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The Federal Law Enforcement -Informer-

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

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CASE SUMMARIES

Circuit Courts of Appeals

1st Circuit

***U.S. v. Clark*,** 2012 U.S. App. LEXIS 14549, July 16, 2012

Officers obtained a warrant to search Clark's house for evidence of animal cruelty and the unlicensed operation of a breeding kennel. In the defendant's bedroom, near a computer workstation, officers saw a handwritten list of web sites with titles suggestive of child pornography, along with nude photographs appearing to depict underage males. The officers stopped their search and obtained a second warrant that authorized them to search the house for child pornography. While executing this warrant, officers seized child pornography.

Clark argued that the original search warrant was not supported by probable cause. As a result, he claimed that any evidence found during this search could not be used to establish probable cause to obtain the second search warrant.

The court disagreed and concluded that probable cause existed to search Clark's house for evidence of animal cruelty and the unlicensed operation of a breeding kennel. First, the witness who gave the officers information concerning Clark's kennel had no reason to lie. In addition, lying to the officers could have resulted in criminal charges being brought against her. Second, the witness' statements were consistent with other complaints an officer had received about Clark. Because the first warrant was supported by probable cause, and Clark did not challenge the second warrant, the district court properly denied Clark's motion to suppress the child pornography evidence.

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

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***U.S. v. Jones*,** 2012 U.S. App. LEXIS 15631, July 27, 2012

The government charged Jones with conspiracy to distribute crack cocaine after he approached an undercover officer and found out how much crack cocaine the officer wished to buy. The video recording of the incident was out of focus and blurry, but another officer, who was familiar with the drug trade in the area, identified Jones as the man who had approached the undercover officer. After the officer showed the undercover officer a booking photograph of Jones, the undercover officer identified Jones as the person that had approached him.

Jones argued that the undercover officer's out-of-court identification of him from the booking photograph should have been suppressed because it had been obtained by an unduly suggestive process and was unreliable.

The court agreed with the district court, which held that the method used to identify Jones, was unnecessarily suggestive. The court commented that it would have imposed little, if any,

additional burden on the police to have shown the undercover officer several different photographs, including one of Jones. However, the court also agreed that the circumstances surrounding the identification established that it was still reasonably reliable and that it should not have been suppressed.

First, the encounter between the undercover officer and Jones took place in full daylight and the officer had ten to fifteen seconds to get a good look at Jones. Second, the officer's degree of attention would have been high because he was a law enforcement officer who was trained to identify people who sold him drugs. Finally, the officer identified Jones the day after their encounter.

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

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U.S. v. Crooker, 2012 U.S. App. LEXIS 15635, July 27, 2012

The court held that federal agents had established probable cause to believe evidence of a crime would be found at Crooker's house. The government had specific information from a confidential informant that ricin was buried in Crooker's backyard, that his uncle had concealed various weapons and biological agents in numerous locations and that he moved those items around to avoid detection.

The court also held that the agents lawfully seized ammunition and a cigarette-rolling device, from a tackle box, under the plain-view exception to the warrant requirement. First, the agents were lawfully present in Crooker's house. Second, the warrant authorized the agents to search for evidence of biological weapons, including small amounts of ricin powder, which could have been concealed in the tackle box. Third, once inside the tackle box, the agents had probable cause to seize the ammunition and because they knew that Crooker could not lawfully possess it, and the rolling device, because the agents believed it was used to roll marijuana cigarettes.

Finally, the court held that Crooker was not in custody for *Miranda* purposes and that the district court had properly refused to suppress statements he made to the agents. First, Crooker was questioned in familiar surroundings. Second, even though there were numerous agents in his house, they holstered their firearms after they cleared the house and left them holstered during their search. Third, no more than two agents were in direct conversation with Crooker at one time. Fourth, the agents never physically restrained Crooker, and freely moved about his property throughout the search, even leaving the property for some time after he was questioned.

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

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U.S. v. Symonevich, 2012 U.S. App. LEXIS 15804, July 31, 2012

A police officer conducted a traffic stop on the vehicle in which Symonevich was a front-seat passenger. As the officer approached the vehicle, he saw Symonevich lean down as if placing or retrieving something from underneath his seat. The officer searched under Symonevich's seat and found a can of tire-puncture sealant. The officer felt something solid move around inside the can and noticed that the bottom of the can was slightly separated from the rest of the can. The

officer unscrewed the bottom of the can and found heroin inside. The officer arrested the Symonevich and the driver.

The court held that, as a passenger in the vehicle, Symonevich did not have a reasonable expectation of privacy in the space below the passenger seat from which the heroin was recovered. The court stated that even if Symonevich demonstrated that he owned the can, that ownership would not have created an expectation of privacy in it, because he placed the can in an area where he had no expectation of privacy.

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

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2nd Circuit

U.S. v. Ramos, 2012 U.S. App. LEXIS 13506, July 2, 2012

Ramos claimed that his *Fifth Amendment* right against self-incrimination was violated because he was compelled to make incriminating statements during a mandatory polygraph examination that was conducted as a condition of his parole.

The court disagreed. First, the parole officer did not tell Ramos that he would lose his freedom if he invoked his *Fifth Amendment* privilege against self-incrimination. Rather, the consent forms Ramos signed warned him that his failure to fully and truthfully answer all questions asked by the parole officer could lead to the initiation of violation proceedings or the revocation of his parole. Second, there was no evidence that Ramos subjectively felt compelled to answer incriminating questions during the polygraph examination or the ICE agents' later investigation. Finally, Ramos could not have reasonably believed that his parole would be revoked for exercising his *Fifth Amendment* right because the Supreme Court has ruled that this would be unconstitutional.

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

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U.S. v. Voustianiouk, 2012 U.S. App. LEXIS 14317, July 12, 2012

Federal agents received information that particular Internet Protocol (IP) address had downloaded child pornography. The agents learned that the IP address was assigned to Voustianiouk and that he listed, as part of his physical address that he lived in "Apartment # 1."

The agents went to Voustianioiuk's physical address and found a two-story building, which contained two apartments, one on the first floor and one on the second floor. The agents could not confirm in which apartment Voustianiouk lived. The agents eventually obtained a warrant to search the first-floor apartment only. The agents intentionally omitted Voustianiouk's name from both the search warrant and the accompanying affidavit.

When the agents arrived to conduct their search, they discovered that Voustianiouk lived in the apartment on the second floor, not the first floor. The agents searched the second-floor apartment and discovered child pornography on Voustianiouk's computers.

In determining the scope of a search warrant, the court must look to the place that the magistrate judge who issued the warrant intended to be searched, not the place that the police intended to search when they applied for the warrant. Here, it was clear that the magistrate judge intended the scope of the search warrant to cover the first-floor apartment only. The search warrant and the accompanying affidavit explicitly authorized the search of the first-floor apartment and made no mention of the second-floor apartment. In addition, the affidavit in support of the search warrant would not have provided probable cause to search Voustianiouk's second-floor apartment because the omission of Voustianiouk's name did not provide any basis for concluding that he may have been involved in a crime. As a result, the agents conducted a warrantless search of the second-floor apartment in violation of the *Fourth Amendment* and all of the evidence they seized should have been suppressed.

The court further held that agents could not have relied in good faith on the search warrant because on its face the warrant explicitly authorized a search of the first-floor apartment only. There can be no doubt that a search warrant for one apartment in a building does not allow the police to enter and search other apartments. Nothing in the warrant or accompanying affidavit provided any reason for these agents to conclude that the magistrate judge had authorized them to search the building's second floor and neither document mentioned Voustianiouk as the occupant of the apartment that the agents were authorized to search.

The court added that there was no question the agents could have called a magistrate judge on the telephone that morning to obtain a new search warrant and that they could have detained Voustianiouk outside his apartment while they obtained a new warrant to search his second-floor apartment.

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

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4th Circuit

U.S. v. Burgess, 2012 U.S. App. LEXIS 14152, July 11, 2012

Burgess claimed that the district court should have suppressed certain statements that he made to police officers after he was arrested. Burgess argued that he provided those statements with the understanding that they were protected by "informal use immunity" or "transactional immunity." According to Burgess, the custom and practice in the Western District of North Carolina was to grant such immunity to cooperating defendants.

The court disagreed. Burgess could not identify any action or statement on the part of the government sufficient to establish an agreement regarding immunity for his statements. The officers informed Burgess his *Miranda* rights before every interview and they never made any express statements to him concerning immunity. In addition, the officers' conduct could not be viewed as having impliedly offering immunity to Burgess or accepting such an offer from him.

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

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6th Circuit

U.S. v. Archibald, 2012 U.S. App. LEXIS 14104, July 11, 2012

Police officers obtained a warrant to search Archibald's apartment after using a confidential informant to make a controlled buy of drugs there. The court held that the search warrant affidavit established probable cause to search Archibald's apartment. Specifically, the officers' corroboration of the controlled buy, the statement that the buy took place at that location within the last 72 hours, and the statement as to the informant's reliability, although minimal, was enough to support a finding of probable cause, even after only one controlled buy.

The court also held that the probable cause outlined in the search warrant affidavit did not go stale by the time the state court judge issued the warrant, three days after the controlled buy.

Finally, the court held that the five-day delay in executing the warrant after the officers obtained it was reasonable. In Tennessee, a search warrant that is executed within five days of being obtained is presumed to retain its probable cause, unless the defendant can establish otherwise. Here, the five-day delay based on a holiday weekend and scheduling conflicts of the officers was reasonable. There was nothing to suggest that the officers requested the search warrant on the Friday of a holiday weekend so that they could purposely delay its execution for five days. In addition, nothing changed between the issuance of the warrant and its execution, which affected the existence of probable cause.

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

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U.S. v. Gill, 2012 U.S. App. LEXIS 14563, July 17, 2012

A confidential informant arranged by telephone to buy cocaine from Gill at a particular location later that day. The informant told the officers that Gill would be driving a green Acura. The officers set up surveillance in the area where the informant said he would meet Gill. The officers saw Gill arrive in a green Acura, where he got out and joined a group of people in front of a row-house. As the officers approached him and identified themselves, Gill ran away. After a brief chase, the officers arrested him. The officers found marijuana in his waistband, cocaine in his car and a loaded handgun on the ground near the area where the officers had arrested him.

The court held that suppression of the evidence was not warranted because the officers had probable cause to arrest Gill the moment they encountered him. The officers had corroborated the key information provided by the informant, specifically, the color and make of the car that Gill was driving and the location of the arranged drug sale. The officers had also heard the informant's end of the telephone conversation in which the informant agreed to meet Gill for a drug deal and they had debriefed the informant immediately following the call to determine what Gill had said.

The court also held that the search of the Acura, incident to Gill's arrest, was lawful because his arrest occurred before the Supreme Court's decision in *Arizona v. Gant* in 2009. At the time of Gill's arrest, officers were allowed to search a vehicle incident to a suspect's arrest even when the suspect no longer occupied the vehicle.

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

*****

U.S. v. Lyons, 2012 U.S. App. LEXIS 15300, July 25, 2012

While investigating a prescription drug ring and Medicare fraud scheme, DEA agents obtained information that a woman would be arriving at a house that was under their surveillance. The woman, Lyons, arrived and met with the leader of the drug ring. A short time later, Lyons drove away from the house. The agents contacted the Michigan State Police who agreed to have state troopers conduct a traffic stop on Lyons' vehicle. The agents gave the troopers limited information about their investigation and why they believed narcotics would be found in Lyons' vehicle. The troopers eventually found thirty-nine bottles of codeine cough syrup in the vehicle.

The court held that the agents had reasonable suspicion to believe that Lyons visited the house for drug trafficking purposes. First, Lyons vehicle had out-of-state license plates, which was consistent with three prior traffic stops that were made during the course of the investigation. Second, it was unusual to see the leader of the drug ring at that particular house. Third, when Lyons entered the driveway, she was directed to park behind the house where her vehicle could not be seen from the road. Finally, the agents had intercepted a phone call between members of the drug ring that indicated that Lyons was unfamiliar with the area and needed directions to the house. The fraudulent patients that had previously visited the house were usually local residents, and neither the doctor nor his assistant was at the house that day.

The court further held that the state troopers lawfully conducted the traffic stop on Lyons' vehicle under the collective knowledge doctrine. Even though the troopers were unaware of all of the facts that supported agents' reasonable suspicion, they had all of the information that they needed to conduct the stop. In addition, they executed the stop within the bound of the agents' reasonable suspicion that Lyons was involved in drug trafficking.

Finally, the court held that the search of Lyons' vehicle was lawful. Lyons did not have a valid driver's license, she provided inconsistent answers about her travel plans and her vehicle smelled strongly of an odor commonly used to mask the scent of drugs. These facts established probable cause to search the vehicle under the automobile exception to the *Fourth Amendment's* warrant requirement.

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

*****

U.S. v. Sharp, 2012 U.S. App. LEXIS 15511, July 27, 2012

Police officers found methamphetamine and marijuana in a shaving kit located on the passenger seat of Sharp's car. The officers searched the shaving kit after a trained narcotics-dog jumped into the car through the driver's side window and alerted to the presence of the drugs inside of it.

Even though the dog had some history of jumping into open car windows, the court found that in this case dog jumped into Sharp's car because it smelled drugs in the car, not because the officers encouraged or facilitated the jump. As a result, the court held that a trained narcotic dog's sniff inside of a car, after instinctively jumping into the car, is not a search that violates the *Fourth Amendment* as long as the officers did encourage or facilitate the dog's jump.

The 3rd, 8th and 10th Circuits agree.

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

*****

7th Circuit

U.S. v. Griffin, 2012 U.S. App. LEXIS 13651, July 5, 2012

Griffin was convicted of being a felon in possession of a firearm and ammunition after police officers conducted a search of his parent's house, where he was living. He claimed that the firearm and ammunition belonged to his father and that was no evidence to establish that he intended to exercise any control over them.

The court agreed and reversed his conviction. Griffin was present in a home where firearms and ammunition were present, but the government offered no evidence that would have allowed a reasonable jury to find beyond a reasonable doubt that he had constructive possession of those items.

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

*****

U.S. v. Stadfeld, 2012 U.S. App. LEXIS 15522, July 27, 2012

Instead of obtaining formal immunity from prosecution, Stadfeld agreed to talk to state investigators informally, in exchange for an oral non-prosecution agreement from the state prosecutor. Stadfeld's retained attorney mistakenly advised him that this non-prosecution agreement prevented any prosecutor, state or federal, from using his statements against him. Four years later, Stadfeld was indicted by a federal grand jury, based in part on his statements to the state investigators.

Stadfeld moved to suppress the use of his statements, arguing that he spoke to the investigators only because he was under the mistaken impression that he had full immunity.

The court held that Stadfeld's statements were not caused by law enforcement coercion. Neither the state prosecutor nor the investigators made any threats or false promises of leniency to obtain Stadfeld's statements. In addition, the erroneous advice from his attorney did not make Stadfeld's statements involuntary or inadmissible based on ineffective assistance of counsel.

The court also held that regardless of any misunderstanding about the scope of the non-prosecution agreement, Stadfeld breached it by lying to the investigators.

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

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8th Circuit

U.S. v. Stoltz, 2012 U.S. App. LEXIS 14018, July 10, 2012

Stoltz argued that the district court should have suppressed all evidence obtained after the officer told him to exit his vehicle, because, at that point, he was unlawfully arrested without probable

cause. The court disagreed, stating, "It is well settled that once a motor vehicle has been lawfully detained for a traffic violation, police officers may order the driver to get out of the vehicle without violating the *Fourth Amendment's* proscription of unreasonable seizures."

Stoltz also argued that the pawn receipts the officers seized from his wallet, while executing a search warrant on the vehicle, should have been suppressed because the search of the wallet fell outside the scope of the search warrant. Again, the court disagreed. The search warrant expressly authorized the officers to search the vehicle for "receipts" and "other items evidencing the expenditure of money." Because receipts may be found in a wallet, the officers' search of the wallet did not exceed the scope of the search warrant.

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

*****

U.S. v. Benson, 2012 U.S. App. LEXIS 14122, July 11, 2012

Benson claimed that the DNA evidence tying him to possession of a stolen handgun should have been suppressed as the fruit of an unlawful seizure.

The court disagreed. Shortly after a shoplifting was reported, a police officer spotted Benson, who matched the description of the shoplifter, running away from the store. These facts gave the officer a reasonable, articulable suspicion that Benson had just committed the shoplifting and justified a *Terry* stop.

The officer could not confirm or dispel his suspicions that led to the *Terry* stop until he transported Benson back to the store. Consequently, placing Benson in the back of the patrol car and transporting him back to the store for identification did not constitute an unreasonable seizure under the *Fourth Amendment*.

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

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U.S. v. Preston, 2012 U.S. App. LEXIS 14362, July 13, 2012

A patrol officer saw a vehicle perform an illegal U-turn and began to follow it. The vehicle pulled over to the side of the road without being signaled to do so by the officer. While the officer was running the license plate through his computer, a woman got out of the vehicle and walked up to a nearby house and knocked on the front door. The officer saw a person in the house look out a window at the woman, but did not answer the door. By now, the officer had learned that the vehicle was registered to a car lot and not to an individual. When the woman began to walk back towards the vehicle, the officer activated his lights, got out of his car and approached the vehicle. None of the four occupants of the vehicle had a valid driver's license and vehicle was not insured. The officer ordered everyone out of the vehicle so an inventory search could be conducted before the vehicle was impounded.

The officer recognized Preston, a back seat passenger, as having been involved in several domestic violence calls and gun cases. During a *Terry* frisk, one of the back-up officers found a loaded handgun in the pocket of Preston's jacket.

The court reversed the district court and held that the *Terry* frisk was lawful because the totality of the circumstances created an objectively reasonable suspicion that Preston might be armed and dangerous. First, the stop took place at night. Second, the woman getting out of the vehicle and knocking on door of a house, whose occupants refused to answer the door, appeared to be an attempt to create a distraction. Third, none of the occupants had a valid license and the vehicle was registered to a car lot. Fourth, once the officer learned Preston's identity, he knew that Preston had been involved in prior cases involving domestic violence and guns. Finally, allowing any of the occupants to walk away from the vehicle without having been searched would have posed a threat to officer safety.

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

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U.S. v. Riley, 2012 U.S. App. LEXIS 14363, July 13, 2012

During the course of a valid traffic stop, the court held that the officer developed reasonable suspicion to detain Riley in order to search his vehicle. First, Riley exhibited undue nervousness in the form of a visibly elevated heart rate, shallow breathing and repetitive gesticulations, such as "wiping his face and scratching his head." Second, Riley gave vague or conflicting answers to simple questions about his travel itinerary. Finally, Riley misrepresented his criminal history to the officer by omitting his prior drug violations and felony arrests.

Next, the court held that the officer's method of questioning Riley did not amount to an unreasonable "search" in violation of the *Fourth Amendment*. The officer asked Riley about his travel itinerary. These questions did not extend the traffic stop because the officer asked them while he was waiting for his dispatch to get back to him with a report on Riley's criminal history, which is allowed during a traffic stop.

The court further held that the fifty-four minutes spent waiting for the drug-detection dog to arrive was reasonable. The officer called for the drug-detection dog within eleven minutes of his initial stop and immediately after he established reasonable suspicion that criminal activity was afoot in Riley's vehicle. No drug-detection dogs were on duty in the area, so the officer had to call an off-duty officer to come to the scene. The court found that this amount of time spent waiting for the drug-detection dog to arrive was unavoidable and reasonable based on the diligence shown by the officer.

Finally, the court held that the drug-detection dog's alert on Riley's vehicle provided probable cause that drugs were present, which allowed the officers to search the vehicle under the automobile exception to the *Fourth Amendment's* warrant requirement.

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

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U.S. v. Hollins, 2012 U.S. App. LEXIS 14514, July 16, 2012

Officers conducted a traffic stop on the SUV in which Hollins was a passenger because it had no license plates. After approaching the SUV, one of the officers saw what appeared to be a valid "In-Transit" sticker. The officer's experience with phony In-Transit stickers had taught him to verify them, so he asked the driver for his license, insurance card and registration. The officer

eventually arrested the driver because he had two outstanding arrest warrants. Hollins could not lawfully drive the SUV because he had a suspended driver's license. Before impounding the vehicle, the officers conducted an inventory search and found a handgun under the center console. The officers arrested Hollins who was a previously convicted felon.

Hollins argued that the handgun should have been suppressed. He claimed that because the SUV had a valid In-Transit sticker, the officers did not have reasonable suspicion or probable cause to stop the SUV.

The court disagreed, holding that the initial traffic stop and investigation, which led to the search and Hollins' arrest, was valid. When the officers initially observed the SUV, it did not have license plates and they could not see the In-Transit sticker. Only after shining his spotlight, getting out of his patrol car, and approaching the SUV, did the officer see the sticker. Even then, however, it was not immediately verifiable as a valid sticker. The officer did not see its expiration date and his experience had taught him that In-Transit stickers that appear to be valid might not be, because it was common to come across stickers that had been illegally distributed. The officer then conducted a reasonable investigation by requesting the driver's license, insurance card and registration.

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

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U.S. v. Hastings, 2012 U.S. App. LEXIS 14590, July 17, 2012

Officers followed a vehicle that left a house where a suspected bank robbery suspect had been hiding. After witnessing the driver commit a traffic violation, the officer conducted a traffic stop. The passenger jumped out of the vehicle and fled on foot with an officer in pursuit. The officer shot the passenger after he pulled a knife on the officer.

Initially, other officers detained the driver, Hastings, and then they transported him to the police station where he was charged with driving with a suspended license several hours later. The next day the officers obtained a warrant to search the vehicle for evidence related to the bank robbery. Inside the vehicle, the officers recovered a rifle and a handgun. Hastings was then charged with being a felon in possession of a firearm.

The court held that the officer was justified in conducting the traffic stop because it was objectively reasonable for him to conclude that it was unsafe for Hastings to abruptly cross two highway lanes, while driving at fifty miles-per-hour, while just barely making it onto the off-ramp.

The court also held that there was no connection between Hastings' prolonged detention, prior to his arrest for driving with a suspended license, and the eventual discovery of the illegal firearms in the vehicle. Hastings' argument that, except for the prolonged detention, he would have driven the car away was clearly incorrect. At the conclusion of the traffic stop Hastings would not have been allowed to drive the vehicle away. First, the vehicle would have been detained as part of the investigation into the officer-involved shooting. Second, the vehicle would have been detained as part of the bank robbery investigation.

Finally, the court held that the plain-view doctrine allowed the officers to seize the firearms from the vehicle even though the search warrant did not list them as items to be seized. Hastings

claimed that plain-view did not apply because the incriminating nature of the firearms was not immediately apparent. The court noted that for the incriminating nature of the firearms to be immediately apparent, the officers only need probable cause to associate the firearms with criminal activity, not absolute certainty. Here, passenger in the vehicle was suspected of committing a bank robbery where he used a note saying that he had a gun, a fact that the officers included in the search warrant affidavit. Under these circumstances, the court concluded that the incriminating nature of the rifle and handgun was immediately apparent.

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

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U.S. v. Zamora-Lopez, 2012 U.S. App. LEXIS 15201, July 24, 2012

An informant told police officers that he had regularly purchased methamphetamine from his supplier every three to five days for the past three years. The informant said that they would meet at a particular intersection where the supplier would get out of his vehicle, which was sometimes a silver SUV, driven by an unknown third person, and get into the informant's vehicle. After driving around and completing the drug deal, the informant would drop off the supplier, who would be picked up by the unknown third person driving the SUV.

The officers set up an undercover drug buy between the informant and his supplier, following their previous routine. After the supplier got out of a silver Jeep and into the informant's vehicle the officers followed the Jeep for a few blocks. The officers conducted a traffic stop and arrested the driver, Zamora-Lopez. The officers recovered a bag containing methamphetamine from Zamora-Lopez's coat pocket.

Zamora-Lopez argued that the officers did not have reasonable suspicion to believe that he was involved in drug trafficking activity just because he was driving the Jeep.

The court disagreed. The informant described to the officers a very specific pattern of long-standing conduct that usually involved three people, the informant, the supplier and an unknown driver. The supplier and his driver sometimes arrived in silver SUV. The supplier's driver frequently stayed in the area to pick up the supplier after the drug transaction. The officers' surveillance observations during the controlled buy confirmed the informant's account in almost every detail. The officers believed that the supplier was an experienced and high-volume drug trafficker and it would be reasonable for the officers to believe that he would a person he trusted to drive him to and from his drug transactions. Therefore, it was reasonable for the officers to suspect that the Jeep's driver was knowingly involved in the supplier's drug trafficking activities.

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

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U.S. v. Mabery, 2012 U.S. App. LEXIS 15417, July 26, 2012

At about 3 a.m., officers saw a Jeep, with its dome light on, in the parking lot of an apartment complex. When the occupant of the Jeep saw the officers' police car, he shifted in his seat, away from the officers, and turned the dome light off. Because there had been previous "trouble" in the apartment complex, the officers stopped and shined the police car's spotlight on the Jeep. Mabery, who was in the Jeep, got out, threw down a bag containing marijuana and ran away

from the officers. The officers chased Mabery, subdued him and then found a gun in pants pocket.

Mabery argued when the officers stopped their police car and illuminated his Jeep with their spotlight, that they unlawfully seized him under the *Fourth Amendment*.

The court disagreed. A seizure occurs when an officer, by means of physical force or show of authority, restrains a person's liberty. The act of shining the spotlight on Mabery, by itself, did not constitute a *Fourth Amendment* seizure before Mabery dropped his contraband and fled from the officers. The officers did nothing else that would support a demonstration of their authority, such as drawing their weapons or issuing verbal commands to Mabery. In addition, Mabery's act of running away from the officers did not support his argument that he did not feel free to leave the scene, because that was exactly what he tried to do. Here, the circumstances established a routine police-citizen encounter, until Mabery got out of the Jeep and ran away from the officers.

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

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U.S. v. Beasley, 2012 U.S. App. LEXIS 15748, July 31, 2012

The court held that the seizure of Beasley's digital camera and other property from his mother's house was reasonable. First, there was no meaningful interference with Beasley's possessory interest in the items because he was incarcerated when the officer seized them. Second, Beasley's mother consented to the officer seizing the items. Third, Beasley's efforts to conceal the items and the other evidence of his production and possession of child pornography gave the officer probable cause to believe the items contained evidence of child abuse and child pornography. Finally, the officer had a legitimate interest in preserving the evidence and Beasley's mother had a legitimate reason to be rid of the items.

The court further held that Beasley's consent to search the camera and other items was obtained voluntarily.

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

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9th Circuit

U.S. v. Pariseau, 2012 U.S. App. LEXIS 14529, July 16, 2012

The court held that Pariseau voluntarily consented to the search in which officers found illegal drugs strapped to his legs when he got off a plane at the Seattle airport. After the officers approached him, they told Pariseau that he could refuse consent, but that he would be detained while they sought a warrant to search him. Pariseau replied, "You may as well search me now." Pariseau's consent was not obtained as a result of threats or coercion. The officers told him that he could refuse consent and wait for a search warrant and that it was not certain that the search warrant would be issued.

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

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U.S. v. Pope, 2012 U.S. App. LEXIS 14612, July 17, 2012

A federal law enforcement officer in a national forest responded to an area where some people were creating a disturbance. The officer encountered Pope, whom he suspected was under the influence of marijuana. Pope told the officer that he had been smoking marijuana but denied that he had any on his person. The officer then ordered Pope to empty his pockets, but Pope refused. The officer asked Pope, a second time, if he had any marijuana on his person. This time Pope admitted that he had marijuana in his pockets. The officer ordered Pope to place the marijuana on the hood of his police car and Pope complied.

The court held that the officer's initial command to Pope to empty his pockets was not a search under the *Fourth Amendment*. Even though Pope had a reasonable expectation of privacy in the contents of his pockets, his non-compliance with the officer's command to empty them did not intrude on that reasonable expectation of privacy.

The government conceded that the officer's second command for Pope to place the marijuana on the hood of his police car was a search under the *Fourth Amendment* because of Pope's compliance. However, the court held that this warrantless search was reasonable because of the potential for the destruction of the evidence. When Pope admitted that he was in possession of marijuana, the officer had probable cause to arrest him for possession of a controlled substance. If the officer had allowed Pope to leave his presence, without searching him, there was a high risk that the evidence would have been hidden or destroyed. Finally, the search was minimally intrusive because the officer merely told Pope to place whatever marijuana he had on the hood of the car.

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

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U.S. v. Oliva, 2012 U.S. App. LEXIS 14906, July 20, 2012

Oliva appealed the district court's denial of his motion to suppress evidence obtained from a series of surveillance orders that authorized the interception of communications over cellular phones associated with him and his co-conspirators. Oliva claimed that the surveillance orders authorized the government to transform the cellular phones into roving electronic bugs by using sophisticated eavesdropping technology.

The court agreed with the district court and stated that if the government seeks authorization for the use of new technology to convert cellular phones into roving bugs, it must specifically request that authority. In this case, however, the surveillance orders were intended only to authorize standard interception techniques and the government only utilized standard interception techniques.

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

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U.S. v. Valdes-Vega, 2012 U.S. App. LEXIS 15335, July 25, 2012

A Border Patrol agent stopped Valdez-Vega 70 miles north of the U.S.–Mexico border. Valdes-Vega's pickup truck had Mexican license plates, he was driving 90 miles-per-hour on the highway while the other vehicles were driving between 70 and 80 miles-per-hour, he was weaving in and out of traffic and he did not make eye contact with the agent after the pulled his police car alongside the passenger side of Valdes-Vega's truck. Valdes-Vega consented to a search of his truck and the agents found approximately 8 kilograms of cocaine.

The Border Patrol Agent testified that his justification for the stop was his belief that Valdes-Vega's behavior was consistent with the behavior of alien and drug smugglers who encounter law enforcement officers in that area.

The court held that the totality of the circumstances did not provide the Border Patrol Agent with reasonable suspicion to believe that Valdes-Vega was smuggling drugs or aliens. The totality of the circumstances revealed a driver with Mexican license plates committing traffic infractions on an interstate 70 miles north of the border. The court concluded that this describes too broad a category of people to justify reasonable suspicion to believe that Valdes-Vega was smuggling either drugs or aliens.

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

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10th Circuit

U.S. v. Burciaga, 2012 U.S. App. LEXIS 15404, July 25, 2012

The court held that the officer lawfully stopped the Burciaga's car for a lane-change violation after Burciaga changed from the left to the right lane on the interstate, after passing the officer's patrol car, without engaging is turn signal in a timely manner. In reversing the district court, the court held that the government did not have to go so far as to establish that Burciaga's lane change "most likely" would affect surrounding traffic. Instead, the government only had to prove a "reasonable possibility" existed that Burciaga's lane change might do so.

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

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11th Circuit

Butler v. Sheriff of Palm Beach County, 2012 U.S. App. LEXIS 13844, July 6, 2012

Dorethea Collier was a corrections officer at county boot-camp facility for minors run by the Sheriff's Office. Collier came home from work and found her nineteen-year-old daughter naked in her bedroom. Collier then found Butler, her daughter's boyfriend, naked in the bedroom closet. While still wearing her uniform, Collier punched Butler one time and then drew her firearm and threatened to shoot Butler if he moved. Collier handcuffed Butler and threatened to kill him if he did not obey her commands. Collier called her supervisor and asked what charges she could bring against Butler. Collier eventually let Butler get dressed and leave the house after she decided that he had not committed any crime.

Butler filed a lawsuit against Collier, individually and in her official capacity as a corrections officer with the Sheriff's Office. In addition to several state law claims, Butler claimed that Collier had violated *42 U.S.C. § 1983* by using excessive force and by effecting an unreasonable search and seizure on him while acting under the color of state law.

The court noted that a defendant acts under the color of state law when he deprives the plaintiff of a right through the exercise of authority that is held by virtue of his position. Consequently, the court must determine if the defendant was exercising power based on state authority or acting only as a private individual.

The court held that Collier's conduct towards Butler was not a result of her status as a corrections officer, but rather as that of an irate mother with an anger management problem. Collier walked into her own house just like any private individual returning home from work. When she punched, handcuffed, and held Butler at gunpoint, she did not represent that she was exercising he authority as a corrections officer. The fact that Collier pointed her duty weapon at Butler and used her department issued handcuffs on him does not automatically mean that she was acting under the color of state law. Because Butler's alleged mistreatment was not inflicted under the color of state law, the district court correctly dismissed his *§ 1983* claims.

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

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U.S. v. Smith, 2012 U.S. App. LEXIS 15149, July 23, 2012

Police officers went to Smith's house to conduct a knock and talk interview after they received a tip that he had child pornography on his laptop computer. The officers entered Smith's home through an unlocked door, to check on his welfare, after he did not respond to their knocking. Once inside, the officers encountered Smith, who agreed to talk to them outside. After a brief conversation, Smith and the officers went back into the house where Smith gave the officers consent to search his home and to seize his laptop computer. Smith also agreed to go to the police station for an interview. During the interview, Smith confessed to downloading child pornography and to making it available for upload to others, through a peer-to-peer file-sharing program. The officers obtained a search warrant and found child pornography on Smith's laptop computer.

The court declined to rule on whether or not the officers' initial entry violated the *Fourth Amendment*. However, the court held that even if the entry was illegal, the officers did not exploit the circumstances of their entry to obtain the evidence later used to convict Smith. Once inside the house, the officers went to Smith's bedroom to check on his welfare and they withdrew from the house after they realized he was not in any danger. The officers did not search the house for computers and they did not examine the laptop computer sitting in plain view in the living room. The officers waited outside for Smith while he got dressed and did not go back into the house until they went back inside with him. These events broke any connection between the officers' initial entry and Smith's consent to search the house, the seizure his computer and his confession. As a result, the court concluded that district court properly refused to suppress the evidence against Smith.

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

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