
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 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 – April 2020

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FLETC Informer Webinar Schedule

1. Recording Me – Recording You (1-hour)

Presented by Henry W. McGowen, Attorney-Advisor/Senior Instructor, Federal Law Enforcement Training Centers, Artesia, New Mexico.

We all enjoy the First Amendment rights under our Constitution, which includes such issues as free speech and freedom of the media to report on events. Does this also include people recording law enforcement officers performing their sworn duties, including, for example, using force in order to effect an arrest? Almost everyone has a phone with a built-in camera, so it is very easy to do. Are there any restrictions for people recording and uploading these photos and videos online? And what about the law enforcement officers themselves - do they have that same right to record suspects? Law enforcement body-worn cameras are a hot topic; are these recordings the answer to combat apparently incriminating, viral videos?

Wednesday, May 6, 2020: 3 p.m. Eastern / 2 p.m. Central / 1 p.m. Mountain / 12 p.m. Pacific

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



2. Federal Law and Standards of Conduct Regarding Hemp Legalization, Cannabis Cultivation, and CBD Products

Presented by Joe Haefner, Associate Chief Counsel, Federal Law Enforcement Training Centers, Artesia, New Mexico.

In this webinar, we will examine the current status of federal law, ethics, and agency policies relating to investment in cannabis cultivation and sales, and the use of Cannibidoil (CBD) products in the workplace.

Wednesday, May 13, 2020 – 3 p.m. Eastern / 2 p.m. Central / 1 p.m. Mountain / 12 p.m. Pacific

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3. Investigative Traffic Stops and Reasonable Suspicion

Presented by Mary Mara, Attorney Advisor (Senior Instructor), Federal Law Enforcement Training Centers, Artesia, New Mexico.

We learned in Terry v. Ohio, that the Fourth Amendment permits an officer to initiate a brief investigative stop of a motor vehicle when he or she has a particularized and objective basis for suspecting the person of criminal activity (i.e. reasonable suspicion that criminal activity is afoot). This webinar will examine a variety of cases, including Kansas v. Glover, decided by the Supreme Court on April 6, 2020, which outline the degree of information an officer must possess before he or she has sufficient 'reasonable suspicion' to conduct such a stop.

Tuesday, May 19, 2020 – 3 p.m. Eastern / 2 p.m. Central / 1 p.m. Mountain / 12 p.m. Pacific

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The Federal Law Enforcement Training Centers (FLETC) Glynco, Georgia cordially invites you to attend the third FLETC CyberCrime & Technical Investigations Training Conference (CYCON-2020) September 9-11, 2020. The goal of the conference is to foster education and awareness of current threats and innovations which impact how law enforcement investigate cybercrime and how they conduct technical investigations. Attendees will experience exhibits, lectures, demonstrations, and hands-on labs. Last held in 2018, CYCON-2018 provided 70 break-out training sessions from FLETC and industry professionals with 77 representatives from more than 40 companies in attendance. There is no cost to attendees or vendors for participation; however, attendees, vendors, and agencies are responsible for all travel, lodging, and meal costs.

For additional details concerning attendee registration, conducting a presentation for CYCON-2020, or conducting a vendor product demonstration please see the FLETC CYCON-2020 website:

<https://www.fletc.gov/cybercrime-and-technical-investigations-training-conference>



FLETC Office of Chief Counsel Podcast Series

Fundamentals of the Fourth Amendment – A 15-part podcast series that covers the following Fourth Amendment topics:

A Flash History of the Fourth Amendment
What is a Fourth Amendment Search?
What is a Fourth Amendment Seizure?
Fourth Amendment Levels of Suspicion
Stops and Arrests
Plain View Seizures
Mobile Conveyance (Part 1 and Part 2)

Exigent Circumstances
Frisks
Searches Incident to Arrest (SIA)
Consent (Part 1 and Part 2)
Inventories
Inspection Authorities

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CASE SUMMARIES

Circuit Courts of Appeal

United States Supreme Court

Kansas v. Glover, 206 L. Ed. 2d 412 (U.S. 2020)

While on patrol, a police officer saw a pickup truck and ran the truck's license plate number through a law enforcement database. The officer learned that Charles Glover, Jr. had registered the vehicle and that Glover's Kansas driver's license had been revoked. The officer did not observe any traffic violations; however, he initiated a traffic stop based on his assumption that Glover was driving the vehicle. The officer did not confirm the identity of the driver before initiating the traffic stop. The officer identified Glover as the driver and the state subsequently charged him with driving as a habitual violator. Glover filed a motion to suppress the evidence arguing that the officer lacked reasonable suspicion to initiate the traffic stop.

Ultimately, the Kansas Supreme Court held that the stop violated the Fourth Amendment. The court held that the officer did not have reasonable suspicion to conduct a stop because his inference that Glover was driving the vehicle amounted to "only a hunch" that Glover was engaging in criminal activity. The court explained that "the officer must have *specific and articulable* facts suggesting the owner is driving the vehicle or is otherwise likely to violate the suspension order based on other corroborating information, such as the officer's prior encounters." The court's rejection of "the owner-is-the-driver presumption" was contrary to the holding of 12 state supreme courts and 4 federal circuit courts of appeal that had ruled on the same or similar issues.

The state appealed. The issue before the Supreme Court was:

Whether it is lawful for an officer to conduct a traffic stop when the officer knows the registered owner of a vehicle has a revoked license and the officer has no reason to believe that someone other than the registered owner is driving the vehicle.

The Supreme Court reversed the judgment of the Kansas Supreme Court. The Court held that an officer has reasonable suspicion to stop a vehicle when the officer knows the registered owner has a revoked license and there are no facts or information to suggest that someone other than the registered owner is driving the vehicle.

Under established case law, a police officer may conduct a brief investigative stop when he has reasonable suspicion to believe a person is involved in criminal activity. Reasonable suspicion is determined by the totality of the circumstances, to include facts known to the officer and reasonable inferences that can be drawn from those facts.

In this case, before conducting the stop the officer saw an individual operating a 1995 Chevrolet 1500 pickup truck with Kansas plate 295ATJ. The officer knew that the registered owner of the truck had a revoked license and that the model of the truck matched the vehicle registration. From these facts, the Court concluded that the officer "drew the commonsense inference that Glover was likely the driver of the vehicle, which provided more than reasonable suspicion to initiate the

stop.” The Court added that the fact that the registered owner of a vehicle is not always the driver of the vehicle did not negate the reasonableness of the officer’s inference. The court noted that an officer does not need “to be perfect,” just reasonable.

The Court concluded by commenting that its holding was narrow in scope. The Court stated that the presence of additional facts might dispel an officer’s reasonable suspicion in a similar situation. For example, if an officer knows the registered owner of a vehicle is a male in his mid-sixties but observes the driver is a female in her mid-twenties, then the totality of the circumstances would not support reasonable suspicion that the driver was involved in criminal activity. However, in this case, the officer had no information to rebut the reasonable inference that Glover was driving his own vehicle; therefore, the Court held that the stop was lawful.

For the Court’s opinion: https://www.supremecourt.gov/opinions/19pdf/18-556_e1pf.pdf

First Circuit

Caniglia v. Strom, 953 F.3d 112 (1st Cir. 2020)

In August 2015, Kim Caniglia called the police department and asked that an officer accompany her to her residence where she lived with her husband, Edward. Kim stated that the day before, during an argument with Edward, he retrieved a handgun from the bedroom, threw it on a table, and told Kim, “shoot me now and get it over with.” A short time later, Edward left the house and Kim returned the gun to its usual place but hid the magazine. Afterward, Kim said she left the house and spent the night at a hotel. Kim explained that she called the police because she had been unable to reach Edward by telephone that morning and she was concerned that he might have committed suicide or otherwise harmed himself. Kim wanted an officer to accompany her to the house because she was worried for Edward and she was concerned about what she would find when she returned home. An officer was dispatched and he met with Kim, who recounted the argument with her husband the previous day, his disturbing behavior, and suicidal statements.

Four officers went to the Caniglia residence and spoke to Edward. Edward corroborated Kim’s account of their argument but he refused to discuss his mental health, except to tell the officers that he was not suicidal. After the ranking officer on the scene determined that Edward posed an imminent danger to himself and others, Edward agreed to be transported to a nearby hospital for a psychiatric evaluation. Edward claimed the only reason he agreed was because the officers told him that his firearms would not be confiscated if he consented to go to the hospital for an evaluation.

After Edward departed by ambulance for the hospital, the officers decided to seize two firearms, magazines for both guns, and ammunition. Although it was unclear whether Kim wanted the guns removed from the house, the officers knew the firearms belonged to Edward and that he objected to the officers seizing them. Edward was evaluated at the hospital but not admitted as an inpatient. Edward’s firearms were returned in December 2015.

Edward Caniglia sued the officers under 42 U.S.C. § 1983. Although he alleged several constitutional and state-law violations, Caniglia’s primary argument was that the officers violated the Fourth Amendment by 1) transporting him involuntarily to the hospital for a psychiatric evaluation, and 2) seizing his two firearms after a warrantless entry into his home.

The district court held that the officers' conduct toward Caniglia and the seizure of his firearms constituted a reasonable exercise of their community caretaking responsibilities; therefore, their actions did not violate the Fourth Amendment. Caniglia appealed.

The Supreme Court has recognized that police officers frequently engage in "community caretaking functions" that have no relationship to the detection, investigation, or acquisition of evidence relating to criminal violations. In [Cady v. Dombrowski](#), the Supreme Court held that the community caretaking exception applied to a situation where officers conducted a warrantless search of a disabled vehicle when the officers reasonably believed that the vehicle's trunk contained a gun and the vehicle was vulnerable to vandals. Since [Cady](#), the community caretaking doctrine has become a catch-all for a wide range of responsibilities that police officers must discharge in addition to their criminal enforcement duties.

Although the community caretaking doctrine has been well settled in the motor vehicle context, there is discord among the federal circuits as to its validity in the context of warrantless entries into a home. The Third and Seventh Circuits have held that the community caretaking exception does not justify a warrantless entry into a home while the Fifth, Sixth, Eighth, and Ninth Circuits have held that the doctrine allows warrantless entries onto private premises, including homes, in certain circumstances. In this case, the First Circuit Court of Appeals joined the Fifth, Sixth, Eighth, and Ninth Circuits, holding that the community caretaking doctrine should not be limited to the motor vehicle context.

In this case, the court held that the community caretaking doctrine specifically applied to the officers' actions in this case. The court found that when the officers seized Caniglia they knew that: 1) he had retrieved a firearm during an argument with his wife and directed his wife to shoot him and "get it over with" and 2) his behavior had so dismayed his wife that she spent the night at a hotel and requested a wellness check on him the next morning as she feared that he may have committed suicide. Based on these facts, the court concluded that the officers not only acted reasonably but in conformity with sound police procedure by seizing Caniglia and sending him to the hospital for a psychiatric evaluation.

In addition, the court found that an objectively reasonable officer could have perceived a real possibility that Caniglia might refuse an evaluation once at the hospital and then shortly return home in the same troubled mental state, posing a threat to himself and others. The court noted that when the officers entered Caniglia's home, they did not search the entire residence in order to seize the weapons, but rather relied upon Kim's directions, which directed them to the firearms. Consequently, the court held that entering Caniglia's home and seizing his firearms was reasonable and consistent with sound police procedure.

For the court's opinion: <https://cases.justia.com/federal/appellate-courts/ca1/19-1764/19-1764-2020-03-13.pdf?ts=1584131409>

Fourth Circuit

United States v. Jones, 952 F.3d 153 (4th Cir. 2020)

The Richmond Police Department received an anonymous 911 call that Melvin Jones was selling marijuana and crack cocaine from his residence. Three officers went to Jones' house to investigate the tip by conducting a "knock and talk" interview. One of the officers knocked on the door and

when Jones opened the door, the officers smelled a strong odor of marijuana coming from inside the house. Based on the marijuana odor, the officers seized Jones as he was standing on the door's threshold, placed him in handcuffs, and seated him on a chair on the front porch. When Jones told the officers that his niece and nephew were inside the house, the officers and Jones called the children out of the house. While one of the officers stayed with Jones and the children, the other officers entered the house and conducted a protective sweep to verify Jones' statement that there were no other people inside the house. During the sweep, which lasted approximately two-minutes, one of the officers saw a smoldering marijuana cigarette sitting on top of the trash in an open trash can in the kitchen. After completing the sweep, one of the officers left the house to apply for a search warrant while the other officers remained with Jones.

The officer returned a short time later with a warrant authorizing a search of Jones' house for controlled substances. The warrant specifically authorized a search of "any safes or locked boxes that could aid in the hiding of illegal narcotics." The officers searched a safe in Jones' bedroom closet and found a handgun. In other parts of the house, the officers found marijuana, crack cocaine, and items commonly used for packaging and weighing narcotics.

The government charged Jones with possession of a firearm by a felon and possession of a cocaine base with intent to distribute. Jones filed a motion to suppress the evidence obtained during the search of his house. After the district court denied the motion, Jones pled guilty to the firearm charge, reserving his right to appeal the district court's ruling on the motion to suppress. In return, the government dismissed the drug charge.

On appeal, Jones claimed that the warrant authorizing the officers to open "any safes or locked boxes" in his house, which led to the discovery of the handgun in his safe, violated the Fourth Amendment. Specifically, Jones argued that the evidence in the warrant affidavit that the officers had detected a strong odor of marijuana coming from the house and observed a smoking joint in the kitchen trash can failed to establish probable cause that other locations in the house would hold evidence of marijuana possession. Jones asserted that the officers' detection of the marijuana odor provided them with probable cause only to believe that he was smoking a marijuana cigarette in his home and the search should have ended when the officers discovered the source of the smell, i.e. "the actual still-smoking marijuana cigarette" in the trash can.

The court disagreed. The "geographic scope" of a search warrant complies with the Fourth Amendment if, in light of "common-sense conclusions about human behavior," there is a "fair probability that contraband or evidence of a crime" will be found in the areas outlined in the warrant. Here, the officers had evidence that Jones, who was the only adult in the house at the time, had been smoking marijuana in his house when the officers knocked on the front door. The court concluded that common sense indicated it was likely that the marijuana Jones was smoking was not the only marijuana in the house. The court noted that a reasonable officer could infer that the marijuana located in the trash can constituted only a single portion of a larger quantity of marijuana stored elsewhere in the home. Finally, the court reasoned that common sense also indicated that a larger quantity of marijuana would be stored in a location that was out of sight. As a result, the court held that based on common sense and context, there was a fair probability that further evidence of Jones' crime would be located elsewhere in the house, which justified a warrant authorizing the search of the entire house, not just the kitchen trash can where the officers saw the smoldering marijuana cigarette.

For the court's opinion: <https://cases.justia.com/federal/appellate-courts/ca4/18-4448/18-4448-2020-03-03.pdf?ts=1583263831>

United States v. Jordan, 952 F.3d 160 (4th Cir. 2020)

After federal agents arrested Ricky Grant for drug distribution, Grant identified Zavian Jordan as his primary and long-standing source of heroin. Grant agreed to cooperate with law enforcement and placed a monitored and recorded telephone call to Jordan, in which the men discussed a future drug transaction. Based on Grant's initial statement to the agents and the content of the recorded call, the agents obtained a warrant to track the location of Jordan's cell phone, and later, a second warrant to place a location-tracking device on Jordan's truck.

Several weeks later, federal agents had Jordan under surveillance when they saw him enter and depart several locations over a short period of time. In some instances, Jordan entered with one package and left with another. Suspecting that Jordan was engaging in drug transactions, the agents contacted a police officer who had been assisting in the investigation and requested that he conduct an investigatory stop of Jordan.

The officer followed Jordan until he saw Jordan turn through a red light without stopping, and then pulled him over. When he approached Jordan's truck, the officer found Jordan on the phone and unwilling to engage with him. Jordan eventually exited his truck and the officer frisked him for weapons. During the frisk, the officer saw a rubber glove in Jordan's pants pocket. The officer knew it was common practice for individuals to package drugs in rubber gloves. By this time, Jordan's brother had arrived on the scene in a separate vehicle and attempted to "interject himself" into the stop. Based on these circumstances, the officer waited approximately 11 minutes for back-up officers to arrive before walking his drug-detecting dog around Jordan's truck. After the dog alerted to the presence of drugs, Jordan told the officer that he had cocaine in his possession. The officer found approximately 12 grams of cocaine in the rubber glove from Jordan's pocket as well as almost \$2,000 in cash. In Jordan's truck, the officer found six cell phones, \$26,000 in cash, and a handgun. Jordan later admitted that he was involved in cocaine trafficking and gave officers a detailed statement.

The government charged Jordan with several drug-trafficking and firearms-related offenses. Jordan filed a motion to suppress the evidence seized from the traffic stop and his subsequent incriminating statements. Jordan conceded that the officer's stop for the traffic violation was lawful. However, Jordan claimed that the officer violated the Fourth Amendment by prolonging the stop for 11-minutes, beyond the time required to complete the stop, without reasonable suspicion that Jordan committed another offense.

Ultimately, the court agreed with the district court which held that the officer had reasonable suspicion of ongoing criminal activity, apart from Jordan's traffic violation, when he stopped Jordan's truck. First, under the collective knowledge doctrine, the court imputed to the officer knowledge of all the facts known to the federal agents when they asked the officer to stop of Jordan. Specifically, the officer later became aware of the following facts as relayed to him by other federal agents: 1) that Jordan was suspected of drug trafficking, and that others involved in the same scheme had been found with firearms or had histories of violent crimes; 2) that Grant had identified Jordan as his primary drug supplier; 3) that warrants had been issued for the tracking of Jordan's cell phone and truck; and 4) that agents had observed Jordan's movements earlier in the day, which based on their training and experience, were indicative of drug transactions.

Next, the court found that the officer did not unreasonably prolong Jordan's detention by waiting 11-minutes for back-up officers to arrive before completing his investigation. The court recognized that "investigating officers may take such steps as are reasonably necessary to maintain the status quo and protect their safety during an investigative stop." The court held that it was reasonable for the officer to wait for back-up officers to arrive because the officer had reason to believe that Jordan was working with armed drug dealers and he was confronted not only with Jordan but also with his brother at the scene.

For the court's opinion: <https://cases.justia.com/federal/appellate-courts/ca4/17-4751/17-4751-2020-03-03.pdf?ts=1583263830>

United States v. Moore, 952 F.3d 186 (4th Cir. 2020)

Pursuant to department policy, police officers set up a traffic checkpoint at the intersection of a well-traveled county road. The purpose of the checkpoint was to ensure that drivers were in compliance with state law regulating the use of motor vehicles. As Leroy Moore pulled up to the checkpoint, an officer noticed what appeared to be bullet holes in the driver's side door. When the officer approached Moore's car, he immediately noticed the odor of marijuana and saw smoke emitting from the passenger area. The officer requested Moore's driver's license and Moore gave it to the officer. The officer then questioned Moore about the smell and Moore admitted that he had just extinguished a "blunt," which the officer took to mean a marijuana cigar.

After being directed to exit the car, an officer frisked Moore and found four bags containing an off-white, rock-like substance in his pants leg. Moore consented to a search of his car where the officers found multiple off-white rock substances on the floorboards, drug paraphernalia, and a firearm. The officers arrested Moore and terminated the checkpoint a short time later.

The government charged Moore with possession with intent to distribute crack cocaine. Moore filed a motion to suppress the evidence obtained from the search of his person and vehicle at the checkpoint. Moore argued that the checkpoint violated the Fourth Amendment because (1) its primary purpose was to advance a general interest in crime control, which is prohibited, and (2) it was conducted in an unreasonable manner because there was no formal policies or procedures in place to limit the discretionary authority of the officers manning it.

The Court of Appeals recognized that the Supreme Court has held that checkpoints designed to intercept illegal aliens, apprehend drunk drivers, and to solicit information from the public regarding criminal activity are reasonable under the Fourth Amendment. In addition, the Supreme Court and lower courts have concluded that checkpoints designed for the limited purpose of checking driver's licenses and motor vehicle registrations are reasonable as well. In this case, the court held that the checkpoint was reasonable under the Fourth Amendment because it was established to check licenses, automobile registrations, and compliance with motor vehicle laws in order to ensure the safe and legal operation of motor vehicles on the roadway.

Next, the court had to determine if the officers' conduct towards Moore during the stop at the checkpoint was reasonable. Generally, when motorists are stopped at lawful checkpoints, officers must treat each motorist in a similar manner as the courts have recognized that there is potential for abuse "when officers are entrusted with standardless and unconstrained discretion."

Here, the court found that the officers operated the checkpoint in a reasonable manner. First, it was clearly visible, as flashing blue lights and traffic cones warned motorists of the need to slow to a stop and the officers manning the checkpoint wore uniforms and reflective vests and hats. Second, and more importantly, the checkpoint was operated pursuant to a “systematic procedure that strictly limited the discretionary authority of the officers and reduced the potential for a motorist to be subjected to arbitrary treatment. Specifically, (1) multiple officers manned the checkpoint, as required by department policy; (2) officers were required to stop every vehicle and were trained to look primarily for violations of motor vehicle laws; (3) the checkpoint was approved and supervised by a commanding officer; and (4) officers did not detain drivers longer than reasonably necessary to accomplish the purpose of checking a license and registration, In Moore’s case, where other facts created a reasonable suspicion that Moore was involved in criminal activity, the extended duration of the investigatory stop was reasonable. The court concluded that the officers at the checkpoint were “plainly regulated and specifically directed toward ensuring highway safety and compliance with motor vehicle laws;” therefore, their actions in conducting it were reasonable.

For the court’s opinion: <https://cases.justia.com/federal/appellate-courts/ca4/18-4606/18-4606-2020-03-04.pdf?ts=1583350234>

Fifth Circuit

United States v. Alvarado-Palacio, 951 F.3d 337 (5th Cir. 2020)

Customs and Border Protection agents at the port of entry in El Paso, Texas found 9.98 kilograms of methamphetamine in Alvarado-Palacio’s car during a secondary inspection. The agents arrested Alvarado. Special Agents Hernandez and Flores with Homeland Security Investigations interrogated Alvarado-Palacio later that day. After being advised of his Miranda rights, Alvarado-Palacio waived his rights and told the agents that he knew the drugs were in his car.

The government charged Alvarado-Palacio with several drug-related offenses. Alvarado-Palacio filed a motion to suppress his statements to the agents during his interrogation. Alvarado-Palacio claimed that he did not voluntarily and knowingly waive his Miranda rights because Agent Hernandez mischaracterized his right to an attorney.

Police officers must inform a suspect of his Miranda rights, but a suspect can waive those rights so long as the waiver is made voluntarily, knowingly, and intelligently. In this case, the agents informed Alvarado-Palacio of his Miranda rights, including his right to consult with an attorney before or during any interrogation. After Alvarado-Palacio indicated he understood his rights, Agent Hernandez gave him a waiver form and Agent Flores mentioned that Alvarado-Palacio could read the rights again. Alvarado-Palacio wrote his name, signature, and date on a Spanish form that included his Miranda rights and a waiver of those rights. Alvarado-Palacio reviewed the form and then the agents asked him if he understood the form. Alvarado-Palacio responded, "Yes, that I may have an attorney, it says?" Agent Hernandez answered while holding the rights and waiver form, "Yes you may have an attorney, but right now is when we can speak with you"; and Alvarado-Palacio responded, "Ah ok." Based on these facts, the court found that Alvarado-Palacio *voluntarily* chose to waive his right to counsel.

Next, the court held that Alvarado-Palacio made a *knowing* waiver of his right to counsel. After Alvarado-Palacio signed the rights and waiver form, the agents asked him if he understood his rights. Alvarado gave an ambiguous reply, "that I can have an attorney, it says?" but then clearly stated "Ah ok" when agents informed him that they were going to speak with him. Just moments before, the agents verbally told Alvarado-Palacio about his Miranda rights and asked if he understood. He answered, "yes". The agents also asked if Alvarado-Palacio understood his rights and would be okay if they asked him a few questions. He answered that he was "ok".

Based on the totality of the circumstances, the court concluded that Alvarado-Palacio knowingly, intelligently, and voluntarily waived his right to counsel, specifically upon following facts: (1) Alvarado-Palacio's initial affirmation that he understood his right to an attorney prior to or during interrogation, (2) the video of him signing the Spanish translated waiver, (3) his second affirmation that he understood his rights, and (4) his agreement to speak with the agents.

For the court's opinion: <https://cases.justia.com/federal/appellate-courts/ca5/17-51030/17-51030-2020-03-02.pdf?ts=1583181027>

United States v. Scully, 951 F.3d 656 (5th Cir. 2020)

Robert Scully and Kenneth Sliz shared ownership and management of Gourmet Express (Gourmet), a company that produced frozen meals. A dispute between Scully and Sliz resulted in civil litigation and the eventual sale of Gourmet. Concerned that Gourmet had been involved in federal crimes while he still owned it, Sliz went to the Internal Revenue Service (IRS) as a whistleblower and the IRS thereby launched an investigation.

IRS agents obtained a warrant to search 1015 East Cliff Drive, which was Scully's residence and, according to a Gourmet company document, was also Gourmet's "West Coast Regional Office." The affidavit submitted to the magistrate judge in support of the warrant explained that Scully "converted a small apartment behind the residence into an office" where he did work for Gourmet and that agents were looking for the sort of evidence that would be found in a home office. The agent that drafted the affidavit stated that, in his experience, "business records are kept at addresses listed as a business office." The affidavit further stated that "the latest Gourmet employee phone directory and office listing" listed 1015 East Cliff Drive as an office, and that a phone and fax number were listed for the same address.

Before preparing the warrant, agents reviewed satellite images of the location and drove past it. In addition, the agents had the warrant application reviewed and approved by the U.S. Attorney's Office. A federal magistrate judge reviewed and signed both the warrant and the supporting affidavit. The agents executing the search were each provided a copy of the warrant before the raid. While the affidavit in support of the warrant explained that Scully's home office was in a building separate from the residence, the warrant included a physical description of the primary residence only.

It was later discovered that Scully's home office was in fact located at 1015½ East Cliff Drive, in a separate building behind the primary residence (1015 East Cliff Drive), accessible by a private sidewalk. Scully's parcel of land contained three structures served by one driveway, the primary residence at 1015 East Cliff Drive, the home office behind the primary residence at 1015½ East Cliff Drive, and a structure to the left of the primary residence that was leased to someone else. In addition to the primary residence at 1015 East Cliff Drive, the agents searched the home office

at 1015½ East Cliff Drive and seized certain documents and an image of Scully's computer hard drive. The agents did not search the third structure on the property.

The government ultimately charged Scully with conspiracy to commit tax fraud, aiding in filing false tax returns, and wire fraud.

Scully filed a motion to suppress the evidence seized from his home office at 1015½ East Cliff Drive. Scully argued that the agents exceeded the scope of the warrant when they searched the home office behind the primary residence because the warrant described only the primary residence at 1015 East Cliff Drive.

The court disagreed. The court considered several facts, including the research conducted by agents to determine scope of the place to be searched as 1015 East Cliff Drive. First, the agents relied on the Gourmet corporate documents listing the West Coast Regional Office at that address, including "the latest Gourmet employee phone directory and office listing," as well as a fax number listed for that address. In addition, the agents reviewed photographs and satellite imagery, drove past the location, and relied on information provided by Sliz. Finally, no signs or markings indicated that the home office carried a separate address, and both structures were similar in appearance, were contained on a singular rectangular lot within the same fenced area, appeared to be connected by the same utility wires, and were connected by a sidewalk. The court held that while the agents could have discovered the separate addresses with additional research, they acted reasonably and in good faith in not including the address 1015½ East Cliff in the warrant application and in believing that the warrant for 1015 East Cliff Drive covered both buildings.

The court further held that the agents were objectively reasonable and acting in good faith in their belief that the warrant containing a physical description of only the primary residence authorized the search of a separate building behind the primary residence. The court recognized that other courts as well as the Sixth Circuit Court of Appeals had previously applied the good-faith exception to uphold the admission of evidence obtained from two separate addresses even though only one address was listed in the search warrant.

Similarly in this case, the court found that: 1) the agent who submitted the warrant and supporting affidavit to the magistrate judge was one of the agents who executed the warrant, 2) the supporting affidavit which described Scully's home office explained that Scully did work for Gourmet there and that the agents were looking for business records contained in the home office, 3) the judge found probable cause to search the property as described in the supporting affidavit and the search was confined to the areas described in it, and 4) prior to executing the warrant, the agents were told that they would be searching the main house and the additional structures on the property, except for the rented structure. The court concluded there was no danger that the less-than-perfect description on the face of the warrant allowed the officers to search beyond the scope of the warrant because the agent that drafted the supporting affidavit participated in the execution of the warrant and because he instructed the other agents as to what places they were authorized to search.

For the court's opinion: <https://cases.justia.com/federal/appellate-courts/ca5/16-51429/16-51429-2020-03-04.pdf?ts=1583368218>

Sixth Circuit

Ashford v. Raby, 951 F.3d 798 (6th Cir. 2020)

A police officer saw a vehicle traveling at over 100 miles per hour and changing lanes without a turn signal. When the officer activated his lights and attempted to stop the vehicle, the driver, Keyonte Ashford, refused and kept driving. The officer pursued Ashford for more than two minutes before three police cars surrounded Ashford and forced him to stop. The officers ordered Ashford to show his hands and Ashford complied by thrusting his hands out the window. The officers then told Ashford twice to turn his engine off. Ashford did not comply. Instead, he thrust his hands further out the window

At that point, Officer Raby and his trained police dog, Ruger, arrived on the scene. While the other officers told Ashford to keep his hands up, Officer Raby approached Ashford's vehicle and opened the driver's side door. With the door open, the officers ordered Ashford to step out of the vehicle. Ashford tried to tell the officers that his SUV was still in drive and his foot on the brake was the only thing stopping it from rolling forward into a police cruiser. According to Ashford, he was afraid to pull back into his vehicle to put it in park. Ashford claimed that he told the officers they were free to reach into his vehicle to put it in park or turn it off. It was not clear whether the officers heard Ashford's suggestion amid the noise. However, even if they did, the officers continued to order Ashford to exit his vehicle. The officers also told Ashford that if he did not, Officer Raby would send his dog to apprehend him.

After 20 seconds of Ashford's refusal to get out of the vehicle, Officer Raby commanded Ruger to attack. Ruger bit Ashford's left arm and then Officer Raby and Ruger pulled Ashford out of the driver's seat and onto the road, where officers arrested him. Afterward, the officers took Ashford to the hospital where he was treated for injuries to his left arm.

Ashford sued Officer Raby under 42 U.S.C. § 1983, claiming that Officer Raby violated the Fourth Amendment by using excessive force against him when he ordered Ruger to attack him. The district court granted Officer Raby qualified immunity. Ashford appealed.

The Sixth Circuit Court of Appeals recognized that to be constitutional under the Fourth Amendment, Officer Raby's use of force only need to be objectively reasonable under the circumstances. The court added that the reasonableness standard does not take into account facts not known to the officer at the time force was used nor does it require an officer to use the best technique available at the time. The court noted that in police work officers usually face a range of acceptable options, not a single, rigid right answer and that the reasonableness standard contains a "measure of deference to the officer's on-the-spot judgment."

Against this framework, the court held that Officer Raby's decision to remove Ashford from the vehicle was reasonable. First, Ashford led police officers on a 2 ½ minute chase before the officer stopped him. Second, Ashford repeatedly refused to exit the vehicle. Third, although Ashford had his hands up, the officers could not control the scene with Ashford in the vehicle. Even though Ashford might have had a valid reason for not wanting to exit the vehicle, the court considered what was reasonable from Officer Raby's perspective, not Ashford's. All that Officer Raby knew about Ashford was that he: 1) had been driving erratically and at excessive speeds, 2) had refused a lawful signal to pull over, 3) had stopped only when forced, 4) left his vehicle in drive for some unknown reason, and requested that officer to enter the SUV, park it, and take the keys from the

ignition. The court concluded that the officers were not required to assume the risk inherent in Ashford's request and that the decision to remove Ashford from the vehicle was reasonable.

Next, the court held that Officer Raby did not violate clearly established law by deploying Ruger to assist in removing Ashford from the vehicle. The court found that if officers had attempted to pull Ashford from the still-running vehicle by themselves they faced the risk that Ashford might attempt to drive away. Given this risk, the court found that it was reasonable to entrust the first stage of the seizure to Ruger rather than an officer. The court added that Ashford could not provide any Sixth Circuit opinion which held that deploying a police dog in similar circumstances violated the Fourth Amendment.

Finally, the court held that Officer Raby did not unreasonably prolong Ruger's use of force against Ashford. Once Ashford was out of the vehicle, Officer Raby controlled Ruger while the other officers secured Ashford. Video footage showed that Officer Raby gave Ruger the release command approximately two seconds after an officer secured Ashford's right arm and about four to five total seconds after the Ashford was pulled from the vehicle. The court commented that Officer Raby's handling of Ruger during the seizure was "responsible and professional."

For the court's opinion: <https://cases.justia.com/federal/appellate-courts/ca6/19-1677/19-1677-2020-03-05.pdf?ts=1583431301>

United States v. Jones, 953 F.3d 433 (6th Cir. 2020)

McKinney called the Paducah police department and reported that her ex-boyfriend, Jermaine Jones, assaulted her and then fled in a white SUV that was driven by one of his friends. When officers arrived at McKinney's home, they interviewed her and corroborated her account of the incident. McKinney told the officers that Jones had threatened her in the past, that he may try to kill her in the future, and that he could easily obtain a gun. McKinney told the officers that she planned to get an emergency protective order against Jones and that she feared he would return to attack her once the officers left the residence.

While completing paperwork related to the call, an officer saw two men in a white SUV at the intersection near McKinney's home. The officer stopped the SUV and identified Jones as the passenger. The officer asked Jones to exit the vehicle and escorted him back to his police car, where a quick frisk of Jones revealed no weapons. The officer spoke to Jones, who denied assaulting McKinney. The officer did not believe Jones and arrested him for fourth-degree assault, a misdemeanor in Kentucky. The officer searched Jones and placed him in the back of his police car. After Jones complained that his handcuffs were too tight, the officer went to check the handcuffs and saw a firearm in the back of his police car that he had not seen before.

The government charged Jones with being a felon in possession of a firearm. Jones filed a motion to suppress the firearm. Jones claimed that the officer violated the Fourth Amendment because he stopped the SUV on the suspicion that Jones had completed a crime, which in this case only amounted to a misdemeanor. Jones argued that to make a valid stop, the officer needed a reasonable suspicion of ongoing or imminent criminal activity, not a completed crime.

In [U.S. v. Hensley](#), the Supreme Court held that "if police have a reasonable suspicion, grounded in specific and articulable facts, that a person they encounter was involved in or is wanted in connection with a completed felony, then a Terry stop may be made to investigate that suspicion."

However, the Court did not address whether it would be reasonable for an officer to conduct a Terry stop to investigate a completed misdemeanor. Instead, the Court left it to lower courts to make that determination on a case-by-case basis. The Court noted that the inquiry turns not on whether the suspect already completed a crime, but rather on the nature of the crime, how long ago the suspect committed it, and the ongoing risk of the individual to the public safety. For example, under this approach, it would not be reasonable for an officer to conduct a Terry stop on someone who “ran a red light six months ago” but it would be reasonable for an officer to stop someone who recently assaulted a spouse. The court added that with other circuits that have adopted the Hensley facts-and-circumstances test in considering the validity of Terry stops for completed misdemeanors, sometimes the government has prevailed and sometimes the defendant has prevailed.

Applying the facts-and-circumstances test, the court held that by stopping Jones' car to investigate McKinney's allegations of assault, whether classified as a misdemeanor or felony, the officer acted reasonably.

The court held that the officer properly stopped Jones as he had established reasonable suspicion that Jones had physically assaulted McKinney. The court noted that prior to the stop, had interviewed McKinney regarding the domestic incident and found her to be credible. Further, the officer corroborated almost every aspect of the McKinney's account of the domestic incident. Later, the officer identified a vehicle near the McKinney home, which matched the description of the SUV in which Jones had fled.. The court concluded that stopping the SUV directly promoted the interest of preventing crime, as McKinney credibly claimed that Jones intended to harm her or her home.

Second, the court held that the stop promoted public safety, as McKinney told the officers that Jones could get a firearm easily and had attacked her in the past. The court concluded that it was reasonable for the officer to stop Jones to prevent him from committing further acts of violence.

For the court's opinion: <https://cases.justia.com/federal/appellate-courts/ca6/19-5633/19-5633-2020-03-23.pdf?ts=1584997213>

Seventh Circuit

United States v. Rickmon, 952 F.3d 876 (7th Cir. 2020)

While on patrol at approximately 4:40 a.m., a police officer received a ShotSpotter system report of two gunshots coming from 2203 North Ellis Street. ShotSpotter is a surveillance system that uses microphones to record gunshots in a specific area. After an individual listens to the audio file and confirms the sound as a gunshot, ShotSpotter sends an alert to the local police department. While driving toward North Ellis Street, the officer received another ShotSpotter alert reporting three more shots fired from North Ellis Street. The officer also received information from his dispatcher stating that cars were reported leaving the area of the reported gunshots and that a man was seen running from the area.

As the officer turned onto North Ellis Street, he saw a car approaching him from the opposite direction. This was the only car the officer saw on the street. The officer activated his emergency lights and stopped the vehicle. The occupants of the car pointed back to crowd of approximately 15-20 people and told the officer: “[t]hey are down there.” When back-up officers arrived, the

passenger, Terrill Rickmon, then reported that someone had shot him in the leg. With the driver's consent, the initial officer on scene searched the vehicle and found a handgun under the passenger seat where Rickmon had been sitting.

The government charged Rickmon with possession of a firearm by a felon. Rickmon filed a motion to suppress the firearm, arguing that ShotSpotter, by itself, should not allow police officers to stop a vehicle in the immediate vicinity of a gunfire report without any individualized suspicion of that vehicle.

The court agreed that a single ShotSpotter alert would most likely not amount to reasonable suspicion to conduct a stop. However, in this case, the court found that the totality of the circumstances established sufficient reasonable suspicion for the officer to stop Rickmon's car beyond being in the vicinity of the ShotSpotter's coverage zone.

First, the officer received two ShotSpotter alerts and two dispatches reporting a shooting on North Ellis Street. While on his way to that location, the officer heard additional radio dispatches which reported cars leaving the area and an individual running away from the shooting. The court concluded that the ShotSpotter alerts were analogous to anonymous tips that were independently confirmed by the information provided in the radio dispatches. The court noted that corroboration from multiple sources describing the general area and nature of the same crime can support reasonable suspicion for a stop.

Second, the officer was responding to an emergency report of shots fires, not one of "general criminality." The court commented that it has "repeatedly emphasized in our decisions that the inherent danger of gun violence sets shootings apart from other criminal activity."

Third, the officer encountered Rickmon's vehicle on the same block of the shooting 5 ½ minutes after he received reports of shots-fired. The court found that stopping Rickmon's vehicle was within this time frame was not unduly long, noting that a shooting may cause a person to quickly flee for any number of reasons including the destruction of evidence, to tend to an injury sustained in the shooting, or to hide in place, and that such flight .

Fourth, although the officer did not have the description of any vehicle, when he saw Rickmon's car the vehicle was traveling on the only street leading away from the site of the shooting. The court concluded that it was reasonable for the officer to believe that Rickmon's car was involved with the gunshots.

Finally, the officer testified that North Ellis Street was an area that he had once previously patrolled and responded to a call of shots-fired.

The court held: 1) the reliability of the police reports, 2) the severity of the crime, 3) the fact that the stop occurred close in time and proximity to the shots, 4) late at night in an area of light traffic, and 5) the officer's experience with gun-related calls in that area, provided reasonable suspicion to stop Rickmon's vehicle.

For the court's opinion: <https://cases.justia.com/federal/appellate-courts/ca7/19-2054/19-2054-2020-03-11.pdf?ts=1583964034>

Eighth Circuit

United States v. Heard, 951 F.3d 920 (8th Cir. 2020)

At approximately 7:20 p.m., Justin Summers called 911 and reported that while driving in a car with his wife, he saw a parked car with substantial front-end damage. Summers stated that he saw a “black male, anywhere from 5’9” to 6-foot,” with a white hat and dark clothes standing next to the driver’s side of the car. Summers added that he saw the man throw something “small” into the “weeds.” When Summers and his wife slowed down almost to a stop next to the car, the man, later identified as Tachay Heard, made a facial expression that made it clear to Summers that “he did not want us there.” As Summers and his wife drove away, Summers saw Heard throw a pistol into the weeds or into the ditch at the side of the road.

When police officers arrived, they found Heard, who is 5’8” tall, wearing a black t-shirt and blue jeans. The officers searched the area near the car and found a bag of marijuana with 27 individually packaged baggies and a loaded firearm that had no dirt or debris on it. The officers arrested Heard.

Around 8:45 p.m., officers asked Summers to return to the scene. He arrived at dusk. Officers positioned Heard, handcuffed with a spotlight shining on him, 20 to 25 feet from Summers. Officers told Summers “to have an open mind, and to tell them if it was or was not the person that [he] saw.” Without hesitation, Summers identified Heard as the man he had seen earlier, with the exception that Heard was now not wearing a hat. Summers added that during the identification Heard gave him the “same hard looks” he had given him earlier in the evening.

The government charged Heard with drug and firearms-related offenses. Prior to trial, Heard filed a motion to suppress Summers’ eyewitness identification, claiming that the show-up identification was impermissibly suggestive. Heard argued that the show-up was unconstitutional because officers called Summers back to the scene of the crime and asked him suggestive questions while Heard was handcuffed with a bright light shining directly on his face. The district court denied the motion and Heard appealed.

Law enforcement officers are not limited to station house line-ups if there is an opportunity for a quick, on-the-scene identification. Officers should avoid any identification procedure that is inherently suggestive. An inherently suggestive identification procedure is one that gives rise to a substantial likelihood of misidentification. However, even if an identification procedure is deemed to have been inherently suggestive, it will be admissible as long as it is not also deemed to be “unreliable.”

In this case, the Eighth Circuit Court of Appeals held that the show-up identification was not impermissibly suggestive. The court cited two Eighth Circuit opinions which held that “suspects being handcuffed and in police custody” or having a light shone on their face “do not render the identification procedure impermissibly suggestive.”

The court further held that Summers’ identification was reliable. An identification is unreliable if the circumstances allow for “a very substantial likelihood of irreparable misidentification.” Factors a court will consider to determine the reliability of an identification include: 1) the opportunity of the witness to view the criminal at the time of the crime, 2) the witness’ degree of attention, 3) the accuracy of the witness’ prior description of the criminal, 4) the level of certainty demonstrated at the confrontation, and 5) the time between the crime and the confrontation.

Considering these factors the court found that Summers paid close attention to Heard due to the severe damage to Heard's vehicle. Summers stated that he observed Heard at a close distance, in good light, and "could see his face really good." Summers testified that Heard gave him "a threatening hard look" and "made it very clear that he didn't want us there." Finally, only about an hour and a half passed between when Summers first saw Heard and when he made the identification.

For the court's opinion: <https://cases.justia.com/federal/appellate-courts/ca8/18-3411/18-3411-2020-03-03.pdf?ts=1583253027>

United States v. Suellentrop, 953 F.3d 1047 (8th Cir. 2020)

Paul Donnelly borrowed Dennis Suellentrop's cell phone. After finishing his call, Donnelly looked through the contents of the phone and found pornographic images and videos of Suellentrop's infant daughter. Law enforcement was called and an officer was dispatched to interview Donnelly. Donnelly told the officer what he had found and gave Suellentrop's phone to the officer. The officer examined the phone and found an image of child pornography. The officer turned off the phone and secured it in his pocket without searching it further.

A short time later, a detective arrived and took possession of Suellentrop's phone without turning it on. The investigator called a state prosecutor who provided assistance with obtaining a warrant to search Suellentrop's residence and cell phone. Several weeks later, a forensic examination of Suellentrop's cell phone revealed images and videos of child pornography.

The government eventually charged Suellentrop with several child-pornography related offenses. Suellentrop filed a motion to suppress the evidence obtained from his cell phone. First, Suellentrop claimed that Donnelly's actions in unlocking the phone and showing an image to the responding officer violated the Fourth Amendment because Donnelly was acting as an agent of the government.

The Fourth Amendment does not prohibit private searches as long as those searches are not instigated by the government or performed on behalf of the government by the private individual. In addition, when the government re-examines materials following a private search, the government may intrude on an individual's privacy expectations without violating the Fourth Amendment as long as the government's search goes no further than the private search.

Here, the court held that Donnelly's examination of Suellentrop's phone constituted a private search. First, it was undisputed that Donnelly viewed the images and videos before law enforcement was called. Second, when Donnelly unlocked the phone and showed an image to the responding police officer, he was not acting as "an agent of the government." Consequently, when the responding officer searched the phone, he was entitled to view the same images and videos that Donnelly had viewed on his own initiative.

Next, Suellentrop claimed that the search of his phone pursuant to the state warrant was unlawful because it did not specifically authorize a search of his phone and because the officers seized his phone before the warrant was issued.

The court disagreed. The warrant for Suellentrop's residence authorized investigators "to search the computers, cameras, storage devices, and electronic devices" seized by the officers for evidence of child pornography. While commenting that "the warrant [was] not a model of clarity,"

the court concluded that it was reasonable for investigators to believe that the warrant authorized the search of Suellentrop's phone because it was an electronic device.

In addition, although the warrant's authority to search, read literally, was limited to evidence seized after the warrant was issued, and investigators should have sought a separate warrant to conduct a forensic examination of Suellentrop's phone, the court concluded that it was "an objectively reasonable honest mistake" that did not violate the Fourth Amendment.

For the court's opinion: <https://cases.justia.com/federal/appellate-courts/ca8/19-1002/19-1002-2020-03-26.pdf?ts=1585236617>
