

THE FEDERAL LAW ENFORCEMENT — INFORMER —

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

Welcome to this installment of *The Federal Law Enforcement Informer (The Informer)*. The Legal Training Division of the Federal Law Enforcement Training Center's Office of Chief Counsel is dedicated to providing law enforcement officers with quality, useful and timely United States Supreme Court and federal Circuit Courts of Appeals reviews, interesting developments in the law, and legal articles written to clarify or highlight various issues. The views expressed in these articles are the opinions of the author and do not necessarily reflect the views of the Federal Law Enforcement Training 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/training/programs/legal-division/the-informer>.

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Free FLETC Informer Webinar Series Schedule

July / August 2013

1. The Law on the Use of Drones in the United States

1-hour webinar presented by Bob Cauthen and David Gratz, FLETC Legal Division

Date and Time: Wednesday July 31, 2013: 2:30 pm EDT Click [HERE](#) to participate.

2. Canines, Cops, and Curtilage – Using Police Dogs After *Florida v. Jardines*

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

Dates and Times: Tuesday August 6, 2013: 1:00 pm EDT Click [HERE](#) to participate **or**
Wednesday August 21, 2013: 10:30 am EDT Click [HERE](#) to participate.

3. Government Workplace Searches: A review of the law that controls the government's ability to intrude into its employees' workspaces.

1-hour webinar presented by John Besselman and Bob Cauthen, FLETC Legal Division.

Date and Time: Wednesday August 7, 2013: 1:30 pm EDT Click [HERE](#) to participate.

4. *Kalkines* and *Garrity* – Getting the Basics: An Introduction to some of the parameters of the important case holdings of *Kalkines* and *Garrity*.

1-hour webinar presented by John Besselman, FLETC Legal Division

Date and Time: Wednesday August 14, 2013: 8:30 am EDT Click [HERE](#) to participate.

5. United States Supreme Court Wrap-Up: A review of seven cases decided by the USSC in the October 2012 Term that affect law enforcement officers.

1-hour webinar presented by Ken Anderson and John Besselman, FLETC Legal Division

Dates and Times: Friday August 16, 2013: 1:30 pm EDT Click [HERE](#) to participate.

6. The Circuit Split in Using Deadly Force to Control Suicidal People:

1-hour webinar presented by Tim Miller, FLETC Legal Division

Date and Time: Thursday August 29, 2013: 2:30pm EDT Click [HERE](#) to participate.

7. Freedom of Speech in the Government Workplace

90-minute webinar presented by Bryan Lemons, Deputy Assistant Director,
Federal Law Enforcement Training Center

Date and Time: Friday August 30, 2013: 1:30 pm EDT Click [HERE](#) to participate.

If there are any specific legal topics that you would like to see offered in future FLETC Informer webinars, please let us know!

Address any inquiries to lgdwebinar@fletc.dhs.gov

CASE SUMMARIES

Circuit Courts of Appeals

2nd Circuit

United States v. Lee, 2013 U.S. App. LEXIS 11496 (2nd Cir. N.Y. June 7, 2013)

Law enforcement officers in Jamaica investigated a marijuana trafficking organization that included Lee. After Jamaican police intercepted wire communications on several telephones in Jamaica, they notified the DEA, pursuant to a Memorandum of Understanding (MOU) that existed between the two countries concerning the investigation of drug trafficking organizations. Although Lee was not the target of the Jamaican investigation, he was heard speaking about drug shipments on some of the wiretaps. These conversations were presented to a federal grand jury in the United States that indicted Lee.

At trial, Lee sought to suppress the Jamaican government's recordings of the intercepted conversations.

Generally, suppression of evidence is not required when foreign law enforcement officials obtain the evidence at issue. However, evidence obtained by a foreign law enforcement agency may be suppressed where the conduct of foreign law enforcement officials rendered them "virtual agents" of United States law enforcement officials. Lee claimed the close, ongoing and formalized collaboration between the Jamaican police and the DEA rendered the Jamaican police "virtual agents" of the DEA.

The court disagreed. Even though the United States and Jamaica agreed on several measures designed to facilitate collaboration and cooperation in drug trafficking investigations, the Jamaican investigation of Lee was an independent undertaking by a foreign sovereign. First, the Jamaican police initiated their investigation into the marijuana trafficking organization before the DEA began its investigation. Second, the Jamaican police did not ask the DEA for its assistance or seek the DEA's approval before conducting their electronic surveillance. Third, DEA agents were not involved in the interception or translation of the conversations at issue. Finally, the DEA did not make a formal request that Jamaican police conduct surveillance on Lee or any other members of the marijuana trafficking organization.

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

5th Circuit

United States v. Hernandez-Mandujano, 2013 U.S. App. LEXIS 13258 (5th Cir. La. June 27, 2013)

Border Patrol agents stopped Hernandez as he was driving on Interstate 10, approximately 450 miles from the nearest United States-Mexico border crossing. The agents believed Hernandez was transporting illegal aliens because he was driving an SUV; had both hands on the steering wheel, and he was not exhibiting the relaxed nature of most drivers. In addition, Hernandez's

speed dropped from 70 miles per hour to 60 miles per hours as the agents followed him, and when the agents pulled alongside Hernandez, he stopped talking to the person in the passenger's seat. The agents learned the car was registered to a woman; however, it had not been reported stolen, had no outstanding warrants or criminal activity associated with it, and had not recently crossed the border.

During the stop, Hernandez told the agents he was a Mexican national in the United States illegally. The government indicted Hernandez for reentry without permission by an alien deported after conviction for an aggravated felony, in violation of 18 U.S.C. § 1326(a) and (b)(2).

Hernandez moved to suppress his statements to the agents, arguing the stop could not be considered an extended border search and the agents lacked reasonable suspicion to conduct a *Terry* stop.

The district court agreed the stop was not an extended border search, but held the agents had reasonable suspicion of illegal activity to support a *Terry* stop.

The court of appeals held the agents did not have reasonable suspicion to stop Hernandez. First, the stop occurred 450 miles from the nearest border crossing and there was no reason to believe Hernandez had come from the border. Second, Hernandez's driving posture speed change and the fact the SUV was registered to a woman was not indicative of criminal activity. Third, the SUV had not been reported stolen, had no outstanding warrants or criminal activity associated with it, and had not recently been documented as crossing the border. Finally, the agents could not identify anything about the SUV that rendered it more likely than other SUVs to be transporting illegal aliens.

Even though the agents violated the *Fourth Amendment* in stopping Hernandez, the court still denied Hernandez's motion to suppress. The court noted previous Fifth Circuit case law held an alien's INS file and identity are not subject to suppression when law enforcement officers learn of a deported alien's unlawful reentry after an allegedly unconstitutional stop.

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

6th Circuit

United States v. Figuero-Diaz, 2013 U.S. App. LEXIS 11231 (6th Cir. Tenn. June 5, 2013)

Federal agents suspecting Rivas was trafficking drugs followed him to a restaurant parking lot. The agents saw Rivas climb into the driver's seat of a tractor-trailer. The agents saw Diaz in the passenger seat of the tractor-trailer. The agents confirmed the tractor-trailer was registered to Rivas. After a few minutes, Rivas got out of the tractor-trailer and got into a car driven by Loya. Diaz followed Loya and Rivas in the tractor-trailer.

The agents followed Loya, Rivas and Diaz to a warehouse and approached the men to conduct a *Terry* stop. Rivas ran from the officers, but was apprehended after a brief foot chase, while Loya and Diaz were detained without incident.

The agents walked a drug dog around the tractor-trailer and the dog gave a positive alert. The agents searched and found over two-thousand pounds of marijuana hidden in the trailer's undercarriage. The agents arrested Rivas, Diaz and Loya.

All three men moved to suppress the marijuana recovered from the trailer, claiming it was seized as a result of their unlawful detention.

The district court suppressed the evidence as to Loya and Diaz, but declined to suppress the evidence as to Rivas. The district court found the agents had reasonable suspicion to detain Rivas, but did not have reasonable suspicion to detain Diaz and Loya. The government appealed the suppression order regarding Diaz and Loya.

The court of appeals reversed the district court and held the marijuana should not have been suppressed as to Diaz and Loya. The exclusionary rule prohibits the government from using evidence caused by an illegal seizure, not evidence found around the same time as an illegal seizure. Here, the agents' detention of Diaz and Loya did not cause the agents to find the marijuana in the trailer. Instead, it was the agents' reasonable suspicion regarding Rivas that caused the agents to detain the tractor-trailer, conduct the dog sniff and discover the marijuana.

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

United States v. Tavera, 2013 U.S. App. LEXIS 12547 (6th Cir. Tenn. June 20, 2013)

Police officers arrested Mendoza and Tavera after they discovered methamphetamine hidden under a bucket of nails in the truck the men were driving. At trial, Tavera testified he did not know about the drugs in the truck. The jury convicted Tavera.

After his conviction, Tavera learned a few days before the trial Mendoza had participated in plea negotiations in which Mendoza told the Assistant United States Attorney (AUSA) Tavera did not know about the drugs in the truck. The AUSA did not disclose Mendoza's statements to Tavera.

Tavera appealed his conviction, arguing *Brady v. Maryland* required the AUSA to disclose Mendoza's statements to him.

The court agreed. In *Brady v. Maryland*, the United States Supreme Court held the government must disclose material, exculpatory evidence in its possession and failure to do so results in a trial that is fundamentally unfair. Here, Mendoza's statements to the AUSA were material to Tavera's case. The government's proof of Tavera's intent to join the drug conspiracy and distribute drugs was not overwhelming. If Tavera had been able to bolster his own testimony with Mendoza's statements, it would have significantly strengthened his case.

In addition, the court rejected the government's argument that Tavera's attorney should have exercised due diligence and discovered the statements on his own by interviewing Mendoza and asking him if he had talked to the AUSA. The "due diligence" defense is not valid because it releases the prosecutor from his duty of disclosure clearly outlined in *Brady* and places the burden of discovering exculpatory information on the defendant.

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

7th Circuit

United States v. Richards, 2013 U.S. App. LEXIS 12026 (7th Cir. Ill. June 14, 2013)

An undercover police officer agreed to purchase ten kilograms of cocaine from a high-level drug dealer at his house. As directed, the officer followed a pick-up truck from a mall parking lot to the drug dealer's house and then backed his car into the garage once the truck left. After men loaded bags into the trunk, the undercover officer drove away. Police officers maintained surveillance on the house after the buy because the undercover officer suspected additional drugs remained on the property, while other police officers followed the pick-up truck.

About twenty minutes later, the officers saw the same pick-up truck meet a gray Lexus in the same mall parking lot. The Lexus followed the pick-up truck to the house and backed into the garage as the undercover officer had done. Ten minutes later, the Lexus emerged from the garage and drove away. While following the Lexus, officers confirmed the substance previously loaded into the undercover officer's car had tested positive for cocaine. After an hour of surveillance during which the Lexus violated no traffic laws, the officers conducted a traffic stop. Without consent, the officers searched the car and found a backpack in the trunk. Inside the backpack, the officers found approximately ten kilograms of cocaine. Richards, the driver, and Rodgers, the passenger, denied ownership of the bag; however, both were arrested. None of the officers involved in the operation had any information connecting either Richards or Rodgers to the target drug dealer before they drove up to his house in the gray Lexus. In addition, the officers had no information that another drug deal would occur at the house that day.

Richards moved to suppress the cocaine found in the backpack, arguing the officers lacked probable cause to stop and search the gray Lexus.

The court disagreed, holding the facts and circumstances known to the officers at the time of the stop provided probable cause to believe the Lexus had picked up drugs during its brief stop at the house. Consequently, the officers were allowed to search the Lexus under the automobile exception to the *Fourth Amendment's* warrant requirement.

First, the officers knew an undercover police officer had purchased ten kilograms of cocaine from the house less than an hour before the Lexus arrived, and the undercover officer believed more cocaine remained at the house.

Second, the officers knew the Lexus met another vehicle and then followed that vehicle to the house, as the undercover officer had done. After arrival, the other vehicle left and the Lexus backed into the garage where it remained for approximately ten minutes before leaving, as the undercover officer had done. These facts and circumstances generated a fair probability that Richards had picked up drugs just as the undercover officer had.

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

8th Circuit

United States v. Smith, 2013 U.S. App. LEXIS 11365 (8th Cir. Mo. June 6, 2013)

Federal agents in St. Louis suspected Smith was involved in a scheme to obtain cash by false pretenses from U.S. Bank. The agents knew Smith had been involved in a similar scheme in Los Angeles and had since relocated to St. Louis. In addition, the agents traced emails sent to U.S. Bank to a house across the street from Smith's residence that had an unsecured wireless router, which would allow anyone within range to access the internet. Finally, U.S. Bank gave the agents a recording of a phone conversation between a bank employee and the individual trying to fraudulently obtain the cash. An agent familiar with Smith's voice confirmed the voice on the recording belonged to Smith.

While conducting surveillance, the agents saw Smith and another person, later identified as Lewis, go into a restaurant. The agents entered and arrested Smith as he came out of the restroom. The agents seized a messenger bag, which was approximately fifteen to twenty feet away at a table with Lewis.

An inventory search of the bag revealed a laptop computer, a cell phone and bank records. The agents secured the items and obtained a warrant to search the bag, laptop and cell phone.

Smith argued the agents did not have probable cause to arrest him; therefore, the items recovered from the messenger bag after his arrest should have been suppressed. Even if his arrest was supported by probable cause, Smith argued the messenger bag and its contents were illegally seized and searched by the agents before they obtained a warrant.

The court disagreed. First, the agents had probable cause to arrest Smith. The agents knew Smith was a suspect in a similar scheme conducted in Los Angeles and an agent identified the voice of the person calling U.S. Bank to set up the scheme as belonging to Smith.

Second, the agents lawfully seized Smith's bag because they had probable cause to believe the bag contained evidence of a crime. The bag resembled the type of bag used to transport a laptop computer and the agents knew e-mails were sent to U.S. Bank from various access points, making it likely a laptop had been used in the scheme. Immediate seizure of the bag was necessary to prevent the destruction of evidence.

Finally, even though the agents slightly deviated from their agency's inventory search policy, the search was still reasonable because it was not pretext for a general search for evidence.

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

United States v. Capps, 716 F.3d 494 (8th Cir. Mo. June 11, 2013)

A police officer conducted a traffic stop because the officer knew Capps did not have a valid driver's license and there was an active felony warrant for Capps' arrest. During the stop, the officer discovered the license plates on Capps' vehicle were registered to a different vehicle. After the officer asked Capps for consent to search the vehicle, Capps told the officer to check the trunk for a second set of license plates. The officer clarified he wanted to search the entire vehicle and told Capps he could refuse this request if he wished. Capps eventually responded,

“just go ahead and look.” During the search, the officer found a bag containing methamphetamine under the hood of Capps’ vehicle.

Capps moved to suppress the methamphetamine, arguing the officer violated the *Fourth Amendment* because any consent he provided was involuntary, in part because the officer failed to advise Capps of *Miranda* rights before asking for consent to search.

The court disagreed. Capps was in his thirties at the time of the incident and did not claim to possess below average intelligence or any other barriers to effective communication. In addition, Capps appeared to be sober and his prior interactions with law enforcement make it more likely he was aware of his rights. Finally, while lack of *Miranda* warnings is a relevant factor to consider, the Eighth Circuit has never required a police officer to provide *Miranda* warnings before requesting consent to search. Here, the weight of the other factors indicated the absence of *Miranda* warnings prior to the search did not affect Capps’ otherwise voluntary consent.

Capps further argued even if his consent was voluntary, his consent to search the vehicle was limited to the trunk.

Again, the court disagreed. The court determines the scope of a person’s consent by considering what an objectively reasonable person would have understood the consent to include. Here, the court held that Capps’ statement, “just go ahead and look” would have led an objectively reasonable person to believe Capps consented to a search of the entire vehicle.

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

United States v. Hightower, 2013 U.S. App. LEXIS 12141 (8th Cir. Ark. June 17, 2013)

A police department received an anonymous call suggesting officers were needed at the local Boys and Girls Club. When the officers arrived, they found no problem at the Boys and Girls Club, but saw a group of ten to fifteen people across the street on the verge of fighting. As the officers crossed the street to investigate, Hightower and his girlfriend walked away from the group, got into his nearby car, and began to drive away. The officers ordered Hightower to stop but he did not comply until an officer walked alongside his slow-moving vehicle and drew his firearm. After Hightower stopped, the officers smelled the odor of alcoholic beverages coming from Hightower’s car. The officers eventually arrested Hightower for public intoxication and discovered an illegal firearm in his car during their inventory search.

Hightower argued the officers did not have reasonable suspicion to support a *Terry* stop.

The court disagreed. Police officers responded to a vague, anonymous emergency call suggesting officers were needed at the Boys and Girls Club. When the officers arrived, they saw a group of individuals across the street talking in raised voices and acting as if they were about to fight. An officer testified the area near the Boys and Girls Club, including the apartment complex across the street, had been the scene of fights, drugs arrests and other criminal activity. These facts, combined with Hightower’s initial refusal to comply with the officer’s repeated orders to stop, gave the officers reasonable suspicion to conduct a *Terry* stop.

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

9th Circuit

United States v. Morgan, 2013 U.S. App. LEXIS 11114 (9th Cir. Ariz. June 3, 2013)

A Border Patrol agent arrested Morgan after discovering several bundles of marijuana concealed in her vehicle as she drove into the United States from Mexico. The agent advised Morgan of her *Miranda* rights and Morgan agreed to speak to the agent. However, soon after the conversation began, Morgan invoked her right to counsel and the agent terminated the interview.

The agent transported Morgan and the marijuana to the Casa Grande Border Patrol station for processing. While processing Morgan, the agent read her a portion of an I-214 Form that contained the *Miranda* warnings. Morgan signed the I-214 Form, acknowledging she was provided *Miranda* rights and that she understood those rights. Although the I-214 Form contained a section on waiving *Miranda* rights, the agent did not read this section to Morgan or attempt to obtain from her a waiver of her *Miranda* rights because she had previously invoked her right to counsel. The agent testified all Border Patrol agents at the Casa Grande Border Patrol station are required, as part of the routine processing of every arrestee, to read the *Miranda* warnings from the I-214 Form. The officer then must obtain an acknowledgement from the arrestee the form was read. This applied even if the arrestee has previously invoked his or her *Miranda* rights at the scene of the arrest.

After Morgan acknowledged her rights, she told the agent she wished to speak with him. The agent told Morgan he could not talk to her without the presence of her attorney because she had already invoked her right to counsel. Morgan told the agent she did not need an attorney and wanted to waive her right to counsel. The agent gave Morgan the opportunity to read and sign the waiver section of the I-214 Form. During her interview, Morgan admitted to smuggling marijuana.

Morgan argued the agent's reading of the I-214 Form constituted a re-initiation of interrogation after she had already invoked her right to counsel.

The term "interrogation" refers to express questioning or the functional equivalent of questioning which includes words or actions on the part of the police, other than those normally related to the arrest and custody process, that the police should know are reasonably likely to elicit an incriminating response. In this case, part of the station's standard processing procedure was to advise arrestees of their *Miranda* rights from the I-214 Form, even if the arrestees had previously invoked their rights. Because the reading of the I-214 Form was a normal part of the arrest and custody process and the agent made no effort to question Morgan or obtain a waiver of her previously invoked right to counsel, the court held the agent's actions were not the functional equivalent of questioning. Consequently, reading the I-214 Form to Morgan was not "interrogation" in violation of *Miranda*.

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

United States v. Needham, 2013 U.S. App. LEXIS 12033 (9th Cir. Cal. June 14, 2013)

In June 2010, police suspected Needham, a registered sex offender, had molested a five-year old boy in the restroom at a local mall. A detective obtained a warrant to search Needham's home. The warrant authorized a search for clothing matching the description of what Needham was

wearing at the mall the day he was suspected of molesting the boy and for a credit card Needham had used. The warrant also authorized the search of Needham's electronic and digital storage devices for child pornography. Other than the detective's opinion that individuals who molest children are likely to possess child pornography, the warrant did not provide any other reason to suspect Needham possessed child pornography in his home.

Officers seized Needham's iPod and discovered images and videos of child pornography.

Needham moved to suppress the evidence obtained from his iPod, arguing the search warrant was not supported by probable cause he possessed child pornography. Needham further argued the lack of probable cause was so obvious that the good-faith exception should not apply.

The officers relied on a warrant based on the inference that those who molest children are likely to possess child pornography. In 2011, the Ninth Circuit decided a case, which held such an inference, by itself, does not establish probable cause to search a suspected child molester's home for child pornography. However, because the search in this case occurred before 2011, the court held it was objectively reasonable for the officers to rely in good faith on the search warrant.

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

United States v. Stoltz, 2013 U.S. App. LEXIS 13220 (9th Cir. Alaska June 27, 2013)

Stoltz was an active duty enlisted member of the United States Coast Guard assigned to a Coast Guard cutter. While moored for a routine port call, a shipmate saw Stoltz aboard the cutter viewing child pornography on his laptop computer. Stoltz later told investigators he possessed child pornography aboard the cutter.

The cutter's commanding officer decided not to court-martial Stoltz, so the government would not be precluded from charging Stoltz in civilian criminal court. However, after seven months passed and no civilian criminal charges had been filed, the commanding officer imposed non-judicial punishment (NJP) on Stoltz.

Generally, service members facing NJP can choose to reject the NJP and demand trial by court martial. If that occurs, the decision of whether to proceed with a court-martial rests with the proper convening authority. However, the right to reject NJP in favor of a court-martial is subject to the "vessel exception." If the service member is attached to or embarked on a vessel, he does not have the right to reject NJP. If the vessel exception does not apply, the service member faced with NJP must be informed of his right to reject NJP in favor of a court-martial and NJP cannot be imposed unless the service member voluntarily, knowingly, and intelligently waives that right in writing. Here, Stoltz was never informed that he could reject NJP and demand a court martial, nor did he waive that right.

Approximately two years later, after Stoltz's discharge from the Coast Guard, a federal grand jury indicted him for possession of child pornography.

Stoltz moved to dismiss the indictment, claiming it violated the *Double Jeopardy Clause* of the *Fifth Amendment* and constituted a due process violation.

The district court dismissed the indictment, concluding the vessel exception did not apply; therefore, Stoltz should have been given the opportunity to reject NJP and demand a court-martial. The district court further held because Stoltz had not been made aware of his right to demand a court-martial, the government violated the *Double Jeopardy Clause* by charging him with the same crime in civilian court.

The Ninth Circuit disagreed. Even if the vessel exception did not apply, and the Coast Guard had improperly imposed NJP on Stoltz, the *Double Jeopardy Clause* was not violated. Double jeopardy bars Stoltz's prosecution only if he was previously placed in jeopardy for the same child pornography offense. The Supreme Court has consistently held that jeopardy does not attach until a defendant is "put to trial before the trier of facts, whether the trier be a jury or a judge." Here, both sides acknowledged that NJP is non-criminal and until he was indicted, Stoltz was never charged with possession of child pornography, in either a court-martial or civilian criminal court. Consequently, the district court improperly dismissed the indictment on double jeopardy grounds.

The court further held even if a due process violation occurred, it occurred as part of the NJP proceeding and not the current prosecution.

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

11th Circuit

United States v. Valerio, 2013 U.S. App. LEXIS 12604 (11th Cir. Fla. June 20, 2013)

A federal agent was conducting surveillance on a store that sold hydroponic gardening equipment. The agent believed individuals who purchased this type equipment were often involved in growing marijuana. The agent saw Valerio drive up to the back of the store in a pick-up truck with no license plate and back into a parking space, in what the agent thought was an attempt to conceal the truck's missing license plate. Valerio entered the store and returned several minutes later carrying a plastic shopping bag. Valerio drove out of the parking lot followed by the agent who noticed Valerio kept looking in his rearview mirror, which the agent interpreted as nervousness. A few minutes later, Valerio pulled over to the side of the road and walked toward the rear of his truck, holding what appeared to be a license plate.

Two weeks later, the same agent was again conducting surveillance on the hydroponic gardening store. The agent saw Valerio drive up to the store in a pick-up truck with no license plate, and back into a parking spot. Valerio entered the store and came out several minutes later. Another federal agent saw Valerio's truck a short time later with a license plate affixed to it. The agents followed Valerio to a multi-unit warehouse the agents thought was suitable for a marijuana grow operation. The agents saw Valerio park his truck and walk toward the warehouse building but the agents did not see which specific unit Valerio entered.

The next day the agents conducted surveillance on the warehouse and saw light emanating from under one of the unit's doors. A week later, the agents brought a drug-dog to the warehouse and the dog alerted to the presence of drugs in one of the units. The agents obtained a warrant and searched the unit. Instead of corroborating their suspicions regarding Valerio, the agents discovered the unit was rented to an individual unrelated to Valerio. The agents learned the unit was used as a recording studio and the bands who recorded there often smoked marijuana.

After failing to find any evidence that Valerio was involved in a marijuana grow operation from the search of the warehouse, the agents went to Valerio's house to conduct a knock and talk interview. However, instead of knocking on Valerio's door to speak with him as instructed, the agents waited across the street until Valerio came out of his house and entered his pick-up truck, which was parked in the driveway. The agents blocked Valerio's exit from his driveway with their vehicle and approached Valerio with their guns pointed at him. The agents ordered Valerio out of his truck, conducted a *Terry* frisk, and escorted Valerio to the front of his truck. Valerio eventually admitted to growing marijuana in two of the units at the warehouse.

Valerio argued the agents' *Terry* stop at his house, one week after the agents had last observed him engage in any suspicious activity, violated the *Fourth Amendment*.

The court agreed. In *Terry v. Ohio*, the Supreme Court held for the first time that not all seizures must be supported by probable cause to comply with the *Fourth Amendment*. However, the Court held *Terry* stops are limited to situations where police officers are required to take "swift action" based upon on-the-spot observations. Consequently, police officers may not use *Terry* as an end-run around the warrant requirement in the context of a standard ongoing police investigation.

Here, the court held the timing and circumstances surrounding the agents' seizure of Valerio placed it well outside the scope of a valid *Terry* stop. The agents did not stop Valerio in response to suspicion that required "swift" law enforcement action. Instead, the agents went to Valerio's house nearly a week after they last observed him engage in suspicious behavior. The court stated:

"The opportunity to *Terry* stop a suspect, a law enforcement power justified by and limited to the exigent circumstances of the moment, cannot be put in the bank and saved for use on a rainy day, long after the exigency has expired."

The court noted the agents were free to continue their surveillance of the warehouse or Valerio's house, attempt to verify through business or utility records that Valerio was a tenant at the warehouse or even initiate a voluntary contact with Valerio.

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

District of Columbia Circuit

United States v. Watson, 2013 U.S. App. LEXIS 11132 (D.C. Cir. June 4, 2013)

A police officer arrested Watson after conducting a traffic stop on Watson's van. Inside the van, police officers found cocaine. The next day, officers executed a search warrant on Watson's home and found firearms and drug paraphernalia. Watson was convicted of several drug offenses.

Watson argued the traffic stop violated the *Fourth Amendment*; therefore, the cocaine seized from the van should have been suppressed. In addition, Watson argued the subsequent search and seizure of evidence from his house was tainted by the unlawful traffic stop.

The court disagreed. The officer testified he stopped Watson's van because it was travelling too close to the vehicle ahead of it and the van had a tinted tag cover that obscured its license plate number. Regardless of any subjective motivation the officer may have had, it was objectively reasonable for him to believe Watson had violated two Maryland traffic laws; therefore, the officer's stop of Watson's van was lawful.

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