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Legal Division
Case Digest
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2014 United States Supreme Court and Circuit Courts of Appeals Case Digest

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United States Supreme Court

Fernandez v. California, 571 U.S. ___, 134 S. Ct. 1126 (2014)

Police officers investigating an assault and robbery saw Fernandez run into an apartment building. Once inside the building, the officers heard screams coming from one of the apartments. The officers knocked on the apartment door and Roxanne Rojas opened it. Rojas had a bump on her nose, fresh blood on her shirt and appeared to be crying. Rojas told the officers she had been in a fight. When the officers asked her if anyone else was in the apartment, Rojas told them that she and her four-year old son were the only individuals present. When the officers asked Rojas to step outside so they could conduct a protective sweep of the apartment, Fernandez stepped forward and told the officers not to enter. The officers arrested Fernandez for assaulting Rojas. In addition, the victim from the assault and robbery investigation identified Fernandez as his attacker. The officers transported Fernandez to the police station for booking. One-hour later, an investigator returned to the apartment and Rojas gave the investigator oral and written consent to search the apartment. The investigator seized weapons, gang paraphernalia and clothing worn by the robbery suspect.

The state charged Fernandez with robbery, domestic violence and firearms related charges. At trial, Fernandez filed a motion to suppress the evidence seized from the apartment, arguing Rojas' consent to search was not valid. The trial court and the California Court of Appeal both held Rojas' consent to search the apartment was valid, even though Fernandez had refused consent to search before he was arrested and taken to jail.

In *Georgia v. Randolph*, the United States Supreme Court held police officers may not conduct a warrantless search of a home over the express refusal of consent by a physically present resident, even if another resident consents to the search. Even though he was not present and objecting when Rojas gave the investigator consent to search the apartment, Fernandez argued his previously stated objection to the search of the apartment was still valid after he had been taken into custody.

The court disagreed. First, the court noted police officers cannot remove a person who might validly refuse consent to search in order to avoid that person's objection. When police officers remove a person who might validly object to a search, the court will determine if the person's removal was objectively reasonable under the circumstances. In this case, Fernandez's removal was objectively reasonable. The court held an occupant, such as Fernandez, who is absent due to a lawful detention or arrest is in the same position as a person who is not present for any other reason.

Second, the court reiterated that a person's objection to a consent search is only valid when the person is present and objecting. If a person is present, objects to the search, but is then lawfully removed from the scene, a person with common authority, such as Rojas in this case, can give the officers valid consent to search. A person's objection does not remain in place after his lawful arrest.

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

United States v. Apel, 571 U.S. ___, 134 S. Ct. 1144 (2014)

Two public highways run through a portion of Vandenberg Air Force Base, California. Adjacent to one of the highways is an area designated for peaceful protests. The base commander enacted several restrictions to control the protest area and issued an advisory stating that anyone who failed to adhere to the protest area policies could be barred from the base. Apel was convicted of three counts of trespassing on the base in violation of *18 U.S.C. § 1382* because he entered the designated protest area after he had been barred from the base for trespassing and vandalism.

The Ninth Circuit Court of Appeals reversed Apel's conviction. The Ninth Circuit held that *§ 1382* did not apply because the statute required the government to prove it has the exclusive control over the area on which the trespass allegedly occurred. Because the protest area was located on a portion of highway subject to an easement granted to the State of California, which later relinquished it to the County of Santa Barbara, the Ninth Circuit concluded the federal government lacked exclusive control over the area on which Apel's trespasses occurred. Consequently, the Ninth Circuit held Apel could not be convicted under *18 U.S.C. § 1382* for reentering a military installation after being ordered not to do so by the commanding officer.

The Supreme Court disagreed. In a unanimous decision, the court held nothing in *§ 1382* suggested the statute does not apply to a military base just because the federal government had conveyed a limited right to travel through a portion of the base or to assemble in a particular area. The common feature of the places described in *§ 1382* is not that they are used exclusively by the military, but that they have defined boundaries and are subject to the command authority of a military officer.

The Supreme Court further held the decision to secure a portion of the military base with fences did not change the boundaries of the base or reduce the authority of the base commander over the unfenced areas where the protest area was located.

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

Rosemond v. United States, 572 U.S. ___, 134 S. Ct. 1240 (2014)

Title 18 U.S.C. § 924(c) prohibits "using or carrying" a firearm "during and in relation to any crime of violence or drug trafficking crime." To convict a defendant for aiding or abetting someone who commits a violation *§ 924(c)*, the Supreme Court held the government must prove the defendant actively participated in the underlying drug trafficking or violent crime and had advance knowledge that the other person would use or carry a gun during the commission of that crime. In this case, the court concluded the district court's jury instructions were erroneous because they allowed the jury to convict Rosemond without proof that Rosemond knew in advance that one of his co-defendants would be armed.

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

United States v. Castleman, 572 U.S. ___, 134 S. Ct. 1405 (2014)

In 2001, Castleman pleaded guilty to having “intentionally or knowingly caused bodily injury to” the mother of his child, in violation of *Tenn. Code Ann. § 39-13-111(b)*. In 2008, a federal grand jury indicted Castleman on two counts of possession of a firearm after being “convicted . . . of a misdemeanor crime of domestic violence,” in violation of *Title 18 U.S.C. § 922(g)(9)*. The district court granted Castleman’s motion to dismiss the § 922(g)(9) counts of the indictment. The Sixth Circuit Court of Appeals affirmed the district court and held Castleman’s conviction in 2001 did not qualify as a “misdemeanor crime of domestic violence” because Castleman could have been convicted for “causing a slight, nonserious physical injury with conduct that cannot be described as violent.”

The Supreme Court disagreed, holding Castleman’s conviction in 2001 qualified as a “misdemeanor crime of domestic violence.” First, under § 922(g)(9) a misdemeanor crime of domestic violence is defined as “an offense that . . . has, as an element, the use or attempted use of physical force.” Second, the court recognized the common law element of force in the crime of battery “was satisfied by even the slightest offensive touching.” Third, because perpetrators of domestic violence are “routinely prosecuted under generally applicable assault or battery laws,” it made sense for Congress to have classified as a “misdemeanor crime of domestic violence” the type of conduct that supports a common-law battery conviction. Fourth, while the words “violent” or “violence” standing alone “connote a substantial degree of force,” that is not true of “domestic violence.” “Domestic violence” is not a type of “violence” but rather a term of art that covers acts that one might not characterize as “violent” in a non-domestic context. Consequently, the court held the requirement of “physical force” is satisfied, for the purposes of § 922(g)(9), by the degree of force that supports a common-law battery conviction.

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

Navarette v. California, 572 U.S. ___, 134 S. Ct. 1683 (2014)

A police dispatcher received an anonymous call from a woman stating a silver Ford pickup truck had just run the woman’s vehicle off the roadway. The woman provided the pickup truck’s license plate number, approximate location and direction of travel. The dispatcher broadcast the woman’s information and a few minutes later police officers saw a silver Ford pickup truck with the same license plate number, near the location and traveling in the same direction reported by the woman. The officer conducted a traffic stop, and as he and a back-up officer approached the pickup truck, the officers smelled the odor of marijuana. The officers searched the pickup truck, found four large bags of marijuana and arrested the driver, Navarette, and his brother, who was a passenger.

Navarette moved to suppress the marijuana, arguing the anonymous 911 call did not provide the officers reasonable suspicion to conduct the traffic stop.

The California Court of Appeal disagreed and affirmed the lower court's decision denying Navarette's motion to suppress the marijuana. Navarette appealed. The United States Supreme Court held the traffic stop did not violate the *Fourth Amendment* because, under the totality of the circumstances, the officers had reasonable suspicion Navarette was driving while intoxicated.

The court held the 911 call was sufficiently reliable to credit the woman's claim that Navarette's truck had run her vehicle off the road. First, the woman described the truck, provided its license plate information and gave the truck's location to the 911 dispatcher. Second, the police officer located the truck approximately 19 miles away from the scene of the incident, approximately 18 minutes after the 911 call. Third, the woman's use of the 911 system was a factor to take into account when determining the reliability of the information she provided. The 911 system had features that allowed for identifying and tracing callers, which would allow a reasonable officer to believe that a person might think twice before calling in a false report. Consequently, the woman's detailed, firsthand description of Navarette's truck and dangerous driving along with the timeline of events suggested the woman called 911 shortly after she was run off the road, which entitled her tip to be considered reliable by the police officer.

Next, the court recognized a reliable tip will justify an investigative stop only if the tip creates a reasonable suspicion that "criminal activity may be afoot." In this case, the court held the woman's report of being run off the roadway created reasonable suspicion of an ongoing crime such as drunk driving. The court stated that running another vehicle off the road suggests lane-positioning problems, decreased vigilance, impaired judgment, or some combination of recognized drunk-driving cues. Because the 911 call established reasonable suspicion to stop Navarette, the officer did not need to follow Navarette to personally observe suspicious driving before conducting the traffic stop.

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

Wood v. Moss, 572 U.S. ___, 134 S. Ct. 2056 (2014)

With permission from local law enforcement officials, a group of supporters and a group of protesters assembled on opposite sides of the street on which the President's motorcade was to travel. At the last minute, the President decided to make an unscheduled stop at a restaurant for dinner. As a result, the President's motorcade deviated from the planned route and proceeded to the outdoor dining area of the restaurant. After learning of the route change, the protesters moved down the sidewalk to the area in front of the restaurant, while the President's supporters remained at their original location. At their new location, the protesters had a direct line of sight to the outdoor patio where the President was located. At the direction of Secret Service agents, state and local police officers cleared the block on which the restaurant was located and moved the protesters two blocks away to a street beyond handgun or explosive reach of the President. The move placed the protesters one block farther away from the restaurant than the supporters. After the President dined, the motorcade left the restaurant and passed the President's supporters who had remained in their original location. The protesters remained two blocks away, beyond the President's sight.

The protestors sued the Secret Service agents, claiming the agents engaged in viewpoint discrimination, in violation of the *First Amendment*. Specifically, the protesters claimed the agents denied the protesters equal access to the President when the agents moved the protesters away from the restaurant while allowing the supporters to remain in their original location.

The court disagreed, holding the agents were entitled to qualified immunity. Qualified immunity protects government officials from liability for civil damages unless the plaintiff can establish the official violated a statutory or constitutional right, and that the right was clearly established at the time of the incident.

First, the court stated it has never held a violation of a right guaranteed by the *First Amendment* gives rise to an implied cause of action for damages against federal officers. However, without deciding the issue, the court assumed an individual could sue a federal official for a *First Amendment* violation.

Next, the court held no clearly established law required Secret Service agents engaged in crowd control to ensure that groups with differing viewpoints are at comparable locations or maintain equal distances from the President. The court noted when the 200 to 300 protesters moved from their original location to the area closer to the restaurant, they were within weapons range and had a largely unobstructed view of the President on the restaurant's patio. Consequently, because of their location the protesters posed a potential security risk to the President. In contrast, the supporters, who remained in their original location, did not pose a security risk because a large two-story building blocked their line of sight and weapons access to the patio where the President dined.

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

Plumhoff v. Rickard, 572 U.S. ___, 134 S. Ct. 2012 (2014)

On July 18, 2004, around midnight, a police officer conducted a traffic stop on a car driven by Rickard because it had only one operating headlight. When Rickard failed to produce his driver's license, the officer asked him to step out of the car. Instead of stepping out, Rickard sped away. The officer pursued Rickard on an interstate highway along with officers in five other police cars. During the pursuit, Rickard was swerving through traffic at speeds over 100 miles per hour. After Rickard exited the interstate highway, he made a sharp turn causing contact between his car and one of the police cars. This contact caused Rickard's car to spin out into a parking lot and collide with Officer Plumhoff's police car. Officers Evans and Plumhoff got out of their cars and approached Rickard's car. Evans with gun in hand, pounded on the passenger side window of Rickard's car. At this point, Rickard's tires started spinning and his car was rocking back and forth, an indication that Rickard was using the accelerator even though his bumper was flush against the police car in front of him. Plumhoff fired three shots into Rickard's car, but Rickard put his car in reverse and turned around, forcing Ellis to step to the side to avoid being struck. As Rickard accelerated down the street away from the officers, two other officers fired 12 shots towards the fleeing suspect. Rickard lost control of the car

and crashed into a building. Both Rickard and his passenger, Allen, died from a combination of gunshot wounds and injuries suffered in the crash.

Rickard's daughter sued Plumhoff and five other police officers claiming they violated the *Fourth Amendment* by using excessive force to stop Rickard.

The court held the officers were entitled to qualified immunity. Rickard led the officers on a chase with speeds exceeding 100 miles per hour and lasted over five minutes. During the chase, Rickard passed more than two dozen other vehicles, several of which were forced to alter their course. After Rickard's car collided with a police car and appeared to be stopped, Rickard resumed maneuvering his car in an attempt to escape. Under the circumstances, the court found Rickard's outrageously reckless driving posed a grave public safety risk. As a result, a reasonable officer could have concluded that Rickard was intent on resuming his flight, and if he were allowed to do so, he would once again pose a deadly threat for others on the road. Consequently, the court held the police officers acted reasonably by firing at Rickard to end that risk.

The court added the officers were justified in firing 15 shots at Rickard, stating, "If police officers are justified in firing at a suspect in order to end a severe threat to public safety, the officers need not stop shooting until the threat has ended." Here, during the 10-second span when the officers fired their shots, Rickard continued to flee until he crashed. In addition, the court stated Allen's presence in the car had no bearing in the analysis of whether the officers acted reasonably by firing at Rickard because *Fourth Amendment* rights are personal and cannot be asserted by another person. As such, the court did not consider Allen's presence in the car when determining the reasonableness of the officers' actions.

Finally, the court held even if the officers' use of force against Rickard had been unreasonable, the officers would still have been entitled to qualified immunity. The court found that at the time of the incident, no clearly established law prohibited the officers from firing at a fleeing vehicle to prevent harm to others.

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

Abramski v. United States, 573 U.S. ___, 134 S. Ct. 2259 (2014)

Abramski agreed to purchase a Glock 19 handgun for his uncle. As a former police officer, Abramski could obtain a more favorable price from the firearms dealer than his uncle could. Abramski completed Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) Form 4473, indicating he was the actual buyer of the handgun. Form 4473 clearly warned that a straw purchaser, someone who buys a gun on behalf of another person, is not considered the actual buyer. Abramski was convicted of making a false statement that was material to the lawfulness of a firearms sale, in violation of *18 U.S.C. § 922(a)(6)* and making a false statement with respect to information required to be kept in the records of a licensed firearms dealer in violation of *18 U.S.C. § 924(a)(1)(A)*.

Abramski argued he could only be prosecuted under *§ 922(a)(6)* if it was unlawful for his uncle to possess a firearm. Abramski claimed because his uncle could lawfully possess

the firearm, the “actual buyer” question on Form 4473 was not material to the lawfulness of the sale. Abramski also argued he could not be prosecuted for violating *18 U.S.C. § 924(a)(1)(A)* because the information he provided on Form 4473 was not required to be kept in the gun dealer’s permanent records.

In a 5-4 decision, the Supreme Court held Abramski’s misrepresentation on Form 4473 was material. The court found when Congress passed the Gun Control Act of 1968, the language in *18 U.S.C. § 922(a)(6)* was intended to refer to the true buyer of a firearm and not a straw purchaser. The court explained federal gun laws have established an elaborate system of in-person identification and background checks to ensure guns are kept out of the hands of felons and other prohibited purchasers. The court added these provisions would be meaningless if a potential gun buyer could avoid them by having someone else purchase a gun for him. As a result, the court ruled Abramski’s misrepresentation was material and the government could prosecute him under *§ 922(a)(6)* even though his uncle could have lawfully purchased the firearm on his own.

The court further held federal law requires licensed firearms dealers to maintain records of gun sales as required by Attorney General regulations. Attorney General regulations compel gun dealers to keep as part of their records each Form 4473 generated from gun sales. Consequently, the court found Abramski’s material misrepresentation about the identity of the true buyer on Form 4473 violated *18 U.S.C. § 924(a)(1)(A)* because that misrepresentation pertained to information a gun dealer was required to keep in his permanent records.

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

Riley v. California; U.S. v. Wurie, 573 U.S. ___, 134 S. Ct. 2474 (2014)

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

Police officers arrested Wurie for distribution of crack cocaine and seized two cell phones from him. Officers searched the call log on one of the cell phones and determined the phone number labeled “my house” was associated with a nearby apartment. Officers went to the apartment and saw the name “Wurie” written on the mailbox. The officers obtained a warrant, searched the apartment and found drugs and firearms.

Wurie filed a motion to suppress the evidence seized from his apartment, arguing the officers violated the *Fourth Amendment* by searching his cell phone incident to arrest.

In reversing Wurie’s conviction, the First Circuit Court of Appeals held the search incident to arrest exception to the *Fourth Amendment’s* warrant requirement did not authorize the warrantless search of data on cell phones seized from individuals arrested by police officers.

The Supreme Court consolidated the cases, holding that police officers generally may not search digital information on a cell phone seized from an individual who has been arrested, without first obtaining a warrant.

Previously, the court held police officers could conduct warrantless searches of arrestees and possessions within the arrestees' control, incident to a custodial arrest. The court concluded such searches were reasonable in order to discover weapons or any evidence on the arrestee's person so that evidence could not be concealed or destroyed.

The court concluded this rationale does not apply to modern cell phones. First, digital data stored on a cell phone cannot be used as a weapon to harm an arresting officer or aid an arrestee in escaping. The court emphasized that police officers may still examine the physical aspects of phone to ensure that it will not be used as a weapon. For example, the court noted a police officer may examine a cell phone to determine whether there is a razor blade hidden between the phone and its case. However, once an officer has secured a phone and eliminated any potential threats the data on the phone cannot harm anyone.

Second, the court stated the government provided little evidence to believe that loss of evidence from a seized cell phone, by remote wiping of the data on the phone, was a common occurrence. Even if remote wiping were a concern, the court listed two ways remote wiping could be prevented. First, the officer could turn the phone off or remove its battery. Second, the officer could put the phone inside a device, called a Faraday bag, that would isolate the phone from radio waves. The court added that Faraday bags are cheap, lightweight, and easy to use and a number of law enforcement agencies already encourage their use. In addition, the court commented that if a police officers are truly confronted with individualized facts suggesting that a defendant's phone will be the target of an imminent remote wiping attempt, they may be able to rely on exigent circumstances to search that phone immediately.

The court further recognized that cell phones are different from other objects that an arrestee might have on his person. Before cell phones existed, a search of an arrestee generally constituted a small intrusion on the arrestee's privacy. However, modern cell phones are, in essence, mini-computers that have immense storage capacity on which many people keep a digital record of nearly aspect of their lives. Consequently, the warrantless search of a cell phone constitutes a significant intrusion upon a person's privacy. If police officers wish to search a cell phone incident to arrest, they need to obtain a warrant.

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

Carroll v. Carman, 574 U.S. ___, 135 S. Ct. 348 (2014)

The Pennsylvania State Police received a report that Zita, a suspect in a car theft, might be located at Andrew and Karen Carman's house. Two police officers were dispatched to the Carmans' house to conduct a knock and talk interview. The Carmans' house was situated on a corner lot with the front of the house facing a main street and the left side of the house facing a side street. The officers initially drove to the front of the house, but

after discovering no available parking, drove down the side street next to the Carmans' house and parked at the far rear of the property. When the officers exited their cars, they walked toward the Carmans' house from the side and approached a sliding glass door that opened onto a ground-level deck. As the officers stepped onto the deck, Andrew Carman came out of the house and confronted the officers in a belligerent and aggressive manner. Carman refused to answer any of the officers' questions, and as Carman turned away from the officers, he appeared to reach for his waist. Officer Carroll grabbed Carman's arm to make sure Carman was not reaching for a weapon causing Carman to lose his balance and fall into the yard. At this point, Karen Carman came out of the house, spoke with the officers, and then consented to a search of the house. The officers searched the Carmans' house but did not find Zita. The Carmans were not charged with any crimes. The Carmans sued Officer Carroll, claiming that Carroll violated the *Fourth Amendment* when he went into their backyard and onto their deck without a warrant.

The Third Circuit Court of Appeals held Officer Carroll was not entitled to qualified immunity. The court found Officer Carroll violated the *Fourth Amendment* as a matter of law because the knock and talk exception requires police officers to begin their encounter at the front door, where they have an implied invitation to go. The court further held it was clearly established at the time of the incident that a police officer's right to knock at the front door while conducting a knock and talk did not automatically allow the officer to enter other parts of the curtilage. Officer Carroll appealed to the United States Supreme Court, which agreed to hear the case without briefing or oral arguments from the parties.

The Supreme Court reversed the Third Circuit Court of Appeals, holding at the time of the incident there was no clearly established law in the Third Circuit requiring police officers to initiate a knock and talk interview at the front door of a residence. Significantly, the Court did not elaborate on the rules police officers must follow when conducting knock and talk interviews where both the front and back doors of a residence appear to be readily accessible to visitors. The Court referenced cases from the Second and Seventh Circuit Courts of Appeal that left this choice to the officers. However, the Court added it was not ruling on whether those cases were correctly decided or whether a police officer may conduct a knock and talk at any entrance that is open to visitors rather than only at the front door.

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

Heien v. North Carolina, 574 U.S. ___, 135 S. Ct. 530 (2014)

A police officer stopped the car in which Heien was a passenger because it only had one operating brake light. During the stop, the officer received consent to search the car and discovered cocaine inside a duffel bag. Heien and the driver were charged with trafficking cocaine.

Heien argued North Carolina law did not require a vehicle to be equipped with more than one working brake light. As a result, Heien claimed the traffic stop constituted an

unlawful seizure in violation of the *Fourth Amendment*; therefore, the cocaine should have been suppressed.

The North Carolina Court of Appeals agreed, holding the relevant code provision, which requires that a car be “equipped with a stop lamp,” *N.C. Gen. Stat. Ann §20-129(g)*, requires only a single lamp. Because Heien’s car had one operating brake light, the court concluded the officer’s justification for the traffic stop was objectively unreasonable and the cocaine should have been suppressed.

The state appealed and the North Carolina Supreme Court reversed the Court of Appeals. The North Carolina Supreme Court held the officer’s mistake of law was objectively reasonable, as no court in North Carolina had ever interpreted the motor vehicle laws to require only one functioning brake light. Consequently, the court held the officer had reasonable suspicion to conduct the traffic stop. Heien appealed to the United States Supreme Court.

The United States Supreme Court agreed with the North Carolina Supreme Court. The Supreme Court noted the *Fourth Amendment* requires government officials to act reasonably, not perfectly, and gives those officials “fair leeway for enforcing the law.” In this case, the Supreme Court found there was little difficulty in concluding the officer’s mistake of law was reasonable. The North Carolina vehicle code that requires “a stop lamp” also provides that the lamp “may be incorporated into a unit with one or more *other* rear lamps,” and that “all originally equipped rear lamps” must be “in good working order.” Although the North Carolina Court of Appeals held that “rear lamps” do not include brake lights, the word “*other*,” coupled with the lack of state-court precedent interpreting the provision, made it objectively reasonable for the officer to believe that a faulty brake light constituted a violation.

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

First Circuit

United States v. Silva, 742 F.3d 1 (1st Cir. 2014)

Pelletier went to the police department and gave an officer \$150 in counterfeit currency Pelletier said he received from Silva. Pelletier told the officer Silva possessed more counterfeit currency as well as counterfeit driver's licenses. Pelletier told the officers Silva was living out of a silver Cadillac, and provided the vehicle's location. The officer did not know Pelletier had contacted the police on numerous occasions in the past to report alleged incidents that were never substantiated.

Two other police officers were dispatched to the location provided by Pelletier. When the officers arrived, they saw a silver Cadillac, full of personal belongings, and a man sitting in the driver's seat. When the man refused to produce his driver's license, one of the officers threatened to arrest him. The man then provided a driver's license that identified him as Anthony Silva. A record check revealed Silva had an outstanding arrest warrant for an unpaid motor vehicle fine. The officers arrested Silva and searched him incident to arrest. The officers found a fake driver's license with Silva's photograph on it and counterfeit currency.

Later that day, Pelletier contacted the police and told an officer that Silva had called him from jail and said there was \$3,000 worth of counterfeit currency in the trunk of the Cadillac. Because Silva's arrest involved counterfeiting, the local police passed the case to the United States Secret Service. A local police officer shared the information collected on Silva with a Secret Service agent, but it was not clear if the officer told the agent about Pelletier's history of making false reports. The agent applied for a warrant to search the Cadillac, which included Pelletier's accusations against Silva, but contained no information about Pelletier's prior history. The agents searched the Cadillac and seized \$3,000 in counterfeit currency.

At trial, Silva moved to suppress the evidence discovered during his arrest and from the subsequent search of his car.

First, the court held the officers had reasonable suspicion to approach Silva and demand his driver's license based on the information provided by Pelletier. Even though the officers had no knowledge of Pelletier's prior history, which may have caused them to question the reliability of his information, Pelletier provided counterfeit currency allegedly obtained from Silva and he accurately described Silva's car and its location. Silva's refusal to provide his driver's license combined with Pelletier's claim that Silva was producing counterfeit identification, gave the officers justification to run a record check on Silva's license.

Second, the court held when the officers discovered the counterfeit currency on Silva's person, they had probable cause to seize the Cadillac and search it without a warrant. The Secret Service agent's decision to obtain a warrant to search the Cadillac did not diminish the fact that probable cause existed. The court stated, "The practice of awaiting a magistrate's warrant prior to conducting a search, even where officers feel confident in

their own assessment of probable cause, is one that should be commended, not punished with exclusion.”

Finally, the court held the agent’s failure to include facts about Pelletier’s history of false reporting was neither intentional nor reckless. In addition, even if the agent had included information concerning Pelletier’s history, this information would not have affected the magistrate’s finding of probable cause.

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

United States v. Jacques, 744 F.3d 804 (1st Cir. 2014)

Police officers detained Jacques and brought him to the police station for questioning about his involvement in a church arson. The officers *Mirandized* Jacques and Jacques waived his rights. During the interview, the officers told Jacques an honest confession might lead to favorable treatment by the prosecutor and judge, while a failure to cooperate was likely to result in a maximum sentence. The officers also commented on the failing health of Jacques’ father, suggesting that continued resistance might deprive Jacques of crucial years with his family. Finally, the officers exaggerated the strength of the evidence against Jacques and misrepresented the involvement of high-profile federal agents in the case. At 1:45 a.m., approximately six and one half hours later, Jacques admitted his involvement in the church arson. In addition, Jacques signed a waiver of his right to prompt presentment to the United States Magistrate Judge.

Jacques moved to suppress his incriminating statements, arguing his confession was obtained involuntarily because the officers’ coercive tactics had overcome his will. Jacques also argued the waiver of his right of presentment was not valid because the officers obtained it more than six-hours after his detention.

First, the court recognized in the First Circuit that confessions are not rendered involuntary when police officers promise to bring the defendant’s cooperation to the prosecutor’s attention or by suggesting that the defendant’s cooperation may lead to favorable treatment. Next, the court held there was no evidence suggesting the officers’ threats of a harsher sentence if Jacques refused to cooperate had any meaningful impact on Jacques’ conduct during the interrogation. The officers repeated their threats numerous times over the six-hour interrogation without any identifiable effect on Jacques. In addition, when Jacques told the officers why he was confessing, he did not mention any of the officers’ alleged threats. While the officers’ threats were relevant to a determination of voluntariness, in this case Jacques failed to establish his will was overcome by the officer’s threats.

Second, the court held the officers’ comments to Jacques about his father’s health did not coerce Jacques into confessing to the arson. The officers’ comments occurred several hours before Jacques confessed and Jacques demeanor did not change significantly after the comments.

Third, the court held the officers’ exaggeration of their case against Jacques, minimizing the gravity of Jacques’ offense, and emphasizing the negative media attention Jacques’

trial would generate did not constitute coercion. While extreme forms of deception by the police might be sufficient to render a suspect's confession involuntary, the interrogation tactics employed by the officers in this case did not amount to coercion in violation of Jacques' *Fifth Amendment* rights.

Finally, the court held the officers did not willfully violate Jacques' right to prompt presentment. Under *Federal Rule of Criminal Procedure 5(a)*, a defendant who has been arrested must be brought "without unnecessary delay before a magistrate judge." To protect this right, the *McNabb-Mallory* rule established by the Supreme Court holds that confessions made during a period of detention that violate the prompt presentment rule are inadmissible in federal court. In response to *McNabb-Mallory*, Congress enacted *18 U.S.C. § 3501*. Under *§ 3501*, a voluntary confession will not be suppressed because of delay in presentment to the magistrate judge as long as the confession was obtained within six-hours of arrest. Any voluntary confession obtained after six-hours may still be admissible if the judge rules the delay in presentment was reasonable.

In this case, the officer gave Jacques the written waiver-of-prompt-presentment-form one-minute past the six-hour window and Jacques signed the form four-minutes later. Such a brief delay in acquiring Jacques' waiver of his right to presentment was not "unreasonable or unnecessary" so as to require suppression of Jacques' confession.

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

Macdonald v. Town of Eastham, 745 F.3d 8(1st Cir. 2014)

Macdonald's neighbor called the police after she saw the door to Macdonald's house standing wide open. Two police officers interviewed the neighbor, approached Macdonald's house, and announced their presence. After receiving no response, the officers entered Macdonald's house through the open door. While searching the house, the officers discovered a marijuana growing operation. The officers arrested Macdonald when he arrived home thirty minutes later.

A state court judge suppressed the evidence discovered in Macdonald's home and the criminal charges against Macdonald were dismissed. Macdonald subsequently sued the town and the police officers, claiming the warrantless entry and search of his house violated the *Fourth Amendment*.

The court disagreed, holding the officers were entitled to qualified immunity. The officers responded to a call from a concerned neighbor, saw the door to Macdonald's house wide open, announced their presence without receiving a reply and then entered the house to check on the welfare of anyone who might be inside. Once inside, the officers conducted their search in a routine manner. Under these circumstances, the court concluded the law was not clearly established to put a reasonable officer on notice that entry into Macdonald's home might violate the *Fourth Amendment*.

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

United States v. Almeida, 748 F.3d 41 (1st Cir. 2014)

A police officer conducted a traffic stop on a pick-up truck registered to Maynard Martin. During the stop, the officer obtained identification information from the driver, Almeida, and his passenger. Almeida identified himself as John Martin and presented a temporary driver's license, without a photograph, with the name John Martin on it. After issuing a warning, the officer let Almeida and his passenger leave. A few minutes later, the officer ran a computer check on John Martin and saw Martin's photograph did not match the driver of the vehicle he had just pulled over. In addition, the officer discovered the passenger had also given a false name and identification. The officer pursued the pick-up truck again, planning to arrest the driver and passenger for presenting false identifications. When the officer pulled the truck over, he discovered Almeida was now in the passenger seat, and the previous passenger was driving. The officer arrested both men.

A short time later, a drug dog alerted to the presence of drugs in the truck. Officers searched the truck and found a bag of marijuana and counterfeit United States currency. In a subsequent inventory search of the truck, officers found evidence related to the counterfeit currency. The officers also searched Almeida's wallet and found genuine United States currency containing serial numbers that matched the serial numbers on some of the counterfeit currency recovered from the truck. The government indicted Almeida for possession of counterfeit currency.

Almeida argued the evidence obtained from both searches of the truck and the search of his wallet violated the *Fourth Amendment*,

The court disagreed holding Almeida did not have a reasonable expectation of privacy in the truck. Even though Almeida was driving the truck when first stopped, the court found Almeida had shown no pattern of repeated use or control over the truck that would allow the court to conclude his possession of the truck was anything more than "informal and temporary." As a result, Almeida could not challenge any of the evidence recovered from the truck in either of the searches conducted by the police officers.

Without deciding whether the officers lawfully searched Almeida's wallet when the officers arrested him, the court held the seizure of the currency from Almeida's wallet was valid under the inevitable discovery doctrine. First, the officer arrested Almeida for possession of false identification. Even if the officers had not searched Almeida's wallet, Almeida's wallet would have been searched at the jail during the booking process. The search at the jail would have inevitably resulted in the seizure of the cash, because it was the jail's policy to remove an arrestee's property during the booking process.

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

United States v. Oquendo-Rivas, 750 F.3d 12 (1st Cir. 2014)

Local police officers arrested Oquendo for his involvement in a shooting at a bar and recovered a firearm with an obliterated serial number they believed might be connected to the shooting. At the police station, an officer gave Oquendo a *Miranda* waiver form.

After reviewing the form, Oquendo indicated he did not wish to make a statement. The officer did not ask Oquendo any questions and left the room. Approximately twenty minutes later, an agent from the Bureau of Alcohol, Tobacco, Firearm and Explosives (ATF) entered the interview room and handed Oquendo a blank *Miranda* waiver form. After reviewing the form, Oquendo wrote, “I do not understand this, my lawyer speaks,” on the form. The agent then verbally read Oquendo his *Miranda* rights, and upon seeing the note on the form, asked Oquendo what he did not understand. Oquendo told the agent he was willing to speak without a lawyer present, but he did not want to answer any questions about the shooting at the bar. After the agent agreed to limit the scope of his questions, Oquendo signed the form and agreed to speak to the agent. During the interview, Oquendo made incriminating statements concerning the recovery of the gun with the obliterated serial number. The government indicted Oquendo for aiding and abetting in the possession of a firearm with an obliterated serial number.

Oquendo argued his incriminating statements to the ATF agent should have been suppressed because only twenty minutes elapsed between the time Oquendo invoked his right to remain silent and the agent approached him.

The court noted there are four factors to consider when determining whether the resumption of questioning is allowed after a person invokes the right to remain silent: (1) whether a reasonable period of time passed prior to the resumption, (2) whether the same officer resumed questioning, (3) whether the suspect received refreshed *Miranda* warnings, and (4) whether questioning concerned the same alleged crime.

In this case, although twenty minutes was a short period of time, a different law enforcement officer, an ATF agent, conducted the second interview, and before he questioned Oquendo, the agent re-advised Oquendo of his *Miranda* rights and limited the scope of his questioning as requested by Oquendo. While the first factor, by itself, favored Oquendo, the court held an analysis of all four factors established the agent did not violate Oquendo’s *Miranda* rights.

Oquendo also argued his written statement, “I do not understand this, my lawyer speaks,” was an invocation of his right to counsel.

The court disagreed. A suspect’s request for counsel must be clear and unambiguous. The court held the phrase, “my lawyer speaks,” was not a clear indication to the agent that Oquendo was requesting the assistance of an attorney. When confronted with this ambiguous statement, the agent sought clarification and continued questioning only after Oquendo made it clear he was willing to proceed without an attorney. As a result, Oquendo’s right to counsel was not violated.

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

United States v. Arnott, 758 F.3d 40 (1st Cir. 2014)

While conducting a wiretap, police officers intercepted a call between Brichetto and Leavitt, in which Leavitt sought to purchase oxycodone pills. After Brichetto and Leavitt agreed to meet in a parking lot to conduct the transaction, officers set up surveillance.

The officers saw Brichetto arrive in a pick-up truck and park next to a car. A man, later identified as Leavitt, got out of the passenger side of the car and got into Brichetto's truck. After a few minutes, Leavitt returned to the car, and both vehicles drove away. The surveillance officers followed the car containing Leavitt. After the officers saw the car roll through a stop sign, they requested a patrol officer conduct a traffic stop. The patrol officer stopped the car and requested identification from the driver, Arnott, and Leavitt, who was in the passenger seat. Leavitt told the officer his name was "William Young," and that he did not have any identification. Arnott, appearing extremely nervous, gave the officer his driver's license, but gave vague answers in response to the officer's questions. The officer ordered Arnott out of the car and conducted a *Terry* frisk for weapons. The officer felt a hard object in Arnott's pocket, which the officer believed was a knife. The officer reached into Arnott's pocket and removed a bag of tightly wrapped pills that Arnott admitted were oxycodone. When the officer asked Arnott if there were any other drugs in the car, Arnott told the officer there was marijuana in the trunk. The officer arrested Arnott and the government indicted him for two drug related offenses.

Arnott filed a motion to suppress the oxycodone pills, arguing the *Terry* frisk was unlawful because the officer did not have reasonable suspicion to believe he was armed and dangerous. Arnott also argued his incriminating statements should have been suppressed because the officer failed to advise him of his *Miranda* rights.

The court disagreed. After speaking with the surveillance officers, the patrol officer knew it was likely the occupants of the car had just completed a drug transaction. In addition, when questioned by the officer Arnott appeared extremely nervous and could barely hold onto his driver's license because his hands were shaking so badly. Finally, the court commented, "the connection between drugs and violence is legendary." Consequently, the court found the totality of the circumstances supported reasonable suspicion to believe Arnott might be armed; therefore, the *Terry* frisk was justified.

The court further held the seizure of the oxycodone pills was reasonable. After the officer felt a hard object he believed was knife, the officer was allowed to remove that object from Arnott's pocket. Even though the hard object turned out to be tightly packaged oxycodone pills and not a knife, contraband discovered during a lawful *Terry* frisk is not subject to suppression.

Next, the court held the officer's questions concerning the presence of other drugs were within the scope of the *Terry* stop because they related to the discovery of the oxycodone pills.

Finally, the court held Arnott was not in custody for *Miranda* purposes when he made the incriminating statements. During the brief period of questioning, prior to arrest, Arnott was on a public roadway, being questioned by a single officer who made no show of force.

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

McGrath v. Tavares, 757 F.3d 20 (1st Cir. 2014)

At 3:15 a.m., Officer Almeida responded to an activated burglar alarm at a liquor store. As Officer Almeida got close to the liquor store, a Toyota Camry traveling in the opposite direction turned left in front of him at an intersection. Believing various traffic violations had been committed, Officer Almeida got behind the Camry, with blue lights and siren activated, and attempted to conduct a traffic stop. However, the driver of the Camry refused to stop. After the Camry drove through a bank's drive-through teller window in the wrong direction, Officer Tavares joined the pursuit. When the driver of the Camry crashed into a stone wall, Almeida and Tavares positioned their patrol cars behind the Camry. Almeida shouted commands to the driver to put his hands up and step out of the Camry. Instead of complying with Almeida's commands, the driver maneuvered the Camry in reverse between the two patrol cars. The reversing Camry hit Almeida's patrol car and continued backing up until it crashed into a telephone pole. The officers approached the Camry, which appeared to be stuck on the telephone pole, with their firearms drawn. Officer Tavares ordered the driver to turn off the engine and get out of the Camry. The driver revved the Camry's engine then accelerated toward Officer Tavares. Officer Tavares fired his firearm twice, striking the Camry's front windshield. One of the shots hit the driver in the upper right arm. As the Camry passed Officer Tavares and continued in Officer Almeida's direction, Officer Tavares fired two more shots, which entered the Camry through the front passenger window. One of the shots struck the driver in the back. Officer Almeida then fired seven shots; however, none struck the driver. After hitting a curb, the Camry went airborne and came to a complete stop. The driver, sixteen-year old, McGrath later died from the gunshot wound to the back.

McGrath's mother sued, claiming Officers Tavares and Almeida violated the *Fourth* and *Fourteenth Amendments* by using excessive force to unlawfully seize her son.

The court affirmed the district court, which held, as a matter of law, that Officer Tavares' use of deadly force was objectively reasonable under the circumstances. First, throughout the pursuit, the court noted, McGrath acted with complete disregard for the safety of the officers or anyone else that might have been on the street. Second, the undisputed facts established when Officer Tavares fired at the Camry, the chase had not ended, even though the Camry had crashed into a stone wall and then a telephone pole. When Officer Tavares fired his first two shots, the Camry was driving toward him. Officer Tavares' choices were to shoot or risk being run over. The court concluded an officer in this situation could have reasonably believed he was facing a threat of serious physical harm or death. Officer Tavares third and fourth shots were fired as the Camry drove toward Officer Almeida. The court found an officer in this situation could have reasonably believed the driver of the Camry posed a threat of serious physical harm to Officer Almeida, and then to the public if he were able to resume his flight. As a result, Officer Tavares was entitled to qualified immunity.

Concerning Officer Almeida, the court affirmed the district court, which held as a matter of law that Officer Almeida was entitled to qualified immunity. In this case, none of Officer Almeida's shots struck McGrath or restrained McGrath's freedom of movement. Consequently, Officer Almeida never seized McGrath for *Fourth Amendment* purposes.

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

United States v. Martinez, 762 F.3d 127 (1st Cir. 2014)

At roll call, police officers were advised of the heightened risk for gang violence in the area because a funeral service was being held at a local church for a murdered gang member. After the service, a police officer drove past a park near the church and saw a large gathering of people and cars. As police officers approached, a silver car left abruptly with its tires screeching and disregarded a red light. One of the officers stopped the car, which contained four men. The officer recognized the front-seat passenger, Martinez. The officer knew Martinez was a gang member who had previously been charged with assault and battery and with weapons offenses. The officer ordered the driver out of the car and told the other occupants to keep their hands where he could see them. Martinez initially placed his hands on the dashboard, but on two occasions reached toward his waistband. A back-up officer then ordered Martinez out of the car and frisked him. The officer discovered a loaded firearm in the waistband of Martinez's pants. The government indicted Martinez for being a felon in possession of a firearm.

Martinez argued the frisk was unlawful because the officer did not have reasonable suspicion that he was presently armed and dangerous.

The court disagreed. At the time of the stop, the officer knew Martinez belonged to a gang and that Martinez had been charged with assault and battery and weapons offenses in the past. In addition, the traffic stop occurred after the car in which Martinez was riding sped away and ran a red light as soon as police officers arrived in an area of suspected gang activity. Finally, Martinez repeatedly refused orders by police officers to keep his hands on the dashboard. Instead Martinez reached toward his waistband. The court concluded, under these circumstances, it was objectively reasonable for the officers to suspect Martinez was armed and dangerous.

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

United States v. Arthur, 764 F.3d 92 (1st Cir. 2014)

On October 31, two armed men robbed a cell phone store and fled on foot. The store clerk described the robbers as black males wearing dark, heavy clothing. Another witness reported the robbers were fleeing on foot down Moultrie Street, which was a street near the store. Upon learning this information, a police officer drove to Moultrie Street and saw a resident raking leaves. The resident told the officer he had just seen two black males running down the street, heading away from the cell phone store. The officer drove to the end of Moultrie Street and when he turned to an adjacent street, the officer saw two black males walking in a direction that led away from the cell phone store. One of the men, later identified as Arthur, was wearing a black pea coat and blue jeans. The other man, later identified as Brown, was wearing a dark colored hooded sweatshirt and black pants. Approximately five minutes had elapsed since the robbery, the men were one eighth of a mile from the cell phone store, and the officer had seen no other people

on foot in the area. The officer stopped the men and told them they matched the description of two robbery suspects. The officer brought the men back to the store where the store clerk identified Arthur and Brown as the robbers. Arthur and Brown were arrested and charged with a variety of federal criminal offenses.

Arthur argued the officer violated the *Fourth Amendment* because the officer did not have reasonable suspicion to stop him.

The court disagreed. First, when the officer stopped Arthur, he had a reliable description of the robbers, to include their race, gender, clothing and their approximate location and direction of travel. Second, the officer corroborated this information with the person raking leaves. Third, only a few minutes had elapsed after the robbery when officer saw Arthur and the other man one eighth of a mile away from the crime scene, heading away from the store. Fourth, Arthur and the other man matched the description provided by the store clerk. Finally, the officer saw no other persons on foot in the area. As a result, the court held the officer had reasonable suspicion to stop Arthur and investigate Arthur's possible involvement in the robbery.

Arthur further argued the store clerk's identification should have been suppressed because it was not reliable.

Again, the court disagreed, holding the store clerk's identification of Arthur was reliable. After stopping Arthur and Brown, the officer brought the men back to the cell phone store. The clerk remained inside the store and viewed each man through the plate glass window as he stood on the sidewalk outside the store. When the clerk saw Arthur, she immediately shouted, "That's him, that's him." Although the show-up procedure was impermissibly suggestive, the court held it was still reliable. First, the clerk had a reasonably good chance to view Arthur during the robbery. Second, the clerk paid close attention to Arthur's appearance as demonstrated by her ability to provide an accurate description. Finally, after viewing Arthur on the sidewalk, the clerk did not hesitate in identifying him as one of the robbers.

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

United States v. Tiru-Plaza, 766 F.3d 111 (1st Cir. 2014)

At approximately 11:00 p.m., police officers stopped a car containing four individuals for a traffic violation. The driver, Morales, could not produce a driver's license and he gave the officers a photocopy of the vehicle's original registration on which the vehicle identification number (VIN) was illegible. Suspecting the vehicle was stolen, one of the officers asked Morales to exit the vehicle and open the hood so the VIN on the engine could be inspected. Morales got out and as he raised the hood of the vehicle, the officer saw the handle of a pistol in the waistband of Morales' pants. The officer alerted his partner who immediately ordered Tiru, the front seat passenger, out of the vehicle. The officer frisked Tiru and discovered a pistol in the waistband of Tiru's pants. Tiru was charged with being a felon in possession of a firearm.

First, Tiru argued the officers unlawfully extended the duration of the traffic stop when they ordered Morales to open the hood of the vehicle. The court disagreed. When Morales failed to provide the officer with a driver's license and a legible vehicle registration, it was reasonable for the officer to suspect the car might have been stolen. Based on that suspicion, it was reasonable for the officer to check the VIN on the vehicle's engine. In addition, the time it took Morales to exit the car and open the hood was brief.

Tiru next argued the pat-down conducted by the officer was not a *Terry* frisk, but rather a search incident to an unlawful arrest. Again, the court disagreed. The officer lawfully directed Tiru to exit the car after his partner discovered Morales had a pistol. The officer then frisked Tiru, discovered the pistol in the waistband of Tiru's pants and then handcuffed and detained Tiru. Tiru was clearly under arrest after the discovery of the pistol in his waistband, not before.

Finally, Tiru argued the officer was not justified in frisking him just because his partner saw a pistol in the waistband of Morales' pants. The court did not agree. First, two police officers encountered four individuals, at nighttime, in a vehicle the officers had some reason to believe might be stolen. Second, the officers discovered that Morales had a pistol concealed in his waistband. Consequently, the court concluded that the officer's decision to frisk Tiru was supported by reasonable suspicion he might be armed and dangerous.

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

United States v. Awer, 770 F.3d 83 (1st Cir. 2014)

A police officer stopped a car for speeding and arrested the driver, Johnson, for failing to have a valid driver's license. While securing Johnson, the officer saw Awer moving around suspiciously inside the car. When the officer ordered Awer to exit the car, Awer reached for the center console instead. As the officer grabbed Awer and pulled him from the car, Awer told the officer he had marijuana in his pocket. The officer arrested Awer and while conducting an inventory search, found cocaine in the trunk of the car. The government indicted Awer for possession with intent to distribute cocaine.

Awer argued the cocaine should have been suppressed. First, Awer claimed the initial traffic stop was complete once the officer arrested Johnson; therefore, the officer needed reasonable suspicion of criminal activity to continue investigating him. Second, Awer claimed he was placed under de facto arrest without probable cause when the officer forcibly removed him from the car.

The court disagreed. The court found approximately three minutes elapsed between the time Johnson pulled over and the officer ordered Awer out of the car. This strongly suggested to the court the initial traffic stop was still ongoing, as the officer still had to determine what to do with the car after arresting Johnson. The court further held Awer's forcible removal from the car did not constitute a de facto arrest. During a traffic stop, a police officer may order the driver and any passengers out of the car until the traffic stop is complete. In addition, when a passenger refuses an officer's request to exit a vehicle,

the officer may forcibly remove the person from the car. Here, when Awer refused to exit the car, the officer used a reasonable amount of force to pull Awer out of the car. The court concluded the officer's use of force did not transform the encounter with Awer into a de facto arrest.

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

United States v. Fermin, 771 F.3d 71 (1st Cir. 2014)

Police officers conducted surveillance on a house after receiving a tip that a large amount of marijuana was being stored there. During their surveillance, the officers saw people coming and going from the house in a pattern consistent with individuals involved in drug trafficking. At some point, the officers saw a man, later identified as Fermin, walk empty-handed between the house under surveillance and the adjacent house. When Fermin emerged three or four minutes later, he was rolling a large suitcase. Looking around as if to see if anyone was walking behind him, Fermin wheeled the suitcase the same way he had just come and entered a nearby parking lot. Fermin wheeled the suitcase to the far end of the parking lot, where he placed the suitcase between a Jeep and a cement wall. Fermin then stepped away from the suitcase and began to talk on a cell phone. Between conversations, Fermin slid the suitcase under the Jeep and removed the sweatshirt he was wearing. Several minutes later, Fermin retrieved the suitcase, tied his sweatshirt around the handle, and exited the parking lot rolling the suitcase.

The officers stopped Fermin on the street shortly thereafter and asked to speak with him about the suitcase. Fermin immediately dropped the suitcase and said it did not belong to him. Fermin told the officers he was jogging in the area when he found the suitcase next to a recycling bin in someone's backyard. While standing next to the suitcase, one officer smelled a strong odor of marijuana. The officer unzipped the suitcase and discovered, among other things, a large quantity of marijuana. The officers arrested Fermin who was indicted on drug and firearm charges.

Fermin argued the evidence recovered from the suitcase should have been suppressed.

The court disagreed. First, the court held the officers had reasonable suspicion to stop Fermin. Acting on a tip from a confidential informant, the officers conducted surveillance on a suspected marijuana "stash" house. During this surveillance, the officers saw people come and go from the house in a pattern consistent with drug trafficking. Finally, the officers saw Fermin walk between the house under surveillance and the adjacent house, emerge a few minutes later rolling a suitcase, and later try to conceal the suitcase by hiding it under the parked Jeep. These facts established reasonable suspicion to believe Fermin was engaged in criminal activity, which supported a *Terry* stop to investigate Fermin and the suitcase.

Second, the court held the officer's warrantless search of the suitcase was lawful after Fermin claimed he did not own it.

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

United States v. Davis, 773 F.3d 334 (1st Cir. 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, 773 F.3d 361 (1st Cir. 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, (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.

Second Circuit

McColley v. County of Rensselaer, 740 F.3d 817 (2d Cir. 2014)

As part of a drug investigation, a police officer submitted a search warrant application to obtain four warrants to search four residences, including Ronita McColley's apartment. The search warrant application was based upon information received from a confidential informant (CI). The CI told the officer he had been taken to an apartment to purchase crack cocaine from a local drug dealer. However, the CI made no mention of McColley or any other woman being present in the apartment at the time. The CI also told the officer about three other residences the drug dealer maintained to sell drugs, which were the subject of the other three search warrants. The officer confirmed the address of the apartment, learned McColley lived there, that she had no criminal history, and that she had a young child. The officer also conducted surveillance on McColley's apartment, but did not observe any drug or criminal activity.

In the officer's search warrant application, he identified individuals who lived at each of the residences and their connection to drug dealing or criminal activity, with the exception of McColley. The officer did not mention McColley's identity, lack of criminal record or that she was a resident in the apartment. The officer only stated the apartment was a location for the drug dealer to conduct transactions. In addition, the officer did not mention the surveillance that had been conducted on McColley's apartment and the lack of drug or criminal activity that had been observed.

After obtaining a warrant, the police searched McColley's apartment but did not discover drugs, weapons, money or evidence of criminal activity. McColley sued the officer who drafted the search warrant affidavit and his agency. Among her claims, McColley argued the officer violated the *Fourth Amendment* by omitting material facts from the search warrant affidavit that, if included and considered by the judge, would not have established probable cause to search her apartment.

The court held the officer was not entitled to qualified immunity because information omitted from the affidavit was necessary to the finding of probable cause. Probable cause is determined by a court considering the totality of the circumstances, not just the particular facts favored by the police officer applying for the search warrant. The first material omission in the affidavit was the failure to mention McColley at all. The officer knew McColley had no criminal history or any ties to any of the targets of the drug investigation, that she lived at the apartment with her child and that the CI did not mention a woman being present during the drug deal. The court noted the omission of McColley from the affidavit was more glaring because the officer included the identities of the residents of the other three residences and their connection to the drug trade. If the officer had identified McColley in the affidavit, the judge who issued the search warrant would have questioned the officer's claim that the drug dealer had "custody and control" over the apartment.

The second material omission from the affidavit occurred when the officer failed to mention the police surveillance of McColley's apartment and the fact that no criminal

activity was observed. While the police were not required to corroborate the CI's claims, once the officers conducted this surveillance and did not observe any criminal activity, the lack of corroboration should have been included in the affidavit. The court suggested if the surveillance had established evidence of criminal activity at McColley's apartment, the officer would have included that information in the affidavit. Again, the court noted, because the outcome of the surveillance was not the one the officer would have preferred, that did not make the information immaterial for a determination of probable cause.

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

United States v. Medunjanin, 752 F.3d 576 (2d Cir. 2014)

In September 2009, agents with the Joint Terrorism Task Force (JTTF) arrested one of Medunjanin's associates on terrorism related charges. As a result, Medunjanin hired Gottlieb to act as Medunjanin's attorney in connection with the JTTF investigation. Gottlieb told JTTF agents and the Assistant United States Attorney he represented Medunjanin and requested that Medunjanin not be interviewed unless Gottlieb was present.

On January 7, 2010, JTTF agents executed a warrant to search Medunjanin's apartment. When Medunjanin asked the agents if they had contacted Gottlieb, the agents replied they had not, but that Medunjanin could contact the attorney if he wished. Medunjanin declined to call Gottlieb at that time, but Medunjanin called Gottlieb after the agents left. Later that day, the JTTF agents arrested Medunjanin. Three times between the afternoon of January 7 and the morning of January 8, 2010, Medunjanin waived his *Miranda* rights and made incriminating statements.

On the afternoon of January 8, a grand jury indicted Medunjanin. When JTTF agents approached him for another interview, Medunjanin told the agents he wished to speak with Gottlieb. The agents complied with Medunjanin's request and stopped questioning him.

On appeal, Medunjanin argued the trial judge should have suppressed his post-arrest statements because questioning by the JTTF agents violated his *Miranda* rights. Specifically, Medunjanin claimed the September 2009 requests by Gottlieb that Medunjanin not be questioned without Gottlieb present constituted an invocation of Medunjanin's right to counsel. Medunjanin also argued he invoked his right to counsel on January 7, during the execution of the search warrant, when Medunjanin asked the JTTF agents if they had contacted Gottlieb.

The court disagreed, holding Gottlieb's requests to the agents in September 2009 did not constitute a valid invocation of Medunjanin's right to counsel under *Miranda*. Even if there was a legal basis for recognizing a pre-custodial invocation of the right to counsel, this right was personal to Medunjanin; therefore, only Medunjanin could waive it or properly invoke it, not his attorney.

Second, the court held Medunjanin did not validly invoke his right to counsel under *Miranda* in January 2010 when he asked the agents conducting the search at his

apartment if they had notified Gottlieb. The court stated, even assuming that *Miranda* rights could be invoked by a suspect before being in custody, Medunjanin did not clearly and unambiguously invoke his right to counsel. The court noted individuals cannot invoke their right to counsel by simply asking police officers if the officers have contacted their attorneys.

Third, the court held Medunjanin voluntarily waived his *Miranda* rights three times, in writing, after the agents arrested him.

Medunjanin also argued the agents violated his *Sixth Amendment* right to counsel.

Again, the court disagreed. After the grand jury indicted him, Medunjanin told the agents he wished to see Gottlieb. At that point, the agents immediately stopped questioning Medunjanin. The court rejected Medunjanin's argument that the agents' conduct prior to Medunjanin's indictment turned into a post-indictment violation of Medunjanin's *Sixth Amendment* right to counsel. The court noted Medunjanin was not denied his choice of counsel; Medunjanin met with Gottlieb prior to his arraignment, and Gottlieb continued to represent Medunjanin.

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

Betts v. Shearman, 751 F.3d 78 (2d Cir. 2014)

Police officers responded to a domestic violence call at a residence where Shearman lived with her husband, Betts. Upon arrival, Shearman told the officers Betts had assaulted her. Based on Shearman's allegations, the officers arrested Betts. Afterward, the officers learned Shearman had lied about being assaulted by Betts. The state later dismissed all charges against Betts.

Betts sued the police officers for false arrest, false imprisonment and malicious prosecution. Betts claimed the officers should have doubted Shearman's credibility because Shearman was visibly intoxicated, had made false accusations against Betts in the past, and there was no physical evidence to support Shearman's claims.

The court held the officers were entitled to qualified immunity. First, Betts never claimed the officers knew of Shearman's alleged prior history of making false allegations against him. Second, even if the officers knew Shearman was intoxicated, it was still reasonable for the officers to believe Betts had assaulted Shearman. Finally, the lack of physical evidence of an assault on Shearman's body did not require the officers to discount the fact Shearman told them Betts had assaulted her. Given the facts available to the officers, it was objectively reasonable for the officers to believe probable cause existed to arrest Betts.

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

United States v. Ganius, 755 F.3d 125 (2d Cir. 2014)

Ganius owned an accounting business that provided services to a client who had contracts with the federal government. After receiving a tip the client was involved in criminal activity, federal investigators obtained a warrant to search Ganius' offices for accounting records related to the client. As a result, in November 2003, the investigators made mirror images of Ganius' computers' hard drives. The mirror images included copies of every file on Ganius' computers, including files containing Ganius' personal financial records, which were beyond the scope of the search warrant.

In December 2004, investigators isolated and extracted the computer files that were covered by the search warrant. However, the investigators did not purge or delete Ganius' personal financial records from the mirror images that were not related to their investigation.

In April 2006, investigators obtained a warrant to search the mirror images for Ganius' personal financial records. As a result, investigators discovered evidence that was introduced against Ganius at his trial for income tax evasion.

Ganius was convicted. On appeal, Ganius argued the government violated the *Fourth Amendment* when the investigators seized his personal computer records in November 2003 and then retained them for more than two and one half years before obtaining a warrant to search them in April 2006.

The court agreed, concluding the unauthorized seizure and retention of Ganius' personal financial records was unreasonable. The search warrant issued in 2003 did not authorize the seizure of Ganius' personal financial records. By December 2004, Ganius' personal records had been separated from those relevant to the federal investigation. Nevertheless, the government continued to retain Ganius' personal records until it developed probable cause to search and seize them in April 2006. Without some independent basis for retaining those documents, the court held the government violated Ganius' *Fourth Amendment* rights by retaining his personal financial files for a prolonged period of time and then using them in a future criminal investigation.

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

United States v. Andino, 768 F.3d 94 (2d Cir. 2014)

Federal agents arrested Montanez for several drug related offenses. After his arrest, Montanez told the agents he had cocaine in the house he shared with his girlfriend, Andino. Montanez gave the agents written consent to search the house and told the agents Andino would know where the cocaine was located.

The agents went to Andino's house and knocked on the door. After Andino answered the door, the agents told her Montanez had been arrested and that he had given the agents consent to seize the cocaine located inside the house. Andino slammed the door and ran toward the interior of the house. Agents positioned outside a window heard a faucet begin to run in the kitchen and drawers being opened and closed. Believing that Andino was in the process of destroying the cocaine, an agent entered the house through a

window. After the agent secured Andino, who had emerged from the kitchen, the agent opened the door to allow the other agents to enter. One of the agents then went into the kitchen where the faucet was still running. The agent seized a plastic baggy in the sink containing a milky white residue. The agents arrested Andino. Laboratory testing later confirmed the white residue in the plastic baggie was cocaine.

Andino argued the agents' warrantless entry into her home violated the *Fourth Amendment*.

The court disagreed, holding the agents' warrantless entry was justified by exigent circumstances, specifically, the imminent destruction of evidence. Upon learning the officers were looking for cocaine, Andino slammed shut the front door, ran from the door, opened and closed drawers and turned on the kitchen faucet. As a result, it was reasonable for the officers to conclude that Andino was attempting to wash the cocaine down the kitchen sink. In addition, the exigency still existed after the first agent entered into the house and secured Andino, as the kitchen faucet was still running when she was seized. It was only after the agents seized Andino and turned the faucet off that the potential for the destruction of evidence had ended. However, when the agent turned off the faucet, he was able to lawfully seize the plastic baggie of cocaine in the sink under the plain view doctrine.

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

NOTES

Third Circuit

United States v. Golson, 743 F.3d 44 (3d Cir. 2014)

A postal inspector seized a package sent from “M. Tubbs” at an address in Phoenix, Arizona, to “Derek Brown” at an address in Mechanicsburg, Pennsylvania. The inspector determined the package was suspicious because the return address was fictitious and non-deliverable. The inspector sent the package to a postal inspector in Pennsylvania who determined “Derek Brown” was not a person known to receive mail at the Pennsylvania address. A drug detection dog alerted to the presence of narcotics in the package, and the postal inspector obtained a warrant to search the package four days later. When the inspector opened the package, he discovered approximately twenty pounds of marijuana.

The postal inspector contacted state police officers and planned a controlled delivery of the package. A state police officer replaced the twenty pounds of marijuana with a small amount of marijuana and other material to represent the original weight of the package. The state officer also placed equipment inside the package to track it and to alert the officers when the package was opened. The state officer obtained an anticipatory search warrant from a state court judge, which authorized the officers to search the residence once the package was delivered and the officers received a signal it had been opened.

After the package was delivered and the officers were alerted the package had been opened, they entered Golson’s house and conducted a search. The officers recovered a variety of illegal drugs, weapons and ammunition. At his federal trial on drug and firearms charges, Golson argued the anticipatory search warrant issued by the state court judge violated *Federal Rule of Criminal Procedure 41(b)*.

The court disagreed, holding the anticipatory search warrant was not subject to *Rule 41(b)*. In federal prosecutions, *Rule 41(b)* grants the authority to issue search warrants to federal judges and judges of state courts of record. In the Third Circuit, *Rule 41(b)* also applies to warrants made at the request of a non-federal law enforcement officer, if the federal court reviewing the warrant deems the search to be “federal” in character. In this case, it was clear the issuing state court judge was not a judge in a state court of record. However, the court found the search of Golson’s residence was not “federal” but rather, “state” in character. First, a state police officer applied for the warrant and alleged a violation of state law. Second, while federal agents may have assisted in obtaining the warrant, state police officers supervised its execution and the evidence seized from Golson’s residence was placed state police custody.

The court further held the state police office established probable cause to support the issuance of an anticipatory search warrant.

Finally, the court held the four day warrantless seizure of the package by the postal inspectors was reasonable because the delay was due to the investigation, scheduled leave and the weekend, when postal operations cease or slow down considerably.

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

United States v. Cortez-Dutrieville, 743 F.3d 881 (3d Cir. 2014)

Federal agents intercepted a UPS package containing heroin. The handwritten mailing address on the package was different from the address indicated on the electronic manifest. The agents repackaged the heroin in a new box, which listed the electronic address instead of the original handwritten address. The electronic address was for a residence where Portia Newell, the mother of Dutrieville's child, lived. The agents also placed a beeper in the package that would indicate when the package was opened, and obtained an anticipatory search warrant for the residence once the package was taken inside the home.

An undercover agent delivered the package to Dutrieville. Two minutes later, the beeper activated and agents entered the home. The agents arrested Dutrieville then searched the house and found the heroin, the empty package, the beeper and other drug paraphernalia in Dutrieville's overnight bag. Dutrieville told the agents he had been staying at the home with Newell's consent for three days. The agents also learned Dutrieville was the subject of an order of protection that provided Dutrieville had "no right or privilege to enter or be present on" Newell's premises and Newell's consent could not override this provision of the order.

Dutrieville argued the evidence found in Newell's house should have been suppressed because the anticipatory search warrant was not supported by probable cause.

The district court held Dutrieville did not have standing under the *Fourth Amendment* to challenge the validity of the search warrant because he was subject to an order of protection that barred him from Newell's home.

The Third Circuit Court of Appeals agreed. Generally, a person's status as an overnight guest is enough to show he has a reasonable expectation of privacy in another person's home. However, Dutrieville was not like most overnight guests because the protection order prohibited him from entering the home and having any contact with Newell and Newell's consent could not override the terms of the order. Consequently, Dutrieville's presence in Newell's home was "wrongful" and any expectation of privacy he may have had was not one that society is prepared to recognize as reasonable.

Because Dutrieville's presence in Newell's home was unlawful, the court further held he could not reasonably expect privacy in a bag that he brought with him during his visit. The court reasoned, a person who is prohibited from entering a particular place cannot reasonably expect to use that place to store his personal effects.

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

United States v. Stanley, 753 F.3d 114 (3d Cir. 2014)

A police officer investigating the online distribution of child pornography discovered a computer on the Gnutella peer-to-peer network sharing files he believed contained child pornography. The officer determined the computer's Internet protocol (IP) address and the subscriber to whom the computer was assigned (the Neighbor). However, when the

officer executed a search warrant, he discovered none of the Neighbor's computers contained child pornography or the Gnutella file sharing software. When the investigator learned the Neighbor's Internet router was not password-protected, he suspected another person was connecting wirelessly, or mooching, the Neighbor's Internet connection without permission. With the Neighbor's consent, the officer connected a police computer to the Neighbor's router, which allowed the officer to determine the media access control (MAC) address and IP address of any other device that connected to the router.

A few weeks later, the officer was alerted that a computer sharing child pornography was mooching the Neighbor's Internet connection. The officer determined the MAC and IP addresses of the mooching computer. The officer went to the Neighbor's house and using free mobile tracking software called MoocherHunter tried to locate the computer that was accessing the Neighbor's router. By using MoocherHunter and a directional antenna, the officer measured the signal strength of the radio waves emitted from the MAC card of the mooching computer. The officer discovered MoocherHunter's readings were strongest when he aimed the antenna at a six-unit apartment complex across the street from the Neighbor. When the officer stood on a public sidewalk in front of the apartment building, MoocherHunter's readings were strongest when the officer aimed the antenna directly at Stanley's apartment. Based on this information, the officer obtained a warrant to search Stanley's apartment. The officer seized Stanley's computer and later recovered numerous images and video files depicting child pornography.

Stanley argued the officer violated the *Fourth Amendment* when he used MoocherHunter to trace Stanley's wireless signal back to the interior of his apartment.

The court disagreed. Stanley intentionally sent a wireless signal from his computer to the Neighbor's router every time he logged on to the Neighbor's Internet connection. Once this occurred, the Neighbor's router relayed data to the Internet service provider (ISP) and back to Stanley's computer without either the Neighbor's or the ISP's knowledge or consent. Under these circumstances, the court found Stanley was, in effect, a virtual trespasser. Consequently, the court held Stanley had no reasonable expectation of privacy in the wireless signal emitted from his computer while he committed this virtual trespass. In addition, the court noted that MoocherHunter revealed only the path of the radio waves that were mooching the Neighbor's Internet connection and not their content.

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

United States v. Donahue, 764 F.3d 293 (3d Cir. 2014)

Donahue was convicted in federal court in Pennsylvania on several fraud related charges and received a ten-year prison sentence. The court directed Donahue to surrender at a certain time and place to begin serving this sentence, but Donahue failed to do so. As a result, the court issued a warrant for Donahue's arrest. Two weeks later, agents with the United States Marshals Service apprehended Donahue in New Mexico after they saw him enter his son's Mustang outside a hotel. The marshals seized the Mustang and searched it without a warrant. Inside the car, the marshals found various maps and several closed

bags, which were not opened. The next day, an agent with the Federal Bureau of Investigation (FBI) drove the Mustang to an FBI facility. FBI agents searched the Mustang without a warrant and found a Glock .40 caliber magazine behind the driver's seat. The FBI agents then obtained the closed bags seized by the marshals from the trunk of the Mustang. Five days after Donahue's arrest, FBI agents searched the bags and found a Glock pistol. The government indicted Donahue for failure to surrender and weapons violations.

Donahue argued the evidence seized from the Mustang should have been suppressed because the warrantless searches were unreasonable under the *Fourth Amendment*.

The court disagreed, holding the federal agents established probable cause to search the Mustang without a warrant under the automobile exception to the *Fourth Amendment's* warrant requirement.

The automobile exception allows police officers to conduct vehicle searches without a warrant if there is probable cause to believe the vehicle contains evidence of a crime. Once probable cause is established, officers are allowed search every part of the vehicle and its contents that may conceal the object of the search. In addition, officers are allowed to search an impounded vehicle, without a warrant, after the officers have secured the vehicle and the loss of evidence is not a concern, even if the officers had time to obtain a search warrant.

In this case, the court held it was reasonable to believe the Mustang contained items showing that Donahue knowingly failed to surrender to federal authorities. The marshals knew Donahue had failed to surrender, as ordered by the court, and in his experience, a marshal testified that fugitives often keep false identification documents in places that are readily accessible, such as their cars. Once the marshals established probable cause to search the Mustang, the court concluded the marshals were entitled to seize the closed bags located in the trunk, and the five-day delay between the seizure of the Mustang and the search of the closed bags was immaterial.

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

United States v. Mallory, 765 F.3d 363 (3d Cir. 2014)

Police officers saw a revolver in the waistband of Mallory's pants while Mallory was standing on a public sidewalk outside a house where he lived on weekends. Mallory refused the officers' commands to stop and ran into the house. The officers entered the house, without a warrant, and ordered all of the occupants outside while the officers searched the house for Mallory. The officers found Mallory in a bathroom, handcuffed him and arrested him for unlawful carrying of a firearm on public streets. As the officers escorted Mallory from the house, one of the officers found a revolver under an umbrella in the foyer behind the front door, which had swung open into the house. The government indicted Mallory for being a felon in possession of a firearm.

Mallory filed a motion to suppress the revolver, arguing the officers' warrantless entry into the house and search behind the front door violated the *Fourth Amendment*.

First, the court held the officers had probable cause to believe Mallory had committed a crime by carrying a firearm in a public place. Second, the court held the officers warrantless entry into the house was justified under the exigent circumstances doctrine because the officers were in “hot pursuit” of Mallory. The court noted this exigency allowed the officers to enter the house and search for Mallory and to search for places where he might have hidden the revolver. However, once the officers found Mallory and handcuffed him, the exigency justifying the officers’ warrantless search, the hot pursuit of an armed suspect, no longer existed. By the time the officer searched behind the front door under the umbrella, other officers had secured Mallory and were escorting him out of the house. In addition, there was no evidence the other occupants of the house posed a threat to the officers or knew of location of the revolver. Once the officers had secured the house and arrested Mallory, nothing prevented the officers from continuing to control the house until a search warrant could be obtained.

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

United States v. Franz, 772 F.3d 134 (3d Cir. 2014)

The Bureau of Land Management (BLM) suspected Franz had stolen a woolly mammoth tusk and other paleontological items from BLM managed land in Alaska and smuggled them to his house in Pennsylvania. With the assistance of federal prosecutors, a BLM agent prepared a warrant application for Franz’s house. On the face sheet of the warrant, where it asked for a description of the property to be seized, the agent wrote, “See attached sheet.” One of the attachments drafted by the agent, labeled “Attachment B,” listed a series of items to be seized to include mammoth tusks, other illegal artifacts, maps of Alaska, financial records, photographs, emails and any related information contained on computer hard drives or other electronic storage devices. A magistrate judge issued the warrant and granted the government’s motion to seal the search warrant, affidavit, and accompanying papers.

When BLM agents executed the warrant, Franz was given a copy of the face sheet of the warrant. The agents did not give Franz copies of the warrant attachments, believing that because the warrant had been sealed, Franz was not entitled to copies of those documents. Nonetheless, one of the agents explained to Franz the circumstances giving rise to the warrant, including the allegation that Franz had stolen a mammoth tusk from protected land. In addition, the agent thoroughly described the items the agents were authorized to seize.

During the search, agents discovered pamphlets that contained images of child pornography. The BLM agents transferred the child pornography evidence to the Federal Bureau of Investigation (FBI), who later obtained a separate warrant to search the digital storage devices and other items the BLM agents seized from Franz’s house. The FBI’s search of Franz’s digital devices revealed two images of child pornography.

Franz was convicted of receipt of child pornography. On appeal, Franz argued the BLM agents violated the *Fourth Amendment* when they gave him a copy of the search warrant without including Attachment B. As a result, Franz claimed the evidence seized by the

BLM agents, which led to the discovery of the child pornography by the FBI, should have been suppressed.

The court disagreed. The court concluded the search warrant obtained by the BLM agents was valid when the magistrate judge issued it. However, the court held the BLM agents' execution of the warrant violated the *Fourth Amendment* because, when presented to Franz, the warrant did not contain a particularized list of the items to be seized. The court stated that where the list of items to be seized does not appear on the face of the warrant, sealing that list, even though it is incorporated into the warrant, violates the *Fourth Amendment*.

However, the court further held the good faith exception to the exclusionary rule applied. The court found that the BLM agents' conduct was objectively reasonable. First, the BLM agents obtained a valid warrant after consulting federal prosecutors. Second, while executing the warrant, one of the agents explained to Franz what items the warrant authorized them to search for and seize and the agents did not exceed the scope of that authorization. Finally, the court agreed with the district court which found the BLM agents had no intention to wrongfully conceal the purpose of the search warrant and that the decision to withhold the attachments from Franz was a "reasonable misunderstanding" based in part on unclear language in the magistrate judge's sealing order.

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

United States v. Thompson, 772 F.3d 752 (3d Cir. 2014)

A police officer in Texas stopped Thompson on I-40 for speeding. During the stop, Thompson told the officer he was traveling to Indiana where he planned to stay for three weeks. The officer became suspicious because Thompson did not make eye contact with him, Thompson's voice was shaky and a vein on the side of Thompson's neck was pulsing. In addition, Thompson only had one suitcase for such a long trip and the officer knew I-40 was a known corridor for illegal drugs. When the officer checked Thompson's criminal history, he learned that Thompson had several older narcotics offenses and a more recent conviction for a firearm offense. When the officer asked Thompson about his criminal history, however, Thompson only told the officer about the firearm conviction. After Thompson refused to consent to a search of his vehicle, the officer requested a K-9 detection team. The K-9 team arrived thirty minutes later and the dog alerted to the presence of narcotics in Thompson's vehicle. The officers searched Thompson's vehicle and found a large quantity of marijuana and cocaine. The officers arrested Thompson, who posted bond and was released.

A few weeks later, a Drug Enforcement Administration (DEA) task force arrested Thompson in Los Angeles for his involvement with a drug cartel. The agents arrested Thompson at 7:00 a.m. and drove him to the Los Angeles field office for processing. Sometime in the early afternoon, Thompson told an agent he wanted to cooperate. At this time, more than 6 hours had passed since Thompson's arrest. Agents interviewed Thompson all afternoon and presented Thompson with a written waiver of his right to

prompt presentment at 6:38 p.m., almost 12 hours after his arrest. Thompson signed the form but requested to end the interview. The next day Thompson continued to cooperate with the agents, offering information about his cocaine sources and about his co-conspirators. The agents presented Thompson before the magistrate judge the following day, almost 48 hours after his arrest.

Thompson pled guilty to drug conspiracy and money laundering offenses, but reserved the right to appeal the denial of his motions to suppress evidence discovered during the traffic stop in Texas and the incriminating statements he made to the agents in California.

Regarding the traffic stop in Texas, the court held the officer's training, experience, observations, as well as the location of the stop and Thompson's behavior established reasonable suspicion to believe Thompson was engaged in criminal activity. As a result, the officer lawfully extended the duration of the traffic stop until the K-9 detection team arrived.

Next, however, the court held Thompson's incriminating statements to the DEA agents in California should have been suppressed.

The Federal Rules of Criminal Procedure require that a defendant who has been arrested in the United States be brought "without unnecessary delay before a magistrate judge." (*Fed. R. Crim. P. 5(a)(1)(A)*).

In a series of cases (*McNabb / Mallory*) the Supreme Court subsequently held that any confessions obtained during an unreasonable period of detention that violated *Fed. R. Crim. P. 5 (a)(1)(A)*, the prompt presentment rule, should be suppressed. The court emphasized that the reasonableness standard focuses primarily on whether the delay in presentment was for the purpose of interrogation.

Following the Supreme Court's *McNabb / Mallory* exclusionary rule, Congress enacted *18 U.S.C. § 3501* in order to create a safe harbor period for certain voluntary confessions. *Section 3501* provides that "a confession shall not be inadmissible solely because of delay in bringing such person before a magistrate judge . . . if such confession was made or given . . . within six-hours immediately following his arrest."

In this case, the court found it was undisputed that Thompson's confessions to the agents came well after the 6 hour safe harbor period provided by *§ 3501*.

The court further found that while some of the delay in presenting Thompson was reasonable, under *McNabb / Mallory*, presenting Thompson to the magistrate 48 hours after his arrest was not reasonable. The court rejected the government's argument that the delay in Thompson's presentment was reasonable because most of the time was devoted to giving Thompson the opportunity to cooperate with the government. In addition to holding the pursuit of cooperation is not a reasonable excuse to delay presentment, the court found the government presented no other evidence as to why the 48-hour delay was reasonable or why the agents did not attempt to have Thompson waive his right to prompt presentment within the first 6 hours of his arrest.

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

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 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.

Fourth Circuit

United States v. Green, 740 F.3d 275 (4th Cir. 2014)

A police officer pulled over Green's vehicle because the windows appeared to be excessively tinted and the license plate was partially obscured in violation of Virginia law. While the officer ran a computer check on Green's license and registration, he noticed Green appeared to be excessively nervous, that Green's vehicle contained a strong odor of air freshener and that it had a "lived-in" look. A few minutes later, the officer learned Green had a protective order against him, which prompted the officer to request additional information from his dispatcher. In the meantime, the officer checked the tint on Green's vehicle, discovering it was illegal. After asking Green about the presence of drugs in the vehicle, which Green denied, the officer requested a check of Green's criminal history from his dispatcher. While waiting for dispatch to respond, the officer directed a back-up officer to conduct a free-air sniff of Green's vehicle using a drug-detection dog. After the drug-detection dog alerted to the presence of narcotics, the officers searched Green's vehicle and discovered just over one kilogram of cocaine and \$7,000 in cash. Approximately fourteen minutes had elapsed between the time the officer stopped Green and the drug-detection dog alerted on Green's vehicle. The government indicted Green for possession with intent to distribute cocaine.

Green argued the cocaine should have been suppressed because the scope and duration of the traffic stop were unreasonable under the *Fourth Amendment*. In addition, Green argued the drug-detection dog's track record was not sufficiently reliable for the dog's positive alert to establish probable cause to search his vehicle.

The court disagreed, holding Green was lawfully seized for the traffic violation when the dog sniff occurred. During a routine traffic stop, an officer may request a driver's license and vehicle registration, run a computer check, and issue a citation. An officer may also conduct an exterior dog sniff of the vehicle as long as it is performed within the time reasonably required to issue a traffic citation. Here, the officer told Green why he had been pulled over, requested Green's license and registration and then immediately began verifying Green's information on his computer and through his dispatcher. While waiting for a response, the officer checked the window tint on Green's vehicle and requested a check of Green's criminal history. The sniff by the drug-detection dog occurred while the officer was waiting for this information and did not unreasonably prolong Green's detention.

The court further held the drug-detection dog's field performance records, degree of training, performance during training and recertification exercises and his evaluations by two different handlers, established the dog's reliability in detecting drugs. As a result, when the dog alerted to the presence of narcotics in Green's vehicle, the officers had probable cause to search it.

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

United States v. Saafir, 754 F.3d 262 (4th Cir. 2014)

A police officer stopped Saafir for speeding and driving a car with excessively tinted windows. During the stop, the officer saw a hip flask commonly used to carry alcohol in the pocket of the driver's side door. After the officer issued Saafir warning tickets and returned his identification documents, the officer asked Saafir for consent to frisk him. Saafir consented, but the frisk revealed nothing. The officer then asked Saafir if he could search Saafir's car, but Saafir refused. After Saafir refused to consent to a search of the car a second time, the officer told Saafir he had probable cause to search the car based on the presence of the hip flask, as a state statute made it a violation for a person to possess an alcoholic beverage other than in the manufacturer's original container. Having declared his authority and intent to search the car, the officer asked Saafir if there was anything he should know about inside the car. Saafir told the officer there "might" be a gun in the car. The officer searched the car and found a gun in the glove compartment. The officer never touched the flask and there was no evidence Saafir had been drinking. Saafir was convicted of being a felon in possession of a firearm.

The court noted it is well settled that a search or seizure is unreasonable if it is premised on a law enforcement officer's misstatement of his authority. On appeal, the government conceded the presence of the hip flask in the door pocket did not establish probable cause to search Saafir's car. However, it was only after the officer told Saafir that he had probable cause to search the car that Saafir admitted to the presence of the gun in the car. Consequently, the court held the officer's false assertion of his authority to search the car tainted Saafir's incriminating statements as well as the subsequent search of the car. Therefore, Saafir's incriminating statement and the gun discovered in the glove compartment should have been suppressed.

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

Fifth Circuit

United States v. Robinson, 741 F.3d 588 (5th Cir. 2014)

Federal agents discovered a person with the username “lowkey” sent images of child pornography over the internet in June and July 2010 using the instant messaging service ICQ. Information embedded with the images indicated the images had been taken in May 2008 and January 2009. The agents obtained subscriber information and Internet Protocol logs for the “lowkey” account and determined the account had been accessed numerous times from a particular IP address assigned to a roofing company. The agents determined the child in the images was Robinson’s young son and that Robinson was a vice-president of the company.

Federal agents obtained a warrant to search Robinson’s business office and house for evidence connected to the production and distribution of child pornography. At Robinson’s office, agents found a computer and thumb drive that contained images and videos of child pornography. At Robinson’s house, agents found clothing, household items and furniture that appeared in the images.

Robinson argued the evidence seized from his office should have been suppressed because the search warrant affidavit was misleading and it omitted important information. First, Robinson claimed the affidavit failed to disclose the available records for the “lowkey” account dated back only to October 2010, several months after the seized images were sent. Second, Robinson argued the affidavit failed to disclose these records showed the “lowkey” account had been accessed by another IP address not associated with his roofing company. Robinson claimed these omissions made it falsely appear an IP address associated with his roofing company sent the images in June and July 2010.

The court disagreed, holding even if the omitted information had been included in the affidavit, there still would have been probable cause to support the issuance of a search warrant for Robinson’s office. The affidavit stated the “lowkey” account had most recently been accessed from an IP address assigned to Robinson’s company. The agents determined this same IP address had been used to login to the “lowkey” account on multiple occasions. Consequently, even if the affidavit stated the agents did not have records for the specific dates when the images were transmitted, these facts would still establish a “fair probability that contraband or evidence of a crime” would be found at Robinson’s office.

Robinson also argued the affidavit contained no information indicating he or his son lived at his current address when the images were taken in May 2008 and January 2009. As a result, Robinson claimed the evidence seized from his house should have been suppressed. Robinson further argued the affidavit contained no information indicating it was likely the clothing or household items visible in the images would be present in his home more than two years later.

Again, the court disagreed and held the information used to establish probable cause was not stale. First, even if Robinson had moved to a different address after the images were

taken, it would be reasonable to believe that evidence of the production, distribution or possession of child pornography might be found at Robinson's current residence because child pornography offenses are often carried out over a long period and in a suspect's home. Second, it would be reasonable to conclude the household items visible in the background of the images, the victim's clothing, or the camera used to take the images would be located at Robinson's current residence, even if Robinson and his family had moved after the images were taken.

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

United States v. Hill, 752 F.3d 1029 (5th Cir. 2014)

Hill was sitting in his car with his girlfriend in the parking lot of her apartment complex at 11:00 pm on a Saturday night when seven to eight police officers in three to four cars entered the parking lot. The officers were driving around the county looking for suspicious activity. When the officers arrived, Hill's car was legally parked, backed into its parking space. When one of the police cars parked near Hill's car, Hill's girlfriend got out of the car and began to walk toward the apartment building. An officer got out, approached Hill's car, and told Hill to roll down the window. Hill told the officer the window would not roll down, and Hill opened the door. The officer immediately asked Hill, "Where's your gun?" Hill told the officer he did not have a gun. The officer then asked Hill for his driver's license and Hill replied that he did not have one. The officer ordered Hill to step out of the car and turn around so the officer could frisk him. When Hill turned around, the officer saw the handle of a handgun in Hill's pocket. The officer arrested Hill who was convicted of being a felon in possession of a firearm and ammunition.

Hill moved to suppress the handgun and ammunition. Hill argued the police officer seized him in violation of the *Fourth Amendment* because the officer did not have reasonable suspicion to believe he was engaged in criminal activity.

The court agreed and reversed Hill's conviction.

The officer testified he ordered Hill out of the car because he believed Hill was engaged in a drug crime. However, the court noted Hill was not doing anything suspicious when the officers encountered him. The court stated Hill was simply sitting with a woman in a car in an apartment parking lot, which, by itself, was not unusual behavior at 11:00 p.m. on a Saturday night. The court added the officers were not responding to a report of criminal activity, and even though the apartment complex might have been located in a "high crime area," the officer could not point to any facts that indicated Hill was involved in criminal activity. Finally, while Hill's girlfriend got out of the car and began to walk away when the officers arrived, Hill remained in his car and made no suspicious movements. Consequently, the court concluded no reasonable officer who came upon a couple sitting in a car in an apartment complex parking lot on a weekend night would, without more, suspect criminal activity.

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

United States v. Boche-Perez, 755 F.3d 327 (5th Cir. 2014)

At approximately 9:10 a.m., Customs and Border Patrol (CBP) agents detained Perez for secondary inspection at the Laredo Port of Entry after an identification check revealed Perez was a suspected narcotics smuggler. At 12:40 p.m., CBP agents found DVDs containing child pornography in Perez's luggage. An agent with Immigration and Customs Enforcement (ICE) arrived, interviewed Perez and received confirmation from an Assistant United States Attorney at 3:22 p.m. that the government would prosecute Perez. The ICE agent arrested Perez and turned him over to a CBP agent so Perez could be processed for admission into the United States. At 4:15 p.m. Perez admitted to the CBP agent that he knew the DVDs in his luggage contained child pornography. Afterward, the CBP agent prepared a written statement containing Perez's admission, which Perez reviewed and signed at 6:00 p.m. At 9:00 p.m., CBP informed ICE that Perez had confessed and was ready for transport to jail. Before transporting Perez, an ICE agent questioned Perez again. Perez admitted to the ICE agent that he possessed more child pornography at his home in Arkansas. The ICE agent booked Perez into jail at 11:40 p.m. Perez spent two nights in jail before he was presented to the magistrate judge.

Perez argued his three confessions should have been suppressed because the ICE agent unreasonably delayed his presentment to the magistrate judge. Perez further argued his confessions should have been suppressed because they were involuntary.

Rule 5 of the Federal Rules of Criminal Procedure requires that "a person making an arrest within the United States must take the defendant without unnecessary delay before a magistrate judge." *18 U.S.C. § 35019(c)* further provides that a court may not suppress a confession made during a six-hour safe harbor period solely due to a delay in presentment if the confession was made voluntarily. However, confessions obtained outside the six-hour safe harbor may be excluded if the delay in presentment was unreasonable. In addition, when determining whether a delay was reasonable, the court examines the delay at the time of the confession, not when the defendant actually was presented to the magistrate judge.

Here, the district court found the six-hour safe harbor began at 9:10 a.m., which the government did not contest, and expired at 3:10 p.m. As a result, the court concluded Perez's three confessions occurred outside the six-hour safe harbor.

Nonetheless, the court held the government's delay in not presenting Perez by 4:15 p.m., the time of his oral confession, was reasonable. The court found during this time CBP agents were processing Perez for entry and searching his luggage. Once the DVDs were discovered, the ICE agent was notified. The ICE agent then investigated the alleged crime and notified the AUSA. Finally, the ICE agent had to prepare, review and submit a criminal complaint to the AUSA. After the ICE agent finished, CBP still had to administratively process Perez for immigration purposes before Perez could be transported to the jail.

After Perez's oral confession at 4:15 p.m., the CBP agent drafted a written confession, which Perez reviewed and signed at 6:00 p.m. The court held the government's delay in not presenting Perez by 6:00 p.m. was reasonable while the CBP agent was transferring Perez's oral confession into writing.

Finally, the court did not rule on the delay concerning Perez's 9:00 p.m. confession. The court found the record was not clear and any error in admitting this confession was harmless as Perez did not plead guilty to any of those additional offenses.

The court further held that Perez's confessions were voluntary. First, there was no evidence to show the delay in presentment was designed to obtain a confession from Perez. Second, immediately after waving his *Miranda* rights, Perez admitted to the CBP agent that he knew the DVDs in his luggage contained child pornography and then Perez signed a written statement to that effect.

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

United States v. Massi, 761 F.3d 512 (5th Cir. 2014)

Around 6:00 p.m., Massi and Sanchez landed a single-engine airplane at the Midland International Airport. The Air Marine Operations Center (AMOC) of the United States Customs and Border Protection requested that federal agents with the United States Immigration and Customs Enforcement (ICE) conduct a "ramp check" of Massi's airplane. A ramp check is a regulatory inspection that permits law enforcement officers to examine the licensing and certification of the pilot and aircraft to ensure they conform with federal regulations. The AMOC requested the ramp check for three reasons. First, the airplane had flown from Orlando to Las Vegas, making six refueling stops along the way, remained in Las Vegas for twelve hours, then was returning to Orlando with Midland as a refueling stop. Second, the registered owner of the airplane had been convicted of drug trafficking twelve years earlier. Third, Massi had crossed from Tijuana, Mexico into the United States sometime within the previous three days.

Two ICE agents reviewed Massi and Sanchez's documents and then requested consent to search the airplane. Both men denied consent, and simultaneously with denying consent, Massi attempted to shut the airplane's open door. While walking around the exterior of the airplane, one of the ICE agents saw a cardboard box through the window of the airplane. When the agent questioned Massi and Sanchez separately about the box, each man gave a different account as to who owned the box.

A third ICE agent arrived at 7:30 p.m., and for the next two hours, he confirmed with his colleagues what had transpired before his arrival. During this time, Massi and Sanchez were required to remain near the airplane. At 9:30 p.m., the ICE agent obtained approval to request a search warrant for the airplane. The ICE agent drafted the affidavit for the search warrant and presented it to a magistrate who issued the warrant at 11:30 p.m. The ICE agents executed the search warrant at midnight and discovered over ten kilograms of marijuana in the cardboard box. The government indicted Massi for possession with intent to distribute marijuana.

Massi moved to suppress all evidence seized in the search of the airplane. While conceding the ICE agents conducted a lawful ramp check of the airplane, Massi argued his lengthy detention prior to the execution of the search warrant was unreasonable. Massi further argued the search warrant was not valid because it was the product of that unlawful detention.

The court held the ICE agents had reasonable suspicion to detain Massi under *Terry v. Ohio* after the conclusion of the ramp check. The AMOC's suspicions that arose from Massi's flight pattern, Massi's recent travel to Tijuana, Mexico, a known drug hub, and the fact that the airplane's registered owner had a drug trafficking conviction combined to establish reasonable suspicion that Massi may have been involved in a drug crime. However, the court further held the justification to detain Massi under *Terry* ended by 7:30 p.m., when the third ICE agent arrived. Consequently, Massi's four and one half hour detention until the search warrant was executed at midnight constituted an unreasonable seizure.

Although the court found Massi's detention violated the *Fourth Amendment*, the court held the good faith exception to the exclusionary rule applied. First, the court noted there was no clear connection between Massi's unlawful detention and the acquisition of the evidence used to support the search warrant. The court found the evidence used to support the affidavit for the search warrant was obtained, although not fully corroborated, before 7:30 p.m. Second, even though Massi's unlawful seizure allowed the airplane to be at the airport for the midnight search warrant to be executed, the court found it was objectively reasonable for the third ICE agent to believe Massi's detention past 7:30 p.m. was lawful because when the agent arrived, he believed that probable cause to search existed. As a result, the court found it was reasonable for the agent to believe that he was justified in taking the steps needed to confirm the known facts in the case with his colleagues, and then to prepare an affidavit to present to a magistrate and obtain a search warrant. In its opinion, the court recognized that case law does not clearly indicate whether or how the delays inherent in obtaining a warrant interact with unlawful seizures under the *Fourth Amendment*. Finally, the court held search warrant affidavit included sufficient facts discovered during Massi's *Terry* stop to establish probable cause to search the airplane.

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

Thompson v. Mercer, 762 F.3d 433 (5th Cir. 2014)

Thompson stole a vehicle, kidnapped its sleeping occupant, and then led police officers on a two-hour pursuit. The kidnapping victim dialed 911 allowing dispatchers to overhear Thompson state that he would "kill himself" when he "got to where he was going." In addition, the victim told the dispatchers there was a firearm in the vehicle. While fleeing from the police officers, Thompson reached speeds in excess of 100 miles per hour, ran numerous stop signs, drove on the wrong side of the road and passed other motorists on the left, on the right, on the shoulder and on the median. The pursuing officers made several attempts to disable Thompson's vehicle, all of which failed. Sheriff Mercer, who did not participate in the pursuit, was kept apprised of the

developments and was aware of these facts. Sheriff Mercer positioned himself on the shoulder of the road ahead of Thompson. When Thompson came into view, Sheriff Mercer fired an AR-15 assault rifle at the vehicle, striking the radiator. When the vehicle failed to slow down, Mercer fired directly into the windshield, striking Thomson in the head and neck killing him. Thompsons parents sued Mercer claiming Mercer used excessive force to stop their son.

The court held Mercer's use of deadly force was objectively reasonable; therefore, Mercer was entitled to qualified immunity. While firing an assault rifle directly into the vehicle created a significant risk of serious injury to Thompson, the court found this risk was outweighed by Thompson's "shocking disregard for the welfare of passersby and of the pursuing law enforcement officers." In addition, the vehicle was not the only deadly weapon at Thompson's disposal. Thompson was in possession of a firearm and throughout the two-hour pursuit, he never showed any signs that he planned to surrender.

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

United States v. Iraheta, 764 F.3d 455(5th Cir. 2014)

A police officer conducted a traffic stop on a car driven by Iraheta. The officer directed Iraheta to exit the car but had the passengers, Gonzalez and Meraz-Garcia, remain inside. During the stop, the officer discovered the men were traveling from California to Miami. At some point, the officer asked Iraheta for permission to search the car for narcotics and Iraheta consented. Gonzalez and Meraz-Garcia did not hear the exchange between the officer and Iraheta. When the officer opened the trunk to search, he saw several duffel bags. None of the bags were marked in a way that identified the owner and none of the men objected to the search or claimed ownership of the bags. The officer opened one of the bags and discovered cocaine and methamphetamine. Iraheta, Gonzalez and Meraz-Garcia were charged with a variety of federal drug offenses.

Each defendant filed a motion to suppress the drugs found in the bag. The district court denied Iraheta's motion, but suppressed the evidence as to Gonzalez and Meraz-Garcia. The government appealed.

First, the court held Gonzalez and Merzaz-Garcia had standing to object to the officer's search of the duffel bag. The court recognized the owner of a suitcase located in another person's car may have a legitimate expectation of privacy with regard to the contents of the suitcase. In addition, a person who abandons or disclaims ownership of property prior to the search does not have standing to challenge a search after his abandonment or disclaimer of that property. However, in this case, neither Gonzalez nor Meraz-Garcia denied ownership of the bag before the officer searched it. Consequently, neither man had abandoned the bag; therefore, Gonzalez and Meraz-Garcia had standing to object to the search of the duffel bag.

Next, the court held Iraheta did not have actual authority to consent to the search of the multiple bags located in the trunk of the car. The court found the government failed to establish that Iraheta had joint access or mutual use of the bags with Gonzalez or Meraz-Garcia. Without joint access or mutal use, the fact that the bags were found in the trunk

of the car driven by Iraheta was not enough to establish he had actual authority to consent to their search.

Finally, the court held Iraheta did not have apparent authority to consent to the search of the bags. There were three people in the car and the number of bags in the trunk was consistent with three people traveling from California to Miami. Taken together, the court found these circumstances would put a reasonable officer on notice that Iraheta could not give consent to search all of the bags in the trunk. In addition, the officer testified he could not remember how many bags were in the trunk or who owned the bags, and the officer never inquired into their ownership.

Although Gonzalez and Meraz-Garcia did not object to the search nor claim ownership of the bags, the court commented neither man heard Iraheta grant consent to search, and the officer never told them Iraheta had done so. Under these circumstances, the court stated, “The onus was on the officers to act reasonably.”

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

Luna v. Mullenix, 765 F.3d 531 (5th Cir. 2014)

At approximately 10:21 p.m., a police officer followed Leija to a fast food restaurant and attempted to arrest him on an outstanding misdemeanor arrest warrant. After some discussion with the officer, Leija fled in his vehicle with the officer in pursuit. A state trooper took the lead in the pursuit as Leija continued onto an interstate highway. Approximately eighteen minutes into the pursuit, Leija approached an overpass where a trooper had deployed a spike strip in the roadway, while Mullenix positioned himself on top of the overpass with an M-4 rifle. Mullenix fired six rounds at Leija’s car, which then engaged the spike strip, hit the median and rolled over. Leija was pronounced dead at the scene. Leija’s cause of death was later determined to be one of the shots fired by Mullenix.

Leija’s estate sued Mullenix, claiming Mullenix violated the *Fourth Amendment* by using excessive force to stop Leija. Mullenix argued his use of force was objectively reasonable because he acted to protect the officers involved in the pursuit, the officer below the overpass, and other motorists who might have been in the path of the pursuit.

The court held Mullenix was not entitled to qualified immunity. The court found the immediacy of the risk posed by Leija was a disputed fact that a reasonable jury could find in either Luna’s favor or in the officer’s favor. According to Luna’s version of the facts, although Leija was clearly speeding during the pursuit, traffic in the rural area was light, and there were no pedestrians, businesses or residences along the highway. In addition, Leija did not run any vehicles off the road and he did not collide with any police vehicles. As a result, the court concluded it could not find that Mullenix acted objectively reasonable as a matter of law.

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

NOTES

Sixth Circuit

United States v. Seymour, 739 F.3d 923 (6th Cir. 2014)

Police officers conducted a traffic stop on Powell's vehicle. Before the vehicle came to a complete stop, Seymour, the front seat passenger, jumped out and fled on foot. Three police officers ran after Seymour. During the foot chase, one of the officers saw Seymour reach into his waistband and remove a handgun. At that moment, another officer tackled Seymour, causing Seymour to drop the gun, which the officers recovered.

The government indicted Seymour for being a felon in possession of a firearm. Seymour argued he was seized for *Fourth Amendment* purposes once Powell's vehicle was pulled over by the police. As a result, Seymour claimed, the handgun should have been suppressed because the officers did not have probable cause to arrest him at the moment of his seizure.

The court disagreed. Even though a traffic stop constitutes a seizure of the passengers in a vehicle, in this case, Seymour did not submit to the officers' show of authority because he exited Powell's vehicle before it came to a complete stop and then ran away from the officers. Seymour was seized only after the police officer tackled him. By this time, the officers had probable cause to arrest Seymour for a weapons violation because the officers saw Seymour reaching into his waistband and then holding a handgun during the chase.

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

United States v. McMullin, 739 F.3d 943 (6th Cir. 2014)

A woman called the police and reported three men were attempting to break into her house through a front window. When police officers approached the house on foot approximately ten minutes later, they saw McMullin standing close to the front window of the woman's house. McMullin saw the officers and began to walk toward them. The officers told McMullin to stop and show his hands. McMullin complied and told the officers he was "here for his people." Concerned for their safety and believing McMullin might be a suspect in the break-in, the officers frisked him for weapons and recovered a handgun from his front waistband. The officers discovered McMullin was not involved with the break-in; however, McMullin was charged with being a felon in possession of a firearm.

McMillian argued the officers did not have reasonable suspicion to either stop or frisk him; therefore, the firearm recovered from his waistband should have been suppressed.

The court disagreed. First, the officers had reasonable suspicion to stop McMullin when they saw him standing near the front window of the house where an attempted break-in had been reported a few minutes earlier. Second, while this circuit has not specifically found that reasonable suspicion of breaking and entering or burglary raises sufficient

suspicion that the suspect may be armed and dangerous, the officers in this case testified in their experiences, burglary suspects are often armed and dangerous. Consequently, the officers were justified in frisking McMullin and removing the firearm from his waistband. The court added that McMullin's ambiguous statement that he was "here for his people," when considered with the other circumstances, was not enough to dispel the officers' reasonable suspicion to stop or frisk McMullin.

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

Kinlin v. Kline, 749 F.3d 573 (6th Cir. 2014)

Trooper Kline saw Kinlin make an unsafe lane change in violation of state law and conducted a traffic stop. After smelling the odor of alcohol, Kline asked Kinlin how much Kinlin had had to drink. Kinlin admitted he consumed two beers earlier that evening. As a result, Kline asked Kinlin to submit to a field sobriety test. When Kinlin refused, Kline arrested him for driving under the influence of alcohol (DUI). A test administered later indicated Kinlin had a blood-alcohol content of .012%, well below Ohio's legal limit of .08%.

Kinlin sued Kline, claiming Kline did not have probable cause to initiate the traffic stop or to arrest him after Kinlin refused the field sobriety test.

The court disagreed, affirming the district court, which had granted Kline qualified immunity.

First, the court held Kline's in-car video showed that Kline had a reasonable basis to conclude Kinlin had violated state law. Kline's video showed that Kinlin executed a sudden lane change that did not leave sufficient space between the car ahead of him and the car behind him. As a result, the court concluded, Kline had probable cause to stop Kinlin.

Second, the court held Kline had probable cause to arrest Kinlin for DUI after Kline saw Kinlin make an unsafe lane change, smelled the odor of alcohol, and Kinlin admitted he had been drinking. Under these circumstances, the court concluded it was objectively reasonable for Kline to believe probable cause existed to arrest Kinlin for DUI.

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

United States v. Noble, 762 F.3d 509 (6th Cir. 2014)

A police officer was following a vehicle connected to a suspect in a methamphetamine trafficking ring. The officer conducted a traffic stop after the vehicle drifted into the adjacent lane without using a turn signal and because the officer believed the window tint on the vehicle was unlawful. While standing at the passenger-side window, the officer noticed the passenger, Noble, was extremely nervous. The officer used his tint meter and determined the vehicle's tint was in violation of state law. The officer then administered a field sobriety test to Adkins, the driver, because of the lane-change violation. During

this time, another officer arrived and directed Noble to place his hand on the dashboard, which he did. After the driver passed the field sobriety test, the officer obtained consent to search the vehicle and ordered Noble to exit. When Noble stepped out of the car, the officer frisked Noble for weapons. The officer stated Noble's nervousness and the fact that Noble was in a car suspected of being involved in drug trafficking caused him to believe Noble might be armed. The officer frisked Noble and felt an object in a plastic bag that the officer believed to be crack cocaine. The officer removed the object and identified it as methamphetamine. The officer also discovered two other baggies of methamphetamine, a pill bottle, a smoking pipe and a loaded handgun on Noble's person. The government indicted Noble on drug and firearms offenses.

Noble argued the officer violated the *Fourth Amendment* by unreasonably prolonging the duration of the traffic stop and by frisking him without reasonable suspicion.

First, the court held the duration of the traffic stop was reasonable. The officer had probable cause to believe two traffic violations had occurred. The officer immediately questioned the driver about his identity and reasons for changing lanes without using his turn signal. The officer then checked the tint on the vehicle's windows and administered a field sobriety test to ensure Adkins' erratic driving was not caused by alcohol or drug impairment.

Second, the court held the officer did not have reasonable suspicion to believe Noble was armed and dangerous. The court noted, in the context of a traffic stop, a person's nervousness is not a reliable indicator of how dangerous he might be. In this case, the officer noticed Noble was nervous at the beginning of the stop, but tested the vehicle's window tint and performed a field sobriety test on Adkins before he decided to frisk Noble. In addition, Noble placed his hands on the dashboard when directed to do so, and left them there until he was ordered out of the vehicle.

The court further stated a person's mere presence in a car, which police officers believe is connected to drug trafficking, does not automatically justify a frisk of that person. Here, the officers did not recognize Noble or Adkins as having a criminal history, and both men complied with the officers' various commands during the traffic stop. Consequently, the court held the frisk of Noble violated the *Fourth Amendment* and the evidence discovered on his person should have been suppressed.

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

Krause v. Jones, 765 F.3d 675 (6th Cir. 2014)

When police officers tried to arrest Krause on an outstanding drug warrant, Krause fled into his house and hid in a bedroom closet with a pistol. Krause told the officers he had multiple guns in the bedroom and that he would kill anyone who tried to come in. A police negotiator talked with Krause for over eight hours in an attempt to get Krause to surrender. After a pole camera appeared to show Krause sleeping in the closet, the officers decided to enter the bedroom to apprehend him. One of the officers rolled a flash bang device into the bedroom while Officer Jones entered the room simultaneously. As Jones entered the bedroom, Krause fired a shot at him. Jones returned fire, killing

Krause. The subsequent investigation revealed Krause had fired one round from a .38 caliber revolver and that Krause had suffered twenty gunshot wounds. Krause's mother sued Jones and several other officers, claiming the officers violated her son's rights by using excessive force when entering the bedroom and shooting Krause.

The court held that Jones and the other officers were entitled to qualified immunity. Regarding the officers' use of the flash bang, the court stated the plaintiff did not identify any way in which the device unlawfully seized or otherwise harmed Krause. Nonetheless, the court found the officers' use of the flash bang was reasonable. The officers were faced with a man resisting arrest on drug charges, who threatened to shoot the officers, and refusing all requests to surrender peacefully. As a result, the officers decided to use a flash bang to minimize the risk of injury to themselves as they entered the room and attempted to subdue Krause before he could act.

The court further held the officers' use of deadly force, by shooting Krause, was objectively reasonable. Officer Jones fired at Krause after he saw the flash of a gun as he entered the bedroom. An officer in Jones' position, who knew Krause was armed and who heard Krause threaten to shoot the officers, could reasonably believe that Krause posed a serious threat to him and the officers behind him. The fact that Jones fired his weapon on fully automatic, striking Krause with twenty rounds was not relevant, as no evidence showed that Jones continued firing after Krause was incapacitated or that Krause had surrendered.

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

Cass v. City of Dayton, 770 F.3d 368 (6th Cir. 2014)

Several police officers were involved in a buy-bust operation where a confidential informant (CI) had arranged to buy crack cocaine from Moore. Moore arrived at the meeting location in a blue Ford Taurus that contained three or four occupants. After the CI made a pre-arranged signal, several officers moved in to apprehend Moore. Officers House and St. Clair walked in front of the Taurus with their firearms drawn and yelled, "Dayton Police. Stop the car." Instead of stopping, the driver of the Taurus, Stargell, accelerated toward the officers. The Taurus struck Officer House, who rolled across the hood. After striking House, the Taurus struck Officer St. Clair's hand, causing him to accidentally discharge his firearm. Believing that St. Clair had fired in self-defense, House fired a single shot at the driver of the Taurus. House's bullet struck and killed Jordan, the front seat passenger. Stargell eventually crashed the Taurus into a tree. The City of Dayton Police Department later determined House and St. Clair violated the department's firearms policy by deliberately placing themselves in the path of the moving vehicle as Stargell drove away.

Cass, the administrator of Jordan's estate, sued Officer House and the City of Dayton, claiming House used excessive force in violation of the *Fourth Amendment* against Jordan.

The court held Officer House was entitled to qualified immunity. In the Sixth Circuit, when analyzing deadly force claims concerning fleeing vehicles, the court must

determine whether the officer has “reason to believe that the fleeing car presents an imminent danger” to “officers and members of the public in the area.” An officer is justified in using deadly force against “a driver who objectively appears ready to drive into an officer or bystander with his car.” Here, the court concluded Officer House’s use of deadly force was objectively reasonable. As House approached the Taurus, clearly identifying himself as a police officer, Stargell accelerated toward him. Almost immediately after being struck, House heard St. Clair discharge his firearm, in what House believed was self-defense. Knowing that two other officers were potentially in the path of the Taurus, House discharged his firearm in an attempt to stop the Taurus by shooting at the driver. Consequently, when House discharged his firearm, it was reasonable for him to believe the lives and safety of other police officers and members of the public in the area were in imminent danger. In addition, the court added House’s alleged violation of City policy did not change its conclusion that House acted objectively reasonable under the circumstances.

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

NOTES

Seventh Circuit

United States v. Richards, 741 F.3d 843 (7th Cir. 2014)

Police officers had an arrest warrant for Wilson. After learning Wilson was at a particular residence, officers went there and knocked on the door. The person who answered the door invited the officers inside the house to speak with the homeowner, Rawls. The officers spoke with Rawls, who was eighty-six years old. Rawls denied Wilson was present, but gave the officers consent to search his home. The officers saw several people as they walked through the house, but not Wilson. In the kitchen, the officers smelled the strong odor of marijuana and saw crack cocaine, as well as a small amount of marijuana, and drug paraphernalia. One of the officers ordered Rawl's nephew, Richards, to stand up so the officer could perform a *Terry* frisk. After Richards refused, a brief altercation followed, but the officers quickly subdued and handcuffed Richards. While lifting Richards from the floor, a handgun fell out of his waistband. The officers then continued to search the house and entered a bedroom Richards used when he visited his uncle. The doorframe had a hasp and padlock, but the door was unlocked, so the officer entered the room. Inside the room, the officers saw an open briefcase that contained cocaine. Richards was charged with several drug and firearm offenses.

Richards argued his eighty-six year old uncle was not capable of giving the officers valid consent to enter his home because his advanced age left him “confused” and “out of touch with reality.”

The court disagreed. First, Rawls, as the homeowner, had authority to consent to a search of his house. In addition, the court found Rawls consent was voluntary. Even though he was old and had difficulty walking, Rawls exhibited no signs that he lacked the intelligence or mental capacity to voluntarily consent. One of the officers, who was trained to recognize the signs of mental illness, testified Rawls appeared to have all his “mental faculties” about him. As a result, nothing would have put a reasonable officer on notice that Rawls' mental state was so impaired that he could not provide voluntary consent to search his house.

Next, even though the bedroom was in Rawl's house, Richards argued Rawls did not have actual authority to consent to its search by the officers.

The court agreed. Common authority is not based on a property interest in the area to be searched, but rather whether the consenting person has joint access or control of the area. Here, Richards had been staying in Rawl's house approximately three times a week for eight months prior to his arrest. When he was there, Richards stayed alone in the bedroom and frequently locked the door with a padlock. In addition, Rawls did not have a key and had no access to the bedroom unless Richards unlocked it. Consequently, the court concluded Richards had established a reasonable expectation of privacy in the bedroom and Rawls did not have the actual authority to consent to its search by the officers.

However, the court held the search was lawful, because Rawls had apparent authority to consent to the officers' search of the bedroom. Police officers may conduct a warrantless search if they reasonably, although mistakenly, believe that the person consenting has authority over the area to be searched based on the facts known to them at the time. In this case, when Rawls gave the officers consent to search his house, Rawls did not tell the officers to avoid Richard's bedroom or restrict their search and Rawls never told the officers he lived with anyone else. The padlock on the door to the bedroom was unlocked when the officers searched the room and the officers did not know Rawls did not have a key to the padlock. In fact, the court noted, it was reasonable for the officers to believe Rawls had placed the padlock on the door, not Richards.

Based on these facts, the court held it was reasonable for the officers to believe Rawls had access to and authority over all of the rooms in his house and could consent to a search of the entire premises.

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

United States v. Johnson, 745 F.3d 227 (7th Cir. 2014)

A jury convicted Johnson of robbing three banks. The majority of the testimony against Johnson came from Prince, who told the jury that he and Johnson had planned and committed the robberies together. To corroborate Prince's story, Williams testified that Prince asked her to give him a ride one day. Williams stated when she picked up Prince, he was accompanied by a stranger. Williams said she drove Prince and the stranger to a grocery store where the men robbed the branch bank it contained. Williams had not met the stranger before and did not know his name; however, Williams picked Johnson's photograph out of a "six-pack" photo array.

Johnson argued the trial court should have suppressed Williams' identification of him.

The court disagreed. When conducting a photographic line-up, the Seventh Circuit has suggested the police should present the photographs to the witness sequentially rather than part of an array. However, while this might be the best approach, the court recognized the due process clause of the *Fifth Amendment* only prohibits the use of an identification procedure that is unnecessarily suggestive. In this case, all six photographs fit Williams' description, a bald black male with a small amount of facial hair. In addition, all six men were in the same clothing and photographed against the same background. As a result, the court concluded the photo array presented to Williams was not unnecessarily suggestive because nothing about the array made Johnson's photograph stand out from the others.

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

Carter v. City of Milwaukee, 743 F.3d 540 (7th Cir. 2014)

In an effort to lose weight, Officer Carter had been taking Colonix, a non-prescription supplement to clean his colon, for about two weeks. Carter consumed some Colonix

prior to entering an apartment with other officers to execute a search warrant. During the execution of the search warrant, a resident accused the officers of taking approximately \$1,750 of his cash. As a result, a supervisor told the officers, including Carter, they were not free to leave until representatives from the police department's Professional Performance Division (PPD) arrived. Thirty to forty-five minutes later, Carter claimed he was feeling the effects of the supplement. Carter asked a supervisor if he could leave the scene to use the restroom at the police station, as he did not want to use the bathroom in the residence because of its very dirty condition. The supervisor put his hand up with his palm straight out and told Carter, "You can't leave until I search you." The supervisor directed Carter to remove his jacket, outer vest carrier and duty belt, which held Carter's firearm. The supervisor patted down Carter and then searched Carter's jacket, wallet, police memo book and duty belt. The supervisor also had Carter remove his boots and searched them. After the supervisor did not find any of the alleged missing money, Carter was allowed to go back to the police station.

Carter sued the supervisor and the police department. Carter claimed he was seized in violation of the *Fourth Amendment* when the supervisor held his hand out and told Carter he had to be searched if he wished to leave the apartment.

The court disagreed, holding that Carter was not seized for *Fourth Amendment* purposes. The supervisor did not tell Carter he was the subject of a criminal investigation, nor was there any indication that he was. In addition, the supervisor did not read Carter his rights and he did not threaten to arrest if Carter refused to be searched. Although Carter might have felt he had to agree to the search as a condition of being allowed to leave, the court ruled this did not mean the supervisor seized Carter under the *Fourth Amendment*. The court concluded a reasonable officer in Carter's position would not have feared arrest or detention if he declined a pat down or search.

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

Huff v. Reichert, 744 F.3d 999 (7th Cir. 2014)

Officer Reichert conducted a traffic stop on Huff and Seaton, claiming their car had crossed over the white divider line on the interstate highway without signaling. After sixteen minutes, Reichert issued Huff a written warning. However, Reichert continued to detain Huff and Seaton for an additional thirty-four minutes. During this time, Huff conducted a *Terry* frisk of both men, a dog sniff of the car's exterior and a search of the car's interior. Reichert found no contraband on Huff, Seaton or in their car. Huff and Seaton sued Reichert claiming a variety of *Fourth Amendment* violations concerning the traffic stop and the *Terry* frisks.

The court affirmed the district court's denial of qualified immunity for Officer Reichert on all of Huff and Seaton's claims. First, the court held there were genuine issues of material fact as to whether Reichert actually witnessed Huff commit a traffic violation. Consequently, it would be up to a jury, after hearing both sides, to determine if Reichert conducted a lawful traffic stop or if Reichert only conducted the traffic stop because

Huff's car had out-of-state license plates on a portion of highway where Reichert claimed a great deal of drug trafficking occurred.

Second, the court held Reichert's justification for the initial stop ended when he handed Huff the written warning. Reichert's subsequent thirty-four minute investigation was not reasonably related to the reason for the initial stop. In addition, Reichert did not develop reasonable suspicion during the initial stop to support the prolonged seizure of Huff, Seaton, or their car.

Even though Reichert claimed Huff and Seaton were free to leave after he issued the written warning, the court disagreed. Reichert told Huff and Seaton they could leave, but not in their car. Reichert told Huff and Seaton if they walked away, Reichert would arrest them for unlawfully walking on the highway. Reichert told Huff and Seaton they could abandon their car and get in the back of a police car and they would be driven to a gas station. If Huff and Seaton chose that option, Reichert said their car would be towed and impounded because it was illegal to abandon a car on the side of the highway. The court concluded under these circumstances, no reasonable person would feel free to leave.

Finally, the court held Reichert did not have reasonable suspicion to believe Huff or Seaton was armed and dangerous; therefore, Reichert was not justified in conducting a *Terry* frisk on either man. The court noted if there were a compelling need to frisk Huff or Seaton, one would have expected Reichert would not have waited more than twenty-seven minutes into the traffic stop to so.

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

White v. Stanley, 745 F.3d 237 (7th Cir. 2014)

Police officers went to Hille's house, without a warrant, to arrest her for possession of a stolen vehicle registration sticker. When the officers knocked on the door, Hille's boyfriend, White, answered the door. The officers told White they wanted to come inside to speak with Hille. White refused to allow the officers to enter the house without a warrant. When White tried to close the door, an officer blocked the door with her foot. White turned around and ran back into the house. The officers entered the house behind White, tackled him and subdued him after a brief struggle. The officers claimed they entered the house because they smelled burning marijuana coming from inside the house while they spoke with White at the front door. The officers found Hille inside the house smoking marijuana and arrested her. The officers also arrested White for resisting or obstructing a peace officer. The charges against White were later dismissed. White sued the officers for false arrest.

First, the court held the smell of burning marijuana, by itself, does not constitute exigent circumstances that justify police officers to enter a home without a warrant. However, the court further held, when the officers entered Hille's house, it was not clearly established that the smell of burning marijuana, by itself, did not justify the officers' warrantless entry. As a result, the officers were entitled to qualified immunity. The court cautioned that officers, who might be faced with a situation like this in the future, should

not expect to receive qualified immunity if they make a warrantless entry into a home solely based on the smell of burning marijuana.

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

United States v. Henderson, 748 F.3d 788 (7th Cir. 2014)

Police officers responded to Henderson's house after receiving a report that Henderson was holding a woman against her will at gunpoint inside the house. After a one-hour standoff, the woman emerged from the house. A short time later, Henderson voluntarily came out of the house and locked the door behind him. The officers handcuffed Henderson and searched him, but did not find any weapons. The officers forcibly entered Henderson's house and conducted a protective sweep. During the sweep, the officers saw remnants of a marijuana grow operation and firearms in plain view. After the sweep, the officers obtained a warrant, searched Henderson's house and seized cocaine, marijuana and several firearms. The government charged Henderson with being a drug user in possession of firearms.

Henderson argued the protective sweep violated the *Fourth Amendment* because there were no facts to support a belief that Henderson's house harbored anyone who posed a threat to the officers after Henderson exited.

The court disagreed. A protective sweep is a quick and limited search of a premises, incident to arrest, conducted to protect the safety of the officers and others. Police officers are allowed to conduct a protective sweep if they have a reasonable belief the area to be swept contains an individual who poses a danger to the officers or others. In this case, the officers responded to a hostage situation involving an armed suspect. The officers did not know how many occupants were inside the house or what the occupants were doing during the hour-long standoff. When the officers arrested Henderson, he was unarmed. At that point, it was reasonable for the officers to believe that an armed and dangerous person might still be in the house.

In addition, the court held the duration and scope of the protective sweep was reasonable. Once inside the house, the sweep lasted no longer than five minutes, the officers limited their search for additional victims or assailants, and the officers did not touch or move any evidence they saw.

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

United States v. Carroll, 750 F.3d 700 (7th Cir. 2014)

A thirteen-year old girl reported Carroll had sexually molested her, five years earlier, when she was eight years old. Specifically, the victim told a detective that Carroll took photographs of her bare genitals and showed her digital images on his camera of other children in partial states of undress. The victim stated the children in the photographs were posed in front of professional backdrops, and she described Carroll's camera. The

victim's father told the detective he worked with Carroll and that Carroll was a professional photographer.

Later that day, the detective applied for a warrant to search Carroll's residence for evidence of child pornography and sexual exploitation of a child. In his affidavit, the detective outlined his law enforcement experience including the last seven years during which he primarily conducted child pornography and child exploitation investigations. The detective stated through his training and experience he developed a working knowledge and understanding that collectors of child pornography go to great lengths to secure and maintain their collections. The detective indicated that child pornography collectors value and retain their collections because the images supply sexual gratification, are difficult to obtain, present a threat of prosecution, carry a highly negative stigma, and are used to trade for new images. The detective explained it was common to find discarded or outdated computers stored in closets, basements and attics for long periods of time and that deleted images may be retrieved years later through a forensic process. Finally, the detective stated in the past he found digitally stored images that were being used for sexual gratification up to five years after the images were created. The state court judge found there was probable cause to search Carroll's residence and issued the warrant. An analysis of Carroll's computer and other digital media located in his residence revealed numerous images of the victim in various states of undress engaged in sexually explicit conduct.

Carroll filed a motion to suppress the evidence discovered by the police. Carroll argued the information in the detective's search warrant affidavit was stale because it was five-years old; therefore, it did not establish probable cause to search his home.

The court disagreed. When receiving an application for a search warrant, a judge must make a practical, common-sense decision about whether the information in the affidavit establishes a fair probability that contraband or evidence of a crime will be found in the place to be searched. In child pornography cases, the issue of staleness must take into account the behavior of child pornography collectors and the capability of modern technology. Here, the court held the detective's affidavit adequately addressed these considerations. First, the detective stated he had learned through training and experience that collectors of child pornography hoard their images for long periods of time for a number of different reasons, which he outlined. Second, the detective sought the search warrant within days interviewing the victim and her father. Third, the detective articulated how deleted images might still be recoverable from a computer or other digital media through a forensic process. Finally, the detective explained how he had previously recovered five-year old digitally stored pornographic images of children.

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

United States v. Hernandez, 751 F.3d 538 (7th Cir. 2014)

Two police officers saw Hernandez pick up a red bag from beside a garbage can and run up an alley. When Hernandez saw the officers, he dropped the red bag on the ground and told the approaching officers, "I just have some dope." Hernandez then handed one of

the officers a key holder that contained five small bags of what appeared to be heroin. After the officers arrested Hernandez, one of the officers asked him what was in the red bag. Hernandez told the officers he had “ripped the guys around the corner for dope and a gun.” The officers looked in the red bag and found a loaded handgun and baggies containing crack cocaine and marijuana.

Hernandez was convicted of being a felon in possession of a firearm.

Hernandez argued his statement concerning the red bag should have been suppressed because it was obtained in violation of *Miranda*.

The court disagreed. Officers are allowed to ask suspect questions, without having to provide *Miranda* warnings, when the questions are designed to prevent the officers from hurting themselves during a search of a suspect or his possessions. In this case, whatever was in the red bag had prompted Hernandez to run when he had it, and had prompted Hernandez to drop it when he saw the police officers. After Hernandez gave the officers the key holder containing what appeared to be heroin, it was reasonable for the officers to believe the red bag might contain a syringe or a weapon. The court added, grabbing or opening the red bag would have placed the officers at risk of harm from impalement on a heroin needle or bumping a loaded firearm. As a result, the court held the officer’s question about what the red bag contained was within the public safety exception to *Miranda*.

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

United States v. Valley, 755 F.3d 581 (7th Cir. 2014)

In September 2010, a police officer using file-sharing software downloaded files containing child pornography from an IP address assigned to Valley’s mother, Jenson. In May 2011, a state court judge issued a warrant to search computers, digital storage devices and other related items found at Jenson’s house. When police officers arrived at Jenson’s house, the officers located Valley in the basement and handcuffed him. Once the house was secured, ten minutes later, the officers removed Valley’s handcuffs and allowed him to get dressed. The officers told Valley he was not under arrest and that he could leave at any time. Valley elected to remain at the house where he smoked, drank sodas and used the bathroom during the 5 ½ hours the officers searched the house. During this time, Valley made incriminating statements to the police officers. After discovering child pornography on his computer, the government indicted Valley.

Valley claimed his incriminating statements should have been suppressed because the officers failed to provide him *Miranda* warnings. Valley also argued the search warrant did not establish probable cause that Valley still possessed images of child pornography, as eight months had elapsed since the officer last downloaded child pornography from his computer.

The court held Valley was not entitled to *Miranda* warnings because Valley was not in custody for *Miranda* purposes. First, the officers never drew their guns or threatened Valley. Second, the officers told Valley, after the house was secured, that he was free to

leave. Third, the officers allowed Valley to smoke, drink soda, and move around the house without restraints. The court concluded a reasonable person in these circumstances would have felt free to leave.

The court further held the information in the search warrant affidavit was not stale; therefore, the officers established probable cause Valley possessed child pornography. In the search warrant affidavit, the officer acknowledged the eight-month delay and stated that in “almost every instance” when multiple months separate the discovery of child pornography and the issuance of a warrant, the images remain on the computer even if the computer moves or the Internet access ends. Additionally, the court recognized prior case law in this area has held that investigators looking for digital evidence can assume it remains on the hard drive because modern computers, by default, retain the data.

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

Hawkins v. Mitchell, 756 F.3d 983 (7th Cir. 2014)

Bumgarner called 911 and reported Hawkins locked her out of his house, but that her keys were still inside the residence. Bumgarner told the 911 operator Hawkins had a history of abusiveness, but the current argument was “verbal only.” When Officer Mitchell arrived, he saw clothing scattered across the yard, and Bumgarner shouting at Hawkins, who was on the front porch. Hawkins then went inside his house and slammed the door. Bumgarner told Mitchell she was not injured, apologized for calling 911, but that she needed her keys so she could leave. Bumgarner told Mitchell that Hawkins had not been violent and had not threatened her. Mitchell knocked on the door and Hawkins opened it, telling Mitchell he did not want to talk to him. Mitchell stuck his foot in the doorway, which prevented Hawkins from closing it, and then Mitchell entered Hawkins’ house. Hawkins repeatedly told Mitchell to get out of his house, but Mitchell refused. When Officer Bowersock arrived, Mitchell motioned him inside Hawkins’ house. In the meantime, Hawkins was on the telephone, speaking with his attorney. Bowersock told Hawkins to get off the phone, or he would be arrested. When Hawkins did not comply, Bowersock told Hawkins he was under arrest. Bowersock and Mitchell then grabbed Hawkins by his wrists and wrestled him to the floor. The state filed charges against Hawkins, but later dismissed them.

Hawkins sued the officers, claiming among other things, the officers violated the *Fourth Amendment* when they entered his house without a warrant, consent or an exigency. The officers argued they were justified in entering Hawkins’ house without a warrant “to prevent imminent serious injury” and to question Hawkins about the “situation.”

First, the court stated the need to question Hawkins amounted to ordinary investigation of possible crime, which did not constitute exigent circumstances.

Second, the court ruled the facts, even as presented by the officers, did not support the conclusion that the entry into Hawkins’ house was necessary to prevent imminent serious injury to anyone. When Mitchell arrived, Bumgarner told him she was not injured and that her argument with Hawkins was verbal. Instead of expressing a need for protection from Hawkins, Bumgarner told Mitchell she wanted to get her keys from inside the

house. Even though Mitchell lawfully attempted to initiate a consensual encounter with Hawkins, Mitchell's non-consensual and warrantless entry into Hawkins' house was unreasonable. When Mitchell entered the house, there was no evidence that Hawkins posed a threat to anyone, and after Bowersock entered, Hawkins continued to object to the officers' presence. Even though Hawkins did not comply with Bowersock's command to get off the phone, Hawkins never threatened the officers. Consequently, the court held because Mitchell and Bowersock did not have a warrant, consent or exigent circumstances, their entry and in-home arrest of Hawkins violated the *Fourth Amendment*.

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

United States v. Burgess, 759 F.3d 708 (7th Cir. 2014)

At approximately 10:45 p.m., numerous 911 callers reported hearing five to nine gunshots in their neighborhood. Based on these reports, police officers were dispatched to the intersection of Wabansia and Karlov Avenues. Less than two minutes later, the dispatcher told the officers additional callers had reported shots had been fired from a black car traveling south on Karlov Avenue. While responding to the call, two officers saw a black car driving away from the area where the gunshots had been reported. The officers stopped the black car approximately one mile from the intersection of Wabansia and Karlov Avenues. During the stop, the officers found a revolver, with five of its six rounds spent, on the seat where Burgess had been sitting. Burgess was arrested for being a felon in possession of a firearm. Just over four minutes elapsed from the initial dispatch about the gunshots until the officers arrested Burgess.

Burgess argued the revolver should have been suppressed because the officers did not have reasonable suspicion to justify the traffic stop.

The court disagreed. First, over the course of a few minutes, numerous 911 callers independently reported gunshots in the same area. The court noted that corroboration from multiple sources describing the general area and nature of the same crime can be considered reliable and support a finding of reasonable suspicion. Second, some of the 911 callers reported the shots were fired from a black car traveling on Karlov Avenue. When the officers saw a black car, two or three minutes later, drive past them, away from the area where the shots were fired, it was reasonable for the officers to believe the black car was involved in the shooting. As a result, the officers had reasonable suspicion to conduct a traffic stop on the black car.

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

Seiser v. City of Chicago, 762 F.3d 647 (7th Cir. 2014)

Seiser, an on-duty Chicago police officer, drove his personal vehicle to a school where he worked security. While in his car, three witnesses saw Seiser drinking from a large bottle, which contained a clear liquid and called 911. The bottle was a 1.75-liter T.G.I.

Friday's Mudslide bottle which, when sold, had contained an alcoholic beverage, which still bore a label that read, "The liquor is in it." The responding police officer saw Seiser's parked car and a bottle with clear liquid on the front seat. Although, the officer could not see the label, the officer believed the bottle contained alcohol based on the witness' statements. The officer located Seiser and asked Seiser to give him the bottle. After Seiser refused, the officer contacted a supervisor who told the officer to arrest Seiser for driving under the influence (DUI) and seize the bottle from Seiser's car. The officer arrested Seiser and administered field sobriety tests, which Seiser passed. The officer then ordered Seiser to submit to a breathalyzer, which indicated a blood-alcohol content of 0.00. The officer amended the charge against Seiser from DUI to an open container violation. A laboratory analysis of the liquid of the bottle seized from Seiser's car found that it did not contain alcohol. The state then dismissed the open container charge against Seiser.

Seiser sued, arguing that compelling him to submit to a breathalyzer test was an unreasonable search under the *Fourth Amendment*. Seiser also claimed there was no probable cause to believe he violated the open container law.

The court disagreed. When a police officer obtains information from a reasonably credible witness that a person has committed a crime, the officer may rely on that information to establish probable cause. Here, the supervisor had reports from three credible witnesses indicating Seiser had been drinking while driving a car. In addition, a police officer saw a bottle in Seiser's car that appeared to contain an alcoholic beverage and Seiser refused the officer's request to inspect the bottle. Finally, the label on the bottle seized from Seiser's car indicated it contained an alcoholic beverage. Under these circumstances, the court concluded it was reasonable to believe Seiser had committed DUI and that the breathalyzer test would yield evidence of that crime.

Finally, even though the results of the breathalyzer administered to Seiser were negative, the officers had probable cause to believe the contents of the bottle seized from Seiser's car contained an alcoholic beverage. Based on the witness statements, the officer's observations and the labeling on the bottle, the court found it was reasonable to believe Seiser violated the state's open container law.

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

Matz v. Klotka, 769 F.3d 517 (7th Cir. 2014)

While on patrol, two police officers saw Salazar and several other men standing on the porch of an apartment. The officers knew Salazar belonged to a local gang and that Salazar had an outstanding arrest warrant for armed robbery. By the time the officers turned around, the men on the porch had fled. The officers ran down an alley next to the apartment and saw two men in a car starting to drive away. The officers drew their handguns and ordered the occupants out of the car. When Matz exited the car, the officers handcuffed him and placed him in a patrol car. Shortly afterward, the officers discovered the car was stolen and arrested Matz. Salazar was arrested later inside the apartment.

Matz sued the police officers, claiming the officers violated the *Fourth Amendment* because they did not have reasonable suspicion to conduct a *Terry* stop. Alternatively, Matz argued his detention by the officers was not a *Terry* stop, but rather a de facto arrest that was not supported by probable cause.

The court disagreed. First, the officers saw Salazar, a known gang member, who had an outstanding arrest warrant for armed robbery. Second, when the officers approached Salazar and the other men on the porch, all of the men ran away. Third, it was objectively reasonable for the officers to believe Salazar could have been in the car driven by Matz. Consequently, it was reasonable for the officers to stop the car and briefly detain the occupants to determine if Salazar was inside.

The court further held that given the circumstances, it was reasonable for the officers to draw their firearms and handcuff Matz while they controlled the situation and determined who was in the car. While the use of firearms and handcuffs put Matz's seizure at the outer edge of a lawful *Terry* stop, the court concluded that Matz's detention was not a de facto arrest without probable cause.

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

United States v. Schmitt, 770 F.3d 524 (7th Cir. 2014)

A confidential informant told a police officer that Schmitt, a convicted felon, had recently acquired an assault rifle in exchange for \$200 and two grams of methamphetamine. Police officers followed up on the tip by conducting surveillance on Schmitt's house. During their surveillance, the officers saw Schmitt come to the front door several times to allow people to enter and exit his home. The next day, police officers returned to Schmitt's house with an arrest warrant for Schmitt. Within five minutes of entry, the officers located Schmitt and another individual. During that time, a police officer opened a locked door that led to the basement where he saw an assault rifle. The government indicted Schmitt for being a convicted felon in possession of a firearm.

Schmitt filed a motion to suppress the rifle, arguing after he was arrested upstairs, the officer violated the *Fourth Amendment* by opening the locked basement door and searching the basement.

The court disagreed, holding the officer discovered the assault rifle in plain view during a lawful protective sweep of the basement. A protective sweep is a quick and limited search of premises, incident to arrest, to protect the safety of the officers and others. This exception to the *Fourth Amendment's* warrant requirement allows police officers to conduct a visual inspection of those places in which a person might hide. Police officers may look in closets and other spaces immediately adjacent to the arrest area. However, to search beyond the immediate area, the officers must have facts which would lead a reasonable officer to believe the area to be swept harbors an individual who poses a danger to those at the scene.

In this case, without deciding whether the basement was immediately adjacent to the place of Schmitt's arrest, the court held the officers had reason to believe the basement could have harbored someone who posed a threat to the officers. First, the officers saw several people going in and out of Schmitt's house the day before. Second, the officers knew Schmitt had a violent criminal history. Third, the officers had information that Schmitt had a firearm in the house. Finally, although the basement door was locked, the court noted the officers would not have been protected if a person with a gun decided to kick the door down or shoot through it.

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

United States v. Kelly, 772 F.3d 1072 (7th Cir. 2014)

A narcotics detective obtained a warrant to search the "upper apartment" of a "multiple family residence" located at 1522 Clifton Avenue for cocaine and drug paraphernalia. To establish probable cause to search the apartment, the detective stated in his affidavit the police department had received a tip that drugs were being sold from the residence located at 1522 Clifton Avenue. The detective also included information from a uniformed police officer who had recently been dispatched to the "upper apartment" at 1522 Clifton Avenue for a welfare check. The uniformed officer reported a woman walked down a set of stairs from the second floor apartment after the officer knocked at the rear door of the building. Finally, the detective used a confidential informant (CI) to purchase cocaine from Kelly. When the CI went to 1522 Clifton Avenue, Kelly walked down a set of stairs from the second floor apartment to the rear door where he met the CI. After Kelly told the CI he would not sell drugs from inside the apartment, Kelly met the CI at a different location and sold him cocaine.

When the detective and other police officers executed the warrant, they discovered 1522 Clifton Avenue was not divided into separate first and second floor apartments. Instead, the officers found the apartments were bisected into front and rear multi-story units, with Kelly's apartment comprised of a basement and a first and second floor. The officers searched all three levels of Kelly's apartment and recovered a handgun, cocaine and drug paraphernalia.

Kelly moved to suppress all evidence seized by the officers. First, Kelly argued the warrant affidavit failed to establish probable cause of drug activity in the apartment. Second, Kelly argued the search of all three levels of his apartment exceeded the scope of the warrant, which he claimed only authorized a search of the non-existent "upper apartment." Finally, Kelly argued the officers were required to stop their search once they realized they were in a "rear" apartment, or at a minimum, search only the "upper" level identified in the warrant.

The court disagreed. First, the court held the detective's observations, along with the facts and circumstances surrounding the CI's controlled purchase of crack cocaine from Kelly created a "fair probability" that drugs would be found at 1522 Clifton Avenue. The court reached this conclusion without taking into consideration the anonymous tip or the information from the officer who conducted the welfare check at the apartment.

Second, the court noted the law does not “demand exact precision” in a search warrant’s description of the targeted premises. Instead, the particularity requirement of the *Fourth Amendment* is satisfied if the warrant’s description “is such that the officer with a search warrant can, with reasonable effort ascertain and identify the place intended.” In this case, the detective knew the target of his search was the apartment to which the rear door of 1522 Clifton Avenue led, whether it was in actuality the “upper apartment” or the “rear apartment.”

Finally, because Kelly’s apartment was the only unit accessible from the rear door of the building, the mislabeling presented no risk that the officers executing the warrant would search someone else’s apartment. In addition, the officers limited their search to the targeted apartment, which they confirmed belonged to Kelly as the officers immediately encountered Kelly upon entry. As a result, the officers were not required to stop or limit their search after they discovered the layout of Kelly’s apartment differed from the warrant’s description.

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

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.

NOTES

Eighth Circuit

United States v. Stringer, 739 F.3d 391 (8th Cir. 2014)

A police officer saw Stringer's vehicle leaving a residence known for drug activity and conducted a traffic stop after he saw Stringer's vehicle did not have license plates or working taillights. When the officer approached the vehicle, he saw two young female passengers who appeared to be under the influence of illegal drugs. After the officer verified the vehicle had a legal title, he told Stringer he was free to go, but that Stringer could not drive the vehicle without license plates and working taillights. When Stringer got out of the car to attempt to fix the taillights, the officer saw a knife in Stringer's pocket and asked him to remove it. Stringer emptied his pockets and in addition to the knife, Stringer removed a contact lens case. The officer asked for permission to examine the case and Stringer consented. Upon opening the case, the officer saw a white crystalline substance around the lid and a white "blob" in the center of each compartment. The officer detained Stringer until another officer arrived with a drug test kit. After the contact lens case tested positive for methamphetamine, the officer arrested Stringer. Another officer arrived with a drug-detection dog that alerted to the presence of narcotics in Stringer's car. The officer searched Stringer's car and found an open purse that belonged to the fifteen-year old female passenger. The officer searched a cell phone in the purse, looking for drug related evidence, but instead found images of the minor female and Stringer engaging in sexual intercourse. The officer also found a cell phone and a digital camera in the vehicle that belonged Stringer, which both contained images similar to those found on the female's cell phone.

Stringer was convicted of production of child pornography.

Stringer argued the officer violated the *Fourth Amendment* by detaining him after the officer confirmed Stringer had a valid driver's license and the vehicle was validly registered in Arkansas.

The court disagreed. Even if Stringer continued to be seized after the completion of the traffic stop, the court held the officer had reasonable suspicion to believe Stringer was involved in narcotics offenses. First, the officer had first-hand knowledge that the house Stringer had left was known for drug transactions. Second, the officer's saw the fifteen-year old female passenger had very dilated pupils, which the officer knew was a sign of drug impairment. Third, the officer saw the contact lens case containing the crystalline substance and white "blobs" he suspected was methamphetamine.

The court further held the officer had probable cause to search the car under the automobile exception to the *Fourth Amendment's* warrant requirement based on the positive field test of the contact lens case for methamphetamine and the drug-dog's alert. Under the automobile exception, the officers were entitled to search the car and any closed containers inside it. The court found Stringer did not have standing to object to the search the female-passenger's cell phone because he did not have a reasonable expectation of privacy in it. Consequently, Stringer could not challenge the seizure of the images of child pornography discovered on her cell phone. Because the court found the

images from the female passenger's cell phone were sufficient to sustain Stringer's conviction, the court did not rule on whether or not the evidence obtained from Stringer's cell phone or digital camera were lawfully obtained as part of the officer's warrantless search under the automobile exception.

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

United States v. Goodrich, 739 F.3d 1091 (8th Cir. 2014)

Police officers responded to a call of a break-in at a house Goodrich rented. Upon arrival, a witness told the officers he heard a gunshot and the officers saw people inside the house. One man ran from the house and was arrested after he dropped a bag of marijuana and two handguns on the ground. The officers arrested a second man as he attempted to exit the house through a window. Goodrich arrived at the house shortly after the police. Because of the reported gunshot, the officers decided to conduct a protective sweep of the house for additional intruders or possible victims. The officers asked Goodrich to open the front door but he refused. The officers told Goodrich if he did not open the door, the officers would force their way inside. After Goodrich unlocked the door, the officers conducted a 20-25 minute sweep of the house, looking under beds, in closets, and anywhere else they believed suspects or victims might be located. During the sweep, the officers saw a firearm on a bed and an open diaper box containing individually wrapped baggies of marijuana.

After the sweep, the officers decided to conduct a second search. An officer gave Goodrich a consent-to-search form. Goodrich read the form and asked the officer what would happen if he refused consent to search. The officer told Goodrich he would obtain a search warrant. Goodrich signed the form; the officers search the house and recovered firearms, marijuana, cash and drug paraphernalia.

The government indicted Goodrich for drug and firearms offenses. Goodrich argued the protective sweep violated the *Fourth Amendment* because he only allowed the officers into his house after they threatened to "break the door down" if he did not open it. Goodrich also argued the police used threats to coerce his subsequent consent to search the house.

The court disagreed. The officers did not need Goodrich's consent to conduct the protective sweep. When the officers arrived, a witness told them a gun had been fired and the officers arrested one of the suspects with a firearm. Under these circumstances, the officers reasonably believed that a shooting victim or additional armed suspect might be in the house. This reasonable belief justified the officers' warrantless entry of the house, with or without Goodrich's consent. In addition, the court held 20-25 minutes was a reasonable amount of time for the officers to conduct the sweep and that the officers properly limited the sweep to places where suspects or victims might be located.

The court also held Goodrich voluntarily consented to the search of his house because the officers did not threaten him, Goodrich read and understood the consent-to-search form and Goodrich did not object while the officers searched the house.

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

United States v. Rodriguez, 741 F.3d 905 (8th Cir. 2014)

A police officer conducted a traffic stop after he saw Rodriguez's car veer onto the shoulder of the road then swerve back into the lane of travel. The officer conducted a records check on Rodriguez and the front seat passenger. After the officer issued Rodriguez a written warning, he asked Rodriguez for permission to walk his drug-sniffing dog around the car. When Rodriguez refused, the officer directed Rodriguez to get out of the car until a back-up officer could arrive. After the back-up officer arrived, the officer walked his dog around Rodriguez's car and the dog alerted to the presence of drugs. The officer searched Rodriguez's car, found a large bag of methamphetamine and arrested Rodriguez. Approximately seven or eight minutes elapsed from the time the officer issued the written warning until the dog alerted on Rodriguez's car.

Rodriguez argued as soon as the officer issued the written warning, the officer did not have reasonable suspicion to detain him on the side of the road while he waited for the back-up officer to arrive.

The court disagreed. Without deciding whether the officer had reasonable suspicion to continue to detain Rodriguez after he issued the written warning, the court held the traffic stop was not unreasonably prolonged by the dog sniff. Although the dog was located in the officer's patrol car, the officer waited to use it until the back-up officer arrived for safety reasons because there were two individuals in Rodriguez's car. Although Rodriguez was detained for an additional seven or eight minutes, the court concluded such a delay was reasonable and only constituted a *de minimis* intrusion on Rodriguez's personal liberty.

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

United States v. Crisolis-Gonzalez, 742 F.3d 830 (8th Cir. 2014)

Federal agents received information that Gonzalez had entered the United States illegally, was involved in trafficking methamphetamine and had possibly purchased a firearm. Four agents went to an apartment where they believed Gonzalez was staying to conduct a knock and talk interview. Savedra opened the door and allowed the agents to enter the apartment. Inside the apartment, the agents saw a woman, and after initially hesitating, Savedra indicated there was someone else in the apartment. The agents drew their firearms and conducted a protective sweep. The agents discovered Gonzalez and another man in the apartment and handcuffed them. One of the agents asked the occupants their names and immigration status. Gonzalez admitted he was in the country illegally. The agent then asked Gonzalez for consent to search the apartment. Gonzalez asked the agent what he was looking for, and the agent replied he was looking for fraudulent documents, guns, large amounts of cash and drugs. Gonzalez told the agent he had a gun under his mattress. The agent asked Gonzalez a second time for consent to search the apartment. When Gonzalez asked what would happen if he refused, the agent told Gonzalez he

would attempt to get a search warrant. Gonzalez and the woman then signed consent-to-search forms, while Savedra and the other man refused. The agents searched Gonzalez's bedroom and seized a gun, drugs, drug paraphernalia, and a fraudulent social security card. Afterward, the agent advised Gonzalez of his *Miranda* rights and Gonzalez waived those rights and made incriminating statements.

The government indicted Gonzalez on drug and immigration offenses. Gonzalez filed a motion to suppress all evidence and statements obtained during the search of the apartment.

First, the court held Savedra, who shared a bedroom in the apartment with his girlfriend, had actual authority to consent to the agents' initial entry into the apartment. The court also ruled the agents did not gain entry into the apartment by false pretenses. Savedra agreed to let the agents into the apartment without specifically asking the agents why they wanted to come in. The agents' general request to enter the apartment was consistent with their goal of locating Gonzalez.

Second, the court held the agents' protective sweep was reasonable. Protective sweeps are not limited to situations where police officers arrest a person in a dwelling. Here, the agents had reason to believe Gonzalez was involved in drug trafficking and might have purchased a gun. In addition, Savedra's initial hesitation when the agents inquired about the presence of others in the apartment gave the agents reason to believe there might be others in the apartment who posed a threat to them.

Third, the court held Gonzalez's pre-*Miranda* statement about the gun under his mattress was a volunteered, spontaneous admission. The agent's question about Gonzalez's immigration status did not cause Gonzalez to make the incriminating statement regarding the gun. Rather, Gonzalez volunteered the location of the gun after the agent explained of what he would be looking for if allowed to search the apartment.

Fourth, the court held the agents obtained Gonzalez's consent to search his bedroom voluntarily. Gonzalez asked the agent what would happen if he refused to consent and Gonzalez read the consent-to-search form before he signed it. These actions indicated Gonzalez's intelligent consideration of his options. In addition, by the time the agent asked Gonzalez for consent to search, the agent had already removed Gonzalez from handcuffs and all of the agents had holstered their firearms.

Finally, the court held Gonzalez's post-*Miranda* statements were obtained after Gonzalez validly waived his *Miranda* rights.

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

United States v. Holleman, 743 F.3d 1152 (8th Cir. 2014)

A state trooper stopped Holleman for speeding and following too closely behind another vehicle. While questioning Holleman during the stop, the trooper became suspicious of Holleman's behavior. First, Holleman only opened the passenger-side window of his truck one inch when the trooper approached the truck. Second, Holleman refused to roll

the window down any farther after the trooper asked him to do so. Finally, Holleman slid his license, registration and insurance card through the one-inch opening in the window. Seven minutes into the stop, the trooper walked his drug dog around Holleman's truck. The dog did not successfully sniff the truck, however, because it was distracted by the smell of a dead animal in a nearby ditch. The trooper issued Holleman a warning ticket and let him leave.

Still suspicious of Holleman, the trooper contacted another police officer who followed Holleman to a hotel. While Holleman's truck was parked in the hotel parking lot, the officer walked his drug dog, Henri, around the truck two times. Both times, Henri alerted to the presence of drugs in Holleman's truck. While waiting for other officers to obtain a warrant to search the truck, an officer spoke to Holleman in the parking lot. Holleman told the officer the two arc welders located in the back of the truck belonged to him. After the search warrant was obtained, officers searched Holleman's truck and found approximately 250 pounds of marijuana hidden inside two arc welders.

The government indicted Holleman for possession with intent to distribute marijuana. Holleman filed a motion to suppress the marijuana found in his truck and the statement he made to the officer in the hotel parking lot.

Holleman claimed the trooper unreasonably extended the duration of the initial stop to conduct the first drug dog sniff. Holleman argued that without this unreasonable extension, the second officer would never have been called in with Henri to conduct a sniff of his truck in the hotel parking lot.

The court disagreed. By the time the trooper employed his drug dog, he was already suspicious of Holleman; therefore, the trooper's use of his drug dog did not unreasonably extend the duration of the initial traffic stop.

Next, the court held Henri's two positive alerts to the side of Holleman's truck established probable cause to believe the vehicle contained drugs. The government introduced sufficient evidence concerning Henri's initial and annual recertifications, as well as his field performance statistics to establish his reliability.

The court further held that even though the officers searched Holleman's truck pursuant to a search warrant, a warrantless search of Holleman's truck would have been justified under the automobile exception to the warrant requirement.

Finally, the court held Holleman's statements to the officer in the parking lot were admissible because Holleman was not in custody for *Miranda* purposes when he spoke to the officer. First, the officer never told Holleman he had to remain in the parking lot or told Holleman he was not free to leave. Second, Holleman was not restrained by the officer while the officer waited for the search warrant. Third, Holleman and the officer were in an open area, and the officer did not limit Holleman's freedom to use his cell phone. While it may have been clear to Holleman that his truck could not leave, the court held a reasonable person in Holleman's position would have felt that he was free to leave the parking lot.

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

United States v. Vore, 743 F.3d 1175 (8th Cir. 2014)

Police officers were conducting surveillance of a residence where they suspected stolen trailers were being stored. The officers saw Vore and another man attach a trailer to the back of a pick-up truck and drive off the property. A police officer conducted a traffic stop after he saw that the trailer did not have a visible license plate. During the stop, the officer ran the trailer's vehicle identification number (VIN) through a police database and learned the trailer had been reported stolen. The officer also found a loose license plate in the trailer that was registered to another trailer that also had been reported stolen. The officers arrested Vore and transported the pick-up truck and trailer to the police station. At the police station, the officers searched the pick-up truck and found methamphetamine, cash and drug paraphernalia. A federal grand jury indicted Vore for possession to distribute methamphetamine.

Vore filed a motion to suppress the evidence found in the pick-up truck.

The court held the officers had probable cause to conduct a warrantless search of Vore's truck under the automobile exception to the *Fourth Amendment's* warrant requirement. The officers saw Vore leave a residence where they suspected stolen trailers were located. Vore's truck was towing a trailer that did not have a visible license plate and that had been reported stolen. Inside the trailer, the officers found a license plate for another trailer that had been reported stolen. Based on the truck's nexus to the residence, the stolen trailer the truck was pulling and the stolen license plate in the trailer, there was a fair probability the truck contained evidence related to the ownership status and theft of the trailers. As a result, the officers did not need a warrant to search Vore's truck.

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

Fagnan v. City of Lino Lakes, 745 F.3d 318 (8th Cir. 2014)

Fagnan's mother called 911 to report a possible gas leak at her house. Police officers accompanied the firefighters who were directed to a laundry room in the basement. While the firefighters searched for the leak, two police officers saw what they believed to be two sawed-off shotguns in a gun cabinet next to the laundry room door. Fagnan told the officers the shotguns were legal. All emergency personnel, including the police officers, left the house after the firefighters found no gas leak.

The police officers eventually obtained a warrant to search Fagnan's house for sawed-off shotguns. After the officers seized the two sawed-off shotguns from the gun cabinet, they arrested Fagnan. Fagnan pleaded not guilty and was acquitted at trial. Fagnan later sued the police officers, claiming the officers violated the *Fourth Amendment* when they initially entered the basement with the firefighters. Specifically, Fagnan claimed the officers exceeded the scope of their consent to be in Fagnan's house when they stood near the laundry room where they saw the sawed-off shotguns in the gun cabinet.

The court disagreed and held the officers were entitled to qualified immunity. The officers stayed near the door to the laundry room while the firefighters searched the room

for the gas leak. A reasonable person would understand the officers had permission to remain near the location of the problem that brought them to the house in the first place. Accordingly, the officers were lawfully in the basement when they saw the sawed-off shotguns in plain view in the gun cabinet.

The court further held that upon seeing the shotguns, the incriminating nature of the firearms was immediately apparent to the officers. The requirement that the guns “incriminating nature” be “immediately apparent,” does not mean an officer must know the items are contraband. Rather, the officer only needs only “probable cause” to connect an object to criminal activity. Here, the officers noticed the shotguns appeared to be unlawful because they had standard magazine tubes that hold four rounds and that the barrels were cut off just above the magazine tubes. In addition, the officers were familiar with shotguns with lawful barrel lengths.

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

United States v. Noonan, 745 F.3d 934 (8th Cir. 2014)

At 2:30 a.m., shortly after the local bars closed, a police officer saw a car operated by Noonan that appeared to be travelling fifteen miles per hour under the speed limit. When the officer turned around to follow the car, Noonan slowed down and allowed the officer to pass him. Noonan then made a left turn down a street occupied by businesses including a mini-storage facility. The officer was aware of a rash of burglaries in the area involving storage facilities. As the officer continued down the street, he saw Noonan make a U-turn and reenter the road upon which they had originally been traveling. When the officer turned around to catch up with Noonan, he saw Noonan make another left hand turn in what the officer believed was an effort to evade the officer. The officer conducted a traffic stop and arrested Noonan after discovering Noonan had an active arrest warrant for manufacturing methamphetamine. During the search incident to arrest, the officer found a methamphetamine pipe in Noonan’s pocket. In the back of Noonan’s car, the officer found a black backpack. Because the officer knew Noonan to be a “meth cook,” he asked Noonan if the backpack contained a “one-pot.” A one pot is a method for manufacturing methamphetamine and the officer knew the chemicals used to manufacture methamphetamine were volatile. In addition, the officer knew the Governor’s office had recently issued a “One Pot Meth Alert,” which included a warning that “ordinary products are dangerous when used to make meth.” Noonan denied there was a meth lab in the backpack but admitted there were materials in the backpack that could be used to produce methamphetamine.

The government indicted Noonan for possession of methamphetamine precursors based on the items discovered in the backpack.

Noonan filed a motion to suppress the items seized from the backpack and his post-arrest statements. Noonan argued the officer did not have reasonable suspicion to support the traffic stop and that the officer was required to give Noonan *Miranda* warnings before questioning him about the backpack.

The court disagreed. Because the local bars had recently closed, the officer was concerned the car's unusually slow speed meant the driver, Noonan, was impaired. In addition, Noonan's evasive driving and the officer's knowledge of storage facility burglaries in the area provided the officer reasonable suspicion to conduct the traffic stop.

The court further held Noonan's post-arrest statements about the contents of the backpack were admissible under the public safety exception to *Miranda*. In this case, it was reasonable for the officer to believe that dangerous items related to the manufacture of methamphetamine might be in the car and to ask Noonan questions without first providing Noonan *Miranda* rights. First, the officer was aware Noonan was a "meth cook," and that methamphetamine labs can be extremely volatile. Second, the officer's question about the presence of a "one-pot" was specifically focused on the threat an active methamphetamine lab could present to public safety.

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

United States v. Douglas, 744 F.3d 1065 (8th Cir. 2014)

Two different individuals called 911 and reported hearing gunshots from a neighboring property that had been vacant since the residence burned down several years earlier. Police officers responded to the heavily wooded lot where the officers saw a bonfire in a clearing near where the house once stood. The officers encountered Douglas and several other individuals. Douglas told the officers the property belonged to his aunt and uncle, who had given him permission to use it. When the officers asked Douglas about the reported gunshots, Douglas denied having a gun and demanded the officers leave the property. While performing a protective sweep around the fire, officers saw an empty box of ammunition, several recently fired shell casings, and two teenage females hiding behind a vehicle. The women said Douglas had been firing a shotgun just before the officers arrived, but stated they did not know where the shotgun was located. One of the officers searched the thick brush at the edge of the woods and saw a rusted-out refrigerator lying on the ground, approximately twenty to twenty-five yards from the fire. The officer saw a shiny black plastic bag, partially covered by a board, inside one of the refrigerator's compartments. The officer moved the board, touched the bag and felt what he believed to be the stock of a gun. The officer eventually removed the bag from the refrigerator and took a sawed-off shotgun out of the bag. Douglas denied that he owned or ever possessed the bag or the shotgun. The officers later discovered the shotgun was lawfully registered to the stepfather of one of the other men at the scene. A federal grand jury indicted Douglas for being a felon in possession of a firearm.

Douglas argued the officers violated the *Fourth Amendment* by searching for and then seizing the shotgun.

The court disagreed, holding Douglas had no reasonable expectation of privacy in the plastic bag that was visible to anyone standing near the refrigerator, which was located in an "open field." Even if someone had an expectation of privacy in the refrigerator, there was nothing to establish Douglas had any connection to the refrigerator as it lay on his aunt and uncle's property. Next, the court held Douglas did not establish he had any

ownership or possessory interest in the bag in which the shotgun was found. To the contrary, Douglas consistently denied that the bag or the shotgun belonged to him. Because of these denials, the court ruled Douglas was precluded from claiming that the bag was searched and its contents seized in violation of the *Fourth Amendment*.

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

Bechman v. Magill, 745 F.3d 331 (8th Cir. 2014)

While conducting a computer check, Officer Magill learned of a “possible” outstanding arrest warrant for Bechman. The warrant stemmed from Bechman’s failure to appear in court after having received a citation for failing to carry proof of automobile insurance. Magill and another male police officer went to Bechman’s house and told Bechman of the existence of a “possible” warrant for her arrest. Bechman told the officers the matter had been resolved and the warrant had been recalled. When Magill contacted his dispatcher to confirm the validity of the warrant, the dispatcher told Magill Bechman’s warrant would be confirmed with the Clerk of Court the next morning. Even though Magill did not have any reason to arrest Bechman other than the unverified “possible” warrant, Magill arrested Bechman. Before the officers arrived, Bechman had been breastfeeding her infant and she asked the officers if she could use the bathroom before being taken to jail. The officers refused to allow Bechman to use the bathroom without the door open and one of the two male police officers watching. In addition, the officers would not allow Bechman to exchange her breast milk soaked shirt for a dry one or to put on a bra without one of them watching. After Bechman declined, the officers handcuffed Bechman and took her to the jail. At the jail, Bechman was strip searched and given a body cavity search. Bechman was released the next morning after it was discovered the warrant for her arrest had been recalled by the court six months earlier.

Bechman sued Magill and the other officer for a variety of federal and state law claims, arguing the officers unlawfully seized her without probable cause in violation of the *Fourth Amendment*.

The officers conceded no valid warrant existed at the time they arrested Bechman; however, the officers claimed it was reasonable for them to believe the warrant for Bechman’s arrest was valid.

The court disagreed. In each case cited to support their position, the police officers were mistakenly informed that the arrest warrant for the subject was outstanding. Here, all the officers confirmed was the possibility of an outstanding warrant for Bechman’s arrest. When the officers attempted to confirm the validity of the warrant, they were told the warrant would be confirmed the next day. The officers never confirmed the existence of an arrest warrant for Bechman. As a result, the court agreed with the district court, which determined that no reasonable police officer could actually believe Bechman’s warrantless arrest was lawful, given the information known to the officers and the circumstances surrounding her arrest.

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

United States v. Glover, 746 F.3d 369 (8th Cir. 2014)

Police officers received an anonymous 911 call that Glover, who was a wanted felon, was located at a particular residence. The caller refused to give her name, but gave the officers her callback number. The officers verified the information provided by the caller to include the fact Glover had several outstanding warrants for his arrest. Officers went to the residence indicated by the caller, which was inside a gated community. The officers obtained the gate-code from the caller and saw a vehicle that matched the description of a vehicle linked to Glover. The officers knocked on the front door but no one answered. The officers called back the anonymous caller who told the officers Glover was still inside the residence and planning to flee. The officers looked through a living room window and saw Glover inside the residence. The officers then broke open the front door and entered the home. The officers arrested Glover and seized firearms, drugs and cash. The government indicted Glover for drug and firearm offenses.

Glover filed a motion to suppress the evidence seized inside the home during his arrest.

Police officers with an arrest warrant may lawfully enter the dwelling where the suspect lives when the officers have reason to believe the suspect is inside. Whether Glover actually resided in the residence was not material because when the officers entered the residence, they reasonably believed Glover resided in the home and that he was present at the time. The 911 caller, while choosing to remain anonymous, provided consistently accurate and detailed information concerning Glover and the gate code to the property. Once outside the residence, the officers saw a vehicle matching a vehicle connected to Glover. Consequently, the court held all of the facts available to the officers demonstrated the officers' reasonable belief that Glover resided at the home and was present inside. Once inside, the officers conducted a plain view seizure of the incriminating evidence.

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

United States v. Woods, 747 F.3d 552 (8th Cir. 2014)

An individual called 911 and reported he saw a man carrying a concealed gun while riding the bus. The caller described the suspect as a black male wearing a black hat, tan pants and a white t-shirt. Police officers responded to the bus stop where the suspect was located and saw three men who matched the description given by the caller. The officers detained one of the men as he walking away from the bus stop, but determined he was not the man with the gun. After the officers released the man, one of the officers contacted the 911 caller by phone for further information. The caller told the officer he had stopped the wrong person. The caller told the officer the man with the gun was one of the two men sitting at the end of the bus stop, but did not specify which man had the weapon. The officers approached the two men sitting next to each other, one wearing a black hat and one wearing a camouflage hat. An officer frisked the man with the black hat and discovered a handgun in the waistband of his pants. Another officer then frisked the man in the camouflage hat, Woods, and discovered a handgun in the waistband of his pants as

well. The officers arrested both men and the government indicted Woods for being a felon in possession of a firearm.

Woods claimed the firearm should have been suppressed because the officers lacked reasonable suspicion that criminal activity was afoot and that Woods was armed and dangerous.

The court disagreed. First, the court found the information provided by the 911 caller was reliable. The caller indicated he had firsthand knowledge of a man carrying a gun. When the officer contacted the caller after stopping the wrong man, the caller directed the officers to Woods and the other man seated at the bus stop. This additional firsthand information indicated the caller was watching the officers and provided the degree of reliability necessary to support the officers' reasonable suspicion to believe that at least one of the men identified by the caller was armed with a concealed handgun.

After discovering the man wearing the black hat had a handgun, the court further held it was reasonable for the officer to frisk Woods. Even though the Eighth Circuit has rejected the "automatic companion" rule, which allows officers to automatically search all companions of an arrestee, companionship can be one relevant factor to consider when establishing reasonable suspicion. The court found the information provided by the caller along with the handgun recovered from the man with the black hat supported the officer's minimally invasive frisk of Woods.

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

United States v. Harris, 747 F.3d 1013 (8th Cir. 2014)

A Greyhound bus employee called the police and reported that a man at the bus station had fallen asleep on a bench with a handgun falling out of his pocket. Greyhound did not allow individuals to carry concealed firearms at the bus station. Police officers arrived at the bus station, which was located in a high crime area, and removed a handgun that was hanging from the sleeping man's pocket. The officers woke the man up and placed him in handcuffs. The officers learned the man, later identified as Harris, had an outstanding warrant for his arrest. The officers arrested Harris on the outstanding warrant and the government later indicted him for possession of firearm by a convicted felon.

Harris argued the police officers violated his *Fourth Amendment* rights because they did not have probable cause to believe he was committing a crime nor reasonable suspicion of criminal activity. As a result, Harris claimed the officers had no right to remove the handgun from his pocket and place him in handcuffs.

The court disagreed. While the court stated the government struggled to show the police officers had a reasonable suspicion of criminal activity, the officers were allowed to remove the handgun from Harris' pocket under the community caretaking doctrine. The community caretaking doctrine encompasses activities conducted by police officers that are not associated with the investigation of criminal activity or the seizure of criminal evidence. A police officer may act under the community caretaking doctrine when the officer has a reasonable belief that an emergency exists requiring his attention. In this case, the officers received a request from Greyhound to assist in dealing with a

dangerous, potentially volatile situation. When the officers arrived, they saw Harris asleep with a handgun hanging out of his pocket. The court noted it was reasonable for the officers to remove the handgun because the officers knew Harris was carelessly handling a firearm in a dangerous public location where it was forbidden to carry firearms. In addition, the court held it was reasonable for the officers to handcuff Harris and determine his identity during the brief encounter.

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

United States v. \$45,000.00 in United States Currency, 749 F.3d 709 (8th Cir. 2014)

A police officer got behind a car on Interstate 80 and claimed he could not read the issuing state's name on the car's license plate. When the driver of the car, Martins, exited the highway, the officer conducted a traffic stop for a violation of *Nebraska Revised Statute § 60-399(2)*, which requires, in part, that all letters, numbers and other writing on a vehicle's license plate be "plainly visible" at all times.

At some point during the stop, the officer walked his drug dog around Martins' car. After the dog alerted to the presence of drugs, the officer searched Martins' car and found two empty coolers, whose interiors smelled like raw marijuana. The officer also discovered \$45,000 in cash inside vacuum-sealed bags, which he seized. The officer did not find any marijuana or other drugs. The officer did not issue Martins a ticket for the alleged license plate violation or charge him with any crime. The government, suspecting the seized money was connected to drug trafficking, instituted a civil forfeiture lawsuit against the currency.

Martins, who claimed an interest in the currency, filed a motion to suppress the evidence obtained from the traffic stop. Martins argued the officer violated the *Fourth Amendment* because the officer did not have probable cause to believe Martins had violated *Nebraska Revised Statute § 60-399(2)*.

The court commented that Nebraska state courts have interpreted the term "plainly visible," in § 60-399(2), to mean that letters, numbers and other writing on license plates must be "generally readable" for law enforcement and identification purposes from within a reasonable distance. In this case, the officer testified he was able to read the issuing state's name, Utah, on Martins' license plate from within 100 feet while traveling behind Martins on Interstate 80, before he pulled Martins over. Under these circumstances, the court held it was not objectively reasonable for the officer to believe Martins had violated *Neb. Rev. Stat. § 60-399(2)*; therefore, the officer lacked probable cause to stop Martins. As a result, the court held the evidence obtained from Martins' car should have been suppressed.

The court further held any reasonable suspicion the officer established to believe Martins was involved in criminal activity occurred after the unlawful traffic stop; therefore, that information could not be considered.

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

United States v. Hill, 750 F.3d 982 (8th Cir. 2014)

LimeWire is an online “peer to peer” file-sharing program that allows users to share files with any other LimeWire users in the world. A police officer assigned to a cybercrimes task force investigating Internet crimes against children used LimeWire to access Hill’s computer. The officer downloaded ten images of what he believed to be child pornography from Hill’s shared folder on LimeWire. Hill was convicted of two child pornography related offenses.

Hill argued the officer violated the *Fourth Amendment* by using LimeWire to access his computer and download files from his LimeWire shared folder.

The court disagreed. LimeWire is a publicly accessible program available for free download by anyone with a computer and an internet connection. When Hill downloaded and actively used LimeWire file-sharing software, Hill made the child pornography files in his shared folder accessible to any LimeWire user in the world, to include police officers. As Hill had no expectation of privacy in such publicly shared files, no unlawful search or seizure occurred when the officer accessed Hill’s LimeWire shared folder.

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

United States v. Ovando-Garzo, 752 F.3d 1161 (8th Cir. 2014)

A state trooper arrested J. Perez for driving with a suspended driver’s license. The trooper then discovered the passengers, Garzo and D. Perez, did not have valid driver’s licenses either. Concerned about leaving Garzo and Perez stranded five miles from the nearest town in freezing weather, the trooper asked the men to identify themselves. Both men told the trooper their names, but neither man could produce identification documents. In addition, both men had difficulty communicating in English and appeared to be nervous. These facts, combined with the recent rise of undocumented aliens in the area, caused the trooper to believe Garzo and D. Perez might be in the United States unlawfully. When the trooper asked the men if they were in the United States unlawfully, both admitted they were. The government charged Garzo with one count of reentry after removal in violation of *18 U.S.C. § 1326(a)*.

Garzo moved to suppress the evidence of his immigration status obtained by the trooper during the traffic stop. Specifically, Garzo claimed the arrest of the driver terminated the traffic stop; therefore, the questioning that followed unlawfully extended the scope of the traffic stop.

The court held the trooper’s questioning was properly within the lawful scope of the traffic stop as a logical extension necessary to determine what to do with the pickup truck and its passengers following the arrest of the driver. The traffic stop occurred five miles from the nearest town, in freezing temperatures and neither Garzo or D. Perez had a valid driver’s license. The circumstances of the arrest required the trooper to engage in a community caretaking function of safely removing the pickup truck and its occupants

from the side of the road, and certain questioning was required to accomplish this task. The court concluded the trooper's questions were reasonably related to the purpose of terminating the traffic stop and did not unreasonably prolong the duration of the stop.

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

United States v. Humphrey, 753 F.3d 813 (8th Cir. 2014)

Two police officers were conducting surveillance on Humphrey, who was a suspect in a burglary and homicide. The officers driving separate unmarked police cars followed Humphrey as he drove around town. At one point, Humphrey pulled next to one of the officers and raised his right arm parallel to the ground, pointing it in the direction of the officer. Believing that Humphrey realized he was being followed, the officer decided to discontinue his surveillance. However, when the officer pulled into the parking lot of a strip mall, Humphrey entered the parking lot from a different direction and drove straight at the officer's car, until the vehicles faced each other only a few feet apart. The second officer pulled up behind Humphrey, boxing him in. Both officers activated their lights and sirens and got out of their vehicles with guns drawn. The officers identified themselves and approached Humphrey's car. When Humphrey rolled down his window, one of the officers saw a handgun resting on Humphrey's knee. Knowing Humphrey was a convicted felon, the officers arrested him for unlawful possession of a firearm.

Humphrey argued the officers did not have reasonable suspicion he was involved in criminal activity; therefore, the firearm was discovered as the result of an unlawful *Terry* stop.

The court disagreed. The officers were investigating Humphrey's possible connection to recent violent crimes. When it appeared that Humphrey realized he was being followed, Humphrey became the pursuer and positioned his car facing the officer's car in the parking lot. In addition to his behavior, the officers knew Humphrey had convictions for violent crimes and firearms offenses. As a result, it was reasonable to believe that Humphrey might assault the first officer, which justified a *Terry* stop.

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

United States v. \$48,100.00 in United States Currency, 756 F.3d 650 (8th Cir. 2014)

Nelson was driving his parents' recreational vehicle (RV) from Colorado to Wisconsin when he was stopped for a traffic violation in Nebraska. After receiving Nelson's consent to search, the police officer found 2.7 grams of marijuana, a marijuana grinder, several marijuana-themed magazines and a plastic bag containing \$48,100 in currency inside a backpack located in the RV. The officer arrested Nelson for possession of marijuana and seized the currency. The government filed an action seeking forfeiture of the \$48,100, arguing the currency was substantially connected to drug trafficking. Although the government conceded the currency had come from legitimate sources, it nonetheless argued Nelson planned to use the currency to purchase narcotics in an

unspecified transaction, which had yet to occur. The government provided no evidence concerning the future drug transaction.

The magistrate judge adopted the government's position, concluding it was more likely than not the \$48,100 was subject to forfeiture as it was substantially connected to a planned, but unconsummated drug transaction. Nelson appealed.

The court agreed with Nelson, holding no affirmative evidence existed to support the government's theory that Nelson planned to obtain a large amount of marijuana to sell in Wisconsin. First, both parties agreed the currency came from legitimate sources. Second, the amount of marijuana seized from the RV was small, consistent with personal use, as was the paraphernalia seized by the officer. Third, the officer testified there were several things missing which he would typically expect to find if Nelson had been planning to purchase and transport a large amount of drugs cross-country to sell. For example, the officer searched Nelson's cell phone, but he did not find any text messages or voice mail recordings referring to a plan to engage in drug trafficking. In addition, Nelson did not have a firearm, the possession of which the officer testified often goes "hand in hand" with drug trafficking. The court concluded the government's theory about a planned drug transaction relied on mere speculation rather than evidence. As a result, the court reversed the magistrate judge's directing the forfeiture of the \$48,100.

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

United States v. Hayden, 759 F.3d 842 (8th Cir. 2014)

Two police officers saw two men standing near a vacant house in a high-crime area at approximately 9:00 p.m. The officers saw one man looking up and down the street while the second man walked closer to the home and looked in a window. The officers were told before their shift there had been an increase in burglaries and robberies involving weapons in the vicinity. When the officers pulled their vehicle next to the men, one of the officers got out of the car, shined his flashlight on the men and said, "Police." One of the men later identified as Hayden turned away from the officer and put his hand inside his jacket pocket. The officer told Hayden to remove his hand from his pocket and Hayden complied. The officer frisked Hayden and found a loaded handgun in Hayden's jacket pocket. The government indicted Hayden for being a felon in possession of a firearm.

Hayden argued the handgun should have been suppressed because the officers did not have reasonable suspicion to justify a *Terry* stop.

The court disagreed. First, the court held Hayden was not seized for *Fourth Amendment* purposes when the officer got out of his car, shined his flashlight on Hayden and said "Police." The court found the officer pulled his vehicle next to Hayden, while the other officer identified himself as a police officer. At no time did the officers impede Hayden's freedom of movement, touch him or display their weapons. The court ruled identifying oneself as "Police" does not effect a seizure of an individual who stops to listen or talk, as self-identification is not a command to stop.

The court held the officer seized Hayden after Hayden complied with the officer's command to remove his hand from his jacket pocket. However, by this time, the court found the officers had reasonable suspicion to conduct a *Terry* stop as the officers had reasonable suspicion Hayden was about to commit a burglary. First, it was late at night, and the officers knew there had been an increase in burglaries in the area. Second, the officers knew from experience it was unusual to find people on the street after dark in this particular high-crime area. Third, based on their actions, Hayden and the other man appeared to be casing the house for burglary. Finally, when the officers approached, Hayden turned away from them and reached into his jacket pocket, as if he were reaching for a weapon.

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

Williams v. Decker, 767 F.3d 734 (8th Cir. 2014)

While conducting motorcycle training in the parking lot of a city park, three police officers approached a car containing two men that was parked diagonally across two parking spaces in their training area. One of the officers saw the driver drinking from a container wrapped in a paper bag and both men upon seeing the officers began moving around while keeping their hands from the officers' view. The officers drew their firearms and ordered both men to show their hands, but neither immediately complied. The officers removed the men from the car and handcuffed them. The officers discovered two containers of beer and a firearm in the glove compartment. After learning there were no outstanding warrants for Porter, the passenger, the officers allowed him to leave. However, the officers learned from their dispatcher that Williams, the driver, had a felony conviction. After twice confirming Williams' conviction with the dispatcher, the officers arrested him for unlawful possession of a firearm. Approximately one-hour into the stop, the officers discovered Williams had pled guilty to a misdemeanor and released him. Williams and Porter sued the officers, claiming the officers violated the *Fourth Amendment* by exceeding the scope of a *Terry* stop.

The court held the officers were entitled to qualified immunity. First, the officers' observations of what they believed to be alcohol consumption, combined with the errant parking of Williams' car established reasonable suspicion that Williams was operating a vehicle while intoxicated. Second, the court held the officers acted reasonably when they drew their weapons, handcuffed Williams and Porter, and removed the gun from the car. Finally, the court held the officers had probable cause to arrest Williams, although they ended up releasing him. The officers arrested Williams based on information from a police dispatcher, which they confirmed twice. The court found it was objectively reasonable for the officers to rely upon Williams' criminal history as reported and confirmed to them by a police dispatcher.

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

Gladden v. Richbourg, 759 F.3d 960 (8th Cir. 2014)

Gladden died of hypothermia after two police officers transported him from a restaurant to an isolated off-ramp outside the city. Gladden had asked the officers for a ride to his sister's house in the next county, but the officers instead left Gladden at the county line, which marked the end of their jurisdiction, and told Gladden to seek assistance from the guard shack of a nearby factory. Gladden's estate sued the officers and their chief for a variety of constitutional and state law torts.

The court affirmed the district court, which granted qualified immunity to the officers, official immunity to the officers and the chief, and dismissed the state-law claims.

The court noted private individuals generally do not have a constitutional right to police assistance. However, the court recognized a person might be constitutionally entitled to police assistance when in custody or when placed in a position of danger by a police officer. Here, the court ruled that neither of these special relationships existed. First, Gladden was not in custody because he freely accepted the ride to the county line. The officers were attempting to do Gladden a favor and at no point during the trip would a reasonable person have believed that he was not free to leave the officers' presence. Second, Gladden's mild signs of intoxication were not enough to alert the officers to the possibility that Gladden might not be able to make decisions for himself and might not be able to find his way to the guard shack, which was a short distance from where the officers left him.

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

United States v. Williams, 760 F.3d 811 (8th Cir. 2014)

After federal agents identified Williams as a potential purchaser of child pornography, approximately seven armed and uniformed agents executed a search warrant at his house. When no one answered their knock, agents used a battering ram to enter. Williams arrived home while the search was ongoing and agreed to speak with one of the agents. The agent told Williams he was not under arrest, and that Williams' decision whether to speak with law enforcement was voluntary. Williams and the agent sat in the living room, ten to fifteen feet from the door and their conversation lasted thirty to forty-five minutes. During this time, the agent did not raise his voice, make any threats or promises to Williams or use deception. In addition, Williams was not restrained and he was allowed to use the restroom and get a glass of water. Williams admitted to viewing child pornography on the internet and gave the agent consent to retrieve his laptop computer from his car. The agent did not advise Williams of his *Miranda* rights during the interview. At the conclusion of the search, the agent did not arrest Williams. The government later indicted Williams for receipt and distribution of child pornography.

The district court held Williams was in custody for *Miranda* purposes and suppressed Williams' incriminating statements and his laptop computer. The government appealed.

The Eighth Circuit Court of Appeals reversed, holding Williams was not in custody for *Miranda* purposes. First, when the agent asked Williams if he would agree to answer

some questions, the agent told Williams that he was not under arrest. Second, the agent questioned Williams in his own home near the front door. Third, the agent did not physically restrain or handcuff Williams, and Williams was allowed to get a glass of water and move unsupervised through his home. Fourth, only one agent questioned Williams and the interview lasted only short time. Finally, the agent did not use deceptive strategy or threats and the agent did not arrest Williams at the end of the interview. Considering the totality of the circumstances, the court concluded a reasonable person in Williams' position would have felt that he was free to terminate the interview with the agent and leave; therefore, Williams was not in custody for *Miranda* purposes.

The court further held Williams' statements to the agent were voluntary as well as Williams' consent to search.

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

United States v. Salgado, 761 F.3d 861 (8th Cir. 2014)

At approximately 1:40 a.m., a state trooper saw a disabled vehicle on the side of the road. The trooper parked behind the vehicle and got out of his patrol car to assist the occupants. As the trooper approached, Salgado and another man immediately walked from the front of their vehicle and told the trooper they did not need his assistance. Based on his prior experience, the trooper found this behavior to be unusual. When the trooper shined his flashlight on the back seat of the vehicle, he saw a third person, and a jacket embroidered with a large marijuana leaf partially covering some electronic equipment. Salgado told the trooper he had been driving the vehicle, but he could not produce a driver's license. The trooper tried to conduct a record check, but no records in the state databases of South Dakota or Minnesota matched the information provided by Salgado. When the trooper asked Salgado about the other occupants in the vehicle, Salgado was only able to identify one of the passengers as "Homie." While the trooper continued to try to identify Salgado, he asked Salgado for consent to search the vehicle for drugs. After Salgado refused to consent at 1:55 a.m., the trooper called an off-duty trooper, who lived forty-five miles away, and asked him to bring his drug detection dog to the scene. Approximately fifty minutes later, the off-duty trooper arrived and the drug detection dog alerted to the presence of drugs in Salgado's vehicle. The officer searched Salgado's vehicle and found methamphetamine, trace amounts of marijuana and a glass pipe. The officers arrested Salgado and the two passengers.

Salgado argued that once he declined the trooper's offer of assistance, the trooper's investigation became an unreasonable seizure under the *Fourth Amendment*.

The court disagreed. Once Salgado identified himself as the driver of the vehicle and admitted he did not have a driver's license, the trooper had probable cause to issue Salgado a citation for a traffic violation. At this point, the trooper was allowed to detain Salgado in order to write the citation, confirm Salgado's identity and check Salgado's criminal history. During this time, the trooper could not match the name and date of birth provided by Salgado to the state databases, and the trooper saw a jacket with an

embroidered marijuana leaf on it inside Salgado's vehicle. In addition, the trooper found it unusual that a potentially stranded motorist so adamantly declined his offer for assistance and was only able to identify one of his passengers as "Homie." Consequently, the court concluded these facts provided the trooper reasonable suspicion to detain Salgado.

The court further held Salgado's nearly one-hour detention until the off-duty trooper arrived with the drug detection dog was reasonable. The court noted the trooper first tried to locate an officer with a dog that was nearby, and then when that failed, the officer attempted to obtain Salgado's consent to search. The court concluded the remote location attributed to the delay, not a lack of diligence or unnecessary delay by the trooper.

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

United States v. Givens, 763 F.3d 987 (8th Cir. 2014)

At approximately 2:00 a.m., a police officer saw a car that did not have license plates. The officer saw a piece of paper in the rear window of the car, but the officer could not determine if the paper was a valid temporary registration card. The officer conducted a traffic stop, and upon reaching the back of the car, he saw the paper in the rear window was a valid temporary registration card. However, by that time, the officer smelled the odor of marijuana emanating from the car. The officer searched the car and discovered bags of marijuana and rounds of ammunition. The government indicted Givens for several criminal violations.

Givens argued the officer did not have reasonable suspicion to support the traffic stop. Specifically, Givens claimed because the officer could not initially read the temporary registration card that the officer could not have reasonably believed the card was invalid.

The court disagreed. The officer testified when he saw the paper in the rear window of Givens' car, he could not tell whether it was a valid temporary registration card or not. The officer further testified, in his experience, temporary registration cards are generally legible when observed from his patrol car. The officer also testified that on prior occasions he had been able to read temporary registration cards at nighttime. The court concluded the lack of license plates on Givens' car or a readily apparent paper registration card in the window gave the officer reasonable suspicion to believe Givens was in violation of state law.

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

United States v. Meidel, 764 F.3d 844 (8th Cir. 2014)

While in Meidel's neighborhood looking for a suspicious vehicle, the officers approached Meidel to ask if he had seen the vehicle. Meidel, who was standing in his front yard, which was surrounded by a chain link fence, spoke to the officers, who remained on the other side of the fence near the roadway. When the conversation ended, Meidel turned around and began to walk toward his house. The officers then saw what appeared to be a

semi-automatic handgun tucked partially into Meidel's pants in the small of his back. At the time, the officers knew several neighbors had previously reported that Meidel had fired a gun in the neighborhood, that Meidel was a convicted felon, and that Meidel had previously displayed the handle of a pistol to a clerk in a convenience store during a dispute. When the officers asked Meidel if he had a gun, Meidel told them it was a pellet gun. The officers noticed Meidel's demeanor had changed, and as Meidel continued toward his house, he was getting closer to a dumpster that was in the yard. The officers told Meidel that he was under arrest, but Meidel continued walking toward his house, while reaching back to the handgun in his waistband. Both police officers jumped the fence, tackled Meidel and recovered the handgun from Meidel's waistband. The government indicted Meidel for being a felon in possession of a firearm.

Meidel argued the officers violated the *Fourth Amendment* when they entered his front yard after they saw the handgun in his waistband.

The court disagreed. First, without deciding the issue, the court assumed that Meidel's fenced-in front yard constituted curtilage; therefore, it was protected by the *Fourth Amendment*. Next, the court held the officers' warrantless entry into Meidel's front yard was justified by exigent circumstances. Here, the officers saw what they believed to be a handgun in the waistband of Meidel's pants and the officers knew Meidel was a convicted felon. In addition, Meidel's demeanor changed when the officers asked him about the gun and Meidel was walking toward a dumpster in the yard, which would have shielded him from the officers' view. The court concluded under these circumstances a reasonable officer would have had legitimate concerns for his safety and the safety of others; therefore, the warrantless entry into Meidel's yard to arrest him and secure the gun was justified.

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

United States v. Hickman, 764 F.3d 918 (8th Cir. 2014)

Robinson was in the bedroom of the house she shared with Tidwell when Hickman came to bedroom door. Hickman, who had been at the house visiting Tidwell, told Robinson Tidwell had left the house and that Tidwell was not answering his cell phone. Robinson and Hickman later found Tidwell's body lying at the side of the house. Instead of calling for assistance, Robinson and Hickman went into the house and packed two kilograms of cocaine into a cooler. After Hickman left with the drugs, Robinson called 911. Robinson told the responding officers she had never seen Hickman before that night, and that Hickman introduced himself to her as "Scotty."

One week later, Robinson told a detective about the drugs in the house, and about how the man whom she knew as "Scotty" had removed the drugs the night of Tidwell's death. The detective then showed Robinson a photograph of Hickman and asked her whom it depicted. Robinson quickly responded the man in the photograph was "Scotty."

The government charge Hickman with conspiracy to possess cocaine with intent to distribute. At trial, Hickman argued Robinson's identification of him during her interview with the detective should have been suppressed.

The court noted that even if Robinson's initial police interview involved an identification procedure that was unduly suggestive, suppression of Robinson's identification would not be automatic. Instead, a court would determine whether the unduly suggestive identification procedure created "a substantial likelihood of misidentification." In this case, the court concluded Robinson's identification of Hickman was reliable. First, Robinson described in detail their joint effort to remove the cocaine from the house. Second, Robinson identified Hickman by a specific alias that Hickman did not dispute. Third, Robinson was certain of Hickman's identity once she saw his photograph. Finally, Robinson identified Hickman from the photograph approximately one week after the incident.

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

Williams v. Holley, 764 F.3d 976 (8th Cir. 2014)

Officer Holley entered Williams' home to arrest Williams on twenty-three outstanding misdemeanor arrest warrants. The warrants were for non-violent misdemeanors, traffic violations and contempt of court stemming from those misdemeanors. After an initial struggle, Holley pushed Williams away from him, and the two men ended up standing five to six feet apart from each other. Williams did not attempt to get away, make any threatening gestures or advance toward Holley. Holley drew his Taser and ordered Williams to lie on the floor. Although Williams ignored Holley's command and remained standing, Williams did not say anything to Holley or make any threatening gestures. Holley attempted to call for back-up; however, his call failed because the radio channel was already in use. Holley then deployed his Taser in dart mode, which hit, but did not appear to affect Williams. As Williams attempted to remove the darts, Holley approached with the intent of applying the exposed prongs of the Taser directly into Williams' body. When Holley approached, Williams took the Taser away from Holley and got on top of him. Williams pressed the activated Taser against Holley's left shoulder. Holley claimed the Taser disabled his left shoulder, but stated he was still able to use his left arm in an attempt to shift Williams off him. Holley then used his right hand to draw his pistol and point it at William's stomach. Williams refused to get off Holley and continued pressing the Taser into Holley's shoulder. Holley fired his pistol into Williams' stomach and then fired a second shot that struck Williams in the hand as Williams attempted to grab the pistol. After the second shot, Holley used his left hand to shift Williams so he could get out from under him. Holley fired four more shots, striking Williams in the chest. According to Holley, he fired at Williams from a distance of less than three feet because Williams was advancing toward him with raised arms. Williams died from his wounds,

An internal investigation and coroner's examination revealed inconsistencies with the account of the shooting provided by Holley. These inconsistencies called into question whether Williams deployed the Taser against Holley as Holley claimed, and whether Williams was in the position Holley claimed when Holley shot him.

Williams' daughter sued Holley, claiming Holley's decision to deploy his Taser against Williams was unreasonable and that Holley unreasonably used deadly force when he repeatedly shot Williams.

The court of appeals affirmed the district court, which held Holley was not entitled to qualified immunity.

Holley argued the court was bound to accept his version of events because he was the only surviving eyewitness to the incident. As a result, Holley claimed there was insufficient evidence for a reasonable juror to find his decision to use deadly force against Williams was unreasonable.

The court disagreed. To determine whether a police officer is entitled to qualified immunity, the court reviews the facts as claimed by the plaintiff, in this case Williams, to determine if a constitutional violation was alleged. In this case, the court noted the circumstantial evidence raised questions of fact regarding material aspects of Holley's account of the incident. Specifically, a reasonable juror could infer Williams had not deployed the Taser against Holley in the manner Holley claimed, and that Williams had been raising his arms to defend himself from Holley's gunshots rather than attacking as Holley described.

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

Aipperspach v. McInerney, 766 F.3d 803 (8th Cir. 2014)

Police officers received a call from Hart who reported that his friend, Al-Hakim, refused to leave Hart's apartment. When officers arrived, Al-Hakim was gone, but the officers learned there might be an outstanding warrant for Al-Hakim's arrest. The officers searched the woods behind Hart's apartment and found Al-Hakim sitting at the bottom of a ravine. An officer asked Al-Hakim to come up and talk, but Al-Hakim refused, and produced what appeared to be a black handgun. Additional officers responded, and Al-Hakim was ordered to drop his weapon no fewer than twelve times. Al-Hakim refused to drop the weapon, instead Al-Hakim briefly pointed it the officers' direction. An officer warned Al-Hakim that if he pointed the weapon at the officers again, the officers would shoot. A few minutes later, when Al-Hakim attempted to change position, he slipped and fell backwards. When Al-Hakim regained his balance, he pointed his weapon at the officers. The officers fired their weapons at Al-Hakim, killing him. The officers recovered Al-Hakim's weapon, which turned out to be a Daisy air pistol. Al-Hakim's estate sued the police officers, claiming the officers' use of deadly force was unreasonable under the circumstances.

The court held the officers were entitled to qualified immunity. In this case, the officers were confronted with a suspect who held what appeared to be a handgun, refused repeated commands to drop the gun, pointed the gun once at the officers and then pointed the gun a second time in the direction of the officers. The court concluded the officers acted reasonably, making a split-second judgment in a situation where Al-Hakim posed a threat of serious physical harm to the officers. The court further noted that video footage from a news helicopter confirmed the officers' sequence of events.

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

United States v. Reid, 769 F.3d 990 (8th Cir. 2014)

Police officers went to Graham's house to arrest her on an outstanding warrant. When the officers arrived, the front door was ajar, and the officers saw Graham dressed in pajamas inside the house. The officers ordered Graham to approach the doorway and after she did, an officer handcuffed Graham, and pulled her outside. An officer then agreed to allow Graham to reenter the house to get dressed. While escorting Graham to her bedroom, an officer saw an assault rifle in plain view. When the officer asked Graham about the rifle, Graham told the officer it belonged to her live-in boyfriend, Reid. Graham subsequently consented to a search of the house and officers discovered a shotgun, ammunition and a disassembled pistol. The government indicted Reid for being a convicted felon in possession of a firearm.

Reid filed a motion to suppress the evidence seized from the house. First, Reid argued the assault rifle should have been suppressed because the officer violated the *Fourth Amendment* by entering the house with Graham, without a warrant. Second, Reid argued the other firearms and ammunition should have been suppressed because they were discovered as a direct result of finding the assault rifle.

The court disagreed. The arrest of a person outside a home does not by itself justify a warrantless search of the residence. However, when an officer allows an arrestee to reenter her home for her own convenience, it is reasonable for the officer to accompany her and to monitor her movements. In this case, when the officers arrested Graham, she was clad only in pajamas. The court concluded it was reasonable for the officer to accompany Graham to her bedroom so she could change into clothes. Consequently, when the officer saw the assault rifle in plain view, he was allowed to lawfully seize it under the *Fourth Amendment*. The court further held the other firearms and ammunition were lawfully seized after Graham provided valid consent to search the house.

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

United States v. Walker, 771 F.3d 449 (8th Cir. 2014)

Shortly before 1:00 a.m., a person called 911 and reported a drive-by shooting at 1405 Idaho Street. The caller further stated he saw two African-American men getting into a "Suburban," which then headed east on Cleveland Avenue. A nearby patrol officer responded. The officer knew a witness in a murder investigation lived at 1405 Idaho Street and that a suspect in the investigation, Rankins, lived two or three blocks east of Idaho Street. Approximately one minute after receiving the report, the officer saw a Suburban backing out of the driveway of Rankin's house. The officer stopped the Suburban and eventually searched it, discovering a handgun. The government indicted Walker, a passenger in the Suburban, for being a felon in possession of a firearm.

Walker argued the handgun should have been suppressed because the officer did not have reasonable suspicion to stop the Suburban.

The court disagreed. The officer received a report of a drive-by shooting at the home of a witness in a murder investigation and that a Suburban was observed driving away from the scene of the shooting. A few minutes later, the officer saw a Suburban backing out of the driveway of a suspect in the murder investigation. Based on these facts, the court concluded the officer had reasonable suspicion to stop the Suburban and investigate its occupants.

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

United States v. Wheelock, 772 F.3d 825 (8th Cir. 2014)

A police officer discovered child pornography was available for download from a certain Internet Protocol (IP) address with Comcast Communications as the Internet Service Provider (ISP). Pursuant to *Minn. Stat. § 388.23*, the officer requested an administrative subpoena from the County Attorney ordering Comcast to produce the subscriber information associated with the identified IP address. The County Attorney issued the subpoena, and Comcast responded by providing Wheeler's name, address and other information. After the officer learned Wheeler was a convicted sex offender with a conviction for possession of child pornography, the officer obtained a warrant to search Wheeler's house. A search of Wheeler's house revealed several hard drives, DVDs and CDs containing child pornography. The government indicted Wheeler for a variety of child pornography related offenses.

Wheeler moved to suppress all evidence obtained as a result of the administrative subpoena. Wheeler argued the use of an administrative subpoena, instead of a search warrant, violated his *Fourth Amendment* privacy interest in his subscriber information the government obtained from Comcast.

The court disagreed. The court explained that every federal court addressing this issue has held individuals do not have a reasonable expectation of privacy in subscriber information they give to an Internet Service Provider. Consequently, the court held Wheelock did not have a reasonable expectation of privacy in the subscriber information he provided to Comcast.

The court further held the officer complied with *Minn. Stat. § 388.23* when he certified to the County Attorney "that the requested records were relevant to an ongoing, legitimate law enforcement investigation of Distribution of Child Pornography."

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

United States v. Chartier, 772 F.3d 539 (8th Cir. 2014)

An officer on patrol saw a car and ran a record check on the car's license plate. The officer discovered the registered owner of the car, a white male, did not have a valid

driver's license. From his location behind the car, the officer could see two heads above the seats' headrests; however, the two-lane road prevented the officer from pulling up next to the car to determine whether the driver was the registered owner. In addition, it was dark, snowing and misting at the time.

The officer conducted a traffic stop, approached the car and saw a woman in the driver's seat. While speaking with the woman, the officer saw a bottle of muriatic acid in the backseat and a Walmart bag and package of air-line tubing tucked under the front passenger's leg. The officer recognized the acid and tubing as items regularly used in manufacturing methamphetamine as the officer had been trained and certified as a clandestine laboratory technician for dismantling and processing methamphetamine labs.

During the stop, the front seat passenger identified himself as Chartier and the officer learned Chartier had a prior incident on his record involving assault with a weapon. In addition, the officer remembered having heard Chartier's name mentioned as an individual involved in methamphetamine manufacturing.

When the officer asked the driver where she and Chartier had been, the woman replied they were coming from Walmart, but denied having purchased anything there. The officer found this suspicious, as he had seen a Walmart bag in the car. After the officer told the driver he was going to walk his drug-detection dog, Reso, around the car, the woman consented to a frisk and showed her pockets to the officer. When the officer ordered Chartier out of the car, the saw bulges in Chartier's coat pockets. The officer frisked Chartier and found a package of hypodermic needles. The officer walked Reso around the car and Reso alerted to the passenger-side door. The officer searched the car but did not find any illegal drugs. The officer then searched Chartier and seized several small plastic baggies that contained methamphetamine and a small case containing pseudoephedrine pills and a pipe. The officer arrested Chartier. The government indicted Chartier on two drug offenses.

Chartier moved to suppress the evidence from the traffic stop.

First, Chartier claimed the officer conducted an unlawful traffic stop. Chartier argued the officer could not conduct a lawful traffic stop to determine if the driver's license was suspended until the officer first verified the driver of the car was the man to whom the car was registered.

The court disagreed. The officer stopped the car only after he determined the owner of the car did not have a valid driver's license. The court held given the road and weather conditions, it was reasonable for the officer to conduct the traffic stop before he affirmatively identified the sex of the driver or further investigated the driver's physical appearance. As a result, the officer had reasonable suspicion that a person without a valid driver's license was driving the car and his decision to conduct a traffic stop did not violate the *Fourth Amendment*.

Second, Chartier argued the officer extended the duration and scope of the traffic stop beyond what was reasonable to determine if the driver had a valid driver's license.

Again, the court disagreed. While talking to the driver, the officer saw the muriatic acid and air-line tubing in the car. Based on his training and experience, the officer knew these

items were used to manufacture methamphetamine. In addition, the officer had previously heard Chartier's name mentioned as someone who was involved in manufacturing methamphetamine. Based on these facts, the court concluded the officer had reasonable suspicion to expand the scope of the traffic stop and further investigate whether Chartier was involved in criminal activity.

Third, Chartier argued the *Terry* frisk was unlawful because it was not supported by reasonable suspicion that he was armed or dangerous.

The court disagreed. At the time of the frisk, the officer knew Chartier had been involved in a prior incident with a weapon and the officer saw bulges in Chartier's coat pockets. In addition, the officer had reasonable suspicion to believe Chartier might be involved with illegal drugs, which are frequently connected to the use of weapons.

Fourth, Chartier argued the officer did not have probable cause to search him after Reso alerted to the presence of drugs in the car, but no drugs were found in the car.

The court disagreed. After Reso alerted to the car, and a search of the car uncovered no drugs, it was likely the scent to which Reso alerted had come from one of the occupants. Given that Reso alerted to the passenger side of the car, where Chartier had been sitting, and the driver had already been searched with negative results, it was reasonable for the officer to believe Chartier possessed illegal drugs. As a result, the officer had probable cause to arrest Chartier. Even though the officer searched Chartier before formally arresting him, the officer had probable cause for the arrest before the search occurred. As result, the court felt it was not "particularly important that the search preceded the arrest rather than vice versa."

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

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

Sheehan v. City & County of San Francisco, 943 F.3d 1211 (9th Cir. 2014)

Teresa Sheehan, a woman who suffered from mental illness, lived in a group home that accommodated such persons. Sheehan's assigned social worker became concerned about her deteriorating condition because Sheehan was not taking her medications. When the social worker entered Sheehan's room, she told the social worker to get out. In addition, Sheehan told the social worker she had a knife and threatened to kill him. The social worker left Sheehan's room, cleared the building of other residents and called the police to help him transport Sheehan to a mental health facility for a 72-hour involuntary commitment for evaluation and treatment.

When Officers Reynolds and Holder arrived, the social worker told them he had cleared the building of other residents. The social worker also told the officers the only way for Sheehan to leave her room was by using the main door, as the window in Sheehan's room could not be used as a means of escape without a ladder. The officers then entered Sheehan's room, without a warrant, to confirm the social worker's assessment and to take Sheehan into custody. Sheehan grabbed a knife and threatened to kill the officers, stating she did not wish to be detained in a mental health facility. The officers went back into the hallway and closed the door to Sheehan's room. The officers called for back-up, but before any other officers arrived, the two officers drew their firearms and forced their way back into Sheehan's room. After Sheehan threatened the officers with a knife, the officers shot Sheehan five or six times. Sheehan survived and sued the officers, claiming the officers violated her *Fourth Amendment* rights by entering her room without a warrant and using excessive force.

The court held the officers were justified in entering Sheehan's room initially, under the emergency aid exception to the *Fourth Amendment's* warrant requirement. When the officers first entered Sheehan's room, they had an objectively reasonable basis to believe Sheehan was in need of emergency medical assistance based on the information provided by Sheehan's social worker.

Even though the officers might have been justified in entering Sheehan's room the second time without a warrant, the court concluded there were factual issues that had to be resolved by a jury and not the court. For example, Sheehan produced evidence suggesting the officers deviated from training they received from their department on how to deal with mentally ill subjects. Consequently, the court held a jury could find that the officers acted unreasonably by forcing their way into Sheehan's room and provoking a near fatal confrontation.

After ruling that a reasonable jury could find a *Fourth Amendment* violation for the officer's second entry into Sheehan's room, the court further held the officers were not entitled to qualified immunity. The court concluded prior case law would have placed any reasonable, competent officer on notice that it is unreasonable to forcibly enter the home of an armed, mentally ill subject who had been acting irrationally and threatening others, when there was no objective need for immediate entry. The court emphasized

that at trial, the facts may show Sheehan was not contained, that she presented a flight risk or threat to others. However, at this stage, the court stated those fact are in dispute.

Concerning the officers' use of deadly force, the court held, at the moment of the shooting, the officers' use of deadly force was reasonable because Sheehan posed an immediate threat of danger to the officers' safety. However, under Ninth Circuit case law, police officers may be liable for an otherwise lawful use of deadly force when they intentionally or recklessly provoke a violent confrontation by actions that rise to the level of a separate *Fourth Amendment* violation. In this case, Sheehan presented evidence from which a reasonable jury could find the officers acted recklessly in failing to take her mental illness into account and in forcing a deadly confrontation rather than attempting to de-escalate the situation.

Finally, the court held Officer Reynolds was entitled to qualified immunity on Sheehan's claim that Reynolds last shot constituted excessive force because Sheehan was already on the ground when Reynolds fired it. Even if Reynolds continued to fire after Sheehan reached the ground, Reynolds was entitled to qualified immunity because Reynolds was forced to make a split-second decision in response to an imminent threat. In addition, after Sheehan was on the ground she continued to hold the knife and threaten the officers.

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

The United States Supreme Court granted certiorari in this case, *San Francisco v. Sheehan*, on November 25, 2014: <http://www.supremecourt.gov/qp/13-01412qp.pdf>

United States v. IMM, 747 F.3d 754 (9th Cir. 2014)

IMM, a twelve-year-old boy, was suspected of sexually assaulting his six-year-old cousin. A police officer drove to IMM's home and transported him and his mother to the police station for an interview. The officer did not provide IMM *Miranda* warnings, but instead provided IMM's mother a Parental Consent-to-Interview form and had her sign it. IMM's mother agreed to wait in the lobby while the officer interviewed IMM. At the time of the interview, the officer knew IMM had been in special education classes, had emotional problems, and could only read at a second-grade level. During the fifty-five minute interview, IMM made incriminating statements to the officer.

Before trial, IMM filed a motion to suppress his incriminating statements because the officer did not provide IMM *Miranda* warnings before questioning him. The district court denied the motion, holding IMM was not in custody for *Miranda* purposes when he made the statements.

The court of appeals reversed. The court held IMM was in custody for *Miranda* purposes because a reasonable twelve-year-old child in IMM's position would not have felt he was free to terminate the interrogation and leave the police station. As a result, the court should have suppressed IMM's incriminating statements.

First, while IMM's mother agreed to a voluntary meeting with the officer, there was no evidence IMM ever agreed to an interview or understood the interview to be voluntary.

All IMM knew was an armed police officer arrived at his house and drove him and his mother 30-40 minutes to a police station where IMM remained in a small room for nearly an hour of questioning. The court concluded it was doubtful a juvenile in IMM's position would have seen the circumstances of his arrival at the police station as the result of a free and voluntary choice to be questioned.

Second, even though the officer did not raise his voice, he repeatedly confronted IMM with fabricated evidence of his guilt and engaged in elaborate deceptions. The officer fed IMM facts that fit the officer's predetermined account of what must have happened, accused IMM of dishonesty whenever IMM disagreed with the officer's false representations, and forced IMM to choose between adopting the officer's false account of events and his own.

Third, the officer interrogated IMM alone, behind a closed door that appeared to be locked, in a small room in a police station located 30-40 minutes away from his home.

Fourth, IMM spend 30-40 minutes in a police car and then nearly one hour being interrogated. Under these circumstances, IMM as a juvenile was more likely overwhelmed and intimidated than an adult would be by such prolonged direct questioning by an adult police officer.

Finally, even though IMM was neither handcuffed nor told he was under arrest, the officer's questions were hostile and accusatory.

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

United States v. Harrington, 749 F.3d 825 (9th Cir. 2014)

A federal park ranger in Yosemite National Park arrested Harrington for driving under the influence (DUI). At the police station, Harrington refused to submit to testing to determine his blood alcohol level. Another park ranger read Harrington an admonition, which informed Harrington that under California law, a refusal to submit to testing would result in Harrington's driver's license being suspended if Harrington was convicted of the underlying DUI charge. The ranger read the California admonition to Harrington three times. Harrington was never informed of the federal admonition, nor was Harrington informed of the consequences under federal law of his refusal to be tested.

The government charged Harrington with several federal misdemeanors in federal district court to include DUI and failure to submit to a blood alcohol test. The government dismissed the DUI charge; however, Harrington was convicted of refusing to submit to the blood alcohol test, which carried a maximum penalty of 6 month in jail and/or a \$5,000 fine.

On appeal, Harrington claimed his right to due process was violated when the park ranger specifically told Harrington his refusal to submit to a blood alcohol test was not, by itself, a separate criminal offense.

The court agreed, holding it was fundamentally unfair to convict Harrington on the refusal charge when Harrington was told three times that his refusal would only result in

a license suspension if convicted of DUI. The court stated, “[h]ad Harrington not been misled as to the consequences of his refusal, he might have preferred to submit to testing rather than to fight an additional criminal charge.” The court added, when police officers give DUI suspects an admonition, due process is violated when the admonition incorrectly informs the suspect that his refusal is not a separate crime, when in fact it is.

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

George v. Edholm, 752 F.3d 1206 (9th Cir. 2014)

Police officers arrested George and transported him to jail. After George removed his clothes in preparation for a strip search, he fell to the floor as if he were having a seizure. While George was on the floor, the officers saw George reach under his body and push his finger into his anus in an attempt to conceal a plastic baggie. Although the officers believed George was faking a seizure so he could conceal what the officers believed was a bag of cocaine, the officers contacted paramedics who transported George to the hospital. At the hospital, the doctor could not remove the plastic baggie by hand because of George’s resistance. As a result, the doctor sedated George, without George’s consent, and removed the plastic baggie, which contained approximately nine grams of cocaine.

George sued the police officers and the doctor, claiming the treatment administered by the doctor violated his *Fourth Amendment* right to be free from unreasonable searches.

The district court dismissed the lawsuit as to the police officers, holding the doctor acted as a private citizen whose conduct could not be attributed to the police officers. The district court further held even if the officers violated George’s constitutional rights, they were entitled to qualified immunity.

The court of appeals disagreed, holding the police officers could be held responsible for the procedures performed by the doctor. Even as a private citizen, the doctor’s treatment of George could be attributed to the officers if they induced the doctor to perform a search he would not otherwise have performed. Here, hospital records indicated “the police department” told intake personnel George had swallowed cocaine, had put cocaine into his rectum and possibly had a seizure. As a result, the doctor testified the information in the intake records caused him to perform a more invasive search than he otherwise would have performed. The court also noted, the paramedics told the officers George had not suffered a seizure, before arriving at the hospital, and the officers testified they believed George was faking a seizure. In addition, there was no evidence in the record showing either police officer believed George had swallowed any cocaine. Consequently, the court held a reasonable jury could conclude the officers gave false information about George’s medical condition to the hospital staff with the intent of inducing the doctor to perform an invasive search.

Next, the court held the officers were not entitled to qualified immunity. The court stated intrusive body searches are allowed when they are reasonably necessary to respond to an immediate medical emergency. In this case, no such medical emergency existed. The doctor never testified that he believed the baggie in George’s rectum had ruptured, only that it could rupture. In addition, the doctor did not testify he had any reason to

believe the baggie in George's rectum was more likely to rupture than in any other similar drug concealment case. The court held a reasonable jury could conclude the only actual risk to George's health was the possibility the baggie of cocaine could rupture, and that sort of speculative, generalized risk could not justify the non-consensual invasive procedures performed by the doctor. As a result, the court held the jury could conclude the procedures performed by the doctor violated the *Fourth Amendment*.

Finally, the court held case law clearly established the possibility that a baggie of drugs could rupture inside a suspect, by itself, could not justify a warrantless search as intrusive as the search conducted in this case.

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

United States v. Edwards, 761 F.3d 977 (9th Cir. 2014)

An unidentified man called 911 and reported a "young black male" at the corner of West Boulevard and Hyde Park Boulevard was shooting at passing cars, including the caller's car. The caller also reported the shooter was between 5 feet 7 inches and 5 feet 9 inches in height, approximately 19 or 20 years old, and wearing a black shirt and gray pants. Finally, the caller reported the shooter had a black handgun and was entering "Penny Pincher's Liquor" store. Two police officers responded within five minutes and saw a man who matched the description, later identified as Edwards, approximately 75 feet from the liquor store. The only other person the officers saw in the area was an Hispanic male wearing a black and green heavy jacket and blue jeans. After two additional officers arrived, the four officers, with weapons drawn, ordered the two men to their knees and handcuffed them. One of the officers frisked Edwards and felt a hard object above Edward's right knee, inside the pant leg. The officer pulled on Edwards' pants and a silver .22 caliber revolver fell out onto the ground. The government indicted Edwards for being a felon in possession of a firearm.

Edwards argued the firearm should have been suppressed, claiming the initial stop amounted to an arrest without probable cause. Edwards further argued if the initial stop was not an arrest, the anonymous 911 call did not provide the officers reasonable suspicion to detain him.

The court disagreed. First, the court held the officers' actions when they first encountered Edwards were reasonable and did not convert Edwards' detention into an arrest. Edwards was the only person near the liquor store who fairly matched the description of a man who reportedly had been shooting at passing cars just minutes before the officers arrived. Under these circumstances, the court reasoned, legitimate safety concerns justified the officers' drawing their weapons, ordering Edwards to his knees and handcuffing him. Second, the court held the information provided by the anonymous 911 caller was sufficiently reliable to provide the officers reasonable suspicion to conduct a *Terry* stop on Edwards. Although he was anonymous, the caller reported firsthand information concerning an ongoing emergency while providing a detailed description of the suspect and location of the incident.

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

United States v. Nora, 765 F.3d 1049 (9th Cir. 2014)

Police officers saw two men they did not recognize standing on the sidewalk in front of Nora's house. The officers lost sight of the men for a few seconds and by the time the officers pulled up in front of the house, the men were standing on the porch. As the officers stood on the sidewalk and attempted to talk to the men, Nora abruptly turned away from the officers and entered the house. The officers saw that Nora was holding a blue-steel semi-automatic handgun in his right hand. The officers ordered Nora to stop, but Nora disregarded the officers' commands and went into the house. The officers called for backup, and within minutes, 20 to 30 officers arrived and surrounded the house with weapons drawn. Police officers used a public address system to order Nora out of the house. When Nora came out, the officers arrested him and found a small amount of marijuana on his person. In addition, Nora made several incriminating statements in response to questioning by the officers. Based on the officers' initial observations, the marijuana seized from Nora, and Nora's incriminating statements, the officers obtained a warrant to search Nora's house for firearms and drugs. After the officers discovered firearms and drugs in Nora's house, the government indicted Nora on a variety of federal criminal offenses.

First, the court held the officers had probable cause to arrest Nora for carrying a loaded firearm in a public place, a misdemeanor. The officers saw Nora carrying the firearm while he was on the front porch of his house, which is not a "public" place under state law. However, when the officers first saw Nora, a few seconds earlier, he was standing on the public sidewalk. Given the short interval during which the officers lost sight of Nora, the court concluded the officers had reasonable grounds to believe Nora possessed the firearm just moments earlier on the public sidewalk.

Second, even if police officers have probable cause to arrest, when arresting a suspect inside his home, the officers must first obtain an arrest warrant or one of the exceptions to the warrant requirement must apply. Although the officers physically took Nora into custody outside his home, Nora only came out after the police ordered him to do so at gunpoint. The court recognized that forcing a suspect to exit his home under those circumstances constitutes an "in-home" arrest for *Fourth Amendment* purposes.

Third, in this case, the officers did not have an arrest warrant for Nora, nor were there exigent circumstances that justified Nora's "in-home" warrantless arrest. Even though Nora possessed a firearm, the court stated that Nora never aimed it at the officers or anyone else and there was no evidence Nora had used or threatened to use the firearm. In addition, the officers had no reason to believe Nora might pose a danger to the public by attempting to flee because the officers had the house surrounded. Finally, the officers only had probable cause to believe Nora committed a misdemeanor violation of state law. The court stated that "an exigency related to a misdemeanor will seldom, if ever, justify a warrantless entry into the home." Here, the court concluded the relatively minor nature of Nora's offense did not justify a finding of exigent circumstances.

Fourth, the court held Nora’s unlawful “in-house” arrest required the suppression of the drugs seized from Nora’s person, and Nora’s incriminating statements. In addition, the court concluded this information should not have been considered when the officers obtained the warrant to search Nora’s house for drugs and firearms.

Finally, the court held the evidence seized from Nora’s house, pursuant to the search warrant should have been suppressed. Based on their personal observations, the officers had probable cause to believe Nora carried a blue-steel semi-automatic handgun into his house. However, the search warrant authorized the officers to seize “firearms, assault rifles, handguns of any caliber and shotguns of any caliber.” The court concluded that this provision of the search warrant was impermissibly broad because it failed to particularly describe the handgun the officers saw Nora carrying.

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

United States v. Fowlkes, 770 F.3d 748 (9th Cir. 2014)

Police officers witnessed what appeared to be a drug transaction between Fowlkes and another man. After conducting a traffic stop, the officers arrested Fowlkes after they saw marijuana and cocaine in Fowlkes’ car. The officers transported Fowlkes to the jail where they conducted a strip search. During the search, the Fowlkes appeared to push something into his anus. The officers responded by deploying a Taser against Fowlkes and then forcibly removing a plastic bag from Fowlkes’ rectum that contained cocaine.

Fowlkes argued the forcible removal of drugs from his rectum by police officers without medical training or a search warrant violated the *Fourth Amendment*.

The court agreed. The *Fourth Amendment* generally requires police officers to obtain a warrant to search for and seize drugs within a person’s body. However, a warrantless search of the human body is reasonable if the search falls within one of the exceptions to the *Fourth Amendment*. In this case, the court found exigent circumstances did not justify the warrantless search of Fowlkes’ rectum. When the officers searched Fowlkes, he was handcuffed, tased and surrounded by five police officers. The government did not present any evidence to establish that Fowlkes could have destroyed the evidence or that a medical emergency existed that justified the immediate retrieval of the cocaine.

The court further held the special-needs exception did not apply. While the officers had a strong interest in preventing contraband from entering the jail, a visual observation would have confirmed their suspicions that Fowlkes was concealing contraband and allowed the officers to obtain a warrant.

Finally, even if the officers could have lawfully conducted a warrantless search, the manner in which the officers conducted the search was unreasonable. There was no evidence that any of the officers had medical or any other training on how to safely remove suspicious objects from an arrestee’s rectum or how to evaluate whether such removal could cause serious harm or death.

Consequently, the court held the lack of a warrant along with the unreasonable and dangerous methods used during the body cavity search violated Fowkles' *Fourth Amendment* rights; therefore, the cocaine should have been suppressed.

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

Cruz v. City of Anaheim, 765 F.3d 1076 (9th Cir. 2014)

A confidential informant (CI) told a police officer that Cruz was a gang member who sold methamphetamine and carried a gun. The officer determined Cruz had a prior conviction for a felony involving a firearm. Sometime later, the CI told the officer where Cruz was located, described Cruz's vehicle and told the officer Cruz was carrying a handgun in his waistband. The CI also told the officer Cruz made it clear that "he was not going back to prison." Several police officers located Cruz's Suburban and followed it. When the officers noticed Cruz's vehicle had a broken taillight, they executed a traffic stop. After Cruz pulled into a parking lot, the officers surrounded his vehicle with their police cars. Cruz attempted to escape by backing his vehicle into one of the police cars. Cruz eventually stopped, and five police officers got out of their patrol cars with their weapons drawn. When Cruz opened his door, the officers shouted at him to get on the ground as he emerged from his vehicle. According to four of the officers, Cruz ignored their commands, exited his vehicle and reached for the waistband of his pants. The fifth officer was standing behind Cruz's vehicle and could not see whether Cruz reached for his waistband. The four officers who claimed Cruz reached for his waistband fired at Cruz. The fifth officer fired at Cruz because he perceived that Cruz was exchanging gunfire with the other four officers. After they stopped firing, the officer approached Cruz's body, which was tangled in his seatbelt and hanging from it. The officers did not find a gun on Cruz's person, but found a loaded handgun on the passenger seat of Cruz' vehicle.

Cruz's relatives sued the city, the chief of police, a deputy chief of police and the five police officers for excessive use of force and wrongful death. The district court dismissed the lawsuit against the city, the chief and deputy chief. The court held the five police officers were entitled to qualified immunity because the plaintiffs had not presented any evidence to contest the officers' version of events.

The court of appeals reversed district court regarding the four officers who claimed they shot Cruz because he reached for his waistband. The court concluded a reasonable jury might find the officers' version of events implausible. For example, the court stated a jury might be skeptical that four pairs of eyes had a line of sight to Cruz's hand as Cruz stood between his vehicle and his vehicle's open door. The court also noted that Cruz was left handed, yet two officers claimed they saw Cruz reach for his waistband with his right hand. As a result, the court found a reasonable jury could doubt that Cruz would have reached for his waistband with his right hand. Finally, the officers claimed Cruz exited his vehicle, stood in the doorway and then reached for his waistband. However, after the officers shot Cruz, the officers had to cut Cruz free from his seatbelt because he was suspended by it. The court concluded a reasonable jury could find that the officers shot

Cruz before he exited his vehicle or that Cruz had not reached for his waistband as the officers claimed.

In addition, the court of appeals reversed the district court's dismissal of the lawsuit as to the city, the chief of police and the deputy chief of police.

Finally, the court of appeals affirmed the district court, which held the fifth officer was entitled to qualified immunity. The court found the plaintiffs presented no evidence to doubt the officer's claim that he reasonably perceived an immediate threat when he heard gunshots that could have been coming from the other four officers, Cruz or both.

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

United States v. Dreyer, 767 F.3d 826 (9th Cir. 2014)

A special agent of the Naval Criminal Investigation Service (NCIS) began investigating the online distribution of child pornography. The agent, located in Georgia, used a software program to search for any computers located in Washington State sharing known child pornography files on the Gnutella file-sharing network. As a result, the agent found a computer sharing several images and a video depicting child pornography. The agent connected Dreyer to the IP address where the files originated. After the agent determined that Dreyer had no current military affiliation, the agent summarized his investigation and forwarded his report to the NCIS office in Washington State. The NCIS in Washington State then turned the information over to a police officer in a local police department. Based on that information, the officer obtained a warrant and seized Dreyer's computer. A subsequent search discovered numerous images and videos of child pornography. The federal government indicted Dreyer on two child pornography charges.

Dreyer argued the evidence admitted against him at trial should have been suppressed because military enforcement of civilian laws is prohibited.

The court agreed. The Posse Comitatus Act (PCA) "prohibits Army and Air Force military personnel from participating in civilian law enforcement activities. In addition, the Ninth Circuit has held that, "although the PCA does not directly reference the Navy, PCA-like restrictions" apply to the Navy as a matter of Department of Defense (DOD) and naval policy. The court also recognized that the PCA-like restrictions on direct assistance to civilian law enforcement officers apply to civilian NCIS agents.

In this case, the agent conducted a broad investigation into sharing of child pornography by anyone within the state of Washington, not just those on a military base or with a reasonable likelihood of a Navy affiliation. Consequently, the court held that the agent's surveillance on all computers in Washington amounted to impermissible direct active involvement in civilian enforcement of the child pornography laws.

The court further held that suppression of the evidence against Dreyer was warranted because the record indicated that the agent in this case, and other NCIS agents routinely

carry out broad surveillance activities that violate the restrictions on military enforcement of civilian law.

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

United States v. Moore, 770 F.3d 809 (9th Cir. 2014)

Federal agents suspected Moore was involved in a marijuana distribution ring. While conducting surveillance on the house Moore shared with his fiancée, Jones, the agents saw Jones leave. A few hours later, knowing Moore was home, agents knocked on the door of the house and rang the doorbell in an attempt to conduct a knock and talk interview. The agents heard people inside the house; however, no one answered the door. One of the agents then called Jones, identified himself, and explained why her house was under surveillance. Jones returned home and gave the agents consent to search the house. When Jones tried to unlock the front door, she discovered the door had been locked with a dead-bolt that could not be unlocked from the outside. After Jones knocked on the door and yelled for someone inside the house to come to the door without success, Jones gave the officers permission to break through the front door with a battering ram. Once inside the house, the agents found marijuana, scales and packing material. The government indicted Moore for possession of marijuana with intent to distribute.

Moore moved to suppress the evidence seized from his house. Even though Jones consented to the search of the house, Moore argued because he was present and did not consent to the search, the agents' warrantless search violated the *Fourth Amendment*.

The court disagreed. In *Georgia v. Randolph*, the United States Supreme Court held the consent of one occupant of a residence is not valid when another occupant is present and expressly refuses consent to search. In this case, the court held the search by the agents did not violate *Randolph* because Moore never expressly refused consent to search. Although Moore was present, the court found he remained inside the house while Jones worked with the agents to gain entry into the house. The court noted acquiescence to a co-occupant's consent to search and the police officers' subsequent actions is not sufficient to satisfy the "express refusal" requirement in *Randolph*. In addition, the court added there was nothing stated in *Randolph* that prohibits police officers from using a battering ram to gain access to a residence when the co-occupant is locked out and expressly consents to its use to gain entry.

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

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. Wells, 739 F.3d 511 (10th Cir. 2014)

Federal agents suspected Officer Gray, a Tulsa police officer, was stealing money and drugs from suspects he detained. An undercover federal agent posed as a drug dealer named Joker and rented a motel room in Tulsa, which was outfitted with hidden audio and video recording equipment. In addition, there was \$13,620 in government funds hidden in the room. After federal agents instructed a cooperating witness to tell Gray a drug dealer with large quantities of drugs and cash was conducting business from the motel room, Officer Gray, Officer Wells and Officer Hill went to the motel and encountered Joker in the lobby. The officers handcuffed Joker and detained him in a patrol car. After Wells obtained Joker's consent to search, Wells and Gray went to Joker's room. The audio and video recordings in Joker's room established Wells and Gray stole \$2,000 from the room and later allowed other officers to take an additional amount of money.

The government indicted Wells for a variety of offenses involving official corruption. Wells argued the trial court should have suppressed the audio and video recordings that documented his activities in the motel room because Joker was not present in the room when these activities were captured.

First, while *18 U.S.C. §§ 2510-2520* (Title III) regulates the interception and recording of audio communications, the court stated Title III only applies to communications that are made where the speaker has a reasonable expectation of privacy. Similarly, video surveillance will not violate the *Fourth Amendment* if the person whose actions are being recorded has no reasonable expectation of privacy at the time of the surveillance.

Second, the court noted the Tenth Circuit has not been generous in recognizing the privacy rights of individuals found in hotel or motel rooms that were not rented in their names. The Tenth Circuit has required that such individuals present evidence establishing they are guests of the renter, rather than individuals merely present on the premises.

In this case, Wells was not Joker's guest nor did he have any socially meaningful connection to the motel room. After obtaining Joker's consent to enter the room, Wells spent approximately fifteen minutes in the room outside Joker's presence. Wells was merely legally present in the room for a very limited amount of time. Consequently, the court concluded Wells did not have a reasonable expectation of privacy in any of his communications in Joker's motel room when he was outside Joker's presence.

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

United States v. Christy, 739 F.3d 534 (10th Cir. 2014)

Christy met a sixteen-year old girl, K.Y., online and exchanged sexually explicit emails and photographs with her. After K.Y.'s parents reported her missing, federal agents in California discovered the sexually explicit emails and photographs. The agents also learned Christy lived in New Mexico and that around the time of K.Y.'s disappearance, Christy had traveled to California and then back to New Mexico. Federal agents in California contacted the local sheriff's office in New Mexico, who dispatched two police officers to Christy's house to conduct a welfare check on K.Y. One of the officers walked to the rear of the house and looked through a crack in the blinds covering a window and saw K.Y. wearing a brassiere and underwear, smiling and holding a rope. Concerned for K.Y.'s safety, the officer asked his sergeant for permission to force entry into the house and for backup. When the officer looked back through the window, K.Y. was no longer wearing the brassiere, she was bound by the rope and the officer saw camera flashes. When backup arrived, the officers made a warrantless entry into the house and arrested Christy. During their protective sweep, the officers found pornographic material in the house. After being *Mirandized*, Christy made several incriminating statements. Based in part on the officers' observations in the house and Christy's statements after his arrest, the officers obtained warrants to search Christy's house, cell phone, vehicle, computer and person. Pursuant to the search warrants, the police discovered, among other things, child pornography, to include images of K.Y.

Christy argued the warrantless entry and search of his house, including his statements to the officers, as well as all of the evidence obtained pursuant to the search warrants should have been suppressed.

The district court held the officers violated the *Fourth Amendment* when they entered Christy's house without a warrant. However, the court held any illegally seized evidence was still admissible against Christy under the inevitable discovery doctrine. The court determined if the illegal search had not occurred, the officers would have legally obtained a warrant and discovered the evidence anyway.

The court of appeals agreed. Under the inevitable discovery doctrine, illegally obtained evidence may be admitted if it ultimately or inevitably would have been discovered by lawful means. Here, the officers had probable cause to obtain a warrant based on the information they knew before they entered Christy's house without a warrant. The officers knew K.Y. was a minor, there was a large age difference between her and Christy, the two had exchanged sexually explicit pictures and Christy traveled across state lines with K.Y. Given those facts, it was reasonable for the officers to believe there was a sexual relationship between Christy and K.Y. and that Christy had violated California law and federal law. As a result, the officer would have obtained a search warrant and the evidence in question would have been discovered legally, had the illegal search not discovered it first.

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

United States v. Gordon, 741 F.3d 64 (10th Cir. 2014)

Brandi Thaxton called 911 to report an incident of domestic violence that had occurred two days earlier. Thaxton, who was upset and crying, told the dispatcher her boyfriend, Gordon, assaulted her and broke her glasses. Thaxton also said Gordon had swung a samurai sword at her and told the dispatcher she believed Gordon would harm her after he found out she had called the police. Police officers responded to Gordon's house and entered without Gordon's consent. After an officer located Thaxton hiding in the basement, Thaxton led the officer upstairs to a bedroom to show him her broken glasses. Near the bedroom door, the officer saw a gun case, which contained a loaded shotgun. The officer seized the shotgun and three swords he found in the hallway. After the officer arrested Gordon for aggravated assault and Thaxton was transported by EMS to the hospital, the officer locked the house and transported Gordon to the county jail. On the way to the jail, while still in possession of Gordon's shotgun, the officer learned Gordon was a convicted felon. The government indicted Gordon for being in possession of a firearm.

Gordon argued the shotgun should have been suppressed because the officers violated the *Fourth Amendment* by entering his house without a warrant or his consent and then seizing his shotgun without justification.

First, the court held the officers' entry into Gordon's house was reasonable due to exigent circumstances. Even though Gordon assaulted Thaxton two days earlier, when the officers entered Gordon's house they knew Thaxton was upset, crying and afraid she would be seriously harmed when Gordon discovered she had called the police.

Second, the court held it was reasonable for the officer to accompany Thaxton from the basement to the upstairs bedroom to retrieve her glasses.

Third, the court held it was reasonable for the officer to initially seize Gordon's shotgun for safety reasons when the officer first saw it. However, once Gordon was in custody on the way to jail, and the house was secured, the court concluded the officer had no legal justification to continue his seizure of Gordon's shotgun. The court emphasized the plain view doctrine did not apply because the officer did not discover the incriminating nature of the shotgun, specifically that Gordon was a convicted felon and could not lawfully possess a firearm, until he was transporting Gordon to jail.

Finally, the court explained while the officer's only mistake was not returning the shotgun before securing Gordon's house, only a few minutes elapsed between the time the officer locked the house and discovered Gordon was a convicted felon. Because this amount of time was a *de minimis* intrusion on Gordon's rights, and Gordon was lawfully in custody at the time, the court held suppression of the shotgun was not warranted.

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

United States v. Harmon, 742 F.3d 451 (10th Cir. 2014)

A police officer stopped Harmon after the officer saw Harmon's car weaving within his lane and the front and rear passenger tires of Harmon's car cross over the outer white line, or fog line, one time. The officer believed touching the fog line violated New Mexico law and was concerned that Harmon might be intoxicated or fatigued.

After issuing Harmon a written warning for failing to maintain a lane, the officer obtained consent to search Harmon's car. During the search, the officer found packages of marijuana and cocaine hidden in the spare tire. The government indicted Harmon for two drug offenses.

Harmon argued on appeal the officer did not have reasonable suspicion to justify the traffic stop.

The court disagreed. The court noted the officer saw Harmon's car weaving and that its front and rear passenger wheels crossed the fog line. In addition, the court stated there was no evidence indicating difficult driving conditions or adverse weather existed that could have explained Harmon's driving errors. Consequently, the combination of these facts gave the officer reasonable suspicion to stop Harmon to investigate whether he was driving while impaired.

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

United States v. Augustine, 742 F.3d 1258 (10th Cir. 2014)

Police officers established probable cause to obtain a warrant to search Augustine's residence for evidence of methamphetamine distribution. After being advised of his *Miranda* rights, Augustine agreed to be interviewed by two police officers without an attorney. At the beginning of the interview, Augustine told the officers he was not under the influence of alcohol or drugs; however, Augustine admitted he took a variety of prescription medications. Throughout the interview, Augustine indicated a desire to take his prescription medications, but he never told the officers that he could not or would not continue the interview without his medication. During the interview, Augustine made several incriminating statements.

The government convicted Augustine on two counts of conspiracy to distribute methamphetamine.

Augustine argued the search warrant affidavit did not establish probable cause to search his residence

and his ability to properly waive his *Miranda* rights was impaired because he was under the influence of controlled substances during his interview with the police officers.

Without deciding whether the search warrant application established probable cause, the court held the application established a minimal nexus between Augustine's residence and the drug-related items being sought in the warrant. Consequently, the court concluded the good-faith exception to the exclusionary rule applied.

The court noted drug or alcohol use, by itself, is not enough to overcome evidence showing the defendant was sufficiently in touch with reality so he knew his rights and the consequences of waiving them. Here, the video recording of Augustine's interview and the testimonies of the interrogating officers did not establish that Augustine was so impaired that his waiver of his *Miranda* rights was invalid. In addition, even though Augustine may have been more comfortable with his medication, the absence of his medication did not cause Augustine to proceed with the interrogation involuntarily or in ignorance of the consequences of his actions or statements.

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

United States v. Mosley, 743 F.3d 1317 (10th Cir. 2014)

Police officer received an anonymous tip that two black males were handling a gun while sitting in a black Ford Focus while parked in a Denny's parking lot. Officers responded and saw only one black Ford Focus in the parking lot with two black males inside. The officers approached the car with weapons drawn and ordered the occupants to raise their hands. The driver immediately complied. The passenger, Mosley, did not. Instead, Mosley made movements with his arm that the officers believed were consistent with either trying to hide or retrieve a weapon. After ignoring repeated commands to put his hands up, Mosley eventually complied. After Mosley raised his hands, an officer opened the passenger's door and ordered Mosley out. Mosley did not immediately comply or respond, so the officer pulled Mosley from the car and handcuffed him. Another officer searched under the passenger seat and found a handgun. The government indicted Mosley for being a felon in possession of a firearm.

Mosley argued he was seized for *Fourth Amendment* purposes when the officers pointed their weapons at him. Mosley claimed this seizure was not supported by reasonable suspicion because the officers were responding to an anonymous tip; therefore, the gun discovered under the passenger's seat should have been suppressed.

The court disagreed. When an officer does not apply physical force to restrain a suspect, a *Fourth Amendment* seizure occurs only if the officer shows his authority and the suspect submits to the assertion of that authority. Here, the officers clearly showed their authority by raising their weapons and shouting for the occupants of the car to put their hands up. However, Mosley did not immediately comply with the officer's commands. Instead, Mosley began making furtive movements consistent with either hiding or retrieving a gun, which was directly contrary to the officer's commands. As a result, Mosley was not seized until he raised his hands.

The court then held by the time Mosley raised his hands, the officers had established reasonable suspicion to support a *Terry* stop. In addition to Mosley's furtive movements, the confrontation occurred at 3:00 a.m., at a location where the officers had previously responded to gun-related crimes in the past. Based on the totality of the circumstances, it was reasonable for the officers to believe Mosley was engaged in criminal activity.

Mosley next argued, even if the officers had reasonable suspicion to justify a *Terry* stop, the officers' use of force turned the *Terry* stop into a de facto arrest without probable cause.

Again, the court disagreed. Police officers may use a reasonable amount of force during a *Terry* stop to ensure their safety, but in many cases, the use of a firearm to effect a *Terry* stop may turn the stop into an arrest. However, under the circumstances, it was reasonable for the officers to point their firearms at Mosley to effect the *Terry* stop. Consequently, the officers' use of force did not transform the *Terry* stop into a de facto arrest without probable cause.

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

United States v. Fonseca, 744 F.3d 674 (10th Cir. 2014)

A police officer was conducting surveillance in an industrial park because of a recent rash of automobile burglaries that had occurred at several of the businesses in the area. Around 2:45 a.m., the officer saw Fonseca walking through a parking lot carrying a dark bag. The officer approached Fonseca and asked to speak with him. Fonseca walked away from the officer, placed the bag on the ground, then turned around and walked back toward the officer. The officer asked Fonseca for identification, but Fonseca told the officer he did not have any. A few minutes later, Fonseca's girlfriend, White, drove up with another woman, Kaylin, and began speaking to Fonseca. The officer asked White to return to her car while the officer talked to Fonseca. On the way back to her car, White picked up the bag Fonseca had placed on the ground. After a few minutes, Fonseca gave the officer his name and date of birth. When the officer noticed the bag Fonseca had been carrying was not on the ground, he asked White if she had moved it. White told the officer she had placed the bag in the car, claiming the bag belonged to Kaylin. When the officer asked Fonseca why he was carrying Kaylin's bag, Fonseca replied, "I don't know." The officer then called dispatch to verify the name and birthdate provided by Fonseca. Dispatch confirmed Fonseca's identify and indicated Fonseca had an outstanding warrant for his arrest. After the officer confirmed the validity of the warrant, he arrested Fonseca. Following Fonseca's arrest, the officer walked over to White's car and saw a handgun sticking out of bag Fonseca had been carrying. The officer searched the bag and discovered eight stolen handguns.

The government indicted Fonseca for possession of stolen firearms. After he was convicted, Fonseca appealed the denial of his motion to suppress the eight stolen firearms, claiming the officer exceeded the scope of the *Terry* stop. Fonseca argued it was not reasonable for the officer to detain him after he initially answered the officer's questions and had told the officer his name and date of birth, approximately twelve minutes into the stop.

The court disagreed, holding it was reasonable for the officer to detain Fonseca for the additional ten minutes that passed after he finished questioning Fonseca but before the officer learned of Fonseca's current warrant. During this time, it was reasonable for the officer to locate the bag he had seen Fonseca carrying when the officer first approached

him. The officer saw Fonseca walking alone in a high-crime industrial area in the middle of the night. After the officer asked Fonseca to speak with him, Fonseca continued to walk away from the officer and then placed the bag on the ground, in what appeared to be an effort to distance himself from the bag, before he returned to speak with the officer. Finally, when the bag disappeared from the ground where Fonseca had placed it, the officer reasonably decided to investigate where the bag had gone and what it might contain. In addition, the court concluded it was reasonable for the officer to ask Fonseca why he was carrying the Kaylin's bag as he walked alone in that particular location at night.

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

United States v. Romero, 749 F.3d 901 (10th Cir. 2014)

Police officers suspected Romero was involved in a murder, in which the victim was killed with a shotgun, based on statements obtained from several witnesses. Officers obtained a warrant to search a car driven by Romero the night of the murder. The officers learned the car was registered to Romero's aunt at the same address where Romero lived. When the officers went to that address, they saw the car. The officers knocked on the door of the residence, planning to conduct a protective sweep so no one from the house would interfere with their search of the car. Romero's stepfather, Martinez, opened the door, told the officers he owned the house, and gave the officers consent to walk through the house. During their sweep, the officers opened the door to Romero's bedroom. Although there was a lock on the door, the lock was not clearly visible, the officers did not see it and the door was not locked when the officers opened it. Inside the bedroom, the officers found Romero asleep and saw a shotgun and red baseball cap, which they believed were connected to the murder. The officers seized both items.

Romero was convicted of a variety of offenses, including first-degree murder. Romero argued the district court should have suppressed the evidence police officers recovered from the car and from his bedroom.

The court disagreed, holding the warrant the officers obtained to search the car Romero had been driving was supported by probable cause. First, the search warrant affidavit included information that established that the victim was a passenger in a car driven by Romero shortly before his death. Second, the affidavit established the car was registered to Romeros' aunt, at the same address where Romero lived. Third, the officers established Romero had driven the car the night of the murder and that officers had previously seized a shotgun from the car. Finally, the officers included information indicating either the victim was shot in the car or his body was transported in the car. Consequently, the search warrant affidavit offered sufficient reason to believe that a search of the car would uncover evidence related to the murder.

The court further held Martinez had apparent authority to allow the officers to enter the house and open the unlocked door to Romero's bedroom.

An owner of a house is presumed to have control of the entire house, including the bedroom of a stepchild who is living there. In this case, however, there was evidence that

Martinez did not have actual authority over Romero's bedroom because Martinez claimed he did not usually enter Romero's bedroom and that there was a lock on the door to the room. Nevertheless, the court held the officers were entitled to rely on Martinez's apparent authority because at the time of the search, the officers did not know either of these facts. As a result, the officers reasonably relied on the presumption of actual authority established by Martinez's statement that he was Romero's stepfather.

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

United States v. Davis, 750 F.3d 1186 (10th Cir. 2014)

In March 2011, an investigation into a string of armed robberies led police officers to suspect the robbers were using a car belonging to Baker's girlfriend. Police officers installed a GPS tracking device onto the rear bumper of the car while it was parked at an apartment complex. Police officers also obtained a warrant to track the GPS signal from Baker's cell phone. Immediately after the robbery of a store, police officers used a combination of GPS coordinates from the car and Baker's cell phone to locate and stop the car containing Baker and Davis. Inside the car, officers found evidence connecting Baker and Davis to the robbery. The government charged Davis with a variety of criminal offenses.

Davis moved to suppress the evidence found in the car, arguing *United States v. Jones*, decided in 2012, held that the warrantless attachment and use of the GPS device violated the *Fourth Amendment*.

In *Jones*, the United States Supreme Court held the attachment of a GPS device to a car, and subsequent use of that device to monitor the car's movements constituted a *Fourth Amendment* "search." Without deciding whether the placement and monitoring of the GPS device violated the *Fourth Amendment* in light of *Jones*, the court held Davis did not have standing to object to the stop. Because Davis did not own or regularly drive the car to which the GPS device was attached, the court concluded he did not have standing to object to the evidence obtained as a result of the alleged illegal placement of the GPS device on the car and its subsequent monitoring.

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

United States v. Garcia, 751 F.3d 1139 (10th Cir. 2014)

While on patrol on a lightly traveled road, Officer Devos saw a car with a cracked windshield traveling in the opposite direction. Devos conducted a traffic stop and encountered Maner, the driver, and Garcia, the passenger. Devos arrested Maner for driving with a suspended driver's license and decided to have the car towed because it could not be driven safely with its cracked windshield. Before towing the car, department policy required Devos to inventory the contents of the car, which Devos had to do by himself because no other officers were available to assist him. Before conducting the inventory, Devos asked Garcia, who appeared to be nervous, to get out of

the car. Devos recognized Garcia from a recent encounter. Two weeks earlier, Devos had deployed his Taser against Garcia after Garcia actively resisted arrest. In addition, Devos knew Garcia had a prior criminal history for armed robbery. Based on these facts, Devos decided to frisk Garcia for weapons before he turned his back on Garcia to conduct the inventory search. During the frisk, Devos found a gun magazine containing seven .380 caliber cartridges. The government indicted Garcia for being a felon in possession of ammunition.

Garcia argued Devos did not have reasonable suspicion that Garcia was armed and dangerous; therefore, the frisk was unlawful, and the ammunition should have been suppressed.

The court disagreed. First, Devos' previous encounter with Garcia and Devos' knowledge that Garcia had a criminal history that included armed robbery supported a reasonable suspicion Garcia was presently armed and dangerous. Second, Devos had a reasonable concern for his safety because the stop occurred on an isolated road, at night, and Devos needed to turn his back to Garcia to conduct the inventory search. Based on the totality of the circumstances, the court concluded Officer Devos had reasonable suspicion under the *Fourth Amendment* to frisk Garcia.

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

Felders v. Malcom, 755 F.3d 870 (10th Cir. 2014)

Trooper Bairett stopped Felders for speeding. During the stop, Bairett noticed Felders was nervous, and would not maintain eye contact with him. Bairett also smelled the strong odor of air freshener coming from the car and saw a license plate ring with "Jesus" written on it. Based on these observations, Bairett suspected Felders was transporting drugs in her car. After issuing Felders a speeding ticket, Bairett asked to speak to the two passengers in the car. Based on several perceived inconsistencies between the passengers' stories and Felders' story about the details of their trip, Bairett believed he had reasonable suspicion Felders was transporting drugs. After Felders refused to consent to a search of her car, Bairett called for a K-9 unit to bring a drug-sniffing dog. When Deputy Malcolm arrived with his K-9, Duke, Bairett told him about the encounter with Felders and that Bairett believed there was probable cause to search Felders' car for drugs. Bairett then ordered the passengers get out of the car, but he did not let them close the car doors. Bairett's dash camera recorded Malcolm commenting to Bairett, "Nice of them to leave the door open for you," to which Bairett responded, "Yeah it was, wasn't it?" When Malcolm began the dog sniff, Duke jumped into Felders' car through the open rear passenger door and alerted on the center console. Malcolm opened the console and found two bags of jerky. After removing the jerky, the officers searched Felders' car for approximately two-hours, but found no drugs.

Felders sued, claiming Bairett and Malcolm violated the *Fourth Amendment* by illegally searching her car.

While the district court held neither officer was entitled to qualified immunity, only Deputy Malcolm appealed. Malcolm argued probable cause existed to search Felders'

car before the dog sniff. Alternatively, Malcolm argued if he did not have probable cause to search Felder's car, the law did not clearly establish that his actions during the dog sniff violated the *Fourth Amendment*. The Tenth Circuit Court of Appeals disagreed and affirmed the district court holding that Malcolm was not entitled to qualified immunity.

First, the court held Malcolm did not have probable cause to search Felders' car for drugs prior to conducting the dog sniff. The court ruled Malcolm could not reasonably rely on Bairett's conclusion that probable cause existed to search Felders' car, nor would a reasonable officer in Malcolm's position believe he had probable cause to search for drugs. The court found, at best, Bairett and Malcolm had reasonable suspicion to conduct a *Terry* stop.

Second, the court held Malcolm did not independently establish probable cause to search Felders' car. Malcolm's argument that inconsistencies in Felders' statements to Bairett were lies, which constituted obstruction of justice under Utah law, was not reasonable.

Third, the court held at the time of the incident, it was clearly established that facilitation of a dog's entry into a car without probable cause violated the *Fourth Amendment*. The court found a reasonable jury could conclude Bairett intentionally caused the car doors to remain open to facilitate Duke's entry and that Duke failed to properly alert before entering Felders' car.

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

Stonecipher v. Valles, 759 F.3d 1134 (10th Cir. 2014)

Federal agents working in an undercover capacity purchased a firearm and two explosives from Stonecipher. The agents also confirmed Stonecipher bought and sold firearms, gun parts, and ammunition online without having a federal firearms license. In addition, agents discovered that Stonecipher had pleaded guilty in 2007 to a misdemeanor crime of domestic violence in Missouri. The agents learned from Missouri court documents that Stonecipher received a suspended sentence, which required him to serve one year of probation, and that Stonecipher was discharged from probation after serving the one-year term. The agents obtained a report from the National Instant Criminal Background Check System (NICS) that indicated Stonecipher had been convicted of a misdemeanor crime of domestic violence in 2007. The agents also obtained a National Criminal Information Center (NCIC) report that noted Stonecipher's guilty plea to the Missouri domestic assault charge. However, summary portions of the NICS and NCIC reports indicated that Stonecipher had "0" convictions. In addition, at the end both reports there was a sentence stating, "Suspended imposition of sentence dispositions are not convictions and are closed record when probation is completed or finally terminated."

The agents sought legal advice from an Assistant United States Attorney (AUSA) who determined Stonecipher was prohibited from possessing firearms under *18 U.S.C. § 922(g)(9)* which makes it unlawful for anyone convicted of a misdemeanor crime of domestic violence to possess a firearm.

The agents drafted an application for a search warrant for Stonecipher's house, in which they alleged Stonecipher was likely in violation of § 922(g)(9) based on his 2007 Missouri domestic violence conviction. The search warrant application also claimed Stonecipher was likely in violation of two other federal firearm statutes. The AUSA reviewed and approved the final version of the warrant application, which was submitted to a magistrate judge who issued the search warrant.

Upon arriving at Stonecipher's house, the agents arrested him. While conducting their search, the agents allowed Stonecipher to show them a letter drafted by his criminal defense attorney concerning the 2007 Missouri domestic violence conviction. The letter stated, in part, that under Missouri law once Stonecipher completed his probation, he would not have a "conviction" for domestic violence on his record. The agents disregarded the letter because it conflicted with the AUSA's legal advice. The next day, the agents told the AUSA about the letter, but the AUSA advised the agents to proceed with their case. As a result, the agents prepared a criminal complaint, which was filed in federal district court. Five days later, federal prosecutors discovered Stonecipher's 2007 Missouri conviction did not disqualify him from possessing firearms because under Missouri law a suspended sentence, under the circumstances, did not amount to a conviction.

Stonecipher filed a *Bivens* action against the federal agents claiming a variety of constitutional violations regarding the search of his house and arrest. The district court held the agents were entitled to qualified immunity because they reasonably concluded on the facts available to them that they had probable cause to search Stonecipher's house, arrest and then file charges against him.

On appeal, Stonecipher argued the agents submitted the search warrant application, in reckless disregard for the truth. Specifically, Stonecipher argued the agents falsely stated Stonecipher had been "convicted" of a misdemeanor crime of domestic violence, while omitting that Stonecipher had received a suspended sentence.

The court of appeals disagreed, holding the agents did not act in reckless disregard for the truth. First, the Missouri court documents established Stonecipher pleaded guilty to misdemeanor domestic violence. Even though the documents showed Stonecipher received a suspended sentence, and that his probation was completed, the documents did not reveal the legal significance of these facts. The court concluded it was reasonable for a non-legally trained officer to assume a conviction and sentence were two separate things, and that the type of sentence would not invalidate a conviction. Second, the court held the NICS and NCIC reports contained conflicting information to the extent that it was reasonable for the agents to believe Stonecipher had been convicted of a misdemeanor crime of domestic violence. Finally, the agents did not act in reckless disregard for the truth when they sought legal advice from the AUSA and provided the AUSA with all the materials he used to make his determination.

The court further held the agents were not required to forego arresting Stonecipher after he gave them the letter from his attorney during the execution of the search warrant. The court stated there was no way to verify the authenticity of the letter, confirm that Stonecipher had completed his probation or determine the legal implications of a

Missouri conviction for the purposes of § 922(g)(9). The court noted the agents acted reasonably by providing Stonecipher's letter to the AUSA.

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

United States v. Salas, 756 F.3d 1196 (10th Cir. 2014)

A police officer stopped Salas after the officer saw Salas' car twice cross the fog line on the right side of the highway. After issuing Salas a warning ticket for failure to stay in his lane, the officer returned Salas' documents and told him he was "good to go." Salas thanked the officer for giving him a warning, shook the officer's hand and began to leave. The officer asked Salas if he had time for a few more questions, and Salas replied, "Sure." After Salas denied having drugs in his car, the officer asked if he could search the vehicle. Salas consented to the search. The officer opened the trunk, which contained a suitcase. Inside the suitcase, the officer found approximately twenty pounds of methamphetamine. Salas was charged with possession with intent to distribute methamphetamine.

Salas argued the methamphetamine should have been suppressed because the officer did not have reasonable suspicion or probable cause to stop him. Salas also argued he did not voluntarily give the officer consent to search the car.

The court disagreed. *Okla. Stat. § 11-309* provides that "a vehicle shall be driven as nearly as practicable entirely within a single lane." The Tenth Circuit has held that a single violation of a traffic statute virtually identical to § 11-309 can provide reasonable suspicion to conduct a traffic stop. Here, the district court found that the officer saw Salas' vehicle cross the fog line twice. Consequently, the officer had reasonable suspicion that Salas violated § 11-309 and was justified in conducting a traffic stop.

Next, the officer's dash camera video showed that when the officer asked Salas if he could search the car, Salas replied, "Sure." The officer then asked Salas, "You sure you don't mind?" Salas replied, "No." Salas' relaxed demeanor and lack of physical coercion or intimidating body language or tone by the officer led the court to conclude Salas voluntarily consented to the search of his car.

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

Leatherwood v. Welker, 757 F.3d 1115 (10th Cir. 2014)

Leatherwood was convicted of crimes in Oklahoma and placed on probation. Leatherwood's ex-wife called his probation officer, Welker, and told Welker she had personal knowledge that Leatherwood had raped Woods, who was Leatherwood's current girlfriend. Leatherwood's ex-wife also told Welker that Leatherwood might have firearms inside his house and in his truck. The conditions of Leatherwood's probation prohibited him from possessing firearms and committing crimes.

An assistant district attorney forwarded Welker two e-mails he received from a confidential informant. In the emails, the confidential informant relayed information from an anonymous source who claimed personal knowledge that Leatherwood had sent e-mails of a sexual nature to Woods and that Leatherwood had sexual materials in his home. The conditions of Leatherwood's probation prohibited him from possessing pornography or sexually oriented material.

Based on her telephone conversation with Leatherwood's ex-wife and the e-mails from the assistant district attorney, Welker received permission from her supervisor to conduct a warrantless search of Leatherwood's home.

Leatherwood subsequently sued Welker and the other law enforcement officers, claiming the warrantless search of his house violated the *Fourth Amendment*.

The court held Welker and the other law enforcement officers did not violate the *Fourth Amendment* because they had reasonable suspicion Leatherwood violated the conditions of his probation. Individuals on probation have a diminished expectation of privacy, and Oklahoma Department of Corrections policy allows warrantless probation searches when there is reasonable suspicion of a probation violation or crime. Here, the court held the tips received by Welker were sufficiently reliable to establish reasonable suspicion. First, Welker knew the identity of Leatherwood's ex-wife and spoke directly with her on the phone. Second, the ex-wife claimed personal knowledge that Leatherwood committed rape, the offense for which he was serving supervised release, and provided the name of Leatherwood's current girlfriend who was the alleged victim. Third, while the content of the allegations in the e-mails came from an anonymous source, Welker knew the assistant district attorney who forwarded the e-mails to her. Finally, the anonymous source claimed he had access to Leatherwood's house, thereby providing a reliable basis of knowledge for the information contained in the e-mails.

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

United States v. Tubens, 765 F.3d 1251 (10th Cir. 2014)

Two police officers followed a Greyhound bus to a truck stop where the bus was scheduled to stop for a twenty-minute passenger break. After obtaining consent from the bus driver, the officers deployed their drug-sniffing dogs into the luggage compartment of the bus. Both dogs separately alerted to the presence of drugs in a black suitcase. The officers removed the suitcase from the bus and after locating its Greyhound identification tag, determined the suitcase belonged to Tubens.

After the passengers reboarded the bus, one of the officers boarded and announced to the passengers that he was looking for Mr. Tubens. After none of the passengers admitted to being Tubens, the officer asked the passengers to produce their bus tickets so he could inspect them. The officer eventually located Tubens, who had been on the bus the entire time. Tubens told the officer he had not come forward because he had not heard the officer call his name. Tubens voluntarily exited the bus with the officer and consented to a search of the black suitcase. While one of the officers searched the suitcase, the other officer asked Tubens if he had any carry-on luggage. Although Tubens denied having

any other luggage, the officer went onto the bus to the area where Tubens had been sitting. The officer discovered a square case and a paper sack on the luggage rack directly above Tubens' seat. When shown these items, Tubens admitted to the officer that they belonged to him. In addition, while on the bus, another passenger told the officer she saw Tubens attempting to push something else down the luggage rack, out of his immediate proximity. The officer eventually located a black bag close to where Tubens had been sitting and established that it did not belong to any of the other passengers on the bus. When the officer asked Tubens about the black bag, Tubens denied ownership. After explaining the black bag had been abandoned, the officer searched it, discovering methamphetamine, and two prescription pill bottles with Tubens' name on them. The officer arrested Tubens.

Tubens argued the evidence located in the black bag should have been suppressed because he did not voluntarily abandon the black bag. Specifically, Tubens claimed his denial of ownership of the black bag was caused by an unlawful *Terry* stop.

The court disagreed. First, the positive alerts from the dogs provided probable cause to believe the suitcase located in the bus's luggage compartment contained cocaine. As a result, the officers were justified in removing the suitcase from the bus's luggage compartment, locating its owner, Tubens, and detaining him for further questioning.

Second, even though Tubens denied possessing any carry-on luggage, it was reasonable for the officer to reenter the bus to confirm this. The officer already believed Tubens had lied when Tubens told the officer he had not heard the officer call his name on the bus. In addition, the officer testified that based on his training and experience, the officer knew drug traffickers often moved their stash between their checked and carry-on bags to avoid detection.

Third, after the officer located the square case and paper sack on the bus, which Tubens admitted were his, the officer was justified in boarding the bus again to look for other luggage that belonged to Tubens. When the officer found the black bag, which another passenger claimed Tubens had been trying to conceal, it was reasonable for the officer to ask Tubens if the bag belonged to him.

Although Tubens was under investigation when he disclaimed ownership of the black bag, the court concluded Tubens voluntarily abandoned the bag during a valid *Terry* stop. As a result, the court held Tubens did not have standing to challenge the search of the bag.

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

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. Ransfer, 743 F.3d 766 (11th Cir. 2014)

In May 2011, police officers installed a GPS tracking device without a warrant on a vehicle used by Ransfer and several co-defendants who were suspects in a series of robberies. At trial, evidence obtained from the GPS tracking was admitted against Ransfer as well as incriminating statements he made after his arrest. Ransfer argued the warrantless installation of the tracking device violated the *Fourth Amendment*. Ransfer further claimed his statements to the officers were not voluntary and he was not aware of the *Fifth Amendment* right against self-incrimination.

The court disagreed. The court noted the warrantless installation of the GPS tracking device occurred before the United States Supreme Court decision in *U.S. v. Jones*. Consequently, the officers relied in good faith on existing case law which held it did not violate the *Fourth Amendment* to install an electronic tracking device on the outside of a vehicle without a warrant.

In addition, the court held Ransfer's incriminating statements to the officers were admissible. First, Ransfer signed a form waiving his *Miranda* rights, which the officers went over with him before he signed it. Second, despite his relative youth, there was no evidence showing Ransfer did not understand these rights. Finally, the court held Ransfer's statements to the officers were voluntary and not the result of coercion.

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

Gennusa v. Canova, 748 F.3d 1103 (11th Cir. 2014)

In June 2009, Studivant agreed to a police interview with his attorney, Gennusa, present. The interview was non-custodial and took place in an interview room at the police station. After Studivant agreed to provide a written statement, the officer left the interview room and closed the door. While alone in the room, Studivant and Gennusa discussed matters related to the investigation while Studivant wrote his statement. Studivant and Gennusa did not realize their privileged attorney-client conversations were being recorded and actively monitored by police officers through a concealed camera in the interview room.

At some point, Gennusa left the interview room and spoke with the officer, who told Gennusa he planned to arrest Studivant. When Gennusa returned to the interview room and told Studivant he was going to be arrested, Studivant decided he no longer wanted to provide a written statement. The officer came back into the interview room and demanded Studivant's written statement. After Gennusa refused to turn over Studivant's written statement, the officer forcibly grabbed the statement off the table from underneath Gennusa's hand and then arrested Studivant.

Gennusa and Studivant sued the police officers claiming the warrantless recording of their privileged conversations and the seizure of the Studivant's written statement violated the *Fourth Amendment* and the warrantless recording of their conversations violated the Federal Wiretap Act under *18 U.S.C. § 2520(a)*.

The district court held the officers were not entitled to qualified immunity. The officers appealed the denial of qualified immunity to Gennusa and Studivant's *Fourth Amendment* claims only.

The court held Studivant and Gennusa had a reasonable expectation of privacy in their privileged conversations in the interview room at the police station. The court noted the attorney-client privilege is the "oldest of the privileges for confidential communications known to the common law."

Consequently, the surreptitious recording and monitoring of those attorney-client conversations, without notice to Studivant or Gennusa, and without a warrant, violated the *Fourth Amendment*.

The court further held it was clearly established in June 2009 that the *Fourth Amendment* required a warrant be obtained before non-custodial privileged communications between attorneys and their clients could be electronically monitored, intercepted or recorded.

Finally, the court held the warrantless seizure of Studivant's written statement was unreasonable because the officers presented no evidence suggesting they reasonably believed Gennusa, an officer of the court, was going to destroy the statement or tamper with it before they could obtain a warrant. At the time, it was clearly established that the warrantless seizure of personal property was unreasonable under the *Fourth Amendment* unless one of the exceptions to the warrant requirement applied.

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

Morris v. Town of Lexington Ala., 748 F.3d 1316 (11th Cir. 2014)

A highly intoxicated woman called 911 in the early morning hours and reported she had been abandoned, that she did not know where she was, and requested someone be sent to pick her up. Police officers responded to the call, which led them to Morris' address where they saw the woman who made the call standing outside the house. The woman told the officers she was in danger and that someone had been beating Morris' horses. The officers knocked on the door of the house and Morris answered it. While Morris stood inside the threshold, the officers asked him about the drunken woman on the porch. Morris said he did not know the woman, but stated he was acquainted with the woman's sister. When the officers told Morris what the woman had said about his horses being abused, Morris told the officers he would put on his boots and check on them. One of the officers told Morris he was "not going anywhere." When Morris stepped back toward the interior of his house, three officers crossed the threshold of the house behind him. After Morris told the officers to leave, two of the officers complied, but the third officer remained in the threshold. When Morris tried to close the door, the officer standing in the threshold shoved Morris. Morris retaliated by punching the officer. The other officers then came back into the house, subdued Morris with an electronic control device

and arrested him for assaulting a police officer and resisting arrest. Morris was later acquitted of both charges.

Morris sued the police officers for a variety of constitutional violations, to include entering his home without a warrant, in violation of the *Fourth Amendment*.

The court held the officers were not entitled to qualified immunity. First, the court held it is clearly established that searches and seizures inside a home are presumed to be unreasonable unless a police officer has a warrant, consent or exigent circumstances. However, the officers claimed because they had reasonable suspicion to detain Morris under *Terry v. Ohio*, the officers were allowed to enter Morris' house to effect that detention. Even if *Terry* allowed the officers to enter Morris' house, which the court seriously doubted, the court held the officers did not have reasonable suspicion to detain Morris. When the officers knocked on the door to speak with Morris, they did not have reasonable suspicion Morris was involved in criminal activity, as the woman never stated Morris had done anything wrong. After Morris opened the door, the officers were faced with an unarmed man, who had just gotten out of bed, and was concerned for the safety of his horses after being told of the woman's claim. The court concluded the officers entered Morris' house without a warrant or "anything remotely approaching reasonable suspicion." Therefore, the court held the officers violated the *Fourth Amendment*.

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

United States v. Davis, 754 F.3d 1205 (11th Cir. 2014)

A jury convicted Davis on seven counts of robbery. At trial, the government introduced cell site location information obtained from Davis' cell phone service provider. The cell site location information included a record of Davis' calls and revealed which cell tower carried the calls. The government argued the cell site location information established Davis placed and received cell phone calls near the locations of the robberies around the same time the robberies were committed. The government obtained Davis' cell site location information after obtaining a court order pursuant to *18 U.S.C. § 2703(d)*. To obtain a court order under *§2703(d)*, the government was not required to establish probable cause.

On appeal, Davis claimed the government violated the *Fourth Amendment*, arguing the government was required to obtain a warrant based on probable cause to obtain his cell site location information. The government argued the cell site location information was not covered by the *Fourth Amendment* and was properly obtained under the *§ 2703(d)* court order.

The court held that Davis had a reasonable expectation of privacy in the cell site location information and the government violated the *Fourth Amendment* when it obtained that information without a warrant. However, the court further held the cell site location information did not need to be suppressed because the officers acted in good faith reliance on *§2703(d)* order. Here, the police officers, prosecutors and judge who issued the order followed the requirements of *18 U.S.C. § 2703* and had no reason to believe it was unconstitutional as written.

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

United States v. Folk, 754 F.3d 905 (11th Cir. 2014)

Police officers obtained a warrant to search a residence where Folk, a convicted felon, lived with Brandow and her seventeen-year-old son. The warrant authorized the officer to search for illegal prescription drugs, currency, and records relating to drug sales. While executing the warrant, an officer saw a rifle and a shotgun in the master bedroom closet. The officer believed Folk and Brandow slept in that bedroom because he saw photographs of the couple around the room and several empty pill bottles prescribed to Brandow and Folk. The government indicted Folk for being a felon in possession of a firearm.

Folk claimed the officer violated the *Fourth Amendment* by seizing the rifle and the shotgun, arguing the search warrant did not specifically authorize the officers to seize firearms.

The court disagreed, holding the officers lawfully seized the firearms under the plain view doctrine. First, the firearms were located in a closet where the officers had a lawful right to be to search for the items listed in the warrant. Second, the incriminating nature of the firearms was immediately apparent to the officer because the officer knew Folk was a convicted felon. In addition, the court concluded it was reasonable for the officer to believe the firearms belonged to Folk. The closet was located in the master bedroom that contained photographs of Folk and Brandow as well as prescription bottles with Folks' name on them.

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

United States v. Watkins, 760 F.3d 1271 (11th Cir. 2014)

Watkins agreed to assist police officers in a murder investigation after the body of a seven-year old girl was found in a landfill. During an interview, Watkins told a police officer the victim often visited his house to play online computer games with his grandchildren. As the interview progressed, Watkins admitted he had downloaded and viewed child pornography on his computers. Consequently, Watkins consented to a search of the three computers in his house, but only after the officer told Watkins he was only interested in searching the computers for evidence related to the ongoing murder investigation, not child pornography. However, when the officer went with Watkins to his house to retrieve the computers, Mrs. Watkins, who had joint access to the computers, signed a form consenting to a full search of the three computers. During this time, Watkins was present and did not object when his wife granted consent. The government discovered evidence of child pornography on one of the computers and charged Watkins.

The district court held the search of computers exceeded the scope granted by Watkins' consent because Watkins believed he was only consenting to a search of the computers to find evidence related to the murder investigation. However, the district court held the full

search of the computers was within the scope of the consent granted by Mrs. Watkins. As a result, the court concluded the evidence of child pornography was admissible against Watkins.

The Eleventh Circuit Court of Appeals agreed. A person who has common authority over property can consent to a search of that property by police officers. However, if another person with common authority is present and objects to the search, the police may not search the property. In this case, Mrs. Watkins consented to an unlimited search of the computers by the officers. Although Watkins was present during this time, he did not object nor suggest to his wife that her consent might be limited by a previous agreement he had with the officer. In addition, the court noted Watkins' previous consent to a limited search did not qualify as a "present" objection to his wife's later consent to a broader search.

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

Saunders v. Duke, 766 F.3d 1262 (11th Cir. 2014)

Saunders entered the front seat of an undercover police officer's car and sold him narcotics. After the sale, other police officers ordered Sanders from the car, pushed him to the ground and handcuffed him. After he was handcuffed, Saunders was held down against the hot pavement on his stomach. Saunders told the officers he was "getting burnt," and was holding his face up off the hot pavement. Although Saunders was not resisting or attempting to flee, one of the officers slammed Saunders' face onto the pavement. As a result, Saunders suffered injuries to his teeth, jaw and head.

Saunders sued the officers for excessive use of force in violation of the *Fourth Amendment*.

The court held Saunders sufficiently alleged a gratuitous use of force; therefore, the officers were not entitled to qualified immunity. According to Saunders, he held his head up to avoid having his face burned by the hot pavement. Although Saunders was not resisting or posing a threat to anyone, he claimed one of the officers "slammed" his head into the pavement with "extreme force." The court concluded if a jury found these allegations to be true, then such a use of force would be excessive. In addition, the court noted a handcuffed, non-resisting suspect's right to be free from excessive force had been established at the time of this incident.

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

Berry v. Leslie, 767 F.3d 1144 (11th Cir. 2014)

Officers with the Orange County Sheriff's Office (OCSO) and representatives from the Florida Department of Business and Professional Regulation (DBPR) conducted an unannounced, warrantless inspection of a barbershop owned by Berry. Once inside the barbershop, police officers handcuffed and frisked Berry and two other barbers. In addition, police officers inspected each of the barbers' workstations by looking through

their drawers, and officers searched an unlocked storage room in the back of the barbershop where no barbering services were rendered. After approximately one-hour, it was determined all of the barbers possessed valid licenses and that the barbershop was in compliance with all safety and sanitation rules. Berry and the two barbers were released from their handcuffs and not charged with any crimes.

Berry and the other barbers sued the police officers claiming the barbershop inspection violated the *Fourth Amendment* by subjecting them to an unreasonable search and seizure.

The court agreed, holding the police officers were not entitled to qualified immunity.

The DBPR is in charge of regulating and enforcing statutes and rules associated with professional licenses in Florida, to include barbershops. Under the rules, DBPR inspectors are authorized to conduct inspections, once every two years, to ensure that barbershops are in compliance with state licensing and sanitation laws.

Here, the court held the officers' show of force, and the search of the Berry's barbershop was unreasonable in view of the fact that DBPR inspectors visited the barbershop two days before the "sweep," and had already determined that Berry and his employees were in compliance with state regulations. In addition, unlike previous inspections of Berry's barbershop, which were conducted by a single DBPR inspector, without the assistance of police officers, this inspection was executed with a tremendous and disproportionate show of force for no legitimate reason. In this case, the court noted that officers with the OCSO prepared a detailed operations plan, which included details on how to seize evidence, gather intelligence and interview potential confidential informants. The court stated the sweep at the barbershop, purportedly to check for licensing violations, was gratuitous at best.

Finally, the court found the statute authorizing the DBPR to inspect barbershops vests the authority to conduct the inspections in the DBPR alone. While law enforcement officers may accompany DBPR inspectors to provide assistance to arrest individuals whom the DBPR inspectors determine to be in violation of the law, the law enforcement officers do not have the authority to conduct barbershop inspections themselves. However, in this case, police officers opened drawers at the barbers' workstations and searched a storage room in the back of the barbershop.

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

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.

NOTES

District of Columbia Circuit

United States v. Brodie, 742 F.3d 1058 (D.C. Cir. 2014)

Police officers obtained a warrant to search a townhouse belonging to a murder suspect who was in custody. While waiting for homicide detectives to arrive, two police officers parked down the street saw Brodie leave the townhouse and walk down the sidewalk towards them. Because Brodie had left the townhouse they planned to search, the officers decided to stop and identify him. The officer pulled the patrol car parallel to Brodie, who was now two townhouses further down the street, while the second officer got out of the car. The officer told Brodie to put his hands on a nearby parked car. Brodie complied. When the officer turned to speak to his partner, Brodie ran. As the officers chased him, Brodie discarded three firearms. Brodie dropped to the ground after one of the officers threatened to deploy his Taser against him. The officers found crack cocaine on Brodie's person.

The district court denied Brodie's motion to suppress the firearms and crack cocaine.

The Court of Appeals reversed. A person is seized under the *Fourth Amendment* when physical force is used to restrain movement or when a person submits to an officer's show of authority. In this case, the court determined Brodie was seized when he placed his hands on the parked car when told to do so by the police officer.

Next, the court held Brodie's seizure was not reasonable. The government did not argue the officers had reasonable suspicion or probable cause to justify Brodie's seizure. Instead, the government argued Brodie's seizure was reasonable under *Michigan v. Summers* because it was incident to the execution of the search warrant on the townhouse. However, the court stated *Summers* only applies to individuals who are present when and where the search is being conducted. Here, the officers were waiting for the homicide detectives to arrive and had not yet begun the execution of the search warrant on the townhouse when they seized Brodie. Because the officers did not encounter Brodie during the search, the court declined to determine if it was reasonable to detain Brodie down the street from the townhouse.

Finally, the court held suppression of the evidence was warranted because the officers only discovered the firearms and crack cocaine because of Brodie's unlawful seizure. There was no evidence to suggest Brodie would have discarded the firearms if the officers had stayed in their car to wait for the detectives to arrive as originally planned.

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

United States v. Peyton, 745 F.3d 546 (D.C. Cir. 2014)

Peyton lived with his great-great-grandmother, Hicks, in a small one-bedroom apartment. Hicks used the bedroom while Peyton kept his bed and personal property in the living room. After the police received a tip that Peyton was using the apartment to deal drugs,

four officers went to the apartment. The officers knew Peyton was not home and they hoped Hicks would consent to a search of the apartment. Hicks signed a consent-to-search form that stated Hicks was freely agreeing to allow the officers to search the entire apartment. When the officers came near Peyton's bed, Hicks told the officers that part of the living room was where Peyton kept his personal property. After one of the officers saw a closed shoebox next to Peyton's bed, he opened it and discovered marijuana, crack cocaine and cash. Based on the evidence found in the shoebox, the government indicted Peyton.

Peyton filed a motion to suppress, arguing Hicks did not have authority to consent to a search of the shoebox. The trial court disagreed, holding Hicks' consent to search covered the entire apartment, to include the shoebox.

The court of appeals agreed with Peyton. During the search of the living room, Hicks told the officers that Peyton kept his personal property in the area around the bed where the officers found the shoebox. The court concluded Hicks' statement put the officers on notice there was an area of the living room that was not hers, and it was not reasonable for the officers to believe that Hicks shared use of the closed shoebox. As a result, Hicks did not have apparent authority to consent to a search of the shoebox, and the evidence discovered in it should have been suppressed.

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

Wesby v. District of Columbia, 765 F.3d 13 (D.C. Cir. 2014)

Police officers responded to a noise disturbance call at a house. When the officers arrived, they discovered twenty-one men and women having a party. One of the women told the officers a woman, named Peaches, who was renting the house had given her permission to be in the house, while others said they had been invited to the party by another guest. Peaches was not present, but when one of the officers spoke to her on the phone Peaches told the officer she had permission to be at the house. The officer eventually contacted the homeowner who denied Peaches was renting the house and denied the partygoers had his permission to be inside his house. A sergeant who had arrived on the scene during the investigation directed the officers to arrest everyone in the house for unlawful entry, a violation of District of Columbia law. Sometime later, the charges against the arrestees were changed to disorderly conduct.

Sixteen of the arrestees sued five police officers for false arrest, as well as the District of Columbia for negligent supervision by the police sergeant.

The court held the officers were not entitled to qualified immunity.

First, the court held it was unreasonable for the officers to believe the plaintiffs had entered the house unlawfully. First, the officers knew the plaintiffs had been invited to some kind of party at the house. Second, the officers had explicit, uncontested statements from Peaches and another guest at the scene that Peaches had told the people inside the house that they could be there. Finally, the officers had a statement from the homeowner that he had been trying unsuccessfully to arrange a lease with Peaches and that he had not

given the people in the house permission to be there. However, the homeowner never told the officers that he or anyone else had told the plaintiffs that they were not welcome in the house. All of the information the officers had obtained by the time of the arrests made it clear the plaintiffs believed they had lawfully entered the house with the consent of someone they believed to be the lawful occupant. As a result, the officers did not have probable cause to arrest the plaintiffs for unlawful entry.

Next, the court held the officers did not have probable cause to arrest the plaintiffs for disorderly conduct. A disorderly conduct violation under District of Columbia law requires that an arrestee disturb a “considerable number of persons,” and creates a “breach of the peace.” Here, the evidence only established that one neighbor called the police to complain about noise that evening.

Finally, the court held the facts in this case demonstrated that the sergeant, one of the District of Columbia’s supervisory officials, directed his subordinates to make arrests that he should have known was not supported by probable cause. Therefore, the plaintiffs were entitled to judgment as a matter of law on their negligent supervision claim.

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

United States Dep’t of Homeland Sec. v. FLRA, 751 F.3d 665 (D.C. Cir. 2014)

The National Treasury Employees Union (NTEU) and Customs and Border Protection (CBP), an agency within the Department of Homeland Security (DHS), negotiated a collective bargaining agreement (CBA). Article 22, Section 2 of the CBA included the following provision:

An employee [in CBP] being interviewed by a representative of the Agency (e.g., Department of Homeland Security Office of Inspector General) in connection with either a criminal or non-criminal matter has certain entitlements/rights regardless of who is conducting the interview.

Among other things, Article 22 required that union officials:

Receive advance notice of employee interviews; that interviews be conducted at the worksite; that employer representatives act professionally; that the employer representatives provide employees with specific negotiated forms with their rights outlined prior to conducting the interview; and that employer representatives advise employees of their right to union representation if the employee may be subject to discipline or adverse action before the interview is conducted.

Article 22 had the effect of requiring all employer representatives to adhere to these negotiated provisions when conducting investigatory interviews, criminal and non-criminal, of CBP bargaining unit employees. In addition, Article 22 specifically identified employees from DHS’s Office of Inspector General (OIG) as employer representatives when the OIG conducted investigations of CBP employees.

DHS objected to Section 2 of the proposed CBA claiming that the procedures followed by DHS's OIG in conducting its investigations are non-negotiable. After the Union and CBP removed Section 2 from the CBA, DHS approved the agreement without that provision. Consequently, the Union filed an appeal with the Federal Labor Relations Authority, (FLRA).

The FLRA agreed with the Union, ruling that the disputed CBA provision concerning the procedures to be followed by the OIG in conducting its investigations were negotiable.

The government appealed the ruling by the FLRA. The Court of Appeals for the District of Columbia agreed with the government. The court held the proposal advanced by the union would compromise the independence of the Office of Inspector General and would be inconsistent with the Inspector General Act (IG Act), 5 U.S.C.S. App. 3 §§ 1-13, within the meaning of the Federal Service Labor-Management Relations Statute (FSLMRS) 5 U.S.C.S. §§ 7117(a)(1). In addition, the court held proposals to regulate OIG investigations authorized by the IG Act were not proper subjects of collective bargaining under the FSLMRS.

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

United States v. Williams, 773 F.3d 98 (D.C. Cir. 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.

NOTES

United States Court of Appeals for the Armed Forces

United States v. Wicks, 73 M.J. 93 (C.A.A.F. 2014)

Wicks was a military training instructor (MTI) whose duties included training new recruits. Wicks was involved in a personal relationship with Roberts, who was also an MTI. A few months later, after their relationship ended, Roberts took Wicks' cell phone without his permission. Roberts read various text messages on Wicks' cell phone that suggested Wicks had engaged in inappropriate conduct with some trainees. Eight months later, as part of a general inquiry from the command concerning MTI misconduct, a criminal investigator interviewed Roberts. Roberts told the investigator she had evidence that would prove Wicks engaged in inappropriate relationships with trainees, and provided verbal descriptions of the text messages she had seen on Wicks' cell phone. Approximately one week later, Roberts gave the investigator Wicks' cell phone. Instead of asking Roberts to show her the text messages Roberts had previously seen, the investigator allowed Roberts to leave and then the investigator reviewed some of the text messages on the cell phone. The next day, the investigator gave the cell phone to another police agency and requested a detailed analysis of the cell phone's contents. Wicks was eventually charged with four violations of the Uniform Code of Military Justice that were referred to trial by general court-martial. Wicks filed a motion to suppress evidence obtained from his cell phone and other evidence derived from the evidence obtained from his cell phone.

First, the United States Court of Appeals for the Armed Forces held the military judge correctly ruled Wicks had a reasonable expectation of privacy in his cell phone.

Second, the court held the military judge correctly ruled the criminal investigator exceeded the scope of the private search conducted by Roberts. Generally, the *Fourth Amendment* does not apply to searches and seizures conducted by private individuals. However, one of the exceptions to the private search doctrine pertains to the scope of any subsequent warrantless search by the government. The government may not exceed the scope of the search by the private individual, to include expanding the private search into a general search. Here, the trial judge was not able to determine whether the investigator limited her search of Wicks' cell phone to the information Roberts had previously discovered during her private search. The court commented that the investigator engaged in a general search of Wicks' cell phone because in reviewing the text messages she did not limit herself to what Roberts had already searched.

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

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