the totality of the circumstances revealed a driver with Mexican license plates committing traffic infractions on an interstate 70 miles north of the border. The court concluded these facts described too broad a category of people to justify reasonable suspicion to believe that Vega was smuggling either drugs or aliens.

The Ninth Circuit Court of Appeals then agreed to re-hear the appeal in an en banc panel of eleven judges. The en banc court affirmed the district court’s denial of Vega’s motion to suppress the cocaine seized from his truck.

The en banc court held that in light of the totality of the circumstances, the two experienced Border Patrol Agents, who observed a truck with foreign license plates driving in a suspicious manner in an area frequented by smugglers, had a reasonable suspicion to believe the driver was smuggling contraband; therefore, justifying the stop.

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

10th Circuit

United States v. Rodriguez, 2013 U.S. App. LEXIS 25853 (10th Cir. N.M. Dec. 31, 2013)

Police in Albuquerque, New Mexico, received a report that two employees in a convenience store were showing each other handguns. When a police officer went into the store, he saw a silver handgun tucked in the back waistband of Rodriguez’s pants as Rodriguez was bending over stocking shelves. When Rodriguez stood up, the gun was concealed by Rodriguez’s shirt. The officer ordered Rodriguez to show his hands and to step outside the store. As Rodriguez walked by, the officer pulled the gun out of Rodriguez’s waistband. Rodriguez told the officer he carried the gun for protection but that did not have a concealed weapons permit. Another officer examined the gun and discovered it was loaded. The officer also learned the gun had been reported stolen and that Rodriguez was a convicted felon. The officers arrested Rodriguez. The government charged Rodriguez with being a felon in possession of a firearm and ammunition.

Rodriguez claimed that possession of a concealed firearm in the State of New Mexico, by itself, cannot be the basis for a *Terry* stop or a *Terry* frisk. As a result, Rodriguez argued the officer unreasonably seized him and removed the handgun from his waistband.

The court disagreed. The seizure was justified because the officer had reasonable suspicion to believe Rodriguez was unlawfully carrying a handgun. First, the officer saw the gun in the waistband of Rodriguez's pants. Second, *Section 30-7-2* of the New Mexico Criminal Code makes it illegal to carry a concealed loaded firearm anywhere except on a person's property, in a private automobile, or unless a person has a valid concealed handgun license. In addition, the officer did not have to be certain the handgun was loaded to justify seizing Rodriguez. The officer only had to reasonably suspect the gun was loaded. Here, the court noted, believing "the defendant's handgun was probably loaded is simply a 'common sense conclusion about human behavior' that Officer Munoz could reasonably draw from the fact defendant sought to conceal the gun on his person."

The court further held the officer was justified in removing the gun from Rodriguez's waistband. The court stated, whether loaded or not, a handgun is a dangerous weapon. Consequently the officer was allowed to remove it so he could conduct his investigation without fear of violence.

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

11th Circuit

United States v. Timmann, 2013 U.S. App. LEXIS 25108 (11th Cir. Fla. Dec. 18, 2013)

A woman returned home from a ten-day trip and called the police after she found what appeared to be three bullet holes in an interior wall of her apartment. A police officer inspected the holes as well as a bullet fragment lodged in the carpet. Suspecting the bullets had been fired from the apartment next door, where Timmann lived, the officer knocked on his door. After receiving no response, the officer discovered Timmann's car was not in the parking lot and that he was likely at work.

The next day, police officers returned to the apartment complex and spoke to the manager. The manager believed Timmann was at work because she had seen his car in the parking lot earlier, but it was not there now. The manager gave the officers a key to Timmann's apartment. The officers knocked on the door to Timmann's apartment, but no one answered. The officers then entered Timmann's apartment, using the key provided by the manager. The officers found no one in the kitchen and living areas of the apartment and they saw no signs of a struggle, bullet holes, blood or other evidence of injury. The officers yelled to announce their presence, but received no answer. When the officers got to the bedroom door, they discovered it was locked. The officers knew from the layout of the two apartments the bullet holes they had seen must have passed through the wall of Timmann's bedroom. The officers knocked on the bedroom door but received no response. The officers did not hear any noise or sounds of movement from the bedroom. One of the officers kicked open the bedroom door. The officers found no one present and no signs of injury. However, the officers saw numerous firearms and ammunition lying in plain view. The officers also saw bullet holes in the wall. The officers took photographs of the bedroom, then left Timmann's apartment. Back at the police station, one of the officers discovered Timmann had two prior felony convictions.

Later that day, a police officer spoke to Timmann by telephone. Timmann told the officer he knew the police were at his apartment investigating the bullet holes in the wall. Timmann told the officer he had received a rifle from a friend and accidentally discharged it inside the apartment. The officer

did not tell Timmann that he and other officers had entered Timmann's apartment and discovered the firearms and ammunition.

The police spoke to Timmann a second and third time by telephone later that day. On both occasions, the officers told Timmann the police knew he was a convicted felon and that officers had entered his apartment and discovered the firearms and ammunition in his bedroom. During both phone calls, Timmann admitted to owning the firearms.

The police subsequently obtained a warrant to search Timmann's apartment and seized the firearms and ammunition from Timmann's bedroom. The government indicted Timmann for possession of a firearm by a convicted felon.

Timmann moved to suppress the firearms and ammunition. Timmann argued there was no probable cause or exigent circumstances to justify the officers' initial warrantless entry into his apartment. Timmann also moved to suppress his telephone statements to the police.

The district court held that the officers' initial warrantless entry into Timmann's apartment was justified under the emergency aid exception to the *Fourth Amendment's* warrant requirement.

The court of appeals disagreed. The court found it was not reasonable for the officers to believe that someone inside Timmann's apartment was in danger and in need of immediate aid. The officers did not receive a report regarding an ongoing disturbance, but rather a service call regarding what appeared to be bullet holes. The officers did not know when the holes had been made and both times the officers went to Timmann's apartment there was no indication a fight had taken place or anyone had been injured. In addition, the officers did not have any information that would cause them to suspect Timmann might be suicidal. On the contrary, the absence of Timmann's vehicle suggested he was likely not at home.

Next, even though the officers' warrantless entry into Timmann's apartment violated the *Fourth Amendment*, Timmann's statements to the police during the first phone call were admissible. When the officer spoke to Timmann, he did not tell Timmann the officers had already entered his apartment and found firearms and ammunition. Instead, the officer only spoke to Timmann about the bullet hole in the wall of his neighbor's apartment. Because the officer did not use the evidence obtained in the unlawful search to induce Timmann's statement that he had obtained a rifle from a friend, this statement did not need to be suppressed. However, the court held Timmann's statements to the police obtained in the second and third phone calls should have been suppressed. During those calls, the officers confronted Timmann with evidence they obtained through the unlawful search of Timmann's apartment, which elicited incriminating statements from Timmann.

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

United States v. Smith, 2013 U.S. App. LEXIS 25555 (11th Cir. Fla. Dec. 23, 2013)

In January 2011, police officers installed GPS trackers on two of Smith's vehicles without a search warrant. The police used information obtained from the GPS trackers in their search warrant application for Smith's house and seized evidence that was used against him at trial.

On appeal, citing *U.S. v. Jones*, Smith argued the officers violated the *Fourth Amendment* when they searched his home pursuant to a warrant that relied in part on information collected from the warrantless GPS surveillance.

The court disagreed. When the officers attached the GPS trackers in January 2011, binding Eleventh Circuit case law specifically authorized police officers to install electronic tracking devices in a suspect's vehicle upon a showing of reasonable suspicion, which the officers had in this case. Even if *Jones* would have made the warrantless searches in this case unreasonable, the court held the officers' good-faith reliance upon that binding case law did not warrant suppression of the evidence.

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