
THE FEDERAL LAW ENFORCEMENT - INFORMER -

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

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The Informer – January 2015

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CASE SUMMARIES

Circuit Courts of Appeal

First Circuit

United States v. Davis, 2014 U.S. App. LEXIS 23118 (1st Cir. Me. Dec. 9, 2014)

Davis, who was living with his girlfriend Hicks and her children, was on state probation for two felony convictions. Hicks' mother called Davis' probation officer and reported there were guns and drugs at Hicks' house. In response, Davis' probation officer and several other officers went to Hicks' house to conduct a home visit. Davis was arrested for being a felon in possession of a firearm after the officers found two rifles and ammunition in the house.

During the ride to the station, the officer and Davis engaged in a brief conversation. The officer testified that he asked Davis general questions concerning Davis' probation and whether Davis was currently employed. At one point, Davis told the officer he was angry with Hicks because "he (Davis) knew the firearms were in the house and she (Hicks) was supposed to get those out of the house." The officer stated that Davis' volunteered statement was not in response to any question he asked. The officer further testified he did not respond to Davis' statement, as Davis had not been provided *Miranda* warnings.

At trial, Davis argued the statement he made to the officer during the ride to the police station should have been suppressed because the officer had not provided him *Miranda* warnings.

The court disagreed. *Miranda* warnings must be provided when a person who is in police custody is subjected to interrogation. Interrogation can either be express questioning or the functional equivalent of questioning by a police officer. The functional equivalent of questioning are any words or actions by a police officer that the officer should know is reasonably likely to elicit an incriminating response from the suspect. While it was undisputed that Davis was in custody, the court found that nothing suggested a reasonable officer would have believed that general questions concerning Davis' probation status or employment would elicit Davis' comments regarding his anger toward Hicks for failing to remove the rifles from the home. As a result, the court concluded the officer's questions during the ride to the police station did not constitute the functional equivalent of questioning and Davis' statement made during his transport to the police station did not violate his *Fifth Amendment* right to be free from self-incrimination.

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

Hunt v. Massi, 2014 U.S. App. LEXIS 23204 (1st Cir. Mass. Dec. 10, 2014)

Police officers went to Hunt's house to arrest him on an outstanding warrant for failure to pay a traffic fine. The officers were aware that Hunt had been arrested approximately two months earlier for his involvement in a drug-trafficking ring. When an officer told Hunt he was under arrest, Hunt requested that he be handcuffed with his hands in front of him. Hunt explained that he had undergone surgery on his stomach the week before, and claimed that he could not

be handcuffed with his hands behind him. An officer lifted Hunt's shirt to look at Hunt's stomach; however, the officer saw nothing that caused him to believe that Hunt needed to be handcuffed with his hands in front of him. When the officer told Hunt to put his arms behind his back, Hunt refused. A scuffle ensued, and after a short struggle, the officers handcuffed Hunt with his hands behind his back. Hunt sued the police officers, claiming violations of his federal constitutional rights under *42 U.S.C. § 1983*, as well as several state torts laws.

The district court held the officers were not entitled to qualified immunity, concluding that Hunt had a clearly established right to be handcuffed with his hands in front of him because of his alleged injury. The officers appealed.

The court of appeals agreed with the officers. In this case, the court concluded a reasonable officer would not have believed the decision to handcuff Hunt with his arms behind his back constituted excessive force. The officers knew of Hunt's serious and recent criminal history. In addition, the officers examined the site of Hunt's recent surgery and determined that no new injury would result from handcuffing Hunt with his hands behind his back. Finally, the court stated that most of the cases finding excessive force incident to handcuffing involved injuries to the shoulder or arm. As a result, the officers were entitled to qualified immunity on Hunt's excessive force claims under *§ 1983*.

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

United States v. Castro-Caicedo, 2014 U.S. App. LEXIS 24427 (1st Cir. Mass. Dec. 24, 2014)

In 2012, a confidential informant (CI) told federal agents that in 2009 on two occasions he met with a person who owned a home in Colombia, who wanted to ship cocaine into the United States. The agents then showed the CI eleven photographs, the last of which was an image of Castro. Upon seeing the last photograph, the CI identified it as depicting the owner of the house with whom he had made the deal to ship the cocaine. At trial, over Castro's objection, the government introduced the CI's identification of Castro to the agents. Even though the district court held the photographs had been assembled in a manner that was unduly suggestive, the court held the CI's identification was still reliable enough to present to the jury. The jury convicted Castro, who appealed.

The court of appeals affirmed Castro's conviction. The court agreed the eleven photographs were shown to the CI in a manner so suggestive that it gave rise to the risk of an unreliable identification. Specifically, the court noted of the eleven photographs, the photograph of Castro depicted a person far older and with darker skin than any of the men depicted in the other photographs. As a result, the court found the use of those eleven photographs was designed to cue the CI to pick out Castro's photograph.

However, even if the identification procedure was unduly suggestive, the court found the CI's identification was still sufficiently reliable to allow a jury to consider it. First, the CI had a good opportunity to view Castro during two face-to-face conversations that lasted close to 90 minutes. Second, the CI testified he paid close attention to Castro during these conversations. Third, the CI's prior description of the man with whom he met was consistent with Castro's appearance. Fourth, there was no indication that the CI was uncertain that the man he identified from the photographs was the man with whom he had previously met. Finally, the

court found the circumstances surrounding the meetings between the CI and Castro rendered the four and one half year gap between the CI's last conversation with Castro and the identification procedure of little importance.

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

Third Circuit

United States v. Burnett, 2014 U.S. App. LEXIS 22662 (3d Cir. Pa. Dec. 2, 2014)

Burnett and Hankerson planned to rob a jewelry store. On the day of the robbery, Hankerson borrowed a car from his girlfriend, Adams, picked Burnett up, and the two men drove to the jewelry store and robbed it. After the robbery, Hankerson and Burnett drove a short distance, placed stolen items from the robbery in the trunk of the car, and walked away. A short time later, officers discovered Adams' car, towed it to a police garage, obtained a warrant and searched it. The officers found evidence linking Hankerson and Burnett to the robbery. In addition, Burnett was identified as one of the robbers through the use of a photo array. The government indicted Burnett for a variety of federal criminal offenses.

Burnett moved to suppress the evidence recovered from the trunk of the car, arguing the officers lacked probable cause to seize the car and that the judge did not have probable cause to issue the search warrant. Burnett also argued the photo array that led to his identification was unduly suggestive because the photos of the other individual in the array did not resemble him.

The court disagreed. First, Burnett failed to establish that he had a reasonable expectation of privacy in the car. Adams, the owner of the car, did not know Burnett and she did not give him permission to occupy her car. Consequently, Burnett did not have standing to object to the search of Adams' car or its contents.

Second, the court held the photo array used by the officer was not unduly suggestive. A photographic array is not unduly suggestive just because certain characteristics of a defendant or photograph set him apart from the other persons pictured in the array. The court emphasized that the key issue is whether differences in the characteristics "sufficiently distinguish" a defendant to suggest to the witness that he is the one who committed the offense. In this case, the court held that all of the men in the array were of a similar age; there was no striking difference in the amount of heard hair each had; and the skin color of the members of the array were not strikingly different. The court concluded that any slight differences in the appearances of the men depicted in the array did not rise to the level of being unduly suggestive, and did not create a substantial risk of misidentification.

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

Seventh Circuit

United States v. Price, 2014 U.S. App. LEXIS 22996 (7th Cir. Ill. Dec. 5, 2014)

During an interview, an officer asked Price if he would consent to a search of his laptop computer. Price turned the computer toward the officer and said she could look at it. The officer told Price she lacked training in computer forensics and that other law enforcement officers would have to conduct the search. Price agreed to the search and signed a Consent-to-Search form. A forensic examination of Price's laptop uncovered images and videos of child pornography. The government charged Price with producing and possessing child pornography.

Price argued the evidence found on his laptop should have been suppressed, claiming he only consented to a contemporaneous search of his laptop by the officer herself, not a later forensic examination by other officers.

The court disagreed. First, the officer told Price she was not trained in computer forensics and that other law enforcement officers would have to conduct the search of the laptop. Second, the Consent-to-Search form that Price signed referred to a "complete search" of the laptop. Under these circumstances, the court held a reasonable person would have understood the scope of his consent was not limited to an immediate search by the requesting officer by herself.

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

United States v. Borostowski, 2014 U.S. App. LEXIS 24661 (7th Cir. Ill. Dec. 31, 2014)

Federal agents obtained a warrant to search Borostowski's house where he lived with his parents and sister. The warrant authorized the agents to search the premises for any digital media that could contain child pornography. When a team of thirteen agents arrived to execute the warrant, one agent detained Borostowski outside in handcuffs for approximately twenty-five minutes while the other agents secured the house. Once the house was secured, two agents interviewed Borostowski in his sister's bedroom. The agents removed the handcuffs, told Borostowski he was not under arrest, and then told Borostowski they would like to interview him. One of the agents read Borostowski his *Miranda* rights and asked Borostowski if he understood them. Borostowski told the agent he understood his rights and then stated, "But I think I should have an attorney present." The agent told Borostowski he was not sure what Borostowski meant and suggested they discuss the matter further. After a short conversation Borostowski agreed to be interviewed and signed the consent portion of the *Miranda* rights form. During the next two hours, Borostowski made numerous incriminating statements to the interviewing agents. At one point Borostowski said to the agents, "I probably should have an attorney." However, the agents did not consider this statement to be an unequivocal request for counsel, and continued questioning Borostowski, who subsequently made additional incriminating statements.

While Borostowski was being questioned, other agents searched the house, but were unable to locate a specific hard drive the agents believed Borostowski owned. An agent described the hard drive to Borostowski's mother, Dollie, who told the agent she believed the hard drive was located in her car, which was parked in the driveway. Dollie consented to a search of her

car and the agent located the hard drive. A forensic examiner searched the hard drive and determined that it contained child pornography.

Borostowski was charged with several counts of possession and distribution of child pornography.

Borostowski argued the incriminating statements he made to the agents should have been suppressed because the agents violated his *Miranda* rights when they continued to question him after he invoked his right to counsel. The district court held Borostowski was not in custody for *Miranda* purposes when the agents interviewed him; therefore, the agents were not required to inform Borostowski of his *Miranda* rights. As a result, the court declined to consider whether any of Borostowski's comments to the agents were unequivocal invocations of his right to counsel.

On appeal, Borostowski argued the district court incorrectly held that he was in not custody for *Miranda* purposes during the interview.

The court of appeals agreed, holding that under the circumstances, a reasonable person in Borostowski's position would not have felt free to end the interview with the agents and leave the house. As a result, the court remanded the case to the district court so it could determine whether and when Borostowski ever unequivocally invoked his right to counsel. The court stated that if the district court determined that Borostowski invoked his right to counsel, then any statements Borostowski made from that point forward would be suppressed.

Borostowski also argued the agents violated the *Fourth Amendment* when they searched Dollie's car, because her car was not listed on the warrant. Additionally, Borostowski claimed Dollie did not have authority to consent to the search of the contents of the hard drive located in her car.

The court disagreed, holding the search of the hard drive was lawful based on the combination of Dollie's consent to search her car and the search warrant. Although Dollie's car was not included in the warrant, the court found it was essentially a "closed container" the agents located on the premises. Dollie's consent authorized the agents to open that "closed container" and seize the hard drive. Once the agents lawfully retrieved the hard drive from the car, the court held the agents were authorized to search it under the authority of the search warrant.

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

Eighth Circuit

United States v. Mohr, 2014 U.S. App. LEXIS 22789 (8th Cir. Iowa Dec. 4, 2014)

Mohr agreed to be interviewed by officers regarding his contact with a minor. Prior to the interview Mohr signed a waiver of his *Miranda* rights; however, as he was walking to the interview room, Mohr asked his probation officer, "Should I get a lawyer at this time? . . . I think I should get one." Once inside the interview room, the officers asked Mohr for his permission to record the interview to which Mohr replied, "I want my lawyer. . . . If you want this recorded I want my lawyer present." The officers continued the interview but did not record it. Based in part on statements he made to the officers, the government indicted Mohr

for sexual exploitation of a child and attempting to entice a minor to engage in illicit sexual activities.

Mohr filed a motion to suppress the statements he made during the interview, claiming that on two occasions he invoked his right to counsel under *Miranda*.

The court disagreed. Officers are only required to stop questioning if a suspect's request for an attorney is clear and unambiguous. In this case, the court held Mohr's statement, "I think I should get a lawyer" was not an unequivocal invocation of his right to counsel under *Miranda*.

The court further held Mohr's second request for counsel was conditioned on whether the interview was recorded; therefore, a reasonable officer could have understood Mohr's statement to mean he was only requesting a lawyer if the interview was going to be recorded. Because the officers did not record the interview, the court concluded Mohr's condition for requiring counsel was not met. Consequently, Mohr's statement was not sufficient to invoke his right to counsel under *Miranda*.

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

Reeves v. King, 2014 U.S. App. LEXIS 23577 (8th Cir. Ark. Dec. 16, 2014)

Reeves, an inmate at a state prison, provided information to correctional officers that a prison nurse was bringing contraband into the facility. Later, when Reeves attempted to initiate a conversation with Lieutenant King and another correctional officer, King told Reeves in front of numerous inmates, "Go ahead and snitch to the Major like you did to him on the nurse and he'll get back to you later." The following day, Reeves was transferred to another prison.

Reeves sued King under 42 U.S.C. § 1983 claiming King violated his *Eighth Amendment* rights by calling him a snitch in front of other inmates.

The district court held King was not entitled to qualified immunity, because in the Eighth Circuit, a detention officer violates his duty to protect an inmate by labeling that inmate as a snitch. King appealed.

The *Eighth Amendment* requires prison officials to take reasonable measures to guarantee the safety of the inmates. In addition, Eighth Circuit case law imposes on prison officials a duty to protect prisoners from violence at the hands of other prisoners and to protect prisoners from unreasonable conditions that pose a substantial risk of serious harm. Finally, previous Eighth Circuit case law has held that labeling an inmate a snitch unreasonably subjects the inmate to a substantial risk of harm from other inmates. As a result, the court affirmed the district court, as existing case law at the time of the incident sufficiently gave King fair warning that labeling Reeves a snitch for reporting a nurse who was bringing contraband into the prison would violate Reeves' constitutional right to protection from harm.

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

United States v. Daniels, 2014 U.S. App. LEXIS 24556 (8th Cir. Minn. Dec. 30, 2014)

Police officers arrested Daniels for his involvement in a shooting. Before questioning Daniels, an officer informed Daniels of his *Miranda* rights. Daniels initialed the *Miranda* advisories indicating he understood his rights and signed the *Miranda* waiver form. Daniels, who was alert and responsive to the officer's questions, told the officer he shot a handgun into the air the prior evening.

The government charged Daniels with being a felon in possession of a firearm. At trial, the government submitted as evidence an audio recording of the interview and the *Miranda* waiver form signed and initialed by Daniels. The jury convicted Daniels.

On appeal, Daniels argued the district court should have suppressed his incriminating statements. Daniels argued his waiver of his *Miranda* rights and subsequent statements to the officer were not given voluntarily due to the combination of his intoxicated and fatigued state, as well as the officer's coercive tactics.

The court disagreed. The court found that Daniels was coherent, responsive, and alert during the interview and expressed no outward manifestations that would suggest his *Miranda* waiver or subsequent statements were involuntary. During the brief interview, Daniels answered the officer's questions coherently and intelligibly. In addition, Daniels never told the officers that he was confused, tired or intoxicated, nor did his actions or words suggest that he felt compelled to speak to the officers against his will. Finally, there was no indication of coercion, threats or promises by the officer that would overbear Daniel's will during any portion of the interview.

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

Ninth Circuit

United States v. Camou, 2014 U.S. App. LEXIS 23347 (9th Cir. Cal. Dec. 11, 2014)

In 2009, United States Border Patrol Agents arrested Camou at an inspection checkpoint and charged him with alien smuggling. At the time of his arrest, the agents also seized Camou's truck and cell phone, which was located in the cab of the truck. Approximately one hour and twenty minutes after Camou's arrest, an agent searched Camou's cell phone looking for evidence of "known smuggling organizations and information related to the case." The agent did not claim the search of Camou's cell phone was necessary to prevent the destruction of evidence or to ensure officer safety. The agent searched the call logs as well as the folders containing videos and pictures. While scrolling through Camou's cell phone, the officer saw what he believed to be images of child pornography. The agent stopped his search and contacted the FBI to pursue child pornography charges against Camou.

Several days later, the FBI executed a warrant to search Camou's cell phone and discovered several hundred images of child pornography. The government indicted Camou for possession of child pornography.

Camou moved to suppress the child pornography images found in his cell phone, arguing the initial warrantless search of his cell phone by the Border Patrol agent violated the *Fourth Amendment*.

The court agreed, holding the agent's warrantless search of Camou's cell phone was not a valid search incident to arrest, and no other exceptions to the *Fourth Amendment's* warrant requirement applied.

First, one of the requirements of a valid search incident to arrest is the search must be "roughly contemporaneous" with the arrest. In this case, the court held the agent's search of Camou's cell phone, one hour and twenty minutes after arrest, was too far removed in time from Camou's arrest to be incident to that arrest. Second, the court found a string of intervening acts occurred between Camou's arrest and the search of his cell phone that indicated the arrest was over. For example, Camou was restrained in handcuffs, removed from the checkpoint area to a security office, processed, and interviewed. In addition, the cell phone was moved from the site of the arrest to the security office. The passage of time along with these intervening events led the court to conclude the search of the cell phone was not roughly contemporaneous with the arrest and, therefore was not a search incident to arrest.

The court further held exigent circumstances did not exist that would have allowed the agent to search Camou's phone without a warrant. The search occurred one hour and twenty minutes after Camou's arrest and the agent did not testify that he believed an immediate search of Camou's phone was necessary to prevent the loss of recent call data. The court added, even had an exigency existed, the agent would have been limited to searching the phone's contact list and call logs. The agent exceeded the scope of any possible exigency by extending the search beyond the call logs to examine the phone's videos and photographs.

Finally, the court held the automobile exception to the *Fourth Amendment's* warrant requirement did not apply. Under the automobile exception, officers may search a vehicle and any containers found inside the vehicle if they have probable cause. However, the court held that cell phones are not containers for purposes of the automobile exception. The court commented that, "today's cell phones are unlike any of the container examples the Supreme Court has provided in the vehicle context," such as luggage, boxes, bags, clothing, consoles, glove compartments or any other item or area that is capable of concealing another object." The court added, if cell phones were considered containers under the automobile exception, "officers would often be able to sift through all of the data on cell phones found in vehicles because they would not be restrained by any limitations of exigency or relevance to a specific crime."

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

Tenth Circuit

United States v. Hood, 2014 U.S. App. LEXIS 24239 (10th Cir. Okla. Dec. 17, 2014)

Officers suspected Milton was involved in a string of burglaries. The officers went to Milton's apartment complex, located in a high-crime area of the city, and learned that Milton lived in apartment 108. After knocking and identifying themselves, the officers heard noise coming from inside the apartment, but no one answered the door. After a few minutes, the

officers walked over to the apartment complex's parking lot to inspect a car they suspected belonged to Milton. While the officers were in the parking lot, a resident shouted to them that someone was running from apartment 108. Two officers ran back to the complex and encountered a man, later identified as Hood. When the officers saw Hood, he was facing a corner of the building with his back toward the officers. Although it was an unseasonably warm day, Hood was wearing a winter jacket and making motions as if he was trying to remove something from his inside jacket pocket. Believing that Hood might be reaching for a weapon, the officers drew their firearms and ordered Hood to the ground. Hood went to the ground, but he still appeared to be grasping for something inside his jacket. When one of the officers asked Hood if he had a firearm underneath him, Hood replied, "I don't know." The officers handcuffed and frisked Hood, removing a pistol from the right inside pocket of Hood's jacket.

The government indicted Hood for being a felon in possession of a firearm.

Hood filed a motion to suppress the pistol seized from his jacket, arguing the officers did not have reasonable suspicion to stop and frisk him. Additionally, Hood argued the officers' use of force during the stop was unreasonable.

The court disagreed. First, the officers were investigating a burglary in a high-crime area. Second, a resident of the apartment complex alerted the officers that a person was running from the apartment where their suspect lived. Third, when the officers confronted Hood he was wearing a winter jacket, despite the warm day. Fourth, the officers saw Hood fumbling in his jacket pockets, which they believed might indicate he was attempting to remove a weapon. Under these circumstances, the court concluded the officers were justified in drawing their firearms and ordering Hood to the ground.

In addition, once Hood failed to fully comply with the officers' commands, and told the officers he did not know whether he had a firearm in his jacket, the officers were justified in handcuffing and frisking him to determine whether he was armed.

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

United States v. Denson, 2014 U.S. App. LEXIS 24616 (10th Cir. Kan. Dec. 30, 2014)

Officers went to Denson's house to serve an outstanding warrant for his arrest after Denson stopped reporting to his probation officer. After using a handheld Doppler radar device and developing other evidence, the officers believed Denson was inside the house. The officers entered the house and arrested Denson. While conducting a protective sweep, officers saw several firearms in a closet and seized them. The government indicted Denson for possession of a firearm by a convicted felon.

First, Denson argued the district court should have suppressed the firearms the officers seized from his house.

The court disagreed. An arrest warrant implicitly carries with it the limited authority to enter a dwelling in which the suspect lives when there is reason to believe the suspect is inside. In this case, the court held the officers established that Denson was inside the house when they entered. First, Denson had recently opened a utility account for the house and as far as the officers knew, Denson did not have another residence. Second, the officers knew Denson had

not reported any earnings, which suggested Denson did not work and might be home at 8:30 a.m. on a weekday. Third, Denson had absconded and was hiding from law enforcement. Fourth, the electric meter on the house appeared to be running very fast, an indication that someone might be inside using electrical devices.

The court declined to rule on whether the officers' use of the Doppler radar device violated the *Fourth Amendment*. The court found that based on the facts outlined above, the officers independently established Denson was inside the house. However, the court cautioned that the government's warrantless use of such a powerful tool to search inside homes poses grave *Fourth Amendment* questions.

Second, Denson argued the officers discovered the firearms as the result of an unlawful protective sweep.

The court disagreed. The officers knew Denson was a fugitive with a history of violent crime. In addition, the officers knew Denson was a gang member with violent associates. Finally, the officers knew a second person lived in Denson's house who was wanted on an outstanding warrant. Based on these facts, the court concluded it was reasonable for the officers to believe Denson might not be alone in the house and that anyone else inside could be dangerous.

Finally, Denson argued the officers unlawfully seized the firearms they found in the closet. Denson claimed at the time of the search, the officers could not exclude the possibility the guns belonged to the other resident of the home and not him.

Again, the court disagreed. A convicted felon, such as Denson, violates federal law by actually or constructively possessing firearms. A felon constructively possesses a firearm if he "knowingly holds the power to exercise or control over them." In this case, Denson listed himself with the utility company as the primary account holder and the officers found the firearms in an unlocked closet that could be accessed by either Denson or the other resident. As a result, the court held when the officers found the firearms, they could reasonably believe the guns were accessible to Denson; therefore, he constructively possessed them.

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

Eleventh Circuit

United States v. Baldwin, 2014 U.S. App. LEXIS 23744 (11th Cir. Fla. Dec. 17, 2014)

During a traffic stop, an officer saw mail from the IRS not addressed to Baldwin or the other passenger in the vehicle, debit cards not in their names, and currency in plain view. Believing he had probable cause to believe Baldwin's vehicle contained evidence of identity theft and tax fraud, the officer conducted a warrantless search of the vehicle. The officer searched a duffel bag located in the vehicle, which contained evidence related to identity theft and tax fraud. The government indicted Baldwin on a variety of criminal offenses.

Baldwin argued the officers were required to obtain a warrant before they searched a duffel bag found in the vehicle.

The court disagreed. Once officers establish probable cause to search a vehicle, the officers may search all parts of the vehicle and any containers within it where the item for which they are looking might be found. In this case, the officer established probable cause to search Baldwin's vehicle based on the items he saw in plain view during the traffic stop. As a result, the officer was not required to obtain a warrant before he searched the duffel bag located in Baldwin's vehicle.

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

District of Columbia Circuit

United States v. Williams, 2014 U.S. App. LEXIS 22648 (D.C. Cir. Dec. 2, 2014)

On October 21, 2011 two police officers were conducting surveillance on a suspected drug house. One of the officers testified that he saw Williams walk out of the house, get into a car and drive away without putting on his seatbelt. The officers followed Williams in their patrol car and eventually conducted a traffic stop. As the officers approached the car, they saw Williams remove something from his jacket pocket and place it in the center console. After arresting Williams for driving without a license, the officers searched the center console and found marijuana and cocaine.

On February 1, 2012, Williams drove to the police department where he was arrested on an outstanding bench warrant. When police officers identified a car parked outside the police station as belonging to Williams, the officers approached it. The officers smelled a strong odor of marijuana coming from the car and called in a drug-sniffing dog. After the dog alerted for the presence of drugs, officers searched Williams' car and found crack cocaine and marijuana inside.

The government charged Williams with several drug related offenses. Williams moved to suppress the evidence seized by the officers on October 21 and February 1.

Concerning the October 21 stop, Williams testified he was wearing his seatbelt and the district court found his testimony to be credible. The court also found, however, that the officer credibly testified that he saw Williams driving with an unbuckled seatbelt. The court held that even if Williams was wearing his seatbelt, it was objectively reasonable for the officer to believe that he saw Williams driving without his seatbelt. As a result, the court held the officer had probable cause to conduct the October 21 traffic stop, which led to the discovery of the drugs in center console.

Williams argued the warrantless search of his car on February 1 was not valid under the automobile exception to the *Fourth Amendment's* warrant requirement. Under the automobile exception, if a car is readily mobile and probable cause exists to believe it contains contraband, police officers are allowed to search the car without a warrant. Williams claimed the automobile exception did not apply because at the time of the search, his car was not readily mobile to him because it was parked and he was under arrest.

The court disagreed. All that is required for an automobile to be readily mobile under the automobile exception is that the car is "readily capable" of being used. It does not matter if the car, its occupants or both are in police custody. In this case, Williams' car was readily

mobile, as Williams had driven it to the police station and parked it outside. In addition, it was undisputed the alert by the drug-dog established probable cause that Williams' vehicle contained drugs. Consequently, the warrantless search by the officers was valid under the automobile exception.

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