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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 <http://www.fletc.gov/training/programs/legal-division/the-informer>.

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# Free FLETC Informer Webinar Series Schedule

## February / March 2014

(See the page 6 for instructions on how to participate in a webinar)

### 1. Government Workplace Searches

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

This webinar examines how public employees might create a Reasonable Expectation of Privacy in their workplaces (computers, cars, offices, etc.), and, if so, how the government can intrude on that REP. This course is recommended for government supervisors, the IG community, and those whose duties include internal investigations.

#### **Date and Time:**

**Thursday February 27, 2014: 2:30 pm EST**

To join this meeting: <https://share.dhs.gov/govtworksearch/>

### 2. What are *Kalkines* and *Garrity* Warnings?

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

This webinar will explore the self-incrimination rights possessed by government employees when confronted by the public employer. This course is recommended for public supervisors, the IG community and those whose duties include conducting internal investigations

#### **Date and Time:**

**Monday March 24, 2014: 8:30 am EDT**

To join this meeting: <https://share.dhs.gov/garrity/>

### 3. Warrantless Searches and Seizures under Exigent Circumstances Part I: The Overview

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

The first installment in a four-part series on exigent circumstances under the *Fourth Amendment*.

#### **Dates and Times:**

**Tuesday March 4, 2014: 12:30 pm EST**

To join this meeting: <https://share.dhs.gov/lgd0304>

**Monday March 17, 2014: 1:30 pm EDT**

To join this meeting: <https://share.dhs.gov/lgd0317>

**4. Warrantless Searches and Seizures under Exigent Circumstances Part II: Emergency Doctrine**

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

This is the second installment in a four-part series on exigent circumstances under the *Fourth Amendment*. Prerequisite: Exigent Circumstances I: The Overview

**Date and Time:**

**Monday March 17, 2014: 2:30 pm EDT**

To join this meeting: <https://share.dhs.gov/lgd0317>

**5. Warrantless Searches and Seizures under Exigent Circumstances Part III: Destruction of Evidence**

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

This is the third installment in a four-part series on exigent circumstances under the *Fourth Amendment*. Prerequisite: Exigent Circumstances Part I.

**Dates and Times:**

**Tuesday March 4, 2014: 1:30 pm EST**

To join this meeting: <https://share.dhs.gov/lgd0304>

**Wednesday March 19, 2014: 1:30 pm EDT**

To join this meeting: <https://share.dhs.gov/lgd0319>

**6. Law Enforcement Legal Update Training (3-Hour Version)**

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

This is a three-hour block of instruction designed to meet the training requirements for state and federal law enforcement officers who have mandated three-hour legal update training requirements.

**Date and Time:**

**Wednesday March 5, 2014: 8:30 am EST**

To join this meeting: <https://share.dhs.gov/lgd0305>

**7. Law Enforcement Legal Update Training (2-Hour Version)**

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

This is a two-hour block of instruction designed to meet the training requirements for state and federal law enforcement officers who have mandated two-hour legal update training requirements.

**Date and Time:**

**Wednesday March 12, 2014: 8:30 am EDT**

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

**8. Understanding the Administrative / Inspection Search**

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

This unique government authority and its limitations can be misunderstood. This webinar will explain how, why and when an agency has the ability to conduct an administrative inspection. All are welcome to attend. Recommended for those agencies that possess an inspection power.

**Date and Time:**

**Thursday March 13, 2014: 1:30 pm EDT**

To join this meeting: <https://share.dhs.gov/inspections/>

**9. The Rules of Search Warrant Execution**

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

This course looks at the rules that govern the proper execution of a search warrant, including the who, how, what, when and where of service. Items discussed will include who can issue and serve a search warrant, the use of force to execute the warrant, and how to properly and lawfully close out the warrant process.

**Date and Time:**

**Tuesday March 11, 2014: 2:30pm EDT**

To join this meeting: <https://share.dhs.gov/swexecution/>

## **10. HIPAA and the Law Enforcement Officer**

1-hour webinar presented by Charlie Kels of the Office of the General Counsel - Office of Health Affairs

This webinar will provide a general overview of HIPAA legislation, including a look at the definitions under Privacy Rule, who and what is covered under this rule, and provides examples of specific exemptions and the impact on law enforcement operations. Mr. Kels will be available for a Q&A session at the conclusion of the webinar.

### **Date and Time:**

**Tuesday March 18, 2014: 9:30am EDT**

To join this meeting: <https://share.dhs.gov/hipaa/>

### **To participate in a FLETC Informer Webinar:**

1. Click on the appropriate link above to access the Homeland Security Information Network (HSIN).
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3. If you do not have a HSIN account click on the button next to "Enter as a Guest."
4. Enter your name and click the "Enter" button.
5. You will now be in the meeting room and will be able to participate in the webinar.
6. Even though meeting rooms may be accessed before a webinar, there may be times when a meeting room is closed while an instructor is setting up the room.
7. Meeting rooms will be open and fully accessible at least one-hour before a scheduled webinar.
8. Training certificates will be provided at the conclusion of each webinar.

**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](mailto:lgdwebinar@fletc.dhs.gov)

# CASE SUMMARIES

## Circuit Courts of Appeals

### 2<sup>nd</sup> Circuit

#### McColley v. County of Rensselaer, 2014 U.S. App. LEXIS 1124 (2d Cir. N.Y. Jan. 21, 2014)

As part of a drug investigation, a police officer submitted a search warrant application to obtain four warrants to search four residences, including Ronita McColley's apartment. The search warrant application was based upon information received from a confidential informant (CI). The CI told the officer he had been taken to an apartment to purchase crack cocaine from a local drug dealer. However, the CI made no mention of McColley or any other woman being present in the apartment at the time. The CI also told the officer about three other residences the drug dealer maintained to sell drugs, which were the subject of the other three search warrants. The officer confirmed the address of the apartment, learned McColley lived there, that she had no criminal history, and that she had a young child. The officer also conducted surveillance on McColley's apartment, but did not observe any drug or criminal activity.

In the officer's search warrant application, he identified individuals who lived at each of the residences and their connection to drug dealing or criminal activity, with the exception of McColley. The officer did not mention McColley's identity, lack of criminal record or that she was a resident in the apartment. The officer only stated the apartment was a location for the drug dealer to conduct transactions. In addition, the officer did not mention the surveillance that had been conducted on McColley's apartment and the lack of drug or criminal activity that had been observed.

After obtaining a warrant, the police searched McColley's apartment but did not discover drugs, weapons, money or evidence of criminal activity. McColley sued the officer who drafted the search warrant affidavit and his agency. Among her claims, McColley argued the officer violated the *Fourth Amendment* by omitting material facts from the search warrant affidavit that, if included and considered by the judge, would not have established probable cause to search her apartment.

The court held the officer was not entitled to qualified immunity because information omitted from the affidavit was necessary to the finding of probable cause. Probable cause is determined by a court considering the totality of the circumstances, not just the particular facts favored by the police officer applying for the search warrant. The first material omission in the affidavit was the failure to mention McColley at all. The officer knew McColley had no criminal history or any ties to any of the targets of the drug investigation, that she lived at the apartment with her child and that the CI did not mention a woman being present during the drug deal. The court noted the omission of McColley from the affidavit was more glaring because the officer included the identities of the residents of the other three residences and their connection to the drug trade. If the officer had identified McColley in the affidavit, the judge who issued the search warrant would have questioned the officer's claim that the drug dealer had "custody and control" over the apartment.

The second material omission from the affidavit occurred when the officer failed to mention the police surveillance of McColley's apartment and the fact that no criminal activity was observed. While the police were not required to corroborate the CI's claims, once the officers conducted this surveillance and did not observe any criminal activity, the lack of corroboration should have been

included in the affidavit. The court suggested if the surveillance had established evidence of criminal activity at McColley's apartment, the officer would have included that information in the affidavit. Again, the court noted, because the outcome of the surveillance was not the one the officer would have preferred, that did not make the information immaterial for a determination of probable cause.

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

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## **4<sup>th</sup> Circuit**

### **United States v. Green, 2014 U.S. App. LEXIS 952 (4th Cir. Va. Jan. 17, 2014)**

A police officer pulled over Green's vehicle because the windows appeared to be excessively tinted and the license plate was partially obscured in violation of Virginia law. While the officer ran a computer check on Green's license and registration, he noticed Green appeared to be excessively nervous, that Green's vehicle contained a strong odor of air freshener and that it had a "lived-in" look. A few minutes later, the officer learned Green had a protective order against him, which prompted the officer to request additional information from his dispatcher. In the meantime, the officer checked the tint on Green's vehicle, discovering it was illegal. After asking Green about the presence of drugs in the vehicle, which Green denied, the officer requested a check of Green's criminal history from his dispatcher. While waiting for dispatch to respond, the officer directed a back-up officer to conduct a free-air sniff of Green's vehicle using a drug-detection dog. After the drug-detection dog alerted to the presence of narcotics, the officers searched Green's vehicle and discovered just over one kilogram of cocaine and \$7,000 in cash. Approximately fourteen minutes had elapsed between the time the officer stopped Green and the drug-detection dog alerted on Green's vehicle. The government indicted Green for possession with intent to distribute cocaine.

Green argued the cocaine should have been suppressed because the scope and duration of the traffic stop were unreasonable under the *Fourth Amendment*. In addition, Green argued the drug-detection dog's track record was not sufficiently reliable for the dog's positive alert to establish probable cause to search his vehicle.

The court disagreed, holding Green was lawfully seized for the traffic violation when the dog sniff occurred. During a routine traffic stop, an officer may request a driver's license and vehicle registration, run a computer check, and issue a citation. An officer may also conduct an exterior dog sniff of the vehicle as long as it is performed within the time reasonably required to issue a traffic citation. Here, the officer told Green why he had been pulled over, requested Green's license and registration and then immediately began verifying Green's information on his computer and through his dispatcher. While waiting for a response, the officer checked the window tint on Green's vehicle and requested a check of Green's criminal history. The sniff by the drug-detection dog occurred while the officer was waiting for this information and did not unreasonably prolong Green's detention.

The court further held the drug-detection dog's field performance records, degree of training, performance during training and recertification exercises and his evaluations by two different handlers, established the dog's reliability in detecting drugs. As a result, when the dog alerted to the presence of narcotics in Green's vehicle, the officers had probable cause to search it.

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



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## **5<sup>th</sup> Circuit**

### **United States v. Robinson, 2014 U.S. App. LEXIS 1493 (5th Cir. Miss. Jan. 24, 2014)**

Federal agents discovered a person with the username “lowkey” sent images of child pornography over the internet in June and July 2010 using the instant messaging service ICQ. Information embedded with the images indicated the images had been taken in May 2008 and January 2009. The agents obtained subscriber information and Internet Protocol logs for the “lowkey” account and determined the account had been accessed numerous times from a particular IP address assigned to a roofing company. The agents determined the child in the images was Robinson’s young son and that Robinson was a vice-president of the company.

Federal agents obtained a warrant to search Robinson’s business office and house for evidence connected to the production and distribution of child pornography. At Robinson’s office, agents found a computer and thumb drive that contained images and videos of child pornography. At Robinson’s house, agents found clothing, household items and furniture that appeared in the images.

Robinson argued the evidence seized from his office should have been suppressed because the search warrant affidavit was misleading and it omitted important information. First, Robinson claimed the affidavit failed to disclose the available records for the “lowkey” account dated back only to October 2010, several months after the seized images were sent. Second, Robinson argued the affidavit failed to disclose these records showed the “lowkey” account had been accessed by another IP address not associated with his roofing company. Robinson claimed these omissions made it falsely appear an IP address associated with his roofing company sent the images in June and July 2010.

The court disagreed, holding even if the omitted information had been included in the affidavit, there still would have been probable cause to support the issuance of a search warrant for Robinson’s office. The affidavit stated the “lowkey” account had most recently been accessed from an IP address assigned to Robinson’s company. The agents determined this same IP address had been used to login to the “lowkey” account on multiple occasions. Consequently, even if the affidavit stated the agents did not have records for the specific dates when the images were transmitted, these facts would still establish a “fair probability that contraband or evidence of a crime” would be found at Robinson’s office.

Robinson also argued the affidavit contained no information indicating he or his son lived at his current address when the images were taken in May 2008 and January 2009. As a result, Robinson claimed the evidence seized from his house should have been suppressed. Robinson further argued the affidavit contained no information indicating it was likely the clothing or household items visible in the images would be present in his home more than two years later.

Again, the court disagreed and held the information used to establish probable cause was not stale. First, even if Robinson had moved to a different address after the images were taken, it would be reasonable to believe that evidence of the production, distribution or possession of child pornography might be found at Robinson’s current residence because child pornography offenses are often carried out over a long period and in a suspect’s home. Second, it would be reasonable to conclude the household items visible in the background of the images, the victim’s clothing, or the camera used to take the images would be located at Robinson’s current residence, even if Robinson and his family had moved after the images were taken.

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

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## **6<sup>th</sup> Circuit**

### **United States v. Seymour, 2014 U.S. App. LEXIS 760 (6th Cir. Ohio January 15, 2014)**

Police officers conducted a traffic stop on Powell's vehicle. Before the vehicle came to a complete stop, Seymour, the front seat passenger, jumped out and fled on foot. Three police officers ran after Seymour. During the foot chase, one of the officers saw Seymour reach into his waistband and remove a handgun. At that moment, another officer tackled Seymour, causing Seymour to drop the gun, which the officers recovered.

The government indicted Seymour for being a felon in possession of a firearm. Seymour argued he was seized for *Fourth Amendment* purposes once Powell's vehicle was pulled over by the police. As a result, Seymour claimed, the handgun should have been suppressed because the officers did not have probable cause to arrest him at the moment of his seizure.

The court disagreed. Even though a traffic stop constitutes a seizure of the passengers in a vehicle, in this case, Seymour did not submit to the officers' show of authority because he exited Powell's vehicle before it came to a complete stop and then ran away from the officers. Seymour was seized only after the police officer tackled him. By this time, the officers had probable cause to arrest Seymour for a weapons violation because the officers saw Seymour reaching into his waistband and then holding a handgun during the chase.

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

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### **United States v. McMullin, 2014 U.S. App. LEXIS 1076 (6th Cir. Mich. January 21, 2014)**

A woman called the police and reported three men were attempting to break into her house through a front window. When police officers approached the house on foot approximately ten minutes later, they saw McMullin standing close to the front window of the woman's house. McMullin saw the officers and began to walk toward them. The officers told McMullin to stop and show his hands. McMullin complied and told the officers he was "here for his people." Concerned for their safety and believing McMullin might be a suspect in the break-in, the officers frisked him for weapons and recovered a handgun from his front waistband. The officers discovered McMullin was not involved with the break-in; however, McMullin was charged with being a felon in possession of a firearm.

McMillian argued the officers did not have reasonable suspicion to either stop or frisk him; therefore, the firearm recovered from his waistband should have been suppressed.

The court disagreed. First, the officers had reasonable suspicion to stop McMullin when they saw him standing near the front window of the house where an attempted break-in had been reported a few minutes earlier. Second, while this circuit has not specifically found that reasonable suspicion of breaking and entering or burglary raises sufficient suspicion that the suspect may be armed and dangerous, the officers in this case testified in their experiences, burglary suspects are often armed and dangerous. Consequently, the officers were justified in frisking McMullin and removing the firearm from his waistband. The court added that McMullin's ambiguous statement that he was "here

for his people,” when considered with the other circumstances, was not enough to dispel the officers’ reasonable suspicion to stop or frisk McMullin.

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

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## **7<sup>th</sup> Circuit**

### **United States v. Richards, 2014 U.S. App. LEXIS 1967 (7th Cir. Ind. Jan. 31, 2014)**

Police officers had an arrest warrant for Wilson. After learning Wilson was at a particular residence, officers went there and knocked on the door. The person who answered the door invited the officers inside the house to speak with the homeowner, Rawls. The officers spoke with Rawls, who was eighty-six years old. Rawls denied Wilson was present, but gave the officers consent to search his home. The officers saw several people as they walked through the house, but not Wilson. In the kitchen, the officers smelled the strong odor of marijuana and saw crack cocaine, as well as a small amount of marijuana, and drug paraphernalia. One of the officers ordered Rawl’s nephew, Richards, to stand up so the officer could perform a *Terry* frisk. After Richards refused, a brief altercation followed, but the officers quickly subdued and handcuffed Richards. While lifting Richards from the floor, a handgun fell out of his waistband. The officers then continued to search the house and entered a bedroom Richards used when he visited his uncle. The doorframe had a hasp and padlock, but the door was unlocked, so the officer entered the room. Inside the room, the officers saw an open briefcase that contained cocaine. Richards was charged with several drug and firearm offenses.

Richards argued his eighty-six year old uncle was not capable of giving the officers valid consent to enter his home because his advanced age left him “confused” and “out of touch with reality.”

The court disagreed. First, Rawls, as the homeowner, had authority to consent to a search of his house. In addition, the court found Rawls consent was voluntary. Even though he was old and had difficulty walking, Rawls exhibited no signs that he lacked the intelligence or mental capacity to voluntarily consent. One of the officers, who was trained to recognize the signs of mental illness, testified Rawls appeared to have all his “mental faculties” about him. As a result, nothing would have put a reasonable officer on notice that Rawls’ mental state was so impaired that he could not provide voluntary consent to search his house.

Next, even though the bedroom was in Rawl’s house, Richards argued Rawls did not have actual authority to consent to its search by the officers.

The court agreed. Common authority is not based on a property interest in the area to be searched, but rather whether the consenting person has joint access or control of the area. Here, Richards had been staying in Rawl’s house approximately three times a week for eight months prior to his arrest. When he was there, Richards stayed alone in the bedroom and frequently locked the door with a padlock. In addition, Rawls did not have a key and had no access to the bedroom unless Richards unlocked it. Consequently, the court concluded Richards had established a reasonable expectation of privacy in the bedroom and Rawls did not have the actual authority to consent to its search by the officers.

However, the court held the search was lawful, because Rawls had apparent authority to consent to the officers’ search of the bedroom. Police officers may conduct a warrantless search if they reasonably, although mistakenly, believe that the person consenting has authority over the area to be

searched based on the facts known to them at the time. In this case, when Rawls gave the officers consent to search his house, Rawls did not tell the officers to avoid Richard's bedroom or restrict their search and Rawls never told the officers he lived with anyone else. The padlock on the door to the bedroom was unlocked when the officers searched the room and the officers did not know Rawls did not have a key to the padlock. In fact, the court noted, it was reasonable for the officers to believe Rawls had placed the padlock on the door, not Richards.

Based on these facts, the court held it was reasonable for the officers to believe Rawls had access to and authority over all of the rooms in his house and could consent to a search of the entire premises.

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

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## **8<sup>th</sup> Circuit**

### **United States v. Stringer, 739 F.3d 391 (8th Cir. Mo. Jan. 6, 2014)**

A police officer saw Stringer's vehicle leaving a residence known for drug activity and conducted a traffic stop after he saw Stringer's vehicle did not have license plates or working taillights. When the officer approached the vehicle, he saw two young female passengers who appeared to be under the influence of illegal drugs. After the officer verified the vehicle had a legal title, he told Stringer he was free to go, but that Stringer could not drive the vehicle without license plates and working taillights. When Stringer got out of the car to attempt to fix the taillights, the officer saw a knife in Stringer's pocket and asked him to remove it. Stringer emptied his pockets and in addition to the knife, Stringer removed a contact lens case. The officer asked for permission to examine the case and Stringer consented. Upon opening the case, the officer saw a white crystalline substance around the lid and a white "blob" in the center of each compartment. The officer detained Stringer until another officer arrived with a drug test kit. After the contact lens case tested positive for methamphetamine, the officer arrested Stringer. Another officer arrived with a drug-detection dog that alerted to the presence of narcotics in Stringer's car. The officer searched Stringer's car and found an open purse that belonged to the fifteen-year old female passenger. The officer searched a cell phone in the purse, looking for drug related evidence, but instead found images of the minor female and Stringer engaging in sexual intercourse. The officer also found a cell phone and a digital camera in the vehicle that belonged Stringer, which both contained images similar to those found on the female's cell phone.

Stringer was convicted of production of child pornography.

Stringer argued the officer violated the *Fourth Amendment* by detaining him after the officer confirmed Stringer had a valid driver's license and the vehicle was validly registered in Arkansas.

The court disagreed. Even if Stringer continued to be seized after the completion of the traffic stop, the court held the officer had reasonable suspicion to believe Stringer was involved in narcotics offenses. First, the officer had first-hand knowledge that the house Stringer had left was known for drug transactions. Second, the officer's saw the fifteen-year old female passenger had very dilated pupils, which the officer knew was a sign of drug impairment. Third, the officer saw the contact lens case containing the crystalline substance and white "blobs" he suspected was methamphetamine.

The court further held the officer had probable cause to search the car under the automobile exception to the *Fourth Amendment's* warrant requirement based on the positive field test of the contact lens

case for methamphetamine and the drug-dog's alert. Under the automobile exception, the officers were entitled to search the car and any closed containers inside it. The court found Stringer did not have standing to object to the search the female-passenger's cell phone because he did not have a reasonable expectation of privacy in it. Consequently, Stringer could not challenge the seizure of the images of child pornography discovered on her cell phone. Because the court found the images from the female passenger's cell phone were sufficient to sustain Stringer's conviction, the court did not rule on whether or not the evidence obtained from Stringer's cell phone or digital camera were lawfully obtained as part of the officer's warrantless search under the automobile exception.

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

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**United States v. Goodrich, 2014 U.S. App. LEXIS 414 (8th Cir. Mo. Jan. 9, 2014)**

Police officers responded to a call of a break-in at a house Goodrich rented. Upon arrival, a witness told the officers he heard a gunshot and the officers saw people inside the house. One man ran from the house and was arrested after he dropped a bag of marijuana and two handguns on the ground. The officers arrested a second man as he attempted to exit the house through a window. Goodrich arrived at the house shortly after the police. Because of the reported gunshot, the officers decided to conduct a protective sweep of the house for additional intruders or possible victims. The officers asked Goodrich to open the front door but he refused. The officers told Goodrich if he did not open the door, the officers would force their way inside. After Goodrich unlocked the door, the officers conducted a 20-25 minute sweep of the house, looking under beds, in closets, and anywhere else they believed suspects or victims might be located. During the sweep, the officers saw a firearm on a bed and an open diaper box containing individually wrapped baggies of marijuana.

After the sweep, the officers decided to conduct a second search. An officer gave Goodrich a consent-to-search form. Goodrich read the form and asked the officer what would happen if he refused consent to search. The officer told Goodrich he would obtain a search warrant. Goodrich signed the form; the officers search the house and recovered firearms, marijuana, cash and drug paraphernalia.

The government indicted Goodrich for drug and firearms offenses. Goodrich argued the protective sweep violated the *Fourth Amendment* because he only allowed the officers into his house after they threatened to "break the door down" if he did not open it. Goodrich also argued the police used threats to coerce his subsequent consent to search the house.

The court disagreed. The officers did not need Goodrich's consent to conduct the protective sweep. When the officers arrived, a witness told them a gun had been fired and the officers arrested one of the suspects with a firearm. Under these circumstances, the officers reasonably believed that a shooting victim or additional armed suspect might be in the house. This reasonable belief justified the officers' warrantless entry of the house, with or without Goodrich's consent. In addition, the court held 20-25 minutes was a reasonable amount of time for the officers to conduct the sweep and that the officers properly limited the sweep to places where suspects or victims might be located.

The court also held Goodrich voluntarily consented to the search of his house because the officers did not threaten him, Goodrich read and understood the consent-to-search form and Goodrich did not object while the officers searched the house.

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

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**United States v. Rodriguez, 2014 U.S. App. LEXIS 1897 (8th Cir. Neb. Jan. 31, 2014)**

A police officer conducted a traffic stop after he saw Rodriguez's car veer onto the shoulder of the road then swerve back into the lane of travel. The officer conducted a records check on Rodriguez and the front seat passenger. After the officer issued Rodriguez a written warning, he asked Rodriguez for permission to walk his drug-sniffing dog around the car. When Rodriguez refused, the officer directed Rodriguez to get out of the car until a back-up officer could arrive. After the back-up officer arrived, the officer walked his dog around Rodriguez's car and the dog alerted to the presence of drugs. The officer searched Rodriguez's car, found a large bag of methamphetamine and arrested Rodriguez. Approximately seven or eight minutes elapsed from the time the officer issued the written warning until the dog alerted on Rodriguez's car.

Rodriguez argued as soon as the officer issued the written warning, the officer did not have reasonable suspicion to detain him on the side of the road while he waited for the back-up officer to arrive.

The court disagreed. Without deciding whether the officer had reasonable suspicion to continue to detain Rodriguez after he issued the written warning, the court held the traffic stop was not unreasonably prolonged by the dog sniff. Although the dog was located in the officer's patrol car, the officer waited to use it until the back-up officer arrived for safety reasons because there were two individuals in Rodriguez's car. Although Rodriguez was detained for an additional seven or eight minutes, the court concluded such a delay was reasonable and only constituted a *de minimis* intrusion on Rodriguez's personal liberty.

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

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**10<sup>th</sup> Circuit**

**United States v. Wells, 739 F.3d 511 (10th Cir. Okla. 2014)**

Federal agents suspected Officer Gray, a Tulsa police officer, was stealing money and drugs from suspects he detained. An undercover federal agent posed as a drug dealer named Joker and rented a motel room in Tulsa, which was outfitted with hidden audio and video recording equipment. In addition, there was \$13,620 in government funds hidden in the room. After federal agents instructed a cooperating witness to tell Gray a drug dealer with large quantities of drugs and cash was conducting business from the motel room, Officer Gray, Officer Wells and Officer Hill went to the motel and encountered Joker in the lobby. The officers handcuffed Joker and detained him in a patrol car. After Wells obtained Joker's consent to search, Wells and Gray went to Joker's room. The audio and video recordings in Joker's room established Wells and Gray stole \$2,000 from the room and later allowed other officers to take an additional amount of money.

The government indicted Wells for a variety of offenses involving official corruption. Wells argued the trial court should have suppressed the audio and video recordings that documented his activities in the motel room because Joker was not present in the room when these activities were captured.

First, while 18 U.S.C. §§ 2510-2520 (Title III) regulates the interception and recording of audio communications, the court stated Title III only applies to communications that are made where the

speaker has a reasonable expectation of privacy. Similarly, video surveillance will not violate the *Fourth Amendment* if the person whose actions are being recorded has no reasonable expectation of privacy at the time of the surveillance.

Second, the court noted the Tenth Circuit has not been generous in recognizing the privacy rights of individuals found in hotel or motel rooms that were not rented in their names. The Tenth Circuit has required that such individuals present evidence establishing they are guests of the renter, rather than individuals merely present on the premises.

In this case, Wells was not Joker's guest nor did he have any socially meaningful connection to the motel room. After obtaining Joker's consent to enter the room, Wells spent approximately fifteen minutes in the room outside Joker's presence. Wells was merely legally present in the room for a very limited amount of time. Consequently, the court concluded Wells did not have a reasonable expectation of privacy in any of his communications in Joker's motel room when he was outside Joker's presence.

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

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### **United States v. Christy, 739 F.3d 534 (10th Cir. N.M. 2014)**

Christy met a sixteen-year old girl, K.Y., online and exchanged sexually explicit emails and photographs with her. After K.Y.'s parents reported her missing, federal agents in California discovered the sexually explicit emails and photographs. The agents also learned Christy lived in New Mexico and that around the time of K.Y.'s disappearance, Christy had traveled to California and then back to New Mexico. Federal agents in California contacted the local sheriff's office in New Mexico, who dispatched two police officers to Christy's house to conduct a welfare check on K.Y. One of the officers walked to the rear of the house and looked through a crack in the blinds covering a window and saw K.Y. wearing a brassiere and underwear, smiling and holding a rope. Concerned for K.Y.'s safety, the officer asked his sergeant for permission to force entry into the house and for backup. When the officer looked back through the window, K.Y. was no longer wearing the brassiere, she was bound by the rope and the officer saw camera flashes. When backup arrived, the officers made a warrantless entry into the house and arrested Christy. During their protective sweep, the officers found pornographic material in the house. After being *Mirandized*, Christy made several incriminating statements. Based in part on the officers' observations in the house and Christy's statements after his arrest, the officers obtained warrants to search Christy's house, cell phone, vehicle, computer and person. Pursuant to the search warrants, the police discovered, among other things, child pornography, to include images of K.Y.

Christy argued the warrantless entry and search of his house, including his statements to the officers, as well as all of the evidence obtained pursuant to the search warrants should have been suppressed.

The district court held the officers violated the *Fourth Amendment* when they entered Christy's house without a warrant. However, the court held any illegally seized evidence was still admissible against Christy under the inevitable discovery doctrine. The court determined if the illegal search had not occurred, the officers would have legally obtained a warrant and discovered the evidence anyway.

The court of appeals agreed. Under the inevitable discovery doctrine, illegally obtained evidence may be admitted if it ultimately or inevitably would have been discovered by lawful means. Here, the officers had probable cause to obtain a warrant based on the information they knew before they

entered Christy's house without a warrant. The officers knew K.Y. was a minor, there was a large age difference between her and Christy, the two had exchanged sexually explicit pictures and Christy traveled across state lines with K.Y. Given those facts, it was reasonable for the officers to believe there was a sexual relationship between Christy and K.Y. and that Christy had violated California law and federal law. As a result, the officer would have obtained a search warrant and the evidence in question would have been discovered legally, had the illegal search not discovered it first.

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

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**United States v. Gordon, 2014 U.S. App. LEXIS 1524 (10th Cir. Utah Jan. 27, 2014)**

Brandi Thaxton called 911 to report an incident of domestic violence that had occurred two days earlier. Thaxton, who was upset and crying, told the dispatcher her boyfriend, Gordon, assaulted her and broke her glasses. Thaxton also said Gordon had swung a samurai sword at her and told the dispatcher she believed Gordon would harm her after he found out she had called the police. Police officers responded to Gordon's house and entered without Gordon's consent. After an officer located Thaxton hiding in the basement, Thaxton led the officer upstairs to a bedroom to show him her broken glasses. Near the bedroom door, the officer saw a gun case, which contained a loaded shotgun. The officer seized the shotgun and three swords he found in the hallway. After the officer arrested Gordon for aggravated assault and Thaxton was transported by EMS to the hospital, the officer locked the house and transported Gordon to the county jail. On the way to the jail, while still in possession of Gordon's shotgun, the officer learned Gordon was a convicted felon. The government indicted Gordon for being in possession of a firearm.

Gordon argued the shotgun should have been suppressed because the officers violated the *Fourth Amendment* by entering his house without a warrant or his consent and then seizing his shotgun without justification.

First, the court held the officers' entry into Gordon's house was reasonable due to exigent circumstances. Even though Gordon assaulted Thaxton two days earlier, when the officers entered Gordon's house they knew Thaxton was upset, crying and afraid she would be seriously harmed when Gordon discovered she had called the police.

Second, the court held it was reasonable for the officer to accompany Thaxton from the basement to the upstairs bedroom to retrieve her glasses.

Third, the court held it was reasonable for the officer to initially seize Gordon's shotgun for safety reasons when the officer first saw it. However, once Gordon was in custody on the way to jail, and the house was secured, the court concluded the officer had no legal justification to continue his seizure of Gordon's shotgun. The court emphasized the plain view doctrine did not apply because the officer did not discover the incriminating nature of the shotgun, specifically that Gordon was a convicted felon and could not lawfully possess a firearm, until he was transporting Gordon to jail.

Finally, the court explained while the officer's only mistake was not returning the shotgun before securing Gordon's house, only a few minutes elapsed between the time the officer locked the house and discovered Gordon was a convicted felon. Because this amount of time was a *de minimis* intrusion on Gordon's rights, and Gordon was lawfully in custody at the time, the court held suppression of the shotgun was not warranted.

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



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**United States v. Harmon, 2014 U.S. App. LEXIS 1525 (10th Cir. N.M. Jan. 27, 2014)**

A police officer stopped Harmon after the officer saw Harmon's car weaving within his lane and the front and rear passenger tires of Harmon's car cross over the outer white line, or fog line, one time. The officer believed touching the fog line violated New Mexico law and was concerned that Harmon might be intoxicated or fatigued.

After issuing Harmon a written warning for failing to maintain a lane, the officer obtained consent to search Harmon's car. During the search, the officer found packages of marijuana and cocaine hidden in the spare tire. The government indicted Harmon for two drug offenses.

Harmon argued on appeal the officer did not have reasonable suspicion to justify the traffic stop.

The court disagreed. The court noted the officer saw Harmon's car weaving and that its front and rear passenger wheels crossed the fog line. In addition, the court stated there was no evidence indicating difficult driving conditions or adverse weather existed that could have explained Harmon's driving errors. Consequently, the combination of these facts gave the officer reasonable suspicion to stop Harmon to investigate whether he was driving while impaired.

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

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**11<sup>th</sup> Circuit**

**United States v. Ransfer, 2014 U.S. App. LEXIS 1669 (11th Cir. Fla. Jan. 28, 2014)**

In May 2011, police officers installed a GPS tracking device without a warrant on a vehicle used by Ransfer and several co-defendants who were suspects in a series of robberies. At trial, evidence obtained from the GPS tracking was admitted against Ransfer as well as incriminating statements he made after his arrest. Ransfer argued the warrantless installation of the tracking device violated the *Fourth Amendment*. Ransfer further claimed his statements to the officers were not voluntary and he was not aware of the *Fifth Amendment* right against self-incrimination.

The court disagreed. The court noted the warrantless installation of the GPS tracking device occurred before the United States Supreme Court decision in *U.S. v. Jones*. Consequently, the officers relied in good faith on existing case law which held it did not violate the *Fourth Amendment* to install an electronic tracking device on the outside of a vehicle without a warrant.

In addition, the court held Ransfer's incriminating statements to the officers were admissible. First, Ransfer signed a form waiving his *Miranda* rights, which the officers went over with him before he signed it. Second, despite his relative youth, there was no evidence showing Ransfer did not understand these rights. Finally, the court held Ransfer's statements to the officers were voluntary and not the result of coercion.

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

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