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The Federal Law Enforcement -Informer-

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

Welcome to this installment of *The Federal Law Enforcement Informer (The Informer).* The Legal Division of the Federal Law Enforcement Training Center is dedicated to providing federal law enforcement officers with quality, useful and timely Supreme Court and Circuit Court 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 Center. *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 the Legal Division web page http://www.fletc.gov/legal.

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In This Issue

Case Summaries

Circuit Courts of Appeals

Click Here

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CASE SUMMARIES

Circuit Courts of Appeals

1st Circuit

U.S. v. Luna, 2011 U.S. App. LEXIS 16628, August 12, 2011

The court held that a local police officer, who had been deputized as a member of an FBI gang task force, was a federal officer for the purposes of *18 U.S.C. §§ 111* and *1114*. *Section 111* allows for federal prosecution of anyone, who among other things, forcibly assaults a person designated in *§1114*. *Section 1114* protects any officer of the United States while the officer is engaged in the performance of his official duties.

The court further held that the evidence at trial supported the conclusion that the officer was engaged in federal duties when Luna shot at him. At the time of the shooting, the officer was covering a local rally. The FBI wanted any information that he could provide about gang members that attended the rally. Because of the nature of his role, the officer was often acting as a local police officer and a task force member simultaneously. Although the officer was assigned to the rally by his department, and was working solely with other local police officers, he contacted his FBI colleagues to report the incident within an hour after it occurred. He later forwarded a copy of his incident report regarding the assault to his FBI supervisor.

Click **HERE** for the court's opinion.

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U.S. v. De Jesus-Viera, 2011 U.S. App. LEXIS 17676, August 24, 2011

Without deciding whether the search was a routine border search, the court held that the U.S. Customs and Border Protection (CBP) officers had reasonable suspicion that the defendant was engaged in criminal activity. As a result, the officers were justified in drilling into the secret compartment in his vehicle that contained heroin and cocaine.

The court noted the escalating sequence of events in which each step taken by the CBP officers led reasonably to the next. The defendant was visibly nervous and avoided eye contact with each of the officers to whom he spoke. The defendant told the officers that he had recently purchased the vehicle, a recognized indicia the vehicle may have been used for drug trafficking. The defendant gave three different stories concerning his travel history when cross-interviewed by the CBP officers. The "buster" scan of the defendant's vehicle yielded abnormal readings, indicating dense objects underneath the floor of the vehicle. A search of the vehicle's interior found recent alterations or repairs contrary to the defendant's prior statement that he had made no recent repairs. An officer's view of the underside of the vehicle showed an abnormal bulge underneath the area where the alterations to the car were found. Finally, a drug-sniffing canine altered to the presence of narcotics in the vehicle.

Click **HERE** for the court's opinion.

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Glick v. Cunniffe, 2011 U.S. App. LEXIS 17841, August 26, 2011

Glick was arrested for using his cell phone's digital camera to film several police officers arresting a man on the Boston Common. The charges against him for violating a state wiretap statute and two other offenses were eventually dismissed. Glick sued the officers under *42 U.S.C. § 1983* claiming that his arrest for filming the officers violated his *First* and *Fourth Amendment* rights.

The court held that the officers were not entitled to qualified immunity. First, a citizen's right to film government officials, including law enforcement officers, in the discharge of their duties in a public space is a basic, vital and well-established liberty protected by the *First Amendment*. Glick was exercising clearly established *First Amendment* rights in filming the officers in the Boston Common, the oldest city park in the United States.

Additionally, the officers arrested Glick without probable cause, in violation of the *Fourth Amendment*. The state wiretap statute prohibits individuals from secretly recording others. Here, Glick told the officers he was recording their actions and they acknowledged this by arresting him. A reasonable officer would have known that arresting Glick for a wiretap offense under these circumstances was a violation of his *Fourth Amendment* rights.

Click **HERE** for the court's opinion.

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2nd Circuit

U.S. v. Plugh, 2011 U.S. App. LEXIS 16503, August 8, 2011

Officers arrested Plugh, advised him of his *Miranda* rights, and then asked him to sign a waiver-of-rights form. Plugh told the officer that he understood his rights, but he declined to sign the waiver, telling the officers, "I am not sure if I should be talking to you and I don't know if I need a lawyer." Plugh repeatedly asked the officers for advice on what to do during the ride to their office, but the officers refused to discuss the case with him. Once at the office the officers told Plugh that he was going to be booked in to the jail and that if he wanted to make any statements that this was the time to do it. Plugh told the officers he wished to speak to them. The officers re-advised Plugh of his *Miranda* rights. Plugh signed a waiver-of-rights form and made several incriminating statements.

Applying the standard outlined by the Supreme Court in *Berghuis v. Thompkins*, the court held that for a defendant to invoke either the right to remain silent or the right to counsel, he must do so unambiguously. The defendant's initial refusal to sign the waiver-of-rights form was not sufficient to establish an unambiguous invocation of those rights. While his refusal to sign the form presented to him upon arrest may have unequivocally established that he did not wish to waive his rights at that time, his statements to the officers made it equally clear that he was not seeking to invoke his rights. Consequently, the officers were under no obligation to cease further questioning.

Click **HERE** for the court's opinion.

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U.S. v. FNU LNU a/k/a Sandra Calzada, 2011 U.S. App. LEXIS 16370, August 9, 2011

The defendant arrived in the United States on an international flight. When a U.S. Customs and Border Protection agent ran the passenger manifest through a database, he received a notification that the defendant had an outstanding arrest warrant. Officers escorted the defendant to a secondary inspection room where they took her fingerprints and asked her a series of questions concerning her name, citizenship, place of birth. When her fingerprints did not match those in the arrest warrant, officers asked her questions about her passport and her passport application. The officers did not provide the defendant with *Miranda* warnings before questioning the defendant and she was eventually indicted for making a false statement on her passport application.

The court held that the defendant was not in custody for *Miranda* purposes; therefore, *Miranda* warnings were not required. The court reiterated that *Miranda* warnings do not need to be given to someone detained at the border and subjected to a routine customs inquiry. Here, the officers' questions were relevant to making a determination of the defendant's admissibility into the United States. The court noted that the use of handcuffs, drawn weapons, or questions unrelated to admissibility could turn a non-custodial situation into a custodial one where *Miranda* warnings would be required.

Click **HERE** for the court's opinion.

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3rd Circuit

U.S. v. Correa, 2011 U.S. App. LEXIS 15823, August 2, 2011

Officers went to an apartment building to search for an escaped fugitive. The exterior door to the building was locked and a sign posted outside stated that anyone not accompanied by a resident would be prosecuted for trespassing. An officer climbed through a partially opened window and unlocked the door from the inside, allowing the other officers to enter the building. The officers eventually arrested Correa in a common-use stairwell and recovered a firearm from his pocket. Correa argued that the officers violated his *Fourth Amendment* rights by unlawfully entering the common areas of the locked, multi-unit apartment building and seizing him.

The court had previously held that residents of a multi-unit apartment building lack an objectively reasonable expectation of privacy in the common areas of the building where the exterior door is unlocked. The court extended this holding by ruling that residents lack an objectively reasonable expectation of privacy in the common areas of multi-unit apartment buildings with locked exterior doors. The *Fourth Amendment* focuses on legitimate expectations of privacy and not on concepts of property-law trespass. Correa lacked a reasonable expectation of privacy in the building's common areas because he did not have control over these areas.

As a result, Correa did not have *Fourth Amendment* standing to challenge the search because he lacked an objectively reasonable expectation of privacy in the common-use stairwell of the apartment building.

The 2nd, 7th, 8th, 9th and 11th Circuits agree.

Click **HERE** for the court's opinion.

*****

People of the Virgin Islands v. John, 2011 U.S. App. LEXIS 16833, August 15, 2011

An officer applied for a warrant to search John's home for child pornography, relying on an affidavit that established only probable cause to believe that she would find evidence that he had sexually assaulted several children at the school where he taught. The officer did not allege any direct evidence that John possessed child pornography, nor allege the existence of any connection between the two crimes. The affidavit provided no reason to believe that a person who committed child sexual assault would be likely to possess child pornography. As a result, the court held that the lower court properly suppressed journals seized by the officers.

Additionally, the court held that good-faith exception to the exclusionary rule did not apply. The affidavit did not contain any assertion that John was in any way associated with child pornography. Although they had a search warrant, it was unreasonable for the officers to believe they had probable cause to search for child pornography.

The court commented that even police officers who lack legal training are expected to know of the requirement that the factual basis for a probable cause determination must be stated in the affidavit. An officer seeking a warrant must explain why she is justified in entering a person's home and searching through his belongings.

Click **HERE** for the court's opinion.

*****

4th Circuit

U.S. v. Massenburg, 2011 U.S. App. LEXIS 6849, August 15, 2011

The court held that the officer lacked reasonable suspicion to conduct a lawful non-consensual frisk of the defendant. The poor match between the vague anonymous tip and the individuals encountered by the officers substantially undermined reliance on the tip for reasonable particularized suspicion of Massenburg. The fact that the area was a high-crime, high-drug area also added nothing to support particularized suspicion as to Massenburg. Finally, the court emphasized that Massenburg's refusal to consent to a search could not by itself justify a non-consensual search. The court reiterated that it had warned the government, in a recent case, against presenting whatever facts are present, no matter how innocent, as indicia of suspicious activity. The court noted that it was deeply troubled by the way in which the government attempted to spin mundane acts into a web of deception, especially when the mundane acts emerge from a refusal to consent to a voluntary search.

Click **HERE** for the court's opinion.

*****

U.S. v. Hill, 2011 U.S. App. LEXIS 17129, August 18, 2011

The court held that the officers did not have sufficient reasons upon which to base their belief that Hill was present in the home; therefore, their entry into the home to execute the arrest warrant for him was unlawful. As a result, the drugs and paraphernalia the officers found during their protective sweep were inadmissible.

The officers testified that they did not expect to find Hill at the home when they arrived there. Although the officers heard voices coming from inside the home to support their belief that Hill was present, the court stated that to have reason to believe that a defendant is in a home, officers cannot solely rely on unidentified noises coming from within the home.

The court additionally held that the officers' entry into the home was not justified by exigent circumstances. The court stated that slight damage to the doorframe, which the officers had seen on a previous visit, and unidentified noises coming from within the home was not sufficient to suggest that there was an emergency taking place inside the home.

While the initial entry into the home was unlawful, the court held that subsequent consent to search the home provided by the defendant's girlfriend was valid. However, the court remanded the issue as to whether the taint from the initial illegal search, which uncovered the additional evidence against Hill, was dissipated by the consent given by the girlfriend for the second search.

Click **HERE** for the court's opinion.

*****

5th Circuit

U.S. v. Soto, 2011 U.S. App. LEXIS 16369, August 19, 2011

The court held that the conduct witnessed by the Border Patrol agents was sufficient to create reasonable suspicion of illegal activity to justify the traffic stop. Upon seeing the agents, Delacruz, a passenger in the vehicle, exhibited a look of shock and immediately ducked down and slumped back, out of the agents' sight. The only plausible explanation for this behavior is that Delacruz was attempting to hide from the agents. Adding to the agents' suspicion, when they pulled up alongside Soto's vehicle, Delacruz's darkly tinted rear window, which was halfway down when the agents first saw it, had been completely rolled up. Finally, the agents made their observations sixty miles from the border on a route known for illegal alien trafficking.

Click **HERE** for the court's opinion.

*****

6th Circuit

U.S. v. Johnson, 2011 U.S. App. LEXIS 18006, August 29, 2011

Officers conducted a knock-and-talk at a residence after they received a tip that the occupants possessed illegal drugs. Johnson and his wife were separated, but he had been living at the residence off and on for several months. Johnson refused to consent to a search of the residence but his wife did consent. Relying on the wife's consent the officers searched a bedroom that Johnson and his wife shared and found counterfeit currency and illegal drugs.

The court held that the search of the bedroom was unreasonable as to Johnson. Johnson had a reasonable expectation of privacy in the bedroom he shared with his wife. His express objection to the search was sufficient to render the search of the bedroom unreasonable as to him, notwithstanding the consent given by his wife.

Click **HERE** for the court's opinion.

*****

7th Circuit

U.S. v. Johnson, 2011 U.S. App. LEXIS 16517, August 11, 2011

The court held that information provided by a confidential informant was sufficiently reliable to establish probable cause to search the defendant's home. The informant told the government that he had purchased cocaine from the defendant at his house four times in the previous week. The informant was known to the government and had provided reliable information in the past. Additionally, the informant made a controlled purchase of cocaine from the defendant at his house a few hours before the warrant was issued.

Click **HERE** for the court's opinion.

*****

U.S. v. Knope, 2011 U.S. App. LEXIS 17453, August 22, 2011

Knope argued that statements he made, after being arrested, while seated in the back of the police car were improperly admitted because they were a result of custodial interrogation and he had not been provided *Miranda* warnings. Specifically, Knope objected to the admission of biographical information that revealed his home address, claiming that his answer provided the likely location of the computer that he had used for his online chats.

The court considered the officer's questions to Knope concerning his name, date of birth address and phone number to be routine booking questions. Routine booking questions asked before *Miranda* warnings are given are not usually grounds for suppression of a defendant's statements that reveal his identity and residence. The court found that the officer did not ask Knope where he lived in order to identify a place to search.

The court held that Knope's consent to search his home and computer was obtained voluntarily. Knope claimed that he was coerced into signing the consent form after the officer told him if he did not consent that there were other ways she could search his computer. If an officer's expressed intent to obtain a warrant is genuine, and not merely a pretext to induce consent, it does not invalidate that consent. Here, Knope had already admitted that he viewed and downloaded child pornography on his home computer and that he had been using his computer when he engaged in online chats with the undercover officer. Therefore, the officer had a legitimate belief that she could obtain a warrant to search Knope's residence and computer.

Click **HERE** for the court's opinion.

*****

U.S. v. Snow, 2011 U.S. App. LEXIS 17688, August 24, 2011

An officer stopped Snow because he matched the description of a burglary suspect. The officer frisked Snow and recovered an unlawful firearm. Apart from his status as a burglary suspect, there was nothing to indicate that Snow was armed.

The court concluded that the officer had reasonable suspicion to detain Snow to investigate his involvement in the burglary. Because burglary is the type of offense that likely involves a weapon, the court held that the officer's decision to order Snow out of his vehicle to conduct a protective frisk was reasonable, despite the absence of additional facts suggesting that Snow might be armed. The fact that Snow was calm and initially cooperated with the officer did not lessen the possibility that he might pose a danger to the officer or others.

Click **HERE** for the court's opinion.

*****

8th Circuit

U.S. v. Claude X, 2011 U.S. App. LEXIS 15915, August 3, 2011

Officers stopped the defendant's vehicle to arrest his passenger on an outstanding warrant. While an officer was processing the arrestee, another officer walked a drug-sniffing dog around the vehicle. The dog alerted on the vehicle. Officers searched the trunk and found drugs.

The court held that the initial stop was lawful and that the officers were still in the process of arresting the passenger when the dog sniff occurred. Because the officers did not prolong the stop beyond the time reasonably required to complete the arrest of the passenger, the search of the trunk was lawful.

The court noted that a dog's alert during a canine search of a vehicle provides probable cause that drugs are present in the vehicle, justifying a warrantless search of the vehicle under the automobile exception to the *Fourth Amendment*.

Click **HERE** for the court's opinion.

*****

U.S. v. Smith, 2011 U.S. App. LEXIS 16138, August 5, 2011

Officers suspected that Smith was involved in a bank robbery and posted a be-on-the lookout notice for Smith and his car. Officers from another police department saw Smith driving his car and conducted a *Terry* stop based on that notice. Once stopped, Smith ran from the car and the officers apprehended him in an adjacent neighborhood. Officers searched Smith's car without a warrant and located evidence from the bank robbery.

The court held that the officers had reasonable suspicion to conduct a *Terry* stop on Smith based on the notice from the other police department. Police officers may rely upon notice from another police department that a person or vehicle is wanted in connection with the investigation of a felony when making a *Terry* stop, even if the notice lacks the specific articulable facts supporting the reasonable suspicion. Reliance on such a notice justifies a stop to check identification, to pose questions to the person or to detain the person briefly while attempting to obtain further information.

The court also held that the warrantless search of Smith's car was lawful. Smith abandoned the car when he left the door open, with the keys in the ignition, the motor running, in a public area, then ran from the officers. In doing so, he gave up any reasonable expectation of privacy he might have had in the car and its contents.

Click **HERE** for the court's opinion.

*****

U.S. v. Wells, 2011 U.S. App. LEXIS 16330, August 8, 2011

Officers received a tip from a confidential informant that Wells was manufacturing methamphetamine in an outbuilding located behind his house. Officers went to Wells's house at 4:00 a.m. to conduct a knock-and-talk interview. Instead of walking down the short paved driveway that lead from the street to the front door of the house, an officer walked down an unpaved driveway next to the house to check an open door on a shed that was in the back yard. After finding nothing in the shed, the officers stood on the unpaved driveway near the corner of the house where they were able to see the outbuilding mentioned by the confidential informant. The officers saw that lights were on and when they walked up to the door, they could detect movement inside. The officers knocked and when Wells opened the door, they smelled the odor of burnt marijuana. The officers conducted a protective sweep and found marijuana in plain view. A subsequent search warrant executed on the outbuilding uncovered evidence of methamphetamine manufacturing.

The court held that the portion of Wells's unpaved driveway extending past the rear of his home and into the backyard was part of the home's curtilage, and as such, Wells had a reasonable expectation of privacy there.

The court further held that the officers' entry onto the curtilage was not reasonable. Generally, no *Fourth Amendment* search occurs when police officers, who enter private property, restrict their movements to those areas generally made accessible to visitors, such as driveways and walkways. In those cases, police officers enter onto curtilage with the implied consent of the homeowner.

In this case, there was no implied consent because the officers did not attempt to make contact with Wells at the front door first. Other cases have found officers' entries into backyards to contact homeowners reasonable after the officers attempted to contact the homeowners at the front door first, and were unsuccessful. Here, at 4:00 a.m., the officers did not attempt to reach Wells by knocking on the front door of his house. The court refused to extend the knock-and-talk rule to situations in which the police choose not to knock at the front door, and without reason to believe the homeowner will be found there, proceed directly to the back yard.

Click **HERE** for the court's opinion.

*****

U.S. v. Quintero, 2011 U.S. App. LEXIS 16332, August 8, 2011

The court agreed with the lower court's finding that the defendant did not voluntarily consent to the search of her motel room and that the drug evidence was properly suppressed. It was not improper for the lower court to consider the fact that the defendants were rousted out of bed at 10:30 p.m. by a number of officers and security personnel. The time of day during which a search takes place is a relevant factor in analyzing its voluntariness.

In this case, the fact that the officers inexplicably delayed their investigation, for over five hours, culminating in a nighttime knock-and-talk designed to obtain a full-scale search, was relevant to

the court's determination. The officers' rousting the defendants from bed at night helped create a more coercive atmosphere and the court properly considered this in its analysis.

Click **HERE** for the court's opinion.

*****

U.S. v. Rush, 2011 U.S. App. LEXIS 16822, August 15, 2011

An officer followed the car in which Rush and two others were riding because they fit the description of the suspects in a recent bank robbery. After the car pulled into a parking lot, one passenger got out and walked into a building. The officer parked his cruiser behind the suspect vehicle, without blocking it in, got out and approached Rush, who had gotten out of the car. While the officer was asking Rush about what they were doing there, the passenger came out of the building. The officer saw a thick roll of cash on top of the passenger's shoe. The money, from the bank robbery, had fallen down the passenger's pants leg to the top of his shoe. The officer arrested the passenger and detained Rush in the back of a police car. The driver fled on foot but was quickly arrested.

The court held that the officer's initial contact with Rush was a consensual encounter. The officer did not use his lights or siren to stop Rush's car nor did he block its exit from the parking lot when it stopped. The officer did not use any physical force, issue any orders or make any show of authority when he approached Rush and asked him his purpose for being in the parking lot. The officer did not have to give Rush the opportunity to avoid him before asking questions.

The court further held that the officer had reasonable suspicion to detain Rush after he saw the large roll of currency on the top of the passenger's shoe. Possession of a large amount of currency shortly after a bank robbery may be sufficient to support a brief investigatory detention. Here, a bank in the area had been robbed within the hour and the three individuals met the general description of the robbers. The passenger had a large amount of currency on his shoe and the driver fled upon seeing the officers recover the money and arrest him.

Click **HERE** for the court's opinion.

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9th Circuit

U.S. v. Stanley, 2011 U.S. App. LEXIS 15829, August 2, 2011

The court held that Stanley had no reasonable expectation of privacy in a computer he jointly owned and used with his girlfriend that was in her possession for two years while he was in prison. As a co-owner and common user, she had the authority to consent to a search of the computer and its non-password protected files. When Stanley gave her the computer, he assumed the risk that she would allow someone else to examine it.

Even if the girlfriend did not have the actual authority to consent to a search of the computer, it was reasonable for the officers to believe that she had the apparent authority to consent to its search.

Click **HERE** for the court's opinion.

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U.S. v. McCarty, 2011 U.S. App. LEXIS 15905, August 3, 2011

A Transportation Security Administration (TSA) screener searched McCarty's bag after it triggered an alarm while passing through a security x-ray machine. When she opened the bag to remove a laptop computer, several photographs fell out of an envelope onto the floor. After she examined the laptop and determined it did not pose a risk, she picked up the photographs. While looking through the photographs to ensure that there were no sheet explosives concealed within, she noticed that several photographs depicted nude children. McCarty was arrested and a search of his computer revealed images and video clips of child pornography.

The court held that the screener's review of the photographs occurred within the scope of an ongoing lawful administrative search. The screener was permitted to search McCarty's bag until she was convinced it posed no threat to airline safety. At no time did the screener state that she had abandoned her primary search for aircraft safety hazards at the time she viewed the photographs. When she looked through the photographs, she was still acting to ensure that there were no sheet explosives hidden inside.

However, the screener went beyond the bounds of a permissible administrative search when she read the contents of some letters and looked at some newspaper articles that were in the bag. At this point, she was no longer searching for safety hazards, but reviewing the items to confirm her feelings that the photographs were contraband. The screener's actions taken during this part of the search violated McCarty's *Fourth Amendment* rights because they were more extensive and intrusive than necessary to detect air-travel safety concerns.

Click **HERE** for the court's opinion.

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Dougherty v. City of Covina, 2011 U.S. App. LEXIS 16879, August 16, 2011

The court held that the search warrant issued to search Dougherty's home computer lacked probable cause because: (1) no evidence of possession or attempt to possess child pornography was submitted to the magistrate, (2) no evidence was submitted to the magistrate regarding computer use by the suspect, and (3) the only evidence linking the suspect's attempted child molestation to possession of child pornography was the experience of the requesting officer, without any further explanation. However, the officers were entitled to qualified immunity. The law in the circuit had not been clearly established regarding whether allegations of sexual molestation at a place of work provide probable cause to search a residence for child pornography in the absence of an explanation tying together the two crimes.

Click **HERE** for the court's opinion.

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Torres v. City of Madera, 2011 U.S. App. LEXIS 17459, August 22, 2011

Torres was handcuffed in the back of a police car. After he began yelling and kicking the rear car door from the inside, an officer opened the car door and mistakenly shot Torres in the chest with her Glock handgun instead of her Taser. Torres later died from the gunshot wound.

The court held that summary judgment in favor of the officer was inappropriate because a reasonable jury, after taking into account all the facts and circumstances facing the officer at the time of the mistaken shooting, could find that her mistake was unreasonable. The jury could conclude that (1) the officer's prior incidents of weapons confusion put her on notice of the risk of repeating this conduct, (2) her daily practice of drawing each weapon at her sergeant's instruction provided her with the training to avoid such instances and (3) the non-exigent circumstances surrounding the shooting did not warrant such hasty conduct which increased the risk of a weapons error. While a jury might ultimately find the officer's mistake of weapon to have been reasonable, it was not appropriate for the lower court to reach this conclusion.

The court also held that the officer was not entitled to qualified immunity because prior case law clearly established that an unreasonable mistake in the use of deadly force against an unarmed, non-dangerous suspect violates the *Fourth Amendment*. The focus is not on what the officer intended to do, but rather on the level of force actually used.

Click **HERE** for the court's opinion.

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Chism v Washington State, 2011 U.S. App. LEXIS 17751, August 25, 2011

Chism and his wife claimed that officers violated their *Fourth Amendment* rights by obtaining search and arrest warrants against them with affidavits that deliberately or recklessly contained material omissions and false statements.

The court agreed, holding that a reasonable jury could find that the officers violated the *Fourth Amendment* through judicial deception. Specifically, the court found that the officers knowingly drafted affidavits for arrest and search warrants that contained false statements and omissions.

Additionally, the court held that the officers were not entitled to qualified immunity. It was clearly established at the time of the officers' conduct that government employees were not entitled to qualified immunity on judicial deception claims.

Click **HERE** for the court's opinion.

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10th Circuit

U.S. v. Kitchell, 2011 U.S. App. LEXIS 16373, August 9, 2011

The court held that the officer was justified in conducting the traffic stop because failing to use a turn signal when entering the toll plaza on the turnpike constituted a violation of Oklahoma law.

Additionally, the duration of the stop was reasonable under the circumstances. The officer finished writing the warning ticket and informed the driver he was free to go shortly after performing other permissible aspects of the stop to include obtaining information from all of the occupants in the car, performing criminal-history checks, and confirming that none of the occupants had outstanding warrants.

The court also held that the officer did not violate the *Fourth Amendment* by detaining the occupant after he gave the driver his license back and gave him a copy of the warning ticket. By

this time, the occupants of the car had given the officer different versions of their travel plans, they appeared to be very nervous and they were in a rental car. Taken together, the officer had reasonable suspicion to prolong the stop to investigate criminal activity.

Finally, the court found that the drug-detection dog, Meco, was reliable, and that his alert on the vehicle established probable cause to search it for drugs. While the officers did not recover drugs from the car, Meco alerted to a backpack found in the trunk that contained over forty thousand dollars in currency, and five illegal handguns. Laboratory testing later confirmed that the backpack and currency contained trace amounts of illegal drugs. The defendant claimed that contamination of currency with trace amounts of illegal drugs is so widespread that any drug-dog alert of an occupied vehicle would impermissibly allow a general search of that vehicle.

The court declined to find that the contamination of currency theory undermined the reliability of canine sniffs in general, while specifically noting in this case, that Meco was trained to distinguish the scent of narcotics from the scents of other items, including currency.

Click **HERE** for the court's opinion.

*****

U.S. v. Medina-Gonzalez, 2011 U.S. App. LEXIS 18279, August 30, 2011

The defendant's car broke down and officers had it towed to a garage at the defendant's request. At the garage, the officers ran a drug-sniffing dog around the car and he alerted to the presence of drugs. Officers conducted a warrantless search of the car and discovered illegal drugs hidden in the spare tire.

The court held that the automobile exception applies to temporarily immobile vehicles when the immobility is caused by mechanical problems. Additionally, the positive alert from the narcotics detection dog established probable cause to search the vehicle. Once probable cause was established, the officers were entitled to search the entire vehicle including the trunk and all containers that could contain contraband.

Click **HERE** for the court's opinion.

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