**Department of Homeland Security**
**Federal Law Enforcement Training Centers**
**Office of Chief Counsel**
**Legal Training Division**

**September 2017**

# The Federal Law Enforcement -Informer-

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

Welcome to this installment of *The Federal Law Enforcement Informer (The Informer).* The Legal Training Division of the Federal Law Enforcement Training Centers' Office of Chief Counsel is dedicated to providing law enforcement officers with quality, useful and timely United States Supreme Court and federal Circuit Courts of Appeals reviews, interesting developments in the law, and legal articles written to clarify or highlight various issues. The views expressed in these articles are the opinions of the author and do not necessarily reflect the views of the Federal Law Enforcement Training Centers. *The Informer* is researched and written by members of the Legal Division. All comments, suggestions, or questions regarding *The Informer* can be directed to the Editor at (912) 267-3429 or FLETC-LegalTrainingDivision@dhs.gov. You can join *The Informer* Mailing List, have *The Informer* delivered directly to you via e-mail, and view copies of the current and past editions and articles in *The Quarterly Review* and *The Informer* by visiting https://www.fletc.gov/legal-resources.

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# The Informer – September 2017

## Case Summaries

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# FLETC Informer Webinar Series

## 1. Thursday October 5, 2017 (2:30 p.m. Eastern Daylight Time)

**Live Webinar:** Legal Issues on the Use of Force against Small Unmanned Aircraft Systems (sUAS)

Presented by Robert H. Cauthen, Attorney-Advisor / Assistant Division Chief, Federal Law Enforcement Training Centers, Glynco, Georgia.

To participate in this webinar: **https://share.dhs.gov/informer**

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# CASE SUMMARIES

# Circuit Courts of Appeal

## First Circuit

**United States v. Dent, 2017 U.S. App. LEXIS 14583 (1st Cir. Me. Aug. 8, 2017)**

Federal agents engaged in a drug trafficking investigation suspected that crack cocaine was located in Dent's apartment. While agents applied for a warrant to search the apartment, three police officers went to Dent's apartment to secure the location and preserve evidence in anticipation of the search warrant. When the officers knocked on the door, Dent's girlfriend, Jackson, opened it. Jackson immediately tried to slam the door shut but the officers pushed their way into the apartment and handcuffed her. During this time, the officers heard music that had been playing elsewhere in the apartment decrease in volume, which led them to believe that another individual was present. The officers began to "clear" every room in the apartment and when they reached the final room to be cleared, they saw a man, later identified as Banyan, attempting to stuff something under an air mattress. The officers placed Banyan in handcuffs, looked underneath the air mattress, and saw a baggie of what they believed to be drugs. The officers left the baggie in place, finished their sweep of the apartment, and waited for the arrival of the agents with the search warrant. After agents arrived with the warrant, they searched Dent's apartment and seized cocaine, heroin, a firearm, and drug paraphernalia.

The government charged Dent with several drug offenses. Dent filed a motion to suppress the evidence seized from his apartment pursuant to the warrant.

The court denied Dent's motion. The court held that there was no evidence that either the warrant or the decision to seek the warrant was based on anything the officers discovered during their warrantless entry and protective sweep of the apartment. The court found that the process of applying for the search warrant had already been initiated based on other independent sources of information and that the drugs observed under the air mattress were not included in the search warrant affidavit.

For the court's opinion: http://cases.justia.com/federal/appellate-courts/ca1/16-2005/16-2005-2017-08-08.pdf?ts=1502218808

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**United States v. Delgado-Pérez, 2017 U.S. App. LEXIS 15402 (1st Cir. P.R. Aug. 16, 2017)**

Police officers went to Delgado's house to arrest him on an outstanding New York state warrant for trafficking cocaine through the United States mail. When the officers arrived outside Delgado's house and announced their presence, there was initially no answer. When the officers began to open a rebar gate outside, Delgado opened a window and told the officers that he would come outside. Once Delgado was outside on the front porch, the officers conducted a protective sweep of Delgado's house and saw a firearm magazine on top of a dresser in a room off an interior hallway. The officers then asked Delgado if there were any firearms in the house. After Delgado

told the officers that he kept a firearm in a dresser drawer, the officers went back into Delgado's house and seized it.

The government charged Delgado with being a felon in possession of a firearm.

Delgado claimed that the firearm seized from his house should have been suppressed because the officers discovered it after conducting an unlawful protective sweep of his house.

The court recognized that when officers arrest a suspect outside his home, they may perform a protective sweep of the home if they have a reasonable belief that "the area to be swept harbors an individual posing a danger to those on the arrest scene."

However, in this case, the court held that when the officers arrested Delgado, there was no evidence to support a belief that another person might be inside the home. First, the pre-arrest intelligence gathered by the officers did not provide any reason to believe multiple persons were present in Delgado's home. Second, the officers had no specific reason to believe that Delgado was armed and dangerous, beside the general fact that his alleged offense involved drug trafficking. The court added that when a person is arrested for drug trafficking, that fact alone does not automatically provide a reason to believe that there might be another person in the home who poses a danger to officer safety. Finally, Delgado's immediate, voluntary surrender on the porch could not provide a basis to believe there were other individuals inside Delgado's house. As a result, the court concluded that the officers conducted an unlawful protective sweep and the evidence seized from Delgado's home should have been suppressed.

For the court's opinion: http://cases.justia.com/federal/appellate-courts/ca1/15-2247/15-2247-2017-08-16.pdf?ts=1502917204

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**United States v. Belin, 2017 U.S. App. LEXIS 15992 (1st Cir. Mass. Aug. 22, 2017)**

Police officers responded to a call that individuals were involved in a fight near a public park, which had been the site of multiple recent firearms incidents and arrests. When officers arrived, they saw a group of five men walking on a sidewalk near the park. As the officers exited their patrol car, one of the men, later identified as Belin, peeled away from the others and hurried away from the officers. One of the officers recognized Belin, as he had previously arrested Belin for a firearm offense and knew that Belin was listed as a gang member in a police database. The officer caught up to Belin and called his name. Belin stopped walking and turned to face the officer. The officer asked Belin if he "had anything on him." Belin became nervous and according to the officer, "he looked around as if searching for a means of escape." At this point, the officer grabbed one of Belin's arms with one hand and reached toward Belin's waist with the other to frisk his waistband. Belin moved both of his hands toward his waistband and a struggle ensued. Other officers quickly arrived, took Belin to the ground, and handcuffed him. An officer searched Belin and discovered a handgun, marijuana, and ammunition on his person.

The government charged Belin with being a felon in possession of a firearm.

Belin filed a motion to suppress the evidence seized during the search. Belin argued that he was unlawfully seized under the Fourth Amendment by the officer's show of authority when the officer approached him. Specifically, Belin claimed that the officer's actions caused him to stop and answer the officer's questions.

The court disagreed. In addition to being formally arrested, a person can be seized by a police officer if he submits to the officer's show of authority. Even though Belin stopped when the officer called his name, the court determined that approaching Belin, calling his name, and asking him a question did not amount to a Fourth Amendment seizure. The court concluded that the officer did not seize Belin until he grabbed Belin's arm.

The court further held that when the officer grabbed Belin's arm, he had reasonable suspicion to believe that Belin was involved in criminal activity, specifically, unlawful possession of a firearm. First, the officer knew Belin had previously possessed an unlawful firearm, and that Belin was listed as a gang member in a police database. Second, the location in which the officer encountered Belin was known for firearm-related offenses. Third, when the officers approached the men walking on the sidewalk, Belin separated himself from them and quickly walked away from the officers. Fourth, during the encounter, but before the stop and frisk, Belin became extremely nervous.

Finally, the court held that the officer's reasonable suspicion that Belin unlawfully possessed a firearm provided reasonable suspicion to believe that Belin was presently armed and dangerous, which justified frisking him for weapons.

For the court's opinion: http://cases.justia.com/federal/appellate-courts/ca1/15-2192/15-2192-2017-08-22.pdf?ts=1503432005

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**Morse v. Cloutier, 2017 U.S. App. LEXIS 16287 (1st Cir. Mass. Aug. 25, 2017)**

Police officers responded to a residence after receiving a call that a man was hiding in the woods throwing rocks and bottles at individuals in their back yard. When officers arrived, the victims told the officers that their neighbor, Charles Morse, was the perpetrator and that he might be armed. The officers knew Morse from a previous encounter where he threatened a man with a firearm.

Officers went to Morse's house and knocked on the door. Morse opened the interior door; however, he locked the screen door that separated him from the officers. When the officers asked Morse to step outside to answer some questions, he refused. The officers then told Morse that he was under arrest. Morse told the officers to return with a warrant and shut the interior door. The officers ordered Morse to open the door and when he refused, the officers kicked through the screen door and the wooden interior door. The officers entered Morse's house and arrested him. The officers charged Morse with a variety of offenses, which were later dismissed.

Morse sued the officers under *42 U.S.C. § 1983* claiming that the officers' warrantless entry and subsequent arrest violated the Fourth Amendment.

The officers filed a motion for summary judgment based on qualified immunity arguing that the warrantless entry into Morse's house was justified by exigent circumstances.

The court agreed with the district court, which held that while the officers had probable cause to arrest Morse, there was a factual dispute between Morse's version and the officers' version of the encounter. As the district court was bound to accept Morse's version of the encounter as true, it concluded that a reasonable juror could find that the circumstances were not sufficiently exigent to allow the warrantless entry in Morse's house and his warrantless arrest.

Alternatively, the officers argued that they were entitled to qualified immunity because they arrested Morse in his doorway; therefore, they did not need a warrant. In United States v. Santana, the Supreme Court held that officers could arrest a suspect insider her home without a warrant when the defendant voluntarily stood in her doorway. The court reasoned that by standing in her doorway, the defendant had voluntarily placed herself in public view, and was, for all intents and purposes, in a public space. The officers argued that when Morse opened his door, he exposed himself to public view and was therefore in a public space where he could be arrested without a warrant.

The court disagreed. First, the court noted that Morse came to his doorway only after the officers knocked; therefore, he was in public view only because the officers summoned him to his door. Second, unlike the suspect in Santana, Morse was not standing directly in his doorway. Instead, even after Morse opened the interior door, he stood behind the locked screen door. Because of these significant distinctions, the court held that Morse's arrest was not a valid "doorway" arrest under Santana.

The court further held that when Morse closed the interior door to his home the law was clearly established such that a reasonable police officer should have realized that forcibly breaking into the house without a warrant or an exigency would violate the Fourth Amendment.

For the court's opinion: http://cases.justia.com/federal/appellate-courts/ca1/15-2043/15-2043-2017-08-25.pdf?ts=1503689404

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# Sixth Circuit

**United States v. Lewis, 2017 U.S. App. LEXIS 16289 (6th Cir. Ky. Aug. 25, 2017)**

Police officers responded to reports that a woman was intoxicated in a Wal-Mart store. Officers found the woman, Carol Lakes, who told the officers she had been taking pain pills due to back trouble. Lakes told the officers that her boyfriend, Lewis, was outside in his truck and that he would drive her home.

The officers accompanied Lakes to the parking lot and located Lewis' truck. An officer looked through the window and saw Lewis asleep inside the truck. The officers decided to open the truck door to see if Lewis would be able to drive Lakes home. When one of the officers opened the door, the interior dome light went on, allowing the officers to see a clear plastic baggie on Lewis' lap that appeared to contain pills. Lewis woke up and tossed the baggie over the console onto the back floorboard. The officers opened the back door, inspected the baggie more closely, and determined that it contained pills. The officers seized the bag of pills, which was later tested and found to contain oxycodone and alprazolam tablets.

The government charged Lewis with various drug-related charges.

Lewis argued that the officers violated the Fourth Amendment by opening the door to his truck.

The court disagreed, holding that opening the door to Lewis' truck fell under the community-caretaker exception. The community-caretaker exception applies when the actions of the police are unrelated to the detection, investigation, or collection of evidence relating to a criminal offense. Here it was undisputed that the officers' sole purpose in opening the truck door was to

determine if Lewis could provide Lakes a safe ride home. The court further held that any limited intrusion on Lewis' privacy from opening the truck door was minimal and that the officers were not required to knock on the window or attempt to speak with Lewis before opening the door.

For the court's opinion: http://cases.justia.com/federal/appellate-courts/ca6/16-5181/16-5181-2017-08-25.pdf?ts=1503691261

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## Seventh Circuit

**United States v. Castetter, 865 F.3d 977 (7th Cir. Ill. Aug. 4, 2017)**

Police officers in Michigan were investigating Mark Holst for his participation in a methamphetamine distribution ring. Officers in Michigan obtained a warrant and installed a GPS tracking device on a car owned by Holst. The officers tracked Holst's car to Cory Castetter's home, which was located across the Michigan state border in Indiana. A confidential informant told the officers that Holst had traveled to Indiana to purchase methamphetamine. Officers stopped Holst's car as he was driving home and seized methamphetamine from him. The Michigan officers relayed this information to officers in Indiana who obtained a warrant to search Castetter's house. When officers executed the search warrant, they discovered methamphetamine, other drugs, and a large amount of cash.

The government charged Castetter with several drug offenses.

Castetter filed a motion to suppress the evidence seized from his house. Castetter argued that the Michigan officers lacked the authority to monitor the location of Holst's car while it traveled outside the state of Michigan. As a result, Castetter claimed that the Michigan officers were prohibited from giving the Indiana officers information concerning Holst's travels in Indiana, which established probable cause to obtain the warrant to search his house.

The court disagreed. The Fourth Amendment requires that a search warrant be supported by probable cause, an oath, and particularity. While states may decide as a matter of state law not to authorize their police departments to acquire information from out-of-state sources, federal courts do not use the exclusionary rule to enforce state-law doctrine. In this case, the Indiana judge determined that there was no problem, as a matter of Indiana law, in using information provided by the Michigan officers.

In addition, the court found that all the officers learned by monitoring the GPS device was the location of Holst's car, and that Castetter had no reasonable expectation of privacy in that location. The court added that no constitutional violation occurs if, by executing a warrant to search one person, such as Holst, officers learn incriminating information about another person, such as Castetter.

For the court's opinion: http://cases.justia.com/federal/appellate-courts/ca7/17-1327/17-1327-2017-08-04.pdf?ts=1501866276

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**United States v. Schreiber, 866 F.3d 776 (7th Cir. Ill. Aug. 7, 2017)**

Police officers arrested Schreiber for armed robbery and a state grand jury indicted him one month later. While Schreiber was awaiting trial for armed robbery, state officials collected a sample of Schreiber's DNA, which was entered into the Illinois DNA indexing system. The DNA sample ultimately connected Schreiber to a 2010 bank robbery and a federal grand jury indicted Schreiber for that crime. Several months later, the armed robbery charge against Schreiber was dismissed after a judge ruled that the officers had not established probable cause to arrest Schreiber.

Schreiber filed a motion to suppress the DNA evidence recovered by the state officials. Schreiber argued that the DNA evidence was obtained as the result of his unlawful arrest for armed robbery; therefore, the federal government should have been precluded from admitting it against him in his prosecution for bank robbery.

The court disagreed. In Kaley v. United States, the United States Supreme Court held that "an indictment returned by a properly constituted grand jury . . . conclusively determines the existence of probable cause to believe the defendant perpetrated the offense alleged." In this case, the court held that the state grand jury indictment, which occurred before the state officials collected Schreiber's DNA sample, conclusively established that there was probable cause to believe Schreiber robbed the liquor store. As a result, the state official who obtained Schreiber's DNA sample was entitled to rely upon this finding of probable cause and the federal government was entitled to rely on the fact of the state grand jury indictment in choosing to use the DNA evidence in prosecuting Schreiber. While not relevant to the court's holding, the court commented that it was uncertain as to how the state court reached its conclusion that the officers did not establish probable cause to arrest Schreiber for armed robbery.

For the court's opinion: http://cases.justia.com/federal/appellate-courts/ca7/16-3847/16-3847-2017-08-07.pdf?ts=1502137895

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**Green v. Newport, 2017 U.S. App. LEXIS 16011 (7th Cir. Wis. Aug. 22, 2017)**

Officer Newport responded to a suspicious person complaint made by an employee of an auto parts store. The employee reported that a person in a Mercury Marquis drove around the store's parking lot approximately five times before parking in front of the store. Officer Newport believed that this behavior was consistent with casing a business in preparation for a robbery. In addition, Officer Newport knew that the auto part store had been robbed at gunpoint within the last two months and that the store closed in thirty minutes and would soon be empty.

When Officer Newport arrived, he saw a Mercury Marquis parked next to a Chevrolet Malibu in front of the store. The Malibu was driven by Davin Green. Officer Newport saw Joe Lindsey, the driver of the Marquis, standing next to the Malibu. The officer observed Lindsey lean into the front passenger window of the Malibu and then stand back up. Suspecting that Lindsey had concealed a weapon inside the Malibu, Officer Newport stopped behind the parked vehicles and ordered the two men to raise their hands. Officer Newport then ordered Green to exit the Malibu, frisked him, and seized a handgun from his waistband.

Green sued Officer Newport under *42 U.S.C. § 1983*, claiming that Officer Newport violated the Fourth Amendment by stopping and frisking him without reasonable suspicion. The district court agreed and denied Officer Newport qualified immunity. Officer Newport appealed.

The court of appeals held that the facts known to Officer Newport when he stopped Green established reasonable suspicion to believe that Green was involved in criminal activity. Specifically, when Officer Newport confronted Green he knew that the store had recently been robbed as well as the "casing" behavior reportedly carried out by Lindsey, which occurred near the time the store was closing. As a result, the court reversed the district court, holding that Officer Newport was entitled to qualified immunity.

The court further held that Officer Newport was entitled to qualified immunity for frisking Green. The court concluded that once Officer Newport established reasonable suspicion to stop Green for armed robbery, the nature of that crime established reasonable suspicion to believe that Green was armed and dangerous.

For the court's opinion: http://cases.justia.com/federal/appellate-courts/ca7/16-1536/16-1536-2017-08-22.pdf?ts=1503433847

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# Eighth Circuit

**United States v. Jackson, 866 F.3d 982 (8th Cir. Iowa Aug. 10, 2017)**

Jackson was convicted of failure to register as a sex offender and sentenced to 21 months' imprisonment followed by five years of supervised release. When Jackson began his term of supervised release at the Fort Des Moines Community Correctional Facility, a residential reentry program, Jackson was told several times that possession of cell phones in the Facility was prohibited. In addition, Jackson was notified that all property brought into the Facility was subject to search.

A few weeks later, a Facility staff member confiscated a cell phone that belonged to Jackson. Officials searched the phone and found pornographic images on it and "inappropriate sites" on Jackson's Internet history. In an interview, Jackson admitted that another person had sent him images of child pornography, which he claimed to have deleted. The government obtained a warrant to search Jackson's cell phone and a forensic examination discovered thirty-seven images of child pornography.

The government charged Jackson with possession of child pornography.

Jackson filed a motion to suppress the images discovered on his cell phone, arguing that the warrantless search of his phone violated the Fourth Amendment.

The court disagreed. First, the court found that Jackson had a reduced expectation of privacy while he served his term of supervised release. Second, the court held that Jackson was on notice that his cell phone was subject to search. Two unambiguous rules of the Facility, expressed to Jackson on multiple occasions were that residents could not possess cell phones inside the facility and that any property possessed inside the facility was subject to search. Consequently, the court concluded that Jackson did not have a reasonable expectation of privacy in his cell phone.

For the court's opinion: http://cases.justia.com/federal/appellate-courts/ca8/16-3807/16-3807-2017-08-10.pdf?ts=1502379048

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**United States v. LeBeau, 867 F.3d 960 (8th Cir. S.D. Aug. 14, 2017)**

While executing a search warrant at a hotel room, federal agents learned that a woman connected to the occupant of that room had been seen entering a different room occupied by LeBeau. The agents went to LeBeau's room in an attempt to locate the woman. The agents asked hotel staff to telephone LeBeau and ask him to step outside to speak to the manager. When LeBeau opened the door, agents asked him to step outside, handcuffed him, and frisked him. The agents told LeBeau they needed to speak to the woman in his room and LeBeau indicated that the agents could enter the room. The agents pushed the door open, which was slightly ajar, and went inside. One of the agents encountered the woman and requested her identification. In the meantime, the other agents conducted a brief sweep to see if anyone else was present. While conducting the sweep, agents saw a baggie of white powder in plain view on a counter by the sink.

After completing the sweep, the agents brought LeBeau into the room and moved the handcuffs to the front of his body. The agents also told LeBeau that he was not under arrest, that he did not have to speak to them, and that they were there to identify the woman in the room. During their conversation, LeBeau gave the agents consent to search the hotel room and his car. The agents discovered syringes and a small amount of cocaine in LeBeau's hotel room and four ounces of cocaine in his car. The agents arrested LeBeau and the government charged him with several drug-related offenses.

LeBeau filed a motion to suppress the evidence discovered in his hotel room and car. LeBeau argued that his consent to search was not voluntary because he was handcuffed and in custody when he consented and he had not been given Miranda warnings.

A court determines if a person has voluntarily consented to a search based on the totality of the circumstances. Even though the fact that LeBeau was handcuffed and was not given Miranda warnings weighted in his favor, the court concluded that other factors supported a finding of voluntariness. First, the agents did not threaten or intimidate LeBeau. Second, the agents told LeBeau that he was not under arrest and that they wanted to ask him questions about the woman in his room. Third, the agents told LeBeau that he did not have to speak with them. Fourth, LeBeau was cooperative with the agents and engaged them in conversation. Finally, LeBeau had prior experience with the legal system.

LeBeau further argued that the evidence discovered in his hotel room and car should have been suppressed because he did not voluntarily consent to the agents' initial entry into his hotel room.

First, the court noted that at trial, the government only introduced evidence discovered in LeBeau's car and did not introduce evidence obtained from the hotel room. As a result, the court concluded that even if the agents' initial entry was unlawful, the evidence discovered in the hotel room did not adversely affect LeBeau.

Next, without deciding the issue, the court assumed that LeBeau did not voluntarily consent to the agents' initial entry into his hotel room. However, the court determined that LeBeau's subsequent voluntary consent to search his car purged the taint of the agents' unlawful entry into his hotel room. First, forty minutes elapsed between the agents' entry and LeBeau's consent to search. Second, several events occurred between the agents' initial entry and LeBeau's consent to search the car which gave LeBeau time to reflect on his options. Specifically, the agents moved LeBeau's handcuffs from the back to the front, told him that he was not under arrest and did not have to talk to them, told him that they wanted to ask him questions about the woman in his hotel room, asked

him for consent to search his hotel room, and finally searched the hotel room after he gave written consent. Finally, the agents did not use force, threats, or intimidation to enter LeBeau's room.

For the court's opinion: http://cases.justia.com/federal/appellate-courts/ca8/15-3653/15-3653-2017-08-14.pdf?ts=1502724676

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**Hosea v. City of St. Paul, 867 F.3d 949 (8th Cir. Minn. Aug. 14, 2017)**

David Hosea was arguing with his girlfriend Jennifer Steines in their home. The argument escalated and Hosea dialed 911 but hung up before speaking to an operator. Police dispatch sent two uniformed officers to investigate and as they exited their vehicle, they heard yelling from inside the residence. When the officers entered, they saw Hosea standing over Steines from approximately three feet away as Steines sat on the couch crying. The officers noticed that Hosea seem agitated, addressed the officers in a loud voice, appeared to be ready to fight, and displayed indicators of aggression , including a "bladed" stance, clenched fists, and flared nostrils. According to Hosea, he saw the officers but claimed that he did not initially recognize them as police officers, so he did not comply with their two requests to get down on the ground. At this point, Hosea's son entered the room and told Hosea that the men were police officers. Hosea claimed that as he began to lower himself to the ground, one of the officers jumped on his back and forced him to the ground. The officers handcuffed Hosea and brought him outside to their patrol car.

Afterward, the officers discovered that the argument between Hosea and Steines had gone from verbal to physical when Steines hit Hosea in the face with a slipper. The officers also learned that Steines had actually never been afraid of Hosea. The officers arrested Hosea, who had suffered a fractured hand during the encounter. The charges against Hosea were eventually dismissed.

Hosea sued the City of St. Paul and the officers claiming that the officers violated the Fourth Amendment by arresting him without probable cause and by using excessive force against him.

The court held that the officers were entitled to qualified immunity on Hosea's unlawful arrest claim because the officers had arguable probable cause to arrest Hosea for, among other things, domestic assault. Even without knowing why Steines was crying, the court held that a reasonable officer could have concluded that she placed the 911 call and was crying because Hosea made her fearful of imminent physical harm. In addition, the court explained that arguable probable cause is determined at the time of arrest, and any after acquired facts, such as that Steines was not in fear of immediate harm, are not relevant.

The court further held that the officers were entitled to qualified immunity on Hosea's excessive force claim because their use of force against Hosea was objectively reasonable. The court held that a reasonable officer on the scene could have concluded that Hosea had committed or was committing domestic assault, a crime that threatens the safety of another individual. In addition, the court found that even if the officers mistakenly believed that Hosea was resisting arrest after he began to lower himself to the ground, their use of force was objectively reasonable because a reasonable officer on the scene could have concluded that Hosea still posed a threat to Steines safety.

For the court's opinion: http://cases.justia.com/federal/appellate-courts/ca8/16-3613/16-3613-2017-08-14.pdf?ts=1502724679

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**United States v. Dortch, 868 F.3d 674 (8th Cir. Neb. Aug. 18, 2017)**

In June 2015, police officers were on patrol near an apartment building where there had been recent reports of gun-related gang activity. The officers were aware that within the previous three weeks there had been reports of shots fired in the area and that three people had been arrested for illegally possessing firearms.

When officers turned a street to drive past the apartment building, they saw a car and a minivan stopped side by side in the street facing them. The car was on the officers' left, in its proper lane, while the minivan was illegally parked on their right. As the officers approached, the car pulled in front of the minivan and stopped. At this point, the car and the minivan were illegally parked in the street. The officers saw Dortch, who was wearing a bulky coat, standing in the middle of the street, leaning into the minivan's passenger-side window. The officers stopped and got out of their cars. One officer walked toward Dortch while the other offers went to talk to the occupants of the car. As the officer approached, Dortch looked at him over his shoulder, made eye contact, looked back into the minivan, and put a cell phone on the passenger seat while keeping his body pressed against the minivan. When the officer asked Dortch why he was standing in the road, Dortch turned his head toward the officer, told the officer that he was talking to his girlfriend, and then turned back and continued his conversation. The officer asked Dortch if he had a gun, and Dortch told him no. The officer told Dortch that was going to frisk him anyway, and felt a heavy object in Dortch's coat pocket. Dortch told the officer, "it's in my pocket." The officer handcuffed Dortch, looked in his coat, and found a pistol.

The government charged Dortch with being a felon in possession of a firearm.

Dortch filed a motion to suppress the pistol. First, Dortch claimed that the officer seized him without reasonable suspicion when the officer walked up to him and asked him what he was doing.

The court recognized that not all encounters between police officers and citizens constitute Fourth Amendment seizures. A person is seized under the Fourth Amendment when an officer, by means of physical force or show of authority has in some way has restrained a person's liberty. In this case, Dortch did not claim that prior to the frisk the officer used or threatened to use physical force when he approached. In addition, Dortch did not identify any show of authority made by the officer. The court concluded that the officer did not seize Dortch by simply walking up to him and asking him questions while Dortch stood in the street.

Second, Dortch claimed that the officer lacked reasonable suspicion to detain him.

The court disagreed. Although the scene the officers came upon in front of the apartment building gave them no reason to suspect Dortch of committing a traffic violation himself, the circumstances indicated that Dortch might be involved with the ongoing illegal parking they observed. Specifically, when the officers noticed Dortch, he was leaning into the minivan talking to the driver and he continued to do so during his initial interaction with the officer. Based on these facts, the court concluded that the officer was justified in briefly stopping Dortch to investigate what was happening with the vehicles and his involvement with them.

Finally, Dortch claimed that the officer lacked reasonable suspicion that he was armed and dangerous; therefore, the frisk was unlawful.

Again, the court disagreed. First, the location where the officer encountered Dortch was a specific area where gun-related gang activity had recently occurred. Second, Dortch was wearing a bulky coat, which was not appropriate for that time of year. The court found that this fact supported the officer's belief that Dortch might be wearing the coat to conceal a weapon. Third, as the officer approached, Dortch put down his phone, thereby freeing his hands to reach for any weapon he might be carrying. Finally, as the officer approached, Dortch pressed the front of his body against the minivan, which supported a reasonable belief that Dortch might be attempting to conceal an object in his coat from the officer's view.

For the court's opinion: http://cases.justia.com/federal/appellate-courts/ca8/16-3178/16-3178-2017-08-18.pdf?ts=1503070243

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**United States v. Long, 2017 U.S. App. LEXIS 16740 (8th Cir. Mo. Aug. 31, 2017)**

Officers were called to remove a car that had been parked in a woman's yard without her permission. The officers discovered the car was a rental and after they were unable to contact the rental company, they called a tow truck to remove it. While waiting for the tow truck, Long approached the officers and told them that he had parked the car in the yard. Long told the officers that Latasha Philips had rented the car and that he had parked the car in the yard.

During the encounter, officers discovered that Long had outstanding warrants for his arrest and detained him in handcuffs. In the meantime, the tow truck driver arrived and opened the car door so that officers could conduct an inventory search. During the inventory search, officers discovered a bag containing a white powdery substance. The officers stopped the inventory search, arrested Long, and applied for a warrant to search the car.

After the obtaining the warrant, officers searched the car and discovered unlawful drugs as well as evidence that Long, a convicted felon, had been in possession of a firearm.

Long filed a motion to suppress the evidence discovered in the rental car, arguing that the inventory search conducted prior to towing the vehicle violated the Fourth Amendment. The government argued that Long did not have standing to object to the search of the rental car.

At the suppression hearing, Philips claimed that she rented the car for her friend Roger, but that she had failed to put Roger's name on the rental contract as an authorized driver. However, Philips testified she did not restrict what Roger could do with the car or to whom Roger could lend the car. Long claimed that Philips' testimony established that he had consensual possession of the car from Roger; therefore, he had standing to object to the inventory search.

The court disagreed. The court found the relationship between Philips, the authorized driver, and Long, an unauthorized driver was too attenuated to provide Long with a reasonable expectation of privacy in car. As a result, the court held that Long, an unauthorized-driver-once-removed with only indirect permission to drive the car from Philips, the authorized driver, did not have standing to object to the search.

For the court's opinion: http://cases.justia.com/federal/appellate-courts/ca8/16-1419/16-1419-2017-08-31.pdf?ts=1504191698

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# Tenth Circuit

**United States v. Thompson, 866 F.3d 1149 (10th Cir. Kan. Aug. 8, 2017)**

Thompson and several co-defendants were convicted of a variety of federal drug offenses. Before trial, the district court admitted cell-service location information (CSLI) the government obtained with a court order pursuant to *§ 2703(d)* of the *Stored Communications Act* (*SCA*).

Thompson filed a motion to suppress the CSLI, arguing that a cell phone user's location is protected by the Fourth Amendment; therefore, to obtain his CSLI, the government was required to obtain a warrant supported by probable cause.

The court disagreed. The court held that cell-phone users lack a reasonable expectation of privacy in their historical CSLI because they voluntarily convey CSLI to third parties who create records of that information for their own business purposes. In so ruling, the court followed the Fourth, Fifth, Sixth and Eleventh Circuits, which have already held that CSLI is a business record created by a third party, the cell phone service providers, from information that cell-phone users turn over voluntarily. The court noted that until the Supreme Court instructs the lower courts otherwise, it was bound to follow the Fourth Amendment's "third-party" doctrine. The court added that the Supreme Court recently granted certiorari in United States v. Carpenter, a Sixth Circuit case, to address whether the Fourth Amendment permits the warrantless seizure and search of CSLI.

For the court's opinion: http://cases.justia.com/federal/appellate-courts/ca10/15-3313/15-3313-2017-08-08.pdf?ts=1502208063

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**United States v. Cone, 2017 U.S. App. LEXIS 16170 (10th Cir. Okla. Aug. 24, 2017)**

A police officer stopped Cone for driving a vehicle without a functioning license plate light, a violation of Oklahoma law. The stop occurred in the parking lot of a hotel where the officer had made numerous arrests for drug trafficking and firearms offenses. The officer asked Cone for his driver's license and told him that his car's tag light was not working. The officer also asked Cone, if he had "ever been in trouble before." When Cone replied, "yes," the officer asked him if he had ever "been to prison before." Again, Cone replied, "yes." Cone then falsely told the officer that he had been to prison for money laundering. The officer stated that the vast majority of time he would question those he pulled over to determine if they had any violent history in their past that might pose a safety risk to him. The officer also asked Cone what he was doing at the hotel, about which the officer and Cone spoke very briefly.

The officer directed Cone to exit his vehicle while he ran a warrant check and status check of Cone's license. As Cone got out of his vehicle, the officer saw the butt of a pistol protruding from under the vehicle's center console. When the officer told Cone to get on the ground, Cone tried to flee, but was quickly apprehended by the officer. A back up officer arrived and seized the pistol from Cone's vehicle. While she was securing the pistol, the officer smelled the odor of marijuana emanating from the passenger side of Cone's vehicle. The officer found a backpack in the vehicle that contained marijuana, methamphetamine, and drug paraphernalia.

The government charged Cone with drug and firearm offenses.

Cone filed a motion to suppress the evidence seized from his vehicle. Cone argued that the officer's questions about his criminal history and travel plans violated the Fourth Amendment

because they were unrelated to the reason for the stop and they unreasonably prolonged the duration of the stop.

The court disagreed. The court recognized that an officer's mission during a stop in not limited to determining whether to issue a ticket. Because traffic stops are potentially dangerous, the Supreme Court has held that officers may run computer checks for warrants and a motorist's criminal history. The court reasoned that if running a computer check of a driver's criminal history is justified, then simply asking the driver about that history is not unreasonable under the Fourth Amendment. Here, the court concluded that the information requested by the officer did not exceed the scope of what a computer check would have revealed. The court added that a drivers' answer may not be as reliable as a computer check but the time involved is much shorter.

The court further held that the officer's questions concerning Cone's reason for being at the hotel did not violate the Fourth Amendment. The court found that Cone failed to show a connection between the questions and the discovery of contraband inside his vehicle. The officer saw the pistol in plain view as Cone exited his vehicle. The court concluded that lawful seizure of the pistol then led to the discovery of the other evidence in Cone's vehicle.

For the court's opinion: http://cases.justia.com/federal/appellate-courts/ca10/16-5125/16-5125-2017-08-24.pdf?ts=1503590465

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