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# THE FEDERAL LAW ENFORCEMENT - INFORMER -

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

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

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# The Informer – December 2014

## **U.S. Department of Justice:**

Guidance for Federal Law Enforcement Agencies Regarding the Use of Race, Ethnicity, Gender, National Origin, Religion, Sexual Orientation, or Gender Identity (December 2014) Click the link below:

<http://www.justice.gov/sites/default/files/ag/pages/attachments/2014/12/08/use-of-race-policy.pdf>



## **Law Enforcement Case Granted Certiorari by the United States Supreme Court:**

*San Francisco v. Sheehan*: Americans with Disabilities Act / Armed Mentally Ill Suspects / Use of Force.....4



## **Case Summaries**

### **United States Supreme Court**

*Heien v. North Carolina*: Whether a police officer’s mistake of law provided reasonable suspicion to support a traffic stop.....6

### **Circuit Courts of Appeals**

#### **First Circuit**

*United States v. Fermin*: Whether police officers had reasonable suspicion to stop the defendant.....7

#### **Third Circuit**

*United States v. Franz*: Whether the good faith exception to the exclusionary rule applied where agents failed to provide the defendant with the attachments to a search warrant.....8

*United States v. Thompson*: Whether a police officer established reasonable suspicion to stop the defendant and whether the defendant’s statements were obtained in violation of the *McNabb/Mallory* rule.....9

#### **Seventh Circuit**

*United States v. Kelly*: Whether a search warrant established probable cause to search defendant’s apartment and whether the warrant sufficiently described the premises to be searched.....10

#### **Eighth Circuit**

*United States v. Walker*: Whether a police officer had reasonable suspicion to stop the vehicle in which the defendant was riding.....11

*United States v. Wheelock*: Whether the defendant had a reasonable expectation of privacy in basic subscriber information he provided

to an internet service provider.....12

*United States v. Chartier*: Whether a police officer had reasonable suspicion to conduct a traffic stop, the duration and scope of the stop, the validity of the frisk and eventual arrest and search of the defendant.....12



## FLETC Informer Webinar Series

### 1. Law Enforcement Legal Refresher Training

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

This two-hour block of instruction focuses on *Fourth* and *Fifth Amendment* law and is designed to meet the training requirements for state and federal law enforcement officers who have mandated two-hour legal refresher training requirements.

**Date and Time: Wednesday January 14, 2015: 2:30 p.m. EST.**

To join this webinar: <https://share.dhs.gov/lgd0312>

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### 2. The Circuit Split in Using Deadly Force to Control Suicidal People

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

When is it objectively reasonable under the *Fourth Amendment* to use deadly force to a control a suicidal person. Some circuits confine the inquiry to the facts confronting the officer at the time the force is used. Others look at the totality of the circumstances and ask whether the force was avoidable. The type of inquiry matters. In one circuit, the force may be deemed objectively reasonable and in another it would not. This one-hour webinar will discuss the circuit split and make some recommendations as to how an officer can be reasonable in any circuit.

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### 3. Law of Video Surveillance

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

This course will review statutory and case law concerning video surveillance.

**Date and Time:**

**Wednesday January 28, 2015: 2:30 p.m. EST**

To participate in this webinar: <https://share.dhs.gov/lawofvideosurveillance/>



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## **Law Enforcement Case Granted Certiorari by the United States Supreme Court:**

### **Americans with Disabilities Act / Armed Mentally Ill Suspects / Use of Force**

#### **San Francisco v. Sheehan**

Decision Below: [743 F.3d 1211 \(9th Cir. 2014\)](#)

Sheehan, a woman who suffered from mental illness, lived in a group home that accommodated such persons. Sheehan’s social worker became concerned about her deteriorating condition because Sheehan was not taking her medications. When the social worker entered Sheehan’s room, Sheehan told the social worker to get out. In addition, Sheehan told the social worker she had a knife and threatened to kill him. The social worker left Sheehan’s room, cleared the building of other residents and called the police to help him transport Sheehan to a mental health facility for an involuntary commitment for evaluation and treatment.

When Officers Reynolds and Holder arrived, the social worker told them he had cleared the building of other residents. The social worker also told the officers the only way for Sheehan to leave her room was by using the main door, as the window in Sheehan’s room could not be used as a means of escape without a ladder. The officers then entered Sheehan’s room without a warrant to confirm the social worker’s assessment, and to take Sheehan into custody. When Sheehan saw the officers, she grabbed a knife and threatened to kill them, stating she did not wish to be taken to a mental health facility. The officers went back into the hallway and closed the door to Sheehan’s room. The officers called for back-up, but before other officers arrived, Reynolds and Holder drew their firearms and forced their way back into Sheehan’s room. After Sheehan threatened the officers with a knife, the officers shot Sheehan five or six times. Sheehan survived and sued the officers, claiming the officers violated her *Fourth Amendment* rights by entering her room without a warrant and using excessive force.

The Ninth Circuit Court of Appeals held the officers first warrantless entry into Sheehan’s room was justified under the emergency aid exception to the *Fourth Amendment’s* warrant

requirement. The court concluded that when the officers first entered Sheehan's room, they had an objectively reasonable basis to believe Sheehan was in need of emergency medical assistance based on the information provided by Sheehan's social worker.

Even though the officers might have been justified in entering Sheehan's room the second time, the court found there were unresolved factual issues that had to be determined by a jury and not the court. For example, Sheehan produced evidence suggesting the officers deviated from training they received from their department on how to deal with mentally ill subjects. Consequently, the court held a reasonable jury might find the officers acted unreasonably by forcing their way into Sheehan's room and provoking a near fatal confrontation.

After ruling that a jury could find a *Fourth Amendment* violation for the officer's second entry into Sheehan's room, the court further held the officers were not entitled to qualified immunity. The court concluded prior case law would have placed any reasonable, competent officer on notice that it is unreasonable to forcibly enter the home of an armed, mentally ill subject who had been acting irrationally and threatening others, when there was no objective need for immediate entry. The court emphasized that at trial, the facts might show Sheehan was not contained and that she presented a flight risk or threat to others. However, at this stage, the court stated those facts were in dispute.

Concerning the officers' use of deadly force, the court held at the moment of the shooting, the officers' use of deadly force was reasonable because Sheehan posed an immediate threat of danger to the officers' safety. However, under Ninth Circuit case law, police officers may be liable for an otherwise lawful use of deadly force when they intentionally or recklessly provoke a violent confrontation by actions that rise to the level of a separate *Fourth Amendment* violation. In this case, Sheehan presented evidence from which a reasonable jury could find the officers acted recklessly in failing to take her mental illness into account and in forcing a deadly confrontation rather than attempting to de-escalate the situation.

The United States Supreme Court granted certiorari on November 25, 2014. The issues before the court are:

1. Whether Title II of the Americans with Disabilities Act requires law enforcement officers to provide accommodations to an armed, violent, and mentally ill suspect in the course of bringing the suspect into custody.
2. Whether it was clearly established that even where an exception to the warrant requirement applied, an entry into a residence could be unreasonable under the *Fourth Amendment* by reason of the anticipated resistance of an armed and violent suspect within.

The Court has not yet scheduled oral arguments in this case.

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# CASE SUMMARIES

## United States Supreme Court

### **Heien v. North Carolina, 2014 U.S. LEXIS 8306 (U.S. Dec. 15, 2014)**

A police officer stopped the car in which Heien was a passenger because it only had one operating brake light. During the stop, the officer received consent to search the car and discovered cocaine inside a duffel bag. Heien and the driver were charged with trafficking cocaine.

Heien argued North Carolina law did not require a vehicle to be equipped with more than one working brake light. As a result, Heien claimed the traffic stop constituted an unlawful seizure in violation of the *Fourth Amendment*; therefore, the cocaine should have been suppressed.

The North Carolina Court of Appeals agreed, holding the relevant code provision, which requires that a car be “equipped with a stop lamp,” *N.C. Gen. Stat. Ann §20-129(g)*, requires only a single lamp. Because Heien’s car had one operating brake light, the court concluded the officer’s justification for the traffic stop was objectively unreasonable and the cocaine should have been suppressed.

The state appealed and the North Carolina Supreme Court reversed the Court of Appeals. The North Carolina Supreme Court held the officer’s mistake of law was objectively reasonable, as no court in North Carolina had ever interpreted the motor vehicle laws to require only one functioning brake light. Consequently, the court held the officer had reasonable suspicion to conduct the traffic stop. Heien appealed to the United States Supreme Court.

The United States Supreme Court agreed with the North Carolina Supreme Court. The Supreme Court noted the *Fourth Amendment* requires government officials to act reasonably, not perfectly, and gives those officials “fair leeway for enforcing the law.” In this case, the Supreme Court found there was little difficulty in concluding the officer’s mistake of law was reasonable. The North Carolina vehicle code that requires “a stop lamp” also provides that the lamp “may be incorporated into a unit with one or more *other* rear lamps,” and that “all originally equipped rear lamps” must be “in good working order.” Although the North Carolina Court of Appeals held that “rear lamps” do not include brake lights, the word “*other*,” coupled with the lack of state-court precedent interpreting the provision, made it objectively reasonable for the officer to believe that a faulty brake light constituted a violation.

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

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# Circuit Courts of Appeal

## First Circuit

### United States v. Fermin, 2014 U.S. App. LEXIS 21627 (1st Cir. R.I. Nov. 14, 2014)

Police officers conducted surveillance on a house after receiving a tip that a large amount of marijuana was being stored there. During their surveillance, the officers saw people coming and going from the house in a pattern consistent with individuals involved in drug trafficking. At some point, the officers saw a man, later identified as Fermin, walk empty-handed between the house under surveillance and the adjacent house. When Fermin emerged three or four minutes later, he was rolling a large suitcase. Looking around as if to see if anyone was walking behind him, Fermin wheeled the suitcase the same way he had just come and entered a nearby parking lot. Fermin wheeled the suitcase to the far end of the parking lot, where he placed the suitcase between a Jeep and a cement wall. Fermin then stepped away from the suitcase and began to talk on a cell phone. Between conversations, Fermin slid the suitcase under the Jeep and removed the sweatshirt he was wearing. Several minutes later, Fermin retrieved the suitcase, tied his sweatshirt around the handle, and exited the parking lot rolling the suitcase.

The officers stopped Fermin on the street shortly thereafter and asked to speak with him about the suitcase. Fermin immediately dropped the suitcase and said it did not belong to him. Fermin told the officers he was jogging in the area when he found the suitcase next to a recycling bin in someone's backyard. While standing next to the suitcase, one officer smelled a strong odor of marijuana. The officer unzipped the suitcase and discovered, among other things, a large quantity of marijuana. The officers arrested Fermin who was indicted on drug and firearm charges.

Fermin argued the evidence recovered from the suitcase should have been suppressed.

The court disagreed. First, the court held the officers had reasonable suspicion to stop Fermin. Acting on a tip from a confidential informant, the officers conducted surveillance on a suspected marijuana "stash" house. During this surveillance, the officers saw people come and go from the house in a pattern consistent with drug trafficking. Finally, the officers saw Fermin walk between the house under surveillance and the adjacent house, emerge a few minutes later rolling a suitcase, and later try to conceal the suitcase by hiding it under the parked Jeep. These facts established reasonable suspicion to believe Fermin was engaged in criminal activity, which supported a *Terry* stop to investigate Fermin and the suitcase.

Second, the court held the officer's warrantless search of the suitcase was lawful after Fermin claimed he did not own it.

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

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## Third Circuit

### United States v. Franz, 2014 U.S. App. LEXIS 21030 (3d Cir. Pa. Nov. 4, 2014)

The Bureau of Land Management (BLM) suspected Franz had stolen a woolly mammoth tusk and other paleontological items from BLM managed land in Alaska and smuggled them to his house in Pennsylvania. With the assistance of federal prosecutors, a BLM agent prepared a warrant application for Franz's house. On the face sheet of the warrant, where it asked for a description of the property to be seized, the agent wrote, "See attached sheet." One of the attachments drafted by the agent, labeled "Attachment B," listed a series of items to be seized to include mammoth tusks, other illegal artifacts, maps of Alaska, financial records, photographs, emails and any related information contained on computer hard drives or other electronic storage devices. A magistrate judge issued the warrant and granted the government's motion to seal the search warrant, affidavit, and accompanying papers.

When BLM agents executed the warrant, Franz was given a copy of the face sheet of the warrant. The agents did not give Franz copies of the warrant attachments, believing that because the warrant had been sealed, Franz was not entitled to copies of those documents. Nonetheless, one of the agents explained to Franz the circumstances giving rise to the warrant, including the allegation that Franz had stolen a mammoth tusk from protected land. In addition, the agent thoroughly described the items the agents were authorized to seize.

During the search, agents discovered pamphlets that contained images of child pornography. The BLM agents transferred the child pornography evidence to the Federal Bureau of Investigation (FBI), who later obtained a separate warrant to search the digital storage devices and other items the BLM agents seized from Franz's house. The FBI's search of Franz's digital devices revealed two images of child pornography.

Franz was convicted of receipt of child pornography. On appeal, Franz argued the BLM agents violated the *Fourth Amendment* when they gave him a copy of the search warrant without including Attachment B. As a result, Franz claimed the evidence seized by the BLM agents, which led to the discovery of the child pornography by the FBI, should have been suppressed.

The court disagreed. The court concluded the search warrant obtained by the BLM agents was valid when the magistrate judge issued it. However, the court held the BLM agents' execution of the warrant violated the *Fourth Amendment* because, when presented to Franz, the warrant did not contain a particularized list of the items to be seized. The court stated that where the list of items to be seized does not appear on the face of the warrant, sealing that list, even though it is incorporated into the warrant, violates the *Fourth Amendment*.

However, the court further held the good faith exception to the exclusionary rule applied. The court found that the BLM agents' conduct was objectively reasonable. First, the BLM agents obtained a valid warrant after consulting federal prosecutors. Second, while executing the warrant, one of the agents explained to Franz what items the warrant authorized them to search for and seize and the agents did not exceed the scope of that authorization. Finally, the court agreed with the district court which found the BLM agents had no intention to wrongfully conceal the purpose of the search warrant and that the decision to withhold the attachments from Franz was a "reasonable misunderstanding" based in part on unclear language in the magistrate judge's sealing order.

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

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**United States v. Thompson, 2014 U.S. App. LEXIS 21853 (3d Cir. Pa. Nov. 19, 2014)**

A police officer in Texas stopped Thompson on I-40 for speeding. During the stop, Thompson told the officer he was traveling to Indiana where he planned to stay for three weeks. The officer became suspicious because Thompson did not make eye contact with him, Thompson's voice was shaky and a vein on the side of Thompson's neck was pulsing. In addition, Thompson only had one suitcase for such a long trip and the officer knew I-40 was a known corridor for illegal drugs. When the officer checked Thompson's criminal history, he learned that Thompson had several older narcotics offenses and a more recent conviction for a firearm offense. When the officer asked Thompson about his criminal history, however, Thompson only told the officer about the firearm conviction. After Thompson refused to consent to a search of his vehicle, the officer requested a K-9 detection team. The K-9 team arrived thirty minutes later and the dog alerted to the presence of narcotics in Thompson's vehicle. The officers searched Thompson's vehicle and found a large quantity of marijuana and cocaine. The officers arrested Thompson, who posted bond and was released.

A few weeks later, a Drug Enforcement Administration (DEA) task force arrested Thompson in Los Angeles for his involvement with a drug cartel. The agents arrested Thompson at 7:00 a.m. and drove him to the Los Angeles field office for processing. Sometime in the early afternoon, Thompson told an agent he wanted to cooperate. At this time, more than 6 hours had passed since Thompson's arrest. Agents interviewed Thompson all afternoon and presented Thompson with a written waiver of his right to prompt presentment at 6:38 p.m., almost 12 hours after his arrest. Thompson signed the form but requested to end the interview. The next day Thompson continued to cooperate with the agents, offering information about his cocaine sources and about his co-conspirators. The agents presented Thompson before the magistrate judge the following day, almost 48 hours after his arrest.

Thompson pled guilty to drug conspiracy and money laundering offenses, but reserved the right to appeal the denial of his motions to suppress evidence discovered during the traffic stop in Texas and the incriminating statements he made to the agents in California.

Regarding the traffic stop in Texas, the court held the officer's training, experience, observations, as well as the location of the stop and Thompson's behavior established reasonable suspicion to believe Thompson was engaged in criminal activity. As a result, the officer lawfully extended the duration of the traffic stop until the K-9 detection team arrived.

Next, however, the court held Thompson's incriminating statements to the DEA agents in California should have been suppressed.

The Federal Rules of Criminal Procedure require that a defendant who has been arrested in the United States be brought "without unnecessary delay before a magistrate judge." (*Fed. R. Crim. P. 5(a)(1)(A)*).

In a series of cases (*McNabb / Mallory*) the Supreme Court subsequently held that any confessions obtained during an unreasonable period of detention that violated *Fed. R. Crim. P. 5 (a)(1)(A)*, the prompt presentment rule, should be suppressed. The court emphasized that

the reasonableness standard focuses primarily on whether the delay in presentment was for the purpose of interrogation.

Following the Supreme Court's *McNabb / Mallory* exclusionary rule, Congress enacted 18 U.S.C. § 3501 in order to create a safe harbor period for certain voluntary confessions. Section 3501 provides that "a confession shall not be inadmissible solely because of delay in bringing such person before a magistrate judge . . . if such confession was made or given . . . within six-hours immediately following his arrest."

In this case, the court found it was undisputed that Thompson's confessions to the agents came well after the 6 hour safe harbor period provided by § 3501.

The court further found that while some of the delay in presenting Thompson was reasonable, under *McNabb / Mallory*, presenting Thompson to the magistrate 48 hours after his arrest was not reasonable. The court rejected the government's argument that the delay in Thompson's presentment was reasonable because most of the time was devoted to giving Thompson the opportunity to cooperate with the government. In addition to holding the pursuit of cooperation is not a reasonable excuse to delay presentment, the court found the government presented no other evidence as to why the 48-hour delay was reasonable or why the agents did not attempt to have Thompson waive his right to prompt presentment within the first 6 hours of his arrest.

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

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## **Seventh Circuit**

### **United States v. Kelly, 2014 U.S. App. LEXIS 22409 (7th Cir. Ill. Nov. 26, 2014)**

A narcotics detective obtained a warrant to search the "upper apartment" of a "multiple family residence" located at 1522 Clifton Avenue for cocaine and drug paraphernalia. To establish probable cause to search the apartment, the detective stated in his affidavit the police department had received a tip that drugs were being sold from the residence located at 1522 Clifton Avenue. The detective also included information from a uniformed police officer who had recently been dispatched to the "upper apartment" at 1522 Clifton Avenue for a welfare check. The uniformed officer reported a woman walked down a set of stairs from the second floor apartment after the officer knocked at the rear door of the building. Finally, the detective used a confidential informant (CI) to purchase cocaine from Kelly. When the CI went to 1522 Clifton Avenue, Kelly walked down a set of stairs from the second floor apartment to the rear door where he met the CI. After Kelly told the CI he would not sell drugs from inside the apartment, Kelly met the CI at a different location and sold him cocaine.

When the detective and other police officers executed the warrant, they discovered 1522 Clifton Avenue was not divided into separate first and second floor apartments. Instead, the officers found the apartments were bisected into front and rear multi-story units, with Kelly's apartment comprised of a basement and a first and second floor. The officers searched all three levels of Kelly's apartment and recovered a handgun, cocaine and drug paraphernalia.

Kelly moved to suppress all evidence seized by the officers. First, Kelly argued the warrant affidavit failed to establish probable cause of drug activity in the apartment. Second, Kelly

argued the search of all three levels of his apartment exceeded the scope of the warrant, which he claimed only authorized a search of the non-existent “upper apartment.” Finally, Kelly argued the officers were required to stop their search once they realized they were in a “rear” apartment, or at a minimum, search only the “upper” level identified in the warrant.

The court disagreed. First, the court held the detective’s observations, along with the facts and circumstances surrounding the CI’s controlled purchase of crack cocaine from Kelly created a “fair probability” that drugs would be found at 1522 Clifton Avenue. The court reached this conclusion without taking into consideration the anonymous tip or the information from the officer who conducted the welfare check at the apartment.

Second, the court noted the law does not “demand exact precision” in a search warrant’s description of the targeted premises. Instead, the particularity requirement of the *Fourth Amendment* is satisfied if the warrant’s description “is such that the officer with a search warrant can, with reasonable effort ascertain and identify the place intended.” In this case, the detective knew the target of his search was the apartment to which the rear door of 1522 Clifton Avenue led, whether it was in actuality the “upper apartment” or the “rear apartment.”

Finally, because Kelly’s apartment was the only unit accessible from the rear door of the building, the mislabeling presented no risk that the officers executing the warrant would search someone else’s apartment. In addition, the officers limited their search to the targeted apartment, which they confirmed belonged to Kelly as the officers immediately encountered Kelly upon entry. As a result, the officers were not required to stop or limit their search after they discovered the layout of Kelly’s apartment differed from the warrant’s description.

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

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## **Eighth Circuit**

### **United States v. Walker, 2014 U.S. App. LEXIS 21534 (8th Cir. Iowa Nov. 14, 2014)**

Shortly before 1:00 a.m., a person called 911 and reported a drive-by shooting at 1405 Idaho Street. The caller further stated he saw two African-American men getting into a “Suburban,” which then headed east on Cleveland Avenue. A nearby patrol officer responded. The officer knew a witness in a murder investigation lived at 1405 Idaho Street and that a suspect in the investigation, Rankins, lived two or three blocks east of Idaho Street. Approximately one minute after receiving the report, the officer saw a Suburban backing out of the driveway of Rankin’s house. The officer stopped the Suburban and eventually searched it, discovering a handgun. The government indicted Walker, a passenger in the Suburban, for being a felon in possession of a firearm.

Walker argued the handgun should have been suppressed because the officer did not have reasonable suspicion to stop the Suburban.

The court disagreed. The officer received a report of a drive-by shooting at the home of a witness in a murder investigation and that a Suburban was observed driving away from the scene of the shooting. A few minutes later, the officer saw a Suburban backing out of the driveway of a suspect in the murder investigation. Based on these facts, the court concluded the officer had reasonable suspicion to stop the Suburban and investigate its occupants.

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

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**United States v. Wheelock, 2014 U.S. App. LEXIS 21886 (8th Cir. Minn. Nov. 20, 2014)**

A police officer discovered child pornography was available for download from a certain Internet Protocol (IP) address with Comcast Communications as the Internet Service Provider (ISP). Pursuant to *Minn. Stat. § 388.23*, the officer requested an administrative subpoena from the County Attorney ordering Comcast to produce the subscriber information associated with the identified IP address. The County Attorney issued the subpoena, and Comcast responded by providing Wheeler's name, address and other information. After the officer learned Wheeler was a convicted sex offender with a conviction for possession of child pornography, the officer obtained a warrant to search Wheeler's house. A search of Wheeler's house revealed several hard drives, DVDs and CDs containing child pornography. The government indicted Wheeler for a variety of child pornography related offenses.

Wheeler moved to suppress all evidence obtained as a result of the administrative subpoena. Wheeler argued the use of an administrative subpoena, instead of a search warrant, violated his *Fourth Amendment* privacy interest in his subscriber information the government obtained from Comcast.

The court disagreed. The court explained that every federal court addressing this issue has held individuals do not have a reasonable expectation of privacy in subscriber information they give to an Internet Service Provider. Consequently, the court held Wheelock did not have a reasonable expectation of privacy in the subscriber information he provided to Comcast.

The court further held the officer complied with *Minn. Stat. § 388.23* when he certified to the County Attorney "that the requested records were relevant to an ongoing, legitimate law enforcement investigation of Distribution of Child Pornography."

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

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**United States v. Chartier, 2014 U.S. App. LEXIS 22323 (8th Cir. Iowa Nov. 26, 2014)**

An officer on patrol saw a car and ran a record check on the car's license plate. The officer discovered the registered owner of the car, a white male, did not have a valid driver's license. From his location behind the car, the officer could see two heads above the seats' headrests; however, the two-lane road prevented the officer from pulling up next to the car to determine whether the driver was the registered owner. In addition, it was dark, snowing and misting at the time.

The officer conducted a traffic stop, approached the car and saw a woman in the driver's seat. While speaking with the woman, the officer saw a bottle of muriatic acid in the backseat and a Walmart bag and package of air-line tubing tucked under the front passenger's leg. The officer recognized the acid and tubing as items regularly used in manufacturing methamphetamine as the officer had been trained and certified as a clandestine laboratory technician for dismantling and processing methamphetamine labs.

During the stop, the front seat passenger identified himself as Chartier and the officer learned Chartier had a prior incident on his record involving assault with a weapon. In addition, the officer remembered having heard Chartier's name mentioned as an individual involved in methamphetamine manufacturing.

When the officer asked the driver where she and Chartier had been, the woman replied they were coming from Walmart, but denied having purchased anything there. The officer found this suspicious, as he had seen a Walmart bag in the car. After the officer told the driver he was going to walk his drug-detection dog, Reso, around the car, the woman consented to a frisk and showed her pockets to the officer. When the officer ordered Chartier out of the car, the officer saw bulges in Chartier's coat pockets. The officer frisked Chartier and found a package of hypodermic needles. The officer walked Reso around the car and Reso alerted to the passenger-side door. The officer searched the car but did not find any illegal drugs. The officer then searched Chartier and seized several small plastic baggies that contained methamphetamine and a small case containing pseudoephedrine pills and a pipe. The officer arrested Chartier. The government indicted Chartier on two drug offenses.

Chartier moved to suppress the evidence from the traffic stop.

First, Chartier claimed the officer conducted an unlawful traffic stop. Chartier argued the officer could not conduct a lawful traffic stop to determine if the driver's license was suspended until the officer first verified the driver of the car was the man to whom the car was registered.

The court disagreed. The officer stopped the car only after he determined the owner of the car did not have a valid driver's license. The court held given the road and weather conditions, it was reasonable for the officer to conduct the traffic stop before he affirmatively identified the sex of the driver or further investigated the driver's physical appearance. As a result, the officer had reasonable suspicion that a person without a valid driver's license was driving the car and his decision to conduct a traffic stop did not violate the *Fourth Amendment*.

Second, Chartier argued the officer extended the duration and scope of the traffic stop beyond what was reasonable to determine if the driver had a valid driver's license.

Again, the court disagreed. While talking to the driver, the officer saw the muriatic acid and air-line tubing in the car. Based on his training and experience, the officer knew these items were used to manufacture methamphetamine. In addition, the officer had previously heard Chartier's name mentioned as someone who was involved in manufacturing methamphetamine. Based on these facts, the court concluded the officer had reasonable suspicion to expand the scope of the traffic stop and further investigate whether Chartier was involved in criminal activity.

Third, Chartier argued the *Terry* frisk was unlawful because it was not supported by reasonable suspicion that he was armed or dangerous.

The court disagreed. At the time of the frisk, the officer knew Chartier had been involved in a prior incident with a weapon and the officer saw bulges in Chartier's coat pockets. In addition, the officer had reasonable suspicion to believe Chartier might be involved with illegal drugs, which are frequently connected to the use of weapons.

Fourth, Chartier argued the officer did not have probable cause to search him after Reso alerted to the presence of drugs in the car, but no drugs were found in the car.

The court disagreed. After Reso alerted to the car, and a search of the car uncovered no drugs, it was likely the scent to which Reso alerted had come from one of the occupants. Given that Reso alerted to the passenger side of the car, where Chartier had been sitting, and the driver had already been searched with negative results, it was reasonable for the officer to believe Chartier possessed illegal drugs. As a result, the officer had probable cause to arrest Chartier. Even though the officer searched Chartier before formally arresting him, the officer had probable cause for the arrest before the search occurred. As result, the court felt it was not “particularly important that the search preceded the arrest rather than vice versa.”

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

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