

THE FEDERAL LAW ENFORCEMENT - INFORMER -

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

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CASE SUMMARIES

Circuit Courts of Appeals

1st Circuit

U.S. v. McGhee, 2010 U.S. App. LEXIS 24901, December 7, 2010

During a lawful search, officers found marijuana in McGhee's shoes and arrested him. The officers had McGhee remove his shirt and shorts, but McGhee resisted when the officers tried to remove his underwear to complete their search incident to arrest. After a struggle, officers pulled down McGhee's underwear and found a bag containing crack cocaine protruding from between his buttocks.

The court noted that searches incident to arrest that go beyond a pat-down, and the removal of outer garments, such as shoes and socks, require more justification because of their intrusiveness. The court held that the officers were justified in conducting a strip-search. The officers had reason to believe that McGhee might be hiding drugs somewhere on his person, and not just in his pockets. They had found marijuana in his shoes, and McGhee's physical resistance when the officers tried to remove his underwear was a reasonable signal that he was concealing drugs in it or on his body.

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

U.S. v. Mohamed, 2010 U.S. App. LEXIS 25184, December 9, 2010

While on patrol, two officers heard gunshots and saw someone running down the street. One officer thought the suspect was wearing a t-shirt, and the other officer thought the suspect was wearing a hooded top. After a brief chase, witnesses pointed out the suspect's hiding place to the officers. With their guns drawn, the officers removed Mohamed from underneath the back deck of a house. He was wearing a hooded sweatshirt, sweating profusely and he was out of breath. An officer handcuffed Mohamed, frisked him, and found a pistol in his pants pocket.

The court held the officers had reasonable suspicion to believe Mohamed was the fleeing suspect, and that they had conducted a valid *Terry* stop. Although one officer believed the fleeing suspect was wearing a t-shirt and shorts, and another officer saw that the suspect was wearing a hooded top, other factors supported Mohamed's detention. Witnesses pointed the officers to Mohamed's hiding place. When the officers discovered Mohamed, he was peeking out from under a deck behind a house, and he was panting and sweaty, which was consistent with someone who had just run away from the police.

The court held that the officer's display of firearms and use of handcuffs and did not transform the *Terry* stop into a de facto arrest without probable cause. The officers heard gunshots, saw someone running away, and witnesses pointed them to Mohamed's hiding place. Since it was likely that the shooter or someone involved in the shooting was armed, it was reasonable for the officers to approach Mohamed with their guns drawn. Although handcuffs are usually associated

with an arrest, the use of handcuffs during a *Terry* stop does not convert the stop into an arrest as long as the officers reasonably believed the handcuffs were necessary to protect themselves or others. The officers' decision to handcuff Mohamed before conducting their frisk was justified since they reasonably believed that he was the shooter or somehow involved in the shooting, which meant it was likely he was armed.

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

U.S. v. Ramos, 2010 U.S. App. LEXIS 25708, December 17, 2010

When the officer opened the door of the parked van, the occupants were seized under the *Fourth Amendment*. The court held that the officers had reasonable suspicion to justify the seizure because: (1) the van was parked in the farthest corner of the bus and rail station parking lot, (2) individuals usually parked their cars and immediately boarded the bus or subway, here the occupants remained in the van for at least twenty minutes after the police observed them, (3) transit rail stations were considered likely targets for terrorist attacks after the recent Madrid bombings, (4) the van had tinted windows and a paper Texas license plate over the regular plate, (5) larger vehicles could hold more explosives than smaller vehicles, (6) the occupants appeared to be of Middle Eastern descent.

The court held there was nothing that prohibited the officers from considering that at least two of the van's occupants appeared to be Middle Eastern. Groups claiming to be affiliated with Middle Eastern terrorist groups had made specific threats to the United States weeks earlier, and metropolitan transit services were considered terrorist targets. The officers did not base their reasonable suspicion solely on Ramos' appearance. Under the totality of the circumstances, the officers had reasonable suspicion criminal activity was afoot.

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

4th Circuit

U.S. v. Mason, 2010 U.S. App. LEXIS 24999, December 8, 2010

The court held that the officer had reasonable suspicion of drug activity when he finished processing the warning ticket for the window tint violation, which justified extending the traffic stop, because: (1) when the officer activated his blue lights to pull Mason over, Mason did not promptly pull over, (2) when Mason rolled down his window the officer smelled the strong odor of air fresheners, beyond what he had normally experienced from their ordinary use, (3) the officer saw a single key on Mason's key ring, combined with the fact he was coming from Atlanta on a known drug route, (4) Mason was sweating and seemed unusually nervous when talking to the officer, (5) Mason and his passenger gave conflicting stories about the purpose of their travel and (6) a newspaper on the backseat was labeled Radisson Hotel, yet Mason told the officer that he had stayed at a relative's house.

The court noted an officer may ask the driver and passenger questions unrelated to the purpose of the original traffic stop, without reasonable suspicion, as long as the questioning occurs within the time frame reasonably necessary to conduct the stop.

The court also held that the drug dog alerted to the drugs on the outside of the car before jumping into the vehicle on its own, through an open window, without any command from the officers. The drug dog's positive indication by entry into the car provided probable cause to justify the warrantless search of the car.

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

U.S. v. Hampton, 2010 U.S. App. LEXIS 25626, December 16, 2010

The court held that the officer lawfully ordered Hampton to exit the vehicle during the traffic stop. When conducting lawful traffic stops, officers may order any passenger to exit the vehicle. Officers may do so as a precautionary measure, without reasonable suspicion that the passenger poses a safety risk.

After Hampton exited the vehicle and shoved the officer in the chest in an effort to flee, the officers had probable cause to arrest him for simple assault and conduct a search of his person incident to that arrest.

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

6th Circuit

U.S. v. Warshak, 2010 U.S. App. LEXIS 25415, December 14, 2010

Federal agents obtained a subpoena under the Stored Communications Act, *18 U.S.C. § 2703(b)* that compelled Warshak's internet service provider (ISP) to turn over emails it had saved the previous year. Subsequently, the government served the ISP with a court order under *§ 2703(d)* that required the ISP to turn over any additional emails in Warshak's account. In all, the government compelled the ISP to reveal the contents of approximately 27,000 emails from Warshak's account.

The court held that a subscriber has a reasonable expectation of privacy in the contents of emails that are stored with, sent, or received through a commercial ISP. The government may not compel a commercial ISP to turn over the contents of a subscriber's email without first obtaining a warrant based on probable cause. Since the agents did not obtain a warrant, they violated the *Fourth Amendment* when they obtained the contents of Warshak's emails. Additionally, the court held that the Stored Communications Act is unconstitutional to the extent that it allows the government to obtain such emails without a warrant.

Although the government's search of Warshak's emails violated the *Fourth Amendment*, the agents relied in good faith on the Stored Communications Act to obtain them; therefore, they were not subject to the exclusionary rule. In the future, however, unless an exception applies, a reasonable officer may no longer assume that the Constitution permits warrantless searches of private emails.

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

U.S. v. Johnson, 2010 U.S. App. LEXIS 25598, December 16, 2010

An undercover officer saw Johnson engage in a hand-to-hand transaction where he exchanged cash for several pieces of a small off-white substance. Johnson got into a car that drove away. The undercover officer relayed this information to his dispatcher, and during a traffic stop conducted by a different officer, Johnson got out of the car and ran. The officer tased Johnson, and as he fell to the ground, the officer saw a gun in his waistband. The officer arrested Johnson for unlawful possession of a firearm, and searched the front passenger area of the vehicle where Johnson had been sitting. The officer recovered crack and powder cocaine from the pocket of a sweatshirt.

The court held that the undercover officer had reasonable suspicion to justify a *Terry* stop on Johnson. The officer who initiated the traffic stop had reasonable suspicion as well, since reasonable suspicion may be based upon information provided by other officers.

Citing *Gant*, the court held that even though the officer had arrested and secured Johnson outside of the car, the search of the passenger area where he had been sitting was justified. An officer may search a vehicle incident to arrest when it is reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle. Since the officer arrested Johnson for unlawful possession of a firearm, he could have reasonably believed that ammunition or additional firearms were in the car or in containers in the car, especially in the passenger area where Johnson had been sitting.

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

7th Circuit

U.S. v. King, 2010 U.S. App. LEXIS 24680, December 3, 2010

Officers went to the defendant's restaurant where they received consent to search the premises from the cook, who was the only employee present. The officers discovered a kilogram of "sham" cocaine that a confidential informant had given the defendant the day before.

The court held that the officers' entry into the restaurant was legal even though the restaurant was not open-for-business, at the time. The door was unlocked, and the employee did not object to the officers' presence when they made contact with him.

The court held that the employee had apparent authority to consent to a search of the premises. He had keys to the restaurant, the code to deactivate the burglar alarm and he opened the restaurant by himself. It was reasonable for the officers to believe that he had full authority over the premises, including the authority to grant access to others.

Finally, the court held that the employee voluntarily consented to the search. The employee never told the agents to stop their search or to leave. The encounter with the officers was polite, and there was no evidence of coercion.

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

Sallenger v. City of Springfield, 2010 U.S. App. LEXIS 25803, December 17, 2010

The court held that the officers began CPR and called paramedics as soon as they realized Sallenger was not breathing and this satisfied the *Fourth Amendment's* reasonableness standard. The officers endured a violent struggle to subdue and restrain Sallenger, a very large man who was actively psychotic, and they responded appropriately once they realized he was not breathing.

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

U.S. v. Cartwright, 2010 U.S. App. LEXIS 26308, December 29, 2010

After a traffic stop, the officer arrested Cartwright for failing to produce a driver's license and giving a false name. The officer found a gun in the backseat of the vehicle during the search incident to arrest. Although the incident occurred before the Supreme Court's decision in *Gant*, Cartwright argued on appeal that the court should apply *Gant* and suppress the gun.

Declining to suppress the gun under *Gant*, the court held that the officer would have inevitably discovered the gun pursuant to the valid inventory search of the car. The court found that the agency's inventory policy was sufficiently standardized and that the officer followed the policy.

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

8th Circuit

U.S. v. Alston, 2010 U.S. App. LEXIS 24829, December 6, 2010

Officers arrested Oteri for a parole violation near a hotel. The officers found drugs on him, and Oteri admitted to being involved in drugs, with a person he knew as "DA", in room 416. Based on prior experience, the officers believed that "DA" was the defendant. Officers also discovered that another person involved in a prior drug investigations was renting room 416.

Alston was on parole and a condition of his parole prohibited him from associating with persons engaged in criminal activity. When the officers saw Alston come out of the hotel they detained him. The officers searched room 416 and found cocaine, which Alston admitted belonged to him.

The court held that the police had reasonable suspicion to conduct a *Terry* stop on Alston for violating a condition of his parole. Based on Oteri's statements, and seeing Alston leave the hotel minutes later, the officers had reasonable suspicion to believe Alston was associating with active drug dealers in violation of his parole.

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

U.S. v. Mayo, 2010 U.S. App. LEXIS 225365, December 13, 2010

The officers' warrantless search of the vehicle was valid under the automobile exception to the warrant requirement of the *Fourth Amendment*. The court held that the officers had probable cause to believe the minivan contained drugs based on the defendants' nervous behavior, their inconsistent stories, the driver's criminal history, and the plain-view discovery of two bindles with markings consistent with drug packaging.

The court also found that the driver gave the officers consent to search the vehicle, and that it was objectively reasonable for the officers to search any part of the minivan where drugs might be stored, including behind the door panels. When a person gives his consent to search a vehicle, officers may search containers within the vehicle that may contain drugs, probe underneath the vehicle, open compartments that appear to be false, or puncture such compartments in a minimally intrusive way. Here, a reasonable person would have understood the officer's request to search the vehicle for drugs covered the entire minivan, including behind the door's interior panels. The officers opened the panels in a minimally intrusive manner and the driver did not object to the search or attempt to withdraw his consent to search.

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

U.S. v. Crippen, 2010 U.S. App. LEXIS 25847, December 20, 2010

During a traffic stop, the officer saw the curved top of a white coffee filter sticking out of Crippen's coat pocket. Based on his training and experience the officer knew coffee filters were often used in manufacturing methamphetamine, and he remembered Crippen from a previous drug arrest. After conducting a pat-down search for weapons, the officer seized the coffee filter. Crippen, who had been a passenger, then admitted that there were drugs in the vehicle.

Crippen argued that the pat-down, which resulted in the seizure of the coffee filter, was illegal because the officer was not motivated by a fear that he was armed and dangerous. The court held that a suspicion on the part of police that a person is involved in a drug transaction supports a reasonable belief that the person may be armed and dangerous because weapons and violence are frequently associated with drug transactions. The court found that because the officer remembered Crippen from a previous drug arrest, and knew coffee filters were used as part of the methamphetamine manufacturing process, he suspected Crippen was involved in a drug transaction. Therefore, the officer had reasonable suspicion Crippen was armed and dangerous, and the pat-down search and seizure of the coffee filter was valid.

The court held that Crippen did not have standing to challenge the search of the vehicle. As a mere passenger in a vehicle, Crippen had no legitimate expectation of privacy under the seats where the officer found the drugs, therefore, Crippen could not challenge the search of the vehicle. Although a passenger is seized for *Fourth Amendment* purposes during a traffic stop, and may challenge the legality of the stop, Crippen challenged the search of the vehicle, and not the legality of the traffic stop.

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

11th Circuit

Jean-Baptiste v. Gutierrez, 2010 U.S. App. LEXIS 24870, December 6, 2010

Officer Gutierrez chased Jean-Baptiste, an armed burglary and robbery suspect, on foot, in residential area, after a high-speed car chase. Gutierrez went behind a house and encountered Jean-Baptiste, who was standing eight to ten feet away. Jean-Baptiste pointed a gun at Gutierrez, who fired his pistol, shooting fourteen continuous rounds at Jean-Baptiste. Eight rounds struck Jean-Baptiste in his legs, foot and testicles. Officer Gutierrez said that he fired his pistol continuously because Jean-Baptiste continued to point his gun at him, and only went down after he had fired his last round.

The court held that Officer Gutierrez was entitled to qualified immunity. Gutierrez confronted an armed suspect who had attempted to elude the police. Jean-Baptiste posed a threat of serious physical injury to Gutierrez and to the citizens in the immediate residential area. Gutierrez reasonably perceived the situation as an ambush that required the use of deadly force.

The court noted that a police officer is entitled to continue his use of force until a suspect is fully secured. The court held that Officer Gutierrez reasonably responded with deadly force, and he was not required to interrupt a volley of bullets until he knew that Jean-Baptiste had been disarmed.

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