
THE FEDERAL LAW ENFORCEMENT - INFORMER -

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

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The Informer – September 2015

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1. Law Enforcement Legal Refresher Training

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

This two-hour block of instruction focuses on *Fourth* and *Fifth Amendment* law and is designed to meet the training requirements for state and federal law enforcement officers who have mandated two-hour legal refresher training requirements.

Date and Time: Thursday October 29, 2015: 2:30 p.m. EDT

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CASE SUMMARIES

Circuit Courts of Appeal

Second Circuit

United States v. Cacace, 2015 U.S. App. LEXIS 13641 (2d Cir. N.Y. Aug. 5, 2015)

Prior to trial, Gioeli, one of the defendants in a multi-defendant organized crime prosecution, filed a motion to suppress evidence taken from his home by Andrea Calabro, the wife of another co-defendant. At the time, Calabro was working as a confidential informant for the government and she had already given federal agents photographs taken at social gatherings that she said were given to her by Mrs. Gioeli. At an agent's suggestion, Calabro accepted Mrs. Gioeli's offer to borrow more photographs. After Mrs. Gioeli gave Calabro some photographs, Calabro asked Mrs. Gioeli if she could come over to her house to examine Mrs. Gioeli's photo collection herself. Mrs. Gioeli agreed; however, when Mrs. Gioeli was momentarily absent, Calabro took an address book and several photographs from Gioeli's home without permission. Calabro gave the address book and photographs to the agent who examined them. The government later obtained a warrant to search Gioeli's home, which included information obtained from the address book.

Gioeli claimed any photographs given to Calabro while Calabro was in Gioeli's house, as well as the address book, and any photographs taken without Mrs. Gioeli's consent should have been suppressed.

The court disagreed. First, while it was undisputed that Calabro was acting as an agent of the government when she borrowed certain photographs from Mrs. Gioeli, the court found that Mrs. Gioeli voluntarily consented to Calabro's presence in the Gioelis' home to view and borrow these photographs.

Second, the court concluded Mrs. Gioeli's consent did not extend to the address book and the photographs Calabro took from the house without Mrs. Gioeli's consent. However, the court held that when Calabro took the address book and photographs, she did so as a private person, and not as a governmental agent. While the court found that Calabro exceeded the scope of her government agency, the court concluded the government did not know of her intent to do so, nor did the government have any reason to suspect that Calabro might do something more than borrow photographs with Mrs. Gioeli's consent. Consequently, Calabro's actions as a private person could not violate the *Fourth Amendment*, as the *Fourth Amendment* does not apply to searches or seizures by private persons.

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

Fourth Circuit

United States v. Graham, 2015 U.S. App. LEXIS 13653 (4th Cir. Md. Aug. 5, 2015)

The government charged Graham and Jordan with a variety of offenses arising from a series of armed robberies. During the investigation, the government recovered two cell phones connected to the defendants. The government subsequently obtained cell site location information (CSLI) from the phones pursuant to a court order issued under 18 U.S.C. § 2703(d). At trial, the government used the CSLI to establish the defendants' locations at various times before and after most of the robberies.

On appeal, the defendants argued the government's acquisition of the CSLI without a warrant based on probable cause was an unreasonable search in violation of the *Fourth Amendment*.

The court agreed, holding the government's warrantless procurement of the CSLI was an unreasonable search in violation of the defendants' *Fourth Amendment* rights. However, the court declined to reverse the defendants' convictions, holding the good faith exception to the exclusionary rule applied. The court concluded the government relied in good faith on court orders issued pursuant to § 2703(d) when it obtained the CSLI.

This decision created a circuit split with *United States v. Davis*, 785 F.3d 498 (11th Cir. 2015), and *In re Application*, 724 F.3d 600 (5th Cir. 2013). The Computer Crime and Intellectual Property Section (CCIPS) of the United States Department of Justice can provide assistance to law enforcement officers concerning cells site issues.

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

Fifth Circuit

United States v. Cervantes, 2015 U.S. App. LEXIS 14336 (5th Cir. Tex. Aug. 14, 2015)

At 8:30 a.m., two Border Patrol agents were on roving patrol on Interstate 20 when they saw an SUV heading eastbound toward Odessa, Texas. The agents saw the SUV had six occupants and was sagging in the rear. When the agents pulled their vehicle near the SUV, the driver, Cervantes, switched from the left lane to the right lane and began traveling behind a tractor-trailer that was being driven ten to fifteen miles per hour under the seventy-five-miles-per-hour speed limit. The agents considered this behavior odd because there were no vehicles in the left lane ahead of the SUV when it slowed down and pulled behind the tractor-trailer. The agents drove their vehicle parallel to the SUV and saw that the rear passengers were wearing dirty jackets and heavy clothing while the front passenger was wearing short sleeves and appeared to be clean. While driving next to the SUV, the agents honked the horn on their vehicle six times, but the occupants of the SUV ignored the agents' presence and continued to look forward. The agents conducted a traffic stop and when they approached the SUV, they saw burlap backpacks in the SUV. The agents saw small brick bundles wrapped with brown tape through a tear in one of the backpacks. The agents searched the SUV and recovered approximately 170 pounds of marijuana in the backpacks that had been transported across the border by the rear passengers.

Cervantes and all of the passengers were charged with aiding and abetting possession with intent to distribute marijuana.

Cervantes argued the marijuana evidence should have been suppressed because the agents did not have reasonable suspicion to conduct the traffic stop.

The court disagreed. Border Patrol agents on roving patrol may conduct vehicle stops if they have reasonable suspicion a vehicle is involved in criminal activity. First, even though the stop occurred approximately 200 miles from the border, the court found the location of the stop on Interstate 20, west of Odessa, was well known for its prevalence of drug and alien smuggling. Second, one of the agents testified that in his experience vehicles containing multiple occupants that also sag in the rear is an indication of narcotics smuggling. Third, the appearance and clothing worn by the rear passengers was, in the agents' experience, consistent with what he had previously observed on many occasions when he encountered undocumented aliens. Fourth, the agents testified that one of the rear passengers was in the cargo area of the SUV, and in their experience, this type of seating arrangement was consistent with smuggling. Finally, the agents found it suspicious that when Cervantes became aware of the agents' vehicle he switched lanes, and pulled behind a truck that was travelling well below the speed limit, then continued to look forward when the agents pulled next to him and honked their horn six times. Considering the totality of the circumstances, the court concluded the agents established reasonable suspicion to stop Cervantes.

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

Seventh Circuit

United States v. Gregory, 2015 U.S. App. LEXIS 13577 (7th Cir. Ill. Aug. 4, 2015)

An anonymous informant contacted a federal agent and told him that Gregory and Cipra were maintaining an indoor marijuana-grow operation in the basements of two adjacent houses in which the men lived. The informant told the agent he had been in the basement of one of the houses within the last two months, and provided the agent with photographs depicting the marijuana plants growing in the basement. The informant told the agent there were similar marijuana plants growing in the basement of the adjacent residence. A few weeks later, the informant told law enforcement officers that Gregory maintained the grow-operation while Cipra was the primary seller. The informant added that the men maintained a year-round harvest, and that he had seen both men in possession of firearms while in the residences. In addition, the informant provided officers with detailed descriptions of the vehicles owned by the men.

Officers verified much of the information provided by the informant. Specifically, the officers learned that Gregory and Cipra were the owners of the residences reported by the informant, that both men had valid Firearms Owners Identification Cards, and the men owned vehicles as described by the informant. Based on the information provided by the informant, as well as their own corroboration of that information, officers obtained warrants to search both residences. Officers executed the warrants and discovered a large-scale marijuana-grow operation in the basements of both residences. As a result, the government charged Gregory, Cipra and two other men with drug and weapon offenses.

Gregory and Cipra filed a motion to suppress the evidence seized during the execution of the warrants, arguing that the search warrants lacked probable cause.

A search warrant affidavit establishes probable cause “when it sets forth facts sufficient to induce a reasonably prudent person to believe that a search will uncover evidence of a crime.” When an application for a search warrant is supported by an informant’s tip, courts consider the totality of the circumstances to determine whether that information establishes probable cause for the search, including: (1) the extent to which the police have corroborated the informant's statements; (2) the degree to which the informant has acquired firsthand knowledge of the events; (3) the amount of detail provided; (4) the amount of time between the date of the events and the application for the search warrant; and (5) whether the informant personally appeared before the judge issuing the warrant.

Here, the court held the informant’s detailed information was largely corroborated by the officers, which demonstrated the informant’s first-hand knowledge of the marijuana-grow operation. For example, the informant provided accurate information about where Gregory and Cipra lived, what cars they drove and that they owned firearms. In addition, the informant supplied the officers with photographs of the marijuana plants as well as details concerning each man’s specific role in the operation. Although the informant has not been in either residence for two months, the court found that factor was not significant given the ongoing continuous criminal activity involved. In addition, the court was not concerned that the informant’s failure to appear in person to testify when the court issuing the search warrant made its probable cause determination. The court concluded the informant’s specific first-hand information, which was corroborated by the officers established probable cause to search the residences.

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

United States v. Sturdivant, 2015 U.S. App. LEXIS 13580 (7th Cir. Ill. Aug. 4, 2015)

After officers arrested Sturdivant for several armed robberies, he agreed to be interviewed. At the beginning of the interview, the officers learned that Sturdivant was an insulin-dependent diabetic; however, Sturdivant did not exhibit any symptoms of suffering from low blood sugar. During the interview, an officer told Sturdivant they had recovered DNA evidence that linked him to one of the crime scenes; however, the officer knew no such DNA evidence existed. After Sturdivant denied any involvement in the robberies, the officers stopped questioning for the evening.

The next day, Sturdivant agreed to be interviewed again. After waiving his *Miranda* rights, Sturdivant confessed to the robberies, and then took the officers to the location where he had discarded the firearm he had used. Afterward, Sturdivant asked the officers if he could see his mother, and the officers drove him to his home and allowed his mother to sit with him for approximately twenty minutes in the back of the police car. While speaking with his mother, Sturdivant told the officers he was not feeling well and vomited on the ground outside the car. The officers then transported Sturdivant back to the police station where they gave him a meal and asked him if he would be willing to be interviewed again on video. Sturdivant agreed. At the beginning of the interview, an officer confirmed that Sturdivant was diabetic, and when asked how he was feeling, Sturdivant answered, “I am feeling alright.” Sturdivant answered

all of the officers' questions clearly and confessed, for a second time, to his involvement in the robberies.

Sturdivant argued his two confessions to the officers should have been suppressed because he gave them involuntarily. First, Sturdivant claimed the officers' indifference to his diabetic condition and the physical distress it caused him, amounted to coercion. Second, Sturdivant claimed he was coerced to confess by the officers' false representation that they had recovered his DNA from the crime scene.

Concerning Sturdivant's first confession, which occurred before he vomited, the court noted that Sturdivant did not tell the officers he was suffering from the effects of diabetes or ask for his insulin. In addition, the officers, who were familiar with the symptoms exhibited by a diabetic with low blood sugar, did not observe any signs that Sturdivant was suffering from the effects of diabetes.

As for his second confession, Sturdivant confirmed on video that he was "feeling alright," he was attentive, he appeared to understand what was going on, and he did not exhibit any signs that he was suffering from the effects of diabetes. Consequently, the court held there was no basis to conclude that Sturdivant's diabetes or the officers' indifference to his condition caused him to involuntarily confess.

The court further held the officer's false statements concerning the DNA evidence did not overcome Sturdivant's freewill and cause him to confess. The court noted that "a lie that related to the suspect's connection to a crime is the least likely to render a confession involuntary." In addition, when confronted with the false DNA evidence, Sturdivant continued to deny his involvement in the robberies until the next day.

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

United States v. Reaves, 2015 U.S. App. LEXIS 13745 (7th Cir. Ill. Aug. 6, 2015)

Officers suspected Reaves was involved in heroin trafficking in Peoria. An informant told officers that Reaves drove to Detroit in a white Chrysler Pacifica to get his heroin supply. After confirming that Reaves owned a white Chrysler Pacifica, the informant picked Reaves out of a line up, and then made four controlled heroin buys from him. After the fourth buy, officers obtained a warrant to attach a GPS tracker on Reaves' Pacifica. When information from the GPS tracker indicated that Reaves' Pacifica was driving back to Peoria from Detroit, officers got behind him on the highway. After an officer saw the Pacifica illegally drift into a different lane without signaling, he conducted a traffic stop. Officers searched Reaves' car and found heroin.

The government charged Reaves with possession with intent to distribute heroin.

Reaves argued the evidence seized from his car should have been suppressed, claiming the officer did not have probable cause to conduct the traffic stop and that the warrantless search of his car was unlawful.

The court disagreed.

First, the court held the officer conducted a lawful traffic stop after he saw Reave's car drift over the traffic line on the highway.

Next, the court held the officers lawfully searched Reaves' car under the automobile exception to the *Fourth Amendment's* warrant requirement. Under the automobile exception, officers do not need a warrant to search a vehicle when they have probable cause to believe it contains evidence of a crime. Probable cause to search a suspect's vehicle under the automobile exception can be based, in part, on information provided by an informant. Here, the informant told the officers that Reaves would drive his white Chrysler Pacifica to Detroit to receive his heroin supply and then return to Peoria. The officers confirmed this information by monitoring Reaves' movements through the use of the GPS tracker. As a result, the court concluded a reasonable officer would have probable cause to believe Reaves' car contained evidence of drug trafficking, which would support the warrantless search of his car.

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

United States v. Witzlib, 2015 U.S. App. LEXIS 13811 (7th Cir. Wis. Aug. 7, 2015)

After officers received information that Witzlib was manufacturing M-80s in the basement of his grandmother's house, they contacted an agent with the Bureau of Alcohol, Tobacco, Firearms and Explosives. The officers and the agent went to the grandmother's house and obtained her consent to search the basement for fireworks where they found approximately one thousand M-80s. Witzlib was arrested and charged with unlawful manufacturing of explosive materials.

Although his grandmother owned the house, Witzlib argued the officers were also required to obtain his consent before they could lawfully search the basement.

The court disagreed. Even though Witzlib lived in the house, his grandmother, as owner of the house, had authority to consent to a search of the common areas, such as the basement. As a result, Witzlib could not reasonably believe that just because some of his possessions, the M-80s, were located in the basement, that his grandmother could not authorize a search of it.

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

United States v. Flores, 2015 U.S. App. LEXIS 14570 (7th Cir. Ill. Aug. 19, 2015)

A state trooper stopped Flores for improper display of a license plate after he saw that the license plate frame on Flores' car partially covered some of the letters on the plate. Although the license plate frame partially covered some of the letters, when the trooper pulled behind Flores, the letters on the plate were clearly visible and legible to the trooper. While the trooper was writing Flores a ticket, another officer and his canine partner conducted a free-air sniff around the car. After the dog alerted, the officers searched Flores' car and found over five kilograms of heroin in a compartment in the engine. Flores was arrested, and after being read his *Miranda* rights, he confessed that he had been paid to transport the heroin from Mexico to Ohio.

Flores argued the evidence seized from his vehicle and his statements should have been suppressed because it was unreasonable for the trooper to believe Flores violated the plate-

display statute. Flores claimed the statute only prohibits license plate obstructions that interfere with an officer's ability to read the information on the license plate.

The court agreed, holding it was not reasonable for the officer to believe the license plate frame on Flores' vehicle violated the statute. The court noted that Illinois courts have long held the plate-display statute requires only the plate's information be clearly visible and legible. In this case, even though the frame covered a portion of some letters, the trooper testified that as he got close to Flores' vehicle, he could read the letters on Flores' license plate. The court concluded if the frame does not impede a reasonable officer from reading a plate, then it is not reasonable to believe that the plate's information is not clearly visible and legible. As a result, the court held the traffic stop was unlawful and the drugs seized and Flores' confession should have been suppressed.

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

Eighth Circuit

United States v. Anguiano, 2015 U.S. App. LEXIS 13473 (8th Cir. Iowa Aug. 3, 2015)

A state trooper stopped a car for speeding and a window-tint violation. When he approached the car, the trooper saw three men inside. The trooper also immediately noticed that the front dash and center console appeared to be very shiny and clean while the rest of the car appeared messy and "lived in," with food and beverage trash and clothing on the floor and backseat. The officer spoke with the driver, Gomez, who was extremely nervous, breathing heavily with a rapid pulse, and not looking at the trooper while speaking. The trooper then spoke with Anguiano, who like Gomez was extremely nervous, had a high pulse and avoided eye contact with the trooper. The trooper's suspicions were aroused after Gomez and Anguiano gave conflicting stories as to the owner of the car and the purpose of their trip. When the trooper spoke to Boswell, the back-seat passenger, Boswell claimed he did not know Gomez, identified Anguiano as "Albert," but did not know his last name despite claiming he had known Anguiano since seventh grade, and was unsure as to where they were travelling.

After the trooper issued Gomez a warning ticket and returned his documents, he asked Gomez if he could ask him a few more questions. Gomez agreed, and a short time later, he gave the trooper consent to search the car. The trooper searched the car and found a can with a false bottom, which contained a substance that appeared to be marijuana and a pipe for smoking methamphetamine. Finally, the trooper removed the panel in the center console area and found a bag containing two pounds of methamphetamine. The trooper did not damage the car while removing the panel, which took about two seconds to remove and replace. Gomez, Anguiano and Boswell were charged with possession with intent to distribute methamphetamine.

Anguiano filed a motion to suppress the evidence found in the car. First, Anguiano argued the trooper unreasonably extended the duration of the traffic stop beyond the time necessary to complete purpose of the stop.

The court disagreed, holding the extension of the traffic stop was supported by reasonable suspicion of criminal activity. First, the trooper's suspicions were immediately aroused by the appearance of the car's interior when he initially encountered Gomez and Anguiano. Specifically, the trooper noticed that the car's dash and center console were shiny and clean,

while the rest of the interior was messy and littered with trash and clothing. Second, Gomez and Anguiano were extremely nervous throughout the encounter, exhibiting high pulse rates and heavy breathing while avoiding eye contact with the trooper. Finally, Gomez, Anguiano and Boswell provided inconsistent stories and were not able to answer simple questions posed by the trooper concerning their travel plans or ownership of the car.

Next, Anguiano argued the troopers' search of the center console area went beyond the scope of Gomez's consent. Anguiano was not an owner, registered user, or driver of the car when it was stopped; instead, he was a mere passenger. Generally, the court found that a mere passenger does not have standing to challenge a vehicle search where he has "neither a property nor possessory interest in the automobile." Consequently, without deciding the issue, the court held Anguiano did not have standing to object to the trooper's search of the car as a mere passenger.

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

United States v. Williams, 2015 U.S. App. LEXIS 13803 (8th Cir. Mo. Aug. 7, 2015)

A police officer was driving her patrol car when its license plate recognition (LPR) system gave an alert concerning a nearby car. The LPR system scans the license plates of cars that are within range of cameras mounted on the patrol car and generates an alert if a scanned car is connected to a wanted person. The LPR alert indicated that a man named Hicks was associated with a nearby car and wanted by a neighboring police department for domestic assault. The alert also stated that Hicks might be armed and dangerous, but it did not explain how or when Hicks was associated with the car. The officer conducted a traffic stop, identifying the driver as Hicks and the front-seat passenger as Williams. When a back-up officer directed Williams out of the car, Williams patted at his waistband twice, and appeared to be nervous. The officer frisked Williams and recovered a handgun from his waistband. The government indicted Williams for being a felon in possession of a firearm.

Williams filed a motion to suppress the firearm, arguing the LPR alert did not provide the officer reasonable suspicion to conduct the traffic stop.

The court disagreed. First, the court recognized there were no reported federal decisions that specifically dealt with the use of an LPR system in the *Fourth Amendment* context. However, courts have held that if a flyer or bulletin has been issued concerning a wanted person, then an officer may rely on that flyer or bulletin to conduct a *Terry* stop in an attempt to obtain further information. Here, the court failed to see how the mechanism through which an officer receives notice from another department, such as through the LPR system, matters for *Fourth Amendment* purposes. The court found that the LPR system merely automates what could otherwise be accomplished by checking the license plate number against a "hot sheet" of numbers, inputting a given number into a patrol car's computer, or "calling in" the number to the police station. As a result, the court concluded the officer was entitled to rely upon the information she received concerning Hicks obtained through the LPR system when she decided to conduct the traffic stop.

The court further held it was reasonable for the officer to conduct the stop even though she could not identify the driver until after she stopped the car. The court noted that common sense

dictates that police officers will often be unable to confirm the race or gender of a driver before initiating a traffic stop.

Finally, the court held the traffic stop was reasonable even though the officer had no information concerning the time frame of when Hicks had been associated with the car.

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

United States v. Thunderhawk, 2015 U.S. App. LEXIS 15123 (8th Cir. N.D. Aug. 27, 2015)

After federal agents received a report that Thunderhawk had sexually abused a child, the agents approached Thunderhawk who agreed to be interviewed. One of the agents told Thunderhawk he could end the interview and leave at any time, that he was not under arrest, and that he would not be arrested at the end of the interview, no matter what he told the agents. The agents interviewed Thunderhawk for approximately twenty minutes. Thunderhawk initially denied the allegations, but eventually admitted getting into bed with the victim. At the end of the interview, the agents allowed Thunderhawk to return home.

Thunderhawk was later arrested and charged with abusive sexual contact with a child under 12 years of age.

Thunderhawk filed a motion to suppress his statements to the agents. Thunderhawk argued the agent's misleading assurance that he would not be arrested rendered his statements involuntary because this assurance was made to "coerce" Thunderhawk into making a statement.

The court disagreed. The agent truthfully told Thunderhawk he would not be arrested at the end of interview, regardless of what he said, not that he would never be arrested or prosecuted. The court added that a promise made by an officer not to arrest or prosecute does not render a confession involuntary. Instead, a court must determine whether or not an officer overbore the suspect's freewill. Here, the court held there was no coercive police activity that overbore Thunderhawk's will; rather, Thunderhawk voluntarily made incriminating statements after twenty or twenty-five minutes of non-coercive questioning.

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

Ninth Circuit

United States v. Cook, 2015 U.S. App. LEXIS 14195 (9th Cir. Cal. Aug. 13, 2015)

Undercover officers arranged to buy drugs from Lambert and Edmonds. While conducting surveillance on Lambert's house before the sale, officers saw Cook enter the house carrying a backpack. When Cook left fifteen minutes later, the backpack appeared to be less full and lighter. Later that day, officers arrested Lambert and Edmonds for distribution of drugs. During an interview, Edmonds told the officers Cook was his supplier and agreed to place a monitored phone call to Cook, requesting that Cook return to Lambert's house. While waiting at Lambert's house, the officers conducted a search and found two firearms. When Cook eventually arrived, he was carrying the same backpack the officers had seen on him during their earlier surveillance. As Cook approached the front porch, officers ordered him to the ground

and placed him in handcuffs. While Cook was still on the ground and within one or two minutes of his arrest, an officer picked up the backpack, which was right next to Cook, and performed a twenty or thirty second cursory search for weapons or contraband. After finding no weapons, the officers quickly moved Cook and the backpack to a more secure location a few blocks away because a crowd had started to gather outside Lambert's house. The officers then conducted a more thorough search of Cook's backpack and found marijuana, MDMA and LSD.

The government indicted Cook for several drug offenses.

Cook filed a motion to suppress the evidence found in his backpack. Cook argued the initial search of his backpack was not valid incident to arrest because he was handcuffed at the time of the search; therefore, there was no reasonable concern for officer safety or destruction of evidence.¹

The court disagreed. A search incident to arrest is an exception to the *Fourth Amendment's* warrant requirement, which allows an officer to search an arrestee's person and the area within the arrestee's immediate control. An area of immediate control is the area from which an arrestee might gain possession of a weapon or destructible evidence. The immediate control requirement ensures the scope of a search incident to arrest is limited to protecting the arresting officers and safeguarding any evidence that an arrestee might conceal or destroy.

In this case, even though Cook was face down on the ground and handcuffed when the officer searched his backpack, the search occurred immediately after Cook was arrested while the backpack was located on the ground next to Cook. In addition, the court found the officers' safety concerns were reasonable. First, the officers believed Cook used the same backpack earlier that day to transport drugs. Second, the officers had already recovered two firearms from the house associated with Lambert, Cook's co-conspirator. Third, Cook's arrest occurred in front of the same house where a crowd had gathered that could have contained someone who might interfere with the arrest. Finally, as soon as the officer determined the backpack contained no weapons, he immediately stopped the search. As a result, the court held the brief and limited nature of the search, its immediacy to the time of arrest and the location of the backpack ensured the search was conducted to protect the arresting officers and prevent the destruction of evidence.

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

Tenth Circuit

United States v. Sanders, 2015 U.S. App. LEXIS 13867 (10th Cir. Colo. Aug. 7, 2015)

Police officers in Aurora, Colorado arrested Sanders on an outstanding warrant after she and her friend, Hussey, exited a store and walked toward her car in the parking lot. Sanders gave permission for a third party to pick up her car and Hussey offered to contact someone to pick up Sanders' car. However, the officers decided to impound Sanders' car and conducted an inventory search before having it removed from the lot. The officers found methamphetamine,

¹ Although the evidence Cook sought to suppress was found during the second search of his backpack, he only challenged the first search that occurred at the scene of his arrest. Cook recognized that if the first search was valid, then the second search was allowed as long as the backpack remained in the "legitimate uninterrupted possession of the police." *United States v. Burnette*, 698 F.2d 1038, 1049 (9th Cir. 1983)

Ecstasy and drug paraphernalia in Sanders' car. The government indicted Sanders for possession with intent to distribute controlled substances.

Sanders moved to suppress the drugs found in her car, arguing the officers violated the *Fourth Amendment* by unlawfully impounding her car from private property.

The court agreed. The court held that impoundment of a vehicle located on private property that is neither obstructing traffic nor creating an imminent threat to public safety is constitutional only if justified by both a standardized policy and a reasonable, non-pretextual community caretaking rationale.

First, the court found that Sanders' car was legally parked in a private lot and there was no evidence that it was either impeding traffic or posing a risk to public safety.

Second, while Aurora's municipal code explicitly authorizes the impoundment of vehicles from public property under certain circumstances, it does not mention the impoundment of vehicles from private lots. As a result, the court concluded that Aurora Municipal Code does not authorize the impoundment of vehicles from private lots. The court noted that while Aurora policy allowed the officers to offer Sanders the options of releasing them from potential liability if her car was left in the lot or having the car towed by a private company, there was no evidence the officers offered Sanders either of these options, or why they failed to do so.

Third, the court held the impoundment was not justified by a reasonable, non-pretextual community caretaking rationale. Sanders' car was legally parked on private property, and there was no evidence that the officers contacted the owners of the parking lot about leaving her car parked there. In addition, the officers impounded Sanders' car without offering her the opportunity to make alternative arrangements, even though she said she was willing to have someone pick up the vehicle on her behalf and Hussey offered to find someone to pick up the car for her.

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

United States v. Padilla-Esparza, 2015 U.S. App. LEXIS 14340 (10th Cir. N.M. Aug. 14, 2015)

On September 10, 2013, United States Customs and Border Protection Officer Aguilera issued a "Be on the Lookout" (BOLO) for Padilla and his truck for suspected bulk cash or drug smuggling. Officer Padilla based the BOLO on information he obtained regarding Padilla and his truck from the Treasury Enforcement Communications System (TECS) concerning an encounter on February 25, 2013 as well as information he obtained from Padilla during an interview on September 7, 2013.

On September 13, 2013, Border Patrol Agents stopped Padilla based on the BOLO issued by Officer Aguilera. However, almost immediately after the stop, the agents allowed Padilla to leave after they mistakenly received information that they had stopped the wrong vehicle. As Padilla was driving away, the agents discovered they had pulled over the correct vehicle and began to pursue Padilla again. A few minutes later, the agents stopped Padilla for a second time. During the stop, Padilla consented to a search of his truck after a drug-detection dog alerted to the presence of narcotics. The agents later found sixteen kilograms of cocaine in a non-factory compartment in Padilla's truck.

The government indicted Padilla for possession with intent to distribute cocaine.

Padilla filed a motion to suppress the evidence discovered in his truck. Padilla argued the first stop violated the *Fourth Amendment* because Officer Aguilera did not have reasonable suspicion to issue the BOLO.

The court disagreed. First, based on information obtained from the TECS, Officer Aguilera knew a drug-detection dog had alerted to a hidden, non-factory compartment in Padilla's truck on February 25, 2013. Based on his experience as a 16-year veteran of the CBP, Officer Aguilera knew such compartments often are used to hide contraband, and that the dog alert suggested the compartment may have been used to store currency or narcotics.

Second, Officer Aguilera knew that on September 7, 2013, Padilla initially failed to declare \$2,000 dollars he had hidden in his camera case and that currency or drug smugglers often do not declare the full amount of cash they carry across the border.

Third, Officer Aguilera knew that on September 7, 2013, Padilla had receipts for \$1,300 in clothing purchases from outlet malls. He detected inconsistencies between these purchases and Padilla's inability to offer any details about how he made money, including the identity of his most recent landscaping clients or how much he was paid for each job.

Finally, Officer Aguilera knew Padilla had frequently traveled through the Las Cruces and Alamogordo checkpoints in the past six months, which was consistent with bulk cash or drug smuggling. As a result, the court held Officer Aguilera had reasonable suspicion Padilla was involved in criminal activity when he issued the BOLO on September 10, 2013.

Padilla also argued the second stop violated the *Fourth Amendment* because any reasonable suspicion dissipated after the first stop, and the agents did not acquire any new information before the second stop to re-establish reasonable suspicion.

The court disagreed, holding the agents' reasonable suspicion was not dissipated after the first stop; therefore, the second stop was reasonable. Successive *Terry* stops are not prohibited; however, a second stop violates the *Fourth Amendment* when an officer's suspicions are dispelled during the first stop, and then offered again to justify the second stop. In this case, the court held the agents' initial stop of Padilla did not dispel reasonable suspicion. After obtaining Mr. Padilla's identification, the agents quickly aborted the stop based upon the erroneous belief they had pulled over the wrong vehicle. The agents did not question Padilla or search his truck. When dispatch confirmed the agents had released the correct suspect, reasonable suspicion based on the BOLO remained, and the agents were justified in stopping Padilla a second time.

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