
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 – September 2020

Case Summaries

Circuit Courts of Appeals

First Circuit

United States v. Del Rosario-Acosta: Whether the decision to impound the defendant’s car and subsequent inventory search was lawful under the community-caretaking exception.....5

Fifth Circuit

United States v. Gallegos-Espinal: Whether federal agents exceeded the scope of a consent search of the defendant’s cell phone by examining data extracted from the phone three days later...6

Sixth Circuit

Stewart v. City of Euclid: Whether an officer was entitled to qualified immunity in a lawsuit alleging an excessive use of force for shooting and killing the driver of a vehicle.....7

Seventh Circuit

Estate of Biegert v. Molitor: Whether the failure of officers to make a plan for their encounter with a suicidal subject, their failure to secure a knife block in the subject’s house, and their aggressive questioning of the subject rendered the officers’ subsequent use of deadly force against the subject unreasonable.....9

Eighth Circuit

United States v. Tapia-Rodriguez: Whether asking the defendant whether he lived in the apartment and which bedroom he occupied, prior to obtaining consent to search, constituted interrogation under Miranda.....11

United States v. Smialek: Whether an FBI agent’s response to the defendant’s question concerning the date of the bank robbery for which he had been arrested constituted interrogation under Miranda.....12

Eleventh Circuit

United States v. Knights: Whether police officers seized the defendant under the Fourth Amendment when they approached the defendant who was seated inside a parked vehicle.....13

United States v. Mastin: Whether officers were authorized to enter a hotel room to arrest two armed robbery suspects and whether the officers were entitled to detain the defendant while they sought to locate and arrest those suspects.....14



FLETC Informer Webinar Schedule – October/November 2020

1. Drones and the Fourth Amendment (1-hour)

Presented by Mary Mara and Henry McGowen, Attorney-Advisors/Senior Instructors, Federal Law Enforcement Training Centers, Artesia, New Mexico.

Drones are almost everywhere these days, but are there any legal restrictions for where a drone can be flown? Particularly, what about law enforcement: can the police lawfully use drones to search for a person or for evidence? For example, do Fourth Amendment protections apply when officers use a drone equipped with a camera to fly over a person's house and look inside? Does reliance on FAA flight safety rules provide the guidance needed to determine not only safe air operations but also legal requirements? This presentation will discuss the potential Fourth Amendment implications of unmanned aerial surveillance by law enforcement today. We will explore the current state of the law, what we know, and questions still remaining regarding this emerging technological frontier.

Wednesday, October 7, 2020: 3 p.m. Eastern / 2 p.m. Central / 1 p.m. Mountain / 12 p.m. Pacific

To participate in this webinar, join us at: <https://share.dhs.gov/oct/>



2. Guardians' Pathway Webcast Series – Episode 3: “Knowing Yourself” (1-hour)

Join George Belsky and John Besselman of the Federal Law Enforcement Training Center as they explain how "knowing yourself" is not just understanding our own strengths and weaknesses. A good law enforcement officer will accentuate the first and minimize the second. Effective law enforcement leadership relies on our ability to know human nature and understand its role in how we lead others.

Thursday, October 8, 2020: 2:30 p.m. Eastern / 1:30 p.m. Central / 12:30 p.m. Mountain / 11:30 a.m. Pacific

To participate in this webinar: <https://share.dhs.gov/guardianspathwayepisode3/>



3. Aerial Surveillance Operations and the Fourth Amendment (1-hour)

Presented by Arie Schaap, Attorney-Advisor/Senior Instructor, Federal Law Enforcement Training Centers, Artesia, New Mexico.

This presentation will look at the issue of surveillance and what may constitute a violation of the Fourth Amendment. Among the cases that will be examined is the recent Federal District Court of Maryland decision in Leaders of a Beautiful Struggle v. Baltimore Police Department where the court denied the plaintiff's request for a preliminary injunction to prevent the Baltimore Police Department from implementing an aerial surveillance

operation pilot program. We will also examine the 2018 Supreme Court decision Carpenter v. United States and compare these two areas of law.

Wednesday, November 4, 2020: 3 p.m. Eastern / 2 p.m. Central / 1 p.m. Mountain / 12 p.m. Pacific

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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 Appeals

First Circuit

United States v. Del-Rosario-Acosta, 968 F.3d 123 (1st Cir. 2020)

Three Puerto Rico Police Department officers responded to a call from a gas station reporting an armed person on the premises. When the officers arrived, they encountered a crowd of people. After the officers ordered the crowd to disperse, they saw Rafael Del Rosario-Acosta (the defendant) walk to a nearby parked car. The defendant got into the car, drove a short distance, parked, and then walked back toward the gas station. When the officers began to question the defendant, he turned and ran down the street toward his car. While the officers pursued the defendant, they saw him discard a plastic bag containing what appeared to be marijuana. After the defendant reached his car, he placed a key in the lock, but then removed it and continued to flee from the officers. As he ran, the defendant discarded a pill bottle that contained Xanax and Percocet pills. The officers caught the defendant after a brief chase and arrested him. One of the officers took the defendant's car key and confirmed that it operated the lock on the defendant's car. The officers had the defendant's car towed back to headquarters where they conducted an inventory search. During the inventory, officers found a handgun and ten small bags of marijuana. The government charged the defendant with drug and firearm offenses.

The defendant filed a motion to suppress the evidence seized from his car. The defendant argued that the officers unlawfully impounded his car; therefore, the inventory search that led to the discovery of the firearm and drugs was also unlawful.

Generally, police officers may only seize property pursuant to a warrant based on probable cause describing the place to be searched and the property to be seized. However, the community-caretaking exception to the warrant requirement recognizes that officers perform a variety of community functions apart from investigating crime that sometimes make it reasonable to seize property without first obtaining a warrant. As applied to the seizure of an automobile, the community-caretaking exception depends largely on the officer's reasons for seizing the vehicle. The officer must have "solid, non-investigatory reasons for impounding a car" and the decision to impound a car may not be a "mere subterfuge" to conduct a criminal investigation.

In this case, the First Circuit Court Appeals agreed with the defendant and held that the officers impounded the defendant's car to facilitate a warrantless search for criminal evidence under the guise of an inventory search. First, at the suppression hearing, when asked why the defendant's car was towed, and officer testified that they did so "for an investigation." When asked why they needed the car for an investigation, the officer replied, "[b]ecause [Defendant] was in that vehicle and it was said that he had a weapon and it wasn't found on him." However, the court noted that there was no evidence that anyone suspected the defendant possessed a weapon when the officers seized his vehicle. When the cashier from the gas station called to report an armed man on the premises, she did not provide a description of the man nor any other identifying details, such as the person's name, age, or the type of firearm he possessed. As a result, the court found the fact that the officer would use such an unsubstantiated claim to invoke the community-caretaking

exception at a subsequent suppression hearing suggested that the officer was attempting to provide an “after-the-fact justification” for seizing the defendant’s car to justify their inventory search.

Second, the court found that the defendant’s car was parked legally on a residential street near the defendant’s home and that it created no more danger than did any other car lawfully parked on that street. Third, there was no personal property visible inside the car that needed to be safeguarded from theft. Finally, there was no evidence to suggest that the defendant’s car was unregistered, uninsured, or in an unsafe condition. Based on these facts, the court concluded that it seemed “inescapable that the officers seized the defendant’s car so that they could search it for evidence of a crime, and that they later sought to justify the search by invoking the community-caretaking exception.”

For the court’s opinion: <https://cases.justia.com/federal/appellate-courts/ca1/17-1736/17-1736-2020-08-03.pdf?ts=1596477603>

Fifth Circuit

United States v. Gallegos-Espinal, 2020 U.S. App. LEXIS 26108 (5th Cir. TX Aug. 17, 2020)

Special agents with the Department of Homeland Security suspected that Cristofer Gallegos-Espinal (the defendant) was involved in his mother’s alien-smuggling network. After arresting his mother, an agent asked the defendant for consent to search his cell phone. The defendant consented to a search of his iPhone orally and in writing. The written consent to search form authorized, among other things, “a complete search of [Gallegos’s] phone” as well as the seizure of any “materials, or other property” that the government might want to examine. Pursuant to this consent, an agent connected the defendant’s iPhone to an electronic extracting device call a “Cellbrite” and copied its data. During this time, another agent interviewed the defendant. After the interview, an agent returned the iPhone to the defendant.

Three days later, agents examined the data from the defendant’s iPhone. In the photo gallery, agents discovered three videos that depicted the defendant sexually abusing a young girl. The government ultimately charged the defendant with several child-pornography related offenses.

Prior to trial, the district court suppressed the videos from the defendant’s iPhone, holding that the government exceeded the scope of the defendant’s consent to search by reviewing the extracted evidence after the agents returned the iPhone to the defendant. The government appealed.

To determine the scope of a person’s consent to search, as applied to written consent, the court framed the question before it as: how would a typical reasonable person interpret the written consent? In this case, the Fifth Circuit Court of Appeals found that consent-to-search form the defendant signed was very broad, as it authorized, among other things, a “complete” search and a seizure of “any . . . property” or “materials” the government wished to examine. In addition, after the defendant orally consented to a search of his iPhone, it was specifically inserted into the consent-to-search form and the defendant gave the agents its twelve-digit passcode.

Applying these terms as written, the court concluded that the government did not exceed the scope of the defendant’s consent by extracting the iPhone’s data or later reviewing it. First, the court

held that no aspect of the search fell outside the range of conduct that a typical reasonable person would expect from a “complete” iPhone search or from the subsequent seizure of any “materials” that that government might want to examine. Second, the court concluded that a typical reasonable person would know that a cell phone contains extensive personal information and would understand that a “complete” cell phone search refers not just to a physical examination of the phone, but further contemplates an inspection of the phone’s “complete” contents. Finally, the court found that a typical reasonable owner of a cell phone would also realize that permission to seize “materials” included permission to seize and examine such information.

For the court’s opinion: <https://cases.justia.com/federal/appellate-courts/ca5/19-20427/19-20427-2020-08-17.pdf?ts=1597707014>

Sixth Circuit

Stewart v. City of Euclid, 2020 U.S. App. LEXIS 25888 (6th Cir. OH Aug. 14, 2020)

Around 7:00 a.m. on March 13, 2017, a woman called the police department to report a suspicious vehicle outside her residence. The caller said a black car she did not recognize had been idling for about twenty minutes with its parking lights on. Officers Catalani and Rhodes were dispatched to check on the vehicle.

Officer Catalani arrived first, parked behind the black car, exited his vehicle, and approached it. Catalani shined his flashlight through the car's windows and saw the following: a digital scale in the center console area; an item he thought to be a burnt marijuana blunt in the passenger seat; and an aluminum screw top he believed to be from a wine bottle. Catalani also noticed the driver, later identified as Luke Stewart, asleep in the driver's seat. When Officer Rhodes arrived, Catalani told him what he had observed and, as a result, Rhodes parked in front of Stewart’s car to limit the potential for escape.

Rhodes got out of his patrol car and approached Stewart's vehicle from the passenger's side while Catalani approached from the driver's side. Catalani knocked on the window, and Stewart woke up. Catalani waved at Stewart and said, “Hi.” Stewart waved back, sat up in the seat, and started the car. Catalani yelled for Stewart to stop and opened the driver's side door in an attempt to keep the vehicle from moving. After Catalani could not pull Stewart out of the car, Rhodes entered the vehicle from the passenger side and attempted to push Stewart out. In response, Stewart put the car into gear and drove into Rhodes’ parked patrol car. Stewart then drove around Rhodes’ police car and continued down the street with Catalani chasing on foot.

Inside the car, Rhodes attempted to gain control of the gearshift and the ignition key while also striking Stewart in the side of the head with a closed fist. The strikes did not seem to have any effect on Stewart and he did not try to defend himself. Rhodes eventually deployed his taser into Stewart's right side. Stewart shouted, “Ah,” and said, “You shot me.” Rhodes pulled the taser trigger six times, but it had little effect on Stewart. Rhodes then used the taser to hit Stewart in the head, causing a cut to open, but Stewart continued to drive.

A short time later, the vehicle came to a stop after it stalled in an intersection while making a left-hand turn. During the stop, Stewart swatted at Rhodes with an open hand and pushed him away. Rhodes was able to get the car into neutral and shut off the engine, but could not get the key out

of the ignition. The car was stopped for approximately ten to fifteen seconds in the intersection before Stewart turned the car back on and continued driving.

Stewart drove the car at approximately twenty to thirty miles per hour and drove up over a curb and around a telephone pole before returning to the street. A few seconds later, the car went over the curb again and came to a stop. At this point, Rhodes was able to get the car back into neutral, but Stewart continued to rev the engine. Rhodes then pulled out his pistol and fired two shots into Stewart's torso. In response, Stewart attempted to punch Rhodes for the first time. Rhodes shot Stewart three additional times, striking him in the neck, chest, and wrist. Stewart died from his wounds. The subsequent investigation revealed that fifty-nine seconds elapsed from the time Catalani advised dispatch of Stewart's flight to the time he reported shots fired.

Luke Stewart's mother, Mary Stewart (the plaintiff), filed a lawsuit on his behalf against Officer Rhodes and the City of Euclid (the City). The plaintiff brought federal claims under 42 U.S.C. § 1983 alleging excessive use of force in violation of the Fourth Amendment, as well as several causes of action for alleged state law tort violations.

The district court held that Officer Rhodes was entitled to qualified immunity and dismissed the case against him. The district court found that Rhodes had probable cause to believe that: (1) he was in danger of serious physical harm while he remained unsecured in Stewart's car; (2) he was at risk of being kidnapped; and (3) Stewart's driving created a risk of serious physical harm to the public. As a result, the district court concluded that Rhodes did not violate the Fourth Amendment when he shot Stewart. In addition, even if Rhodes violated Stewart's constitutional rights, the district court held that those rights were not clearly established at the time of incident. The district court also concluded that Rhodes was entitled to qualified immunity under Ohio law. Finally, the district court dismissed the lawsuit against the City after it determined that Rhodes had not committed a violation of the Fourth Amendment. The plaintiff appealed.

To determine whether an officer is entitled to qualified immunity, a court will examine whether: (1) an officer's conduct violated a constitutional right, and (2) whether that right was clearly established at the time of the incident.

The Sixth Circuit Court of Appeals disagreed with the district court and held that Officer Rhodes' use of force against Stewart was unreasonable. While the court conceded that Rhodes faced some danger while in Stewart's car, the court found that Stewart's driving was not so dangerous as to constitute "an immediate threat to the safety of the officer or others." Most importantly, the court noted that Stewart's car was in neutral at the time of the shooting and not moving. The court concluded that even if Stewart got the car back in gear, it seemed doubtful that Stewart's driving alone was threatening enough to justify shooting him. Based on the totality of the circumstances, the court held that a reasonable jury could find that Officer Rhodes' use of deadly force was unreasonable.

However, the court agreed with the district court, which found that even if Officer Rhodes violated Stewart's right to be free from an excessive use of force under the Fourth Amendment, that right was not clearly established under these circumstances. For a right to be clearly established, the Supreme Court has "stressed the need to identify a case where an officer acting under similar circumstances . . . was held to have violated the Fourth Amendment." While there does not have to be a case directly on point, existing precedent must place the lawfulness of the officer's actions "beyond debate." Here, the court held that Stewart had pointed to no cases in the Sixth Circuit involving an officer being driven in a suspect's car, much less a case that shared similar

characteristics such as the suspect's level of speed, aggression, or recklessness. While a plaintiff need not provide a case factually on all fours, existing precedent must be similar enough to place the question beyond debate. The court added that the Sixth Circuit has not debated the types and level of threat faced by an officer inside a fleeing suspect's vehicle, much less placed it beyond debate. Consequently, the court held that Officer Rhodes was entitled to qualified immunity because no prior case established Stewart's right to be free from excessive use of force under the circumstances Officer Rhodes faced. By finding that Officer Rhodes was entitled to qualified immunity on the plaintiff's Fourth Amendment claim, the court held that the plaintiff's claim against the City for Rhode's alleged constitutional violation was properly dismissed by the district court.

Finally, the court reversed the district court's dismissal of the plaintiff's state law tort claims against Officer Rhodes. The district court found that Rhodes was entitled to immunity from Stewart's various state law claims for the same reasons it concluded Rhodes did not violate Stewart's Fourth Amendment rights. However, the court noted that statutory immunity under Ohio law, which applies to state law claims, is distinct from federal qualified immunity. The court remanded the plaintiff's state law claims to the district court to determine this issue.

For the court's opinion: <https://cases.justia.com/federal/appellate-courts/ca6/18-3767/18-3767-2020-08-14.pdf?ts=1597435215>

Seventh Circuit

Estate of Biegert v. Molitor, 968 F.3d 693 (7th Cir. 2020)

On February 24, 2015, Joseph Biegert texted his mother (the plaintiff) that he had taken a number of pills in an apparent suicide attempt. His mother, concerned for his safety, called the police department and requested a welfare check. She told the dispatcher that Biegert was depressed, had a history of suicide attempts, was alone, and had access to neither weapons nor vehicles. Officers Brian Krueger and Matthew Dunn were dispatched to Biegert's apartment. While on the way, the officers notified rescue personnel and alerted them that their assistance might be required.

Upon arrival, the officers knocked on the door. Biegert opened the door, confirmed his identity, told the officers that he was depressed, and allowed them to enter the apartment. Once inside, the officers saw three pill bottles laying on the floor. Officer Krueger asked Biegert how many pills he had ingested, to which Biegert responded "three." Officer Krueger believed this may have meant that Biegert had consumed the contents of the three bottles.

While speaking with Biegert, the officers heard sounds from the bedroom and asked Biegert who else was there, to which Biegert responded that he did not know. Officer Dunn conducted a protective sweep, discovering the sound had been caused by a shade in front of an open window. During the sweep, Officer Dunn noticed a knife block in the kitchen, but he did not secure the knives before returning to Officer Krueger and Biegert in the living room.

According to the plaintiff, the officers then "questioned and instructed" Biegert aggressively and became increasingly combative as the encounter went on. For example, when Biegert, put his hand in his pocket, Officer Krueger told him to remove it. Officer Krueger then asked Officer Dunn to pat down Biegert for weapons to ensure the safety of the rescue personnel waiting outside, though neither believed that Biegert was either armed or unwilling to accept help. At this point,

Biegert stood up and put his hands behind his back as instructed. While conducting the pat down, Officer Dunn held two of Biegert's fingers with one hand. When Officer Dunn's pat down neared Biegert's belt, Biegert recoiled and pulled his right hand out of Officer Dunn's grasp. Once this occurred, Officer Krueger grabbed Biegert's left hand while Officer Dunn sought to regain control of Biegert's right hand. Despite their efforts, Biegert pulled away and dragged the officers toward the kitchen. Officer Krueger told Biegert "[d]on't do anything stupid" and tried to put Biegert in a secure hold so he could place him in handcuffs. Officer Dunn attempted to block Biegert with his leg, and both Biegert and Officer Dunn fell to the floor. Biegert stood up, pulled the officers into the kitchen, and all three men fell to the floor while Biegert continued to struggle with the officers.

During the struggle, Officer Krueger drew his Taser and attempted to use it on Biegert, but it did not fire. When Officer Krueger then tried to put the Taser directly against Biegert, Biegert squeezed Officer Krueger's genitals and reached for the Taser. Officer Krueger knocked the Taser out of Biegert's hand and began punching Biegert in the face, apparently with no effect. Officer Dunn then fired his Taser, and although he tried to aim at Biegert, he hit Officer Krueger instead. Once Officer Krueger recovered from the shock, he expanded his baton and prepared to continue striking Biegert.

At this point, Biegert grabbed a knife from the kitchen counter, and stood over Officer Dunn with the knife in his right hand. Biegert lunged at Officer Dunn, who deflected the knife with his hand. Biegert lunged a second time, cutting Officer Dunn's right arm. Officer Dunn drew his firearm and yelled that Biegert was stabbing him. Officer Krueger dropped his baton, drew his firearm, and stepped back. Biegert stepped toward Officer Krueger, who fired at him. Officer Dunn then fired and Biegert fell on his back still holding the knife. A short time later, other officers arrived to assist, and Dunn received care for two stab wounds to his upper right arm. Two minutes elapsed from the officers' knocking on Biegert's door to the shooting. Biegert died at the scene.

The plaintiff sued Officers Dunn and Krueger as well as the officers' supervisor, Thomas Molitor. After the district court dismissed the lawsuit, the plaintiff appealed to the Seventh Circuit Court of Appeals with respect to Officers Dunn and Krueger. On appeal, the plaintiff argued the officers violated Biegert's Fourth Amendment right to be free from excessive force.

First, according to the plaintiff, the officers acted unreasonably by creating the conditions that precipitated the violent encounter. Specifically, the plaintiff claimed the officers created the situation that ultimately led to Biegert's death by failing to make a plan for the encounter, failing to secure the knife block in the kitchen, and questioning Biegert aggressively. In addition, the plaintiff alleged the officers' actions were contrary to both state law and police department policies.

The court disagreed. The court found that none of the officers' actions that occurred before their application of force rendered their subsequent use of force unreasonable, nor did the officers' creation of a dangerous situation constitute an independent violation of Biegert's constitutional rights. The court held that even if the officers might have made mistakes that provoked Biegert's violent resistance, their actions did not violate the Fourth Amendment. The court further held that any alleged violation of state law or department policy was irrelevant to determine the reasonableness of an officer's use of force.

Next, the plaintiff argued that the officers acted unreasonably when Officer Dunn took hold of Biegert's fingers in a way that may have caused him pain.

The court disagreed. The court held that Officer Dunn acted reasonably by physically controlling Biegert while he conducted the pat down. At the time, the officers knew that Biegert might be suicidal, and the officers wanted to ensure that he posed no threat to rescue personnel. In addition, if Biegert experienced any pain in the way Officer Dunn held his fingers, he did not give the officers any indication of it.

Finally, the plaintiff claimed that the officers acted unreasonably by shooting Biegert.

Again, the court disagreed. As a general matter, “if the suspect threatens the officer with a weapon, deadly force may be used, even if a less deadly alternative is available to the officers.” Here, Biegert not only threatened to use the knife, he used it. By the time Biegert was shot, he had already stabbed Officer Dunn multiple times and then advanced toward Officer Krueger. The court concluded that, at this point, the officers reasonably resorted to firing at Biegert in response to the imminent threat he posed.

For the court’s opinion: <https://cases.justia.com/federal/appellate-courts/ca7/19-2837/19-2837-2020-07-31.pdf?ts=1596224190>

Eighth Circuit

United States v. Tapia-Rodriguez, 968 F.3d 891 (8th Cir. 2020)

A police officer arrested Jose Rodolfo-Chaidez for methamphetamine trafficking. During an interview, Rodolfo-Chaidez told the officer where he lived, admitted the apartment contained narcotics, and stated that he had a roommate named “Poncho” who was also involved in narcotics. Rodolfo-Chaidez gave the officer written consent to search the apartment, to include his bedroom, which he indicated was located in the southwest corner of the apartment.

When officers arrived at the apartment, they found Idelfonso Tapia-Rodriguez (the defendant) on the living room couch. The officers handcuffed the defendant and performed a brief sweep of the apartment. During the sweep, the officers saw methamphetamine in plain view in the kitchen but observed no contraband in either of the two bedrooms. Afterward, one of the officers asked the defendant if he lived in the apartment, and if so, where his bedroom was located. The defendant told the officers that he lived in the apartment and indicated that he occupied the northwest bedroom. After obtaining this information, an officer presented the defendant with a consent-to-search form. The officer told the defendant his room would be searched if he signed the form, but that he could also tell the officers “no.” The defendant signed the form and his bedroom was searched along with the rest of the apartment. In the defendant’s bedroom closet, the officers found a shoebox containing several pounds of methamphetamine.

After the government charged the defendant with several drug offenses, he filed a motion to suppress the statements he made to the officers in which he admitted to living in the apartment and occupying the northwest bedroom. The defendant argued that the officer was required to provide him Miranda warnings before asking those questions. The district court denied the defendant’s motion and he subsequently entered a guilty plea, reserving the right to appeal the suppression issue.

Under Miranda, before conducting a custodial interrogation, law enforcement officers must properly advise a suspect of “his right to be free from compulsory self-incrimination and to the

assistance of counsel.” In this case, the government conceded that the defendant was “in custody.” Consequently, the issue before the court was whether asking the defendant: (1) whether he lived in the apartment, and (2) which bedroom was his, constituted interrogation.

The Supreme Court has defined interrogation as “any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response.” The Court added that the “should have known” standard is objective and “focuses primarily upon the perceptions of the suspect, rather than the intent of the police.” As a result, not all government inquiries to a suspect in custody constitute “interrogation” and therefore need to be preceded by Miranda warnings. Finally, in the Eighth Circuit, “a request for routine information necessary for basic identification purposes is not interrogation” unless the officer “should reasonably be aware that the information sought . . . is directly relevant to the substantive offense charged.”

In this case, the Eighth Circuit Court of Appeals held that asking the defendant whether he lived in the apartment did not constitute interrogation. The court found that the question was “a request for routine information necessary for basic identification purposes because the officers were trying to understand and identify the defendant’s presence in the apartment they were about to search with Rodolfo-Chaidez’s consent. Accordingly, the court held that the defendant’s response to this question was admissible.

Next, the court held that asking the defendant which bedroom he occupied in the apartment did not constitute interrogation because the officers had a legitimate need for the information to ensure they were conducting a lawful consensual search. First, the court noted that it has never held “that a request to search must be preceded by Miranda warnings or that a lack of Miranda warnings invalidates a consent to search.” Second, after Rodolfo-Chaidez indicated that he had a roommate, the officers realized that he did not have authority to consent to a search of the entire apartment. As a result, to avoid conducting an illegal warrantless search, the officers needed to determine if the defendant occupied the second bedroom and whether he would consent to its search. Finally, the officer asked the defendant questions that were only related to obtaining consent to search. The officer did not ask the defendant what the officers might find in his bedroom or any other questions relating to the details of the case.

For the court’s opinion: <https://cases.justia.com/federal/appellate-courts/ca8/18-3751/18-3751-2020-08-06.pdf?ts=1596727823>

United States v. Smialek, 2020 U.S. App. LEXIS 25965 (8th Cir. Aug. 17, 2020)

In March 2018, Steven Smialek (the defendant) robbed a bank in Fridley, Minnesota. Agents with the Federal Bureau of Investigation arrested the defendant approximately two-months later. Before interviewing the defendant, an agent attempted to provide the defendant Miranda warnings, but was repeatedly interrupted by the defendant, who insisted on knowing the date of the robbery. After the defendant asked the agent when the robbery happened for the fifth time, the agent responded, “March 10th.” The defendant then volunteered a detailed alibi for March 10. Notably, the defendant’s account of his activities and movements on March 10 did not rule out his involvement in the robbery.

The defendant filed a motion to suppress his alibi, which the district court denied. At trial, the jury saw a video of the defendant explaining his alibi to the agent, who testified that the

defendant's recall was "very unusual." The jury subsequently convicted the defendant. On appeal, the defendant argued that the agent should have reasonably known that providing the date of the robbery would elicit an incriminating response from him in violation of Miranda.

The Eight Circuit Court of Appeals disagreed. Law enforcement officers are required to provide Miranda warnings when a person is interrogated by law enforcement after being taken into custody. As the government conceded that the defendant was in custody, the court only had to determine if the defendant's alibi was the product of interrogation. Under Miranda, "interrogation" refers to express questioning or the functional equivalent of questioning, *i.e.*, "any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect." Voluntary statements from a suspect, not prompted by interrogation, are admissible with or without Miranda warnings. In addition, in most cases where an officer responds to a suspect's question, the officer's response does not amount to an interrogation.

In this case, the court disagreed with the defendant's position that the agent should have reasonably known that providing the information for which the defendant had badgered him would elicit an incriminating response. The court held that the defendant's statements to the agent were responses to the defendant's own questions; therefore, they were part of a conversation "normally attendant to arrest and custody." The court added that even if the agent expected a response from the defendant, it was not reasonably likely that the defendant's response would be incriminating. As a result, the court held that the agent's statement of the date of the robbery, in response to the defendant's questions, did not constitute interrogation under Miranda.

For the court's opinion: <https://cases.justia.com/federal/appellate-courts/ca8/19-2342/19-2342-2020-08-17.pdf?ts=1597678224>

Eleventh Circuit

United States v. Knights, 967 F.3d 1266 (11th Cir. 2020)

While on routine patrol around 1:00 a.m., two police officers saw a car parked in a grassy area between the road and a house. As the officers approached, they saw two of the car's doors open with two men leaning into the car. The officers believed the men might be stealing something from the car, as the area was considered be "high crime" because both officers had responded to gang activity, shootings, and narcotics crimes there. As the officers drove by, they heard someone unsuccessfully try to start the car. Believing that the men might be trying to steal the vehicle, the officers decided to investigate further.

The officers turned around and parked their patrol car in the street next to the car, which remained parked in the grassy area. As the officers got out of the patrol car, one of the men walked away and entered the nearby house without responding to the officers' attempts to talk to him. The officers then approached the other man, later identified as Anthony Knights (the defendant), who sat in the driver's seat of the car with the door closed. One of the officers knocked on the driver's window and when the defendant opened the door, the officer "was overwhelmed with an odor of burned marijuana." After confirming that the defendant's wife owned the car, the officers searched it and found, among other things, a handgun and ammunition.

The government charged the defendant with being a felon in possession of a firearm and ammunition. The defendant filed a motion to suppress the evidence seized from the car, arguing that it was the fruit of an unlawful seizure. The defendant claimed that the officers seized him without reasonable suspicion that he was involved in criminal activity when they parked the patrol car close to his car and then approached him. The defendant did not challenge any seizure that occurred after that point.

The Fourth Amendment protects “[t]he right of the people . . . against unreasonable searches and seizures.” A “seizure” does not occur every time a police officer interacts with a citizen. Officers are free to “approach individuals on the street or in other public places and ask them questions, without reasonable suspicion of criminal activity, if the individuals are willing to listen. In contrast, officers need reasonable suspicion of criminal activity to detain individuals if a consensual encounter becomes an investigatory stop. An investigatory stop occurs “when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen.” The test for whether the officer restrained a citizen’s liberty is whether “a reasonable person would feel free to terminate the encounter.”

Against this backdrop, the Eleventh Circuit Court of Appeals agreed with the district court, which denied the defendant’s motion to suppress the evidence seized from his car. The court held that the officers did not seize the defendant when they parked their patrol car, got out, and approached his parked vehicle. First, the court noted that the officers parked near the defendant’s car without activating the light bar or siren while leaving the defendant with enough space drive away. Second, as the officers approached the defendant, they did not display their weapons, issue any commands, or otherwise communicate to the defendant that he was not free to leave. The court added that as the officers approached, the defendant’s companion “obviously felt free to leave the car, ignore the officer’s invitation to speak to him, and enter the house.” Based on these facts, the court concluded that during this encounter, a reasonable person would have felt free to leave.

For the court’s opinion: <https://cases.justia.com/federal/appellate-courts/ca11/19-10083/19-10083-2020-08-03.pdf?ts=1596468652>

United States v. Mastin, 2020 U.S. App. LEXIS 27136 (11th Cir. AL Aug. 26, 2020)

A fugitive task force received felony arrest warrants for two gang members named Trudyo Hines and Taboris Mock. Those warrants concerned a robbery committed with handguns, though the men were also wanted for questioning about a related homicide. Officers learned that the two men were likely staying at hotels in Montgomery, Alabama. In the officers' experience, fugitives would often register hotel rooms under the names of relatives or girlfriends to avoid apprehension. Their experience prompted an investigation into local hotels, which revealed that Nakita Rogers, Hines's girlfriend, had checked into a Country Inn and Suites with at least one other person. The officers confirmed Rogers's room number and surveilled the hotel.

Shortly after midnight, several vehicles pulled into the parking lot. Three men, two of whom matched the descriptions of Hines and Mock, and three women exited the vehicles and went into the hotel. The officers confirmed with the front desk in real time that one of the women was Nakita Rogers. A short time later, two men and one woman exited the hotel and left in one of the vehicles. Because the officers did not know whether Hines and Mock were still in the hotel, were in the vehicle that had just departed, or had split up, they broke up into two teams. One team planned to conduct a traffic stop on the vehicle, while the other planned to make contact at the hotel room.

When the team at the hotel arrived on the correct floor, the door to the targeted room was slightly ajar. As the team set up, the door swung open; a man stood inside the doorway with his hands in the pocket of his hoodie. The officers immediately recognized that the man was neither Hines nor Mock. The officers also recognized Nakita Rogers standing behind the man in the doorway with at least one other female in the room. The officers ordered the man, later identified as Darrius Mastin (the defendant), to take his hands out of his pockets. Next, they told the room's occupants to get on their knees with their hands up, and then to crawl out into the hallway one by one. The defendant went first and as he crossed the threshold of the door, a pistol fell out of his waistband. The officers seized the pistol, detained the defendant, and repeated the order for the women to exit the room. Once everyone was out, the officers entered the room to ensure that no one else remained hiding inside.

Meanwhile, as the first team attempted to execute the arrest warrants at the hotel, the second team conducted the planned traffic stop. Hines was in the vehicle and the officers arrested him. Mock was nowhere to be found at that point; he was arrested later that night at a different hotel room rented in his girlfriend's name.

The government charged the defendant with being a felon in possession of a firearm. The defendant filed a motion to suppress the firearm, which the district court denied. After the defendant was convicted he appealed. First, the defendant argued that the officers' entry and search of the hotel room violated the Fourth Amendment.

An arrest warrant based on probable cause implicitly carries with it the limited authority to enter a dwelling to execute the warrant if the officer: (1) has a reasonable belief that the location to be searched is the suspect's dwelling; and (2) that the suspect is inside the dwelling at the time of entry.

In this case the court found that it was reasonable for the officers to believe that the hotel room was either Mock's or Hines's dwelling at the time of entry and that it was reasonable for the officers to believe that Hines or Mock was inside the room. First, the officers believed the two men were "running together" because of an ongoing dispute with another gang. Second, neither man was likely to rent a hotel room in his own name, as they were wanted for armed robbery, as well as for questioning about a homicide. Third, the fugitive task force knew that Nakita Rogers, Hines's girlfriend, had rented a room under her name and that she had rented that room with another individual present. Fourth, after surveilling the premises, the task force knew that six other individuals, including two that matched Hines's and Mock's description, had entered the hotel. Although some of those individuals later left the hotel, it was reasonable for the officers to believe that either Hines or Mock had remained behind. The fact that the officers could not be completely certain if either man had left the room was irrelevant. Consequently, the Eleventh Circuit Court of Appeals held that because the officers reasonably believed that the hotel room was the dwelling of Hines, Mock, or both, and that at least one of them was inside, they did not violate the Fourth Amendment by entering the hotel room to execute the arrest warrants.

Second, the defendant argued that even if executing the warrant at the hotel room was lawful, requiring him, an innocent bystander who was not sought by the police, to crawl out of the hotel was unreasonable and violated the Fourth Amendment.

In [Michigan v. Summers](#), the Supreme Court held that it was reasonable for officers to detain the occupants of a dwelling while they executed a search warrant there. The primary rationale for the [Summers](#) rule is to ensure the safety of the officers and bystanders. The Court reasoned that the

“risk of harm to both the police and the occupants is minimized if the officers routinely exercise unquestioned command of the situation.” Although the Summers case dealt with search warrants, in this case, the Eleventh Circuit Court of Appeals explicitly extended the Summers rule to cover arrest warrants as well as search warrants, holding that “officers may briefly detain those on the premises while they seek to execute an arrest warrant.” By way of reminder, the court added that just because officers are entitled to detain bystanders while executing warrants does not mean that any manner of detention will always be reasonable.

In this case, the court held that the manner in which the officers seized the defendant, under the Summers rule, did not violate the Fourth Amendment. Specifically, it was reasonable to require the defendant to lower himself to the ground and crawl out of the room because it allowed the officers to see past him and look for any emerging threats from the room, as the arrest warrants for were for violent crimes and the suspects were alleged to be armed gang members.

For the court’s opinion: <https://cases.justia.com/federal/appellate-courts/ca11/18-14241/18-14241-2020-08-26.pdf?ts=1598448634>
