Department of Homeland Security
Federal Law Enforcement Training Centers
Office of Chief Counsel
Legal Training Division

May 2025

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. You can join *The Informer* Mailing List, and have *The Informer* delivered directly to you via e-mail by clicking on the link below.

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The Informer – May 2025

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FLETC Informer Webinar Schedule: June - July 2025

1. Officer Liability: Supervisor's Edition (Episode 5, Negligent Hiring) (1-hour)

Presented by Mary Mara and Samuel A. Lochridge, Attorney Advisors / Senior Instructors, Federal Law Enforcement Training Centers, Glynco, Georgia.

In part five of this six-part series covering the liability of supervision, we will examine some of the potential areas of liability for managers, including such claims as failure to train and failure to properly supervise employees. Please join Attorney Advisors Sam Lochridge and Mary Mara as they continue this journey in Episode 5: Negligent Hiring.

Monday, June 16, 2025: 3:00 p.m. Eastern / 2:00 p.m. Central / 1:00 p.m. Mountain / 12:00 p.m. Pacific

To join: Officer Liability: Supervisor's Edition (Episode 5, Negligent Hiring)

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2. *Barnes v. Felix*: What Does This Mean for Use of Force? (1-hour)

Presented by Lyla Zeidan, Attorney Advisor / Instructor, Federal Law Enforcement Training Centers, Glynco, Georgia.

This webinar will examine the recent U.S. Supreme Court case, *Barnes v. Felix*, and the far-reaching implications of this landmark case on the use of force. We will break down the Court's ruling and examine how it impacts use of force standards and training. While the ruling affirms that force should be judged under the "totality of the circumstances" standard, some advocates are stretching the decision to support other theories. Please join Attorney Advisor Lyla Zeidan as she reviews the impact of the *Barnes v. Felix* decision on the use of force.

Tuesday, June 17, 2025: 2:30 p.m. Eastern / 1:30 p.m. Central / 12:30 p.m. Mountain / 11:30 a.m. Pacific

To join: Barnes v. Felix: What Does This Mean for Use of Force?

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3. 109A Felonies (1-hour)

Presented by Robert Duncan, Attorney Advisor / Senior Instructor, Federal Law Enforcement Training Centers, Artesia, New Mexico.

Sexually based offenses, when committed in areas of federal jurisdiction such as in Indian Country or federal enclaves, e.g., military installations and federal prisons, are known as 109A Felonies (18 U.S.C. Sections 2241 - 2244). This webinar will outline the elements of these offenses, distinguish between "acts" and "contact" as defined by 18 U.S.C. Section 2246, compare and contrast state offenses with the federal elements, and discuss the required elements of report writing to ensure a successful prosecution.

Wednesday, June 18, 2025: 5:30 p.m. Eastern / 4:30 p.m. Central / 3:30 p.m. Mountain / 2:30 p.m. Pacific

To join: 109A Felonies

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4. Officer Liability: Supervisor's Edition (Episode 6, Important Free Speech Considerations) (1-hour)

Presented by Mary Mara and Samuel A. Lochridge, Attorney Advisors / Senior Instructors, Federal Law Enforcement Training Centers, Glynco, Georgia.

In the final part of this six-part series covering the liability of supervision, we will explore how the First Amendment can affect the ability to exercise free speech in the workplace. Please join Attorney Advisors Sam Lochridge and Mary Mara as they continue this journey in Episode 6: Important Free Speech Considerations.

Tuesday, July 1, 2025: 3:00 p.m. Eastern / 2:00 p.m. Central / 1:00 p.m. Mountain / 12:00 p.m. Pacific

To join: Officer Liability: Supervisor's Edition (Episode 6, Important Free Speech Considerations)

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5. Indian Country Criminal Jurisdiction (1-hour)

Presented by Robert Duncan, Attorney Advisor / Senior Instructor, Federal Law Enforcement Training Centers, Artesia, New Mexico.

There are three sovereign entities in the United States – federal, state, and tribal. Tribal governments are unique among the three, as they possess a separate sovereignty that has never been formally incorporated into the American constitutional framework. The discussion of "Indian" and "non-Indian" concepts, as matters of political recognition, is distinguishable from racial, genetic, cultural, or ethnic identity and are especially important in light of public interest, as well as recent Supreme Court cases involving Indian Country Criminal Jurisdiction. This webinar will discuss the history behind the recognition through political status – especially in criminal jurisdiction – and why concepts unique to Indian law exist in a historical context.

Thursday, July 3, 2025: 5:30 p.m. Eastern / 4:30 p.m. Central / 3:30 p.m. Mountain / 2:30 p.m. Pacific

To join: Indian Country Criminal Jurisdiction

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Protective Frisk of Vehicles after *Michigan v. Long*: Effect of Suspect's Ability to Access Vehicles on Officer's Ability to Frisk

By
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United States Department of Homeland Security
Federal Law Enforcement Training Centers / Office of Chief Counsel / Legal Division
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There is no doubt that the 1968 case of *Terry v. Ohio* provided a much needed tool to keep law enforcement officers safe while investigating crime.[1] *Terry* sanctioned a brief investigative detention, or stop, based on reasonable suspicion that crime was afoot, and a brief pat-down of outer clothing for weapons (a procedure commonly referred to as a frisk) supported by reasonable suspicion that a suspect was presently armed and dangerous.[2] Courts have expanded the scope of the *Terry* frisk beyond the person of a suspect, including items in the suspect's immediate control such as bags, purses, and fannypacks[3] When an officer reasonably suspects a suspect is presently armed and dangerous, and the suspect is in possession of a container, the *Terry* frisk also extends to that container. Likewise, courts have seen fit to enable officers to frisk vehicles when an occupant or recent occupant of the vehicle is believed to be armed and dangerous. In terms of a vehicle frisk, the question is often asked, should we treat a vehicle like any other container, i.e., does the suspect need to be able to access the vehicle in order to frisk the vehicle? How far can a suspect be from a vehicle in order for officers to be justified in a frisk of the vehicle? If a suspect is handcuffed and secured, may officers continue to frisk the suspect's vehicle? The answers to these questions may be surprising.

Expanded Application of *Terry* Frisk to Vehicles

In 1983, the Supreme Court allowed the frisk of a vehicle in the case of *Michigan v. Long*.[4] In that case, officers stopped to investigate a car which had swerved off the road and come to rest in a ditch. The defendant, Long, met the officers at the rear of the vehicle. As the officers followed him after asking him to retrieve his vehicle registration, they saw a large hunting knife in plain view on the floorboard of the car which caused them to frisk Long for weapons. Finding none, one officer proceeded to secure Long at the back of the vehicle while the second officer frisked the passenger compartment for weapons. He noticed something protruding from under an armrest and after lifting the armrest, found a pouch of marijuana. Long was arrested and 75 pounds of marijuana were subsequently found in the trunk.

The Court ultimately held that a frisk of the passenger compartment of an automobile, limited to those areas where a weapon could be found, was permissible if the police officer possessed reasonable suspicion that the suspect was dangerous and could gain immediate control of weapons.[5]

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[1] *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868 (1968).
[2] *Id*.
[3] *See U.S. v. Thomson*, 354 F.3d 1197, 1201 (10th Cir. 2003); *U.S. v. Hernandez-Mendez*, 626 F.3d 203, 213 (4th Cir. 2010); *U.S. v. Gist-Davis*, 41 F.4th 259 (4th Cir. 2022).
[4] *Michigan v. Long*, 463 U.S. 1032, 103 S. Ct. 3468 (1983).
[5] *Id*. at 1046.

In response to the argument that Long was effectively under their control while secured at the back of his vehicle and could not gain control of weapons at the time the frisk occurred, the Court outlined three reasons why the vehicle frisk was, in fact, permissible. First, a suspect could break away from police and retrieve a weapon from the vehicle. Second, if a suspect were not placed under arrest, he would be permitted to re-enter his vehicle where he could retrieve a weapon. Finally, as in the instant case, a suspect could be permitted to re-enter the vehicle before the investigation concluded (asked to retrieve registration), in which case he could access weapons.[6]

<u>*Terry* Frisks Permitted Even If Suspect Secured</u>

The following cases illustrate how this holding has been applied to different facts, specifically when the suspect's movement has been restricted to varying degrees.

In *U.S. v. Canada*, after officers developed suspicion that the suspect was armed and dangerous, they frisked Canada, found nothing, and moved him toward the rear of his vehicle.[7] One officer then conducted a protective frisk under the driver's seat and discovered a loaded gun. After running a records check and discovering that the suspect was both prohibited from possessing a firearm and had a suspended license, he was arrested. The Fourth Circuit upheld the protective frisk of the vehicle, referring to *Michigan v. Long* when noting that the defendant was neither handcuffed nor detained in the police cruiser, therefore could have easily broken away from police. The Court also pointed to the third condition from *Michigan v. Long*, noting that at the time the frisk occurred, it was reasonable of officers to not plan to arrest Canada since they had not yet run the records check on him, therefore he could foreseeably regain access to the car.[8]

Likewise, in *U.S. v. Morgan*, the suspects who were believed to be armed and dangerous and had recently occupied a car, were handcuffed and seated on a curb away from the car.[9] Officers frisked the vehicle and discovered a box with methamphetamine under the driver's seat. The court approved the initial frisk of the vehicle, deferring to *Michigan v. Long* in noting that "if the suspect is not placed under arrest, he will be permitted to reenter his automobile, and he will then have access to any weapons inside."[10]

The following cases demonstrate that even when a suspect who is believed to be armed and dangerous is secured in the back of a police unit, a valid frisk of their vehicle may still occur. In *U.S. v. Holmes*, two occupants of a vehicle were stopped using "felony stop" tactics, handcuffed, frisked, and secured in caged, locked police cars at least twenty feet from their vehicle when the frisk of their vehicle occurred.[11] Objecting to the vehicle frisk, the defense argued that even if officers reasonably believed that the suspects were dangerous and there was a likelihood of weapons being in their vehicle, it was inconceivable that the suspects could have slipped their restraints and escaped from the locked squad car. The court dismissed this argument, noting that after their release at the end of the stop, the suspects would have access to the interior of their vehicle. This, combined with the suspects' inherent dangerousness, could put the officers' safety in jeopardy.[12]

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[6] *Id*. at 1051-1052.
[7] *U.S. v. Canada*, 76 F.4th 1304 (10th Cir. 2023).
[8] *Id*. at 1310.
[9] *U.S. v. Morgan*, 729 F.3d 1086 (8th Cir. 2013).
[10] *Id.* at 1089.
[11] *U.S. v. Holmes*, 376 F.3d 270 (4th Cir. 2004).
[12] *Id.* at 279.

In *U.S. v. Vaccaro*, officers stopped the defendant for a traffic violation.[13] After observing his behavior, officers ordered him out of the car at gunpoint. The suspect appeared to be nervous, unstable, and claimed there were people trying to kill him. Officers noticed a rifle case in his vehicle. Officers frisked the defendant and, finding nothing, put him in the back of the police unit while handcuffed. They then proceeded to frisk his vehicle, seizing the rifle. At oral argument, the defendant conceded that he was, in fact, subjected to a *Terry* stop, not an arrest, and therefore the rule of *Michigan v. Long* applied, as opposed to a search incident to arrest of a vehicle under the *Arizona v. Gant* case.[14] If he had been permitted to return to his car, he conceded he could have gained immediate control of weapons in the vehicle, rendering the frisk lawful under *Long*.[15] Thus, temporarily securing a suspect in the back of a police car, even when handcuffed, to control the scene or frisk the vehicle does not invalidate the frisk. After all, a *Terry* frisk occurs during an investigation; an officer might not develop probable cause to arrest despite suspecting criminal activity or the suspect being armed and dangerous while involved.

All of these cases demonstrate that the courts have broadly interpreted the idea of "immediate control" in the context of a suspect who is believed to be armed and dangerous and is an occupant or recent occupant of a vehicle. Although a suspect's physical proximity to a vehicle is one factor to consider, an equally important factor is whether the suspect could be allowed to return to his or her vehicle. Therefore, even when a suspect is handcuffed and secured, whether in a police vehicle or otherwise, if they are not under arrest, they may have the opportunity to return to their vehicle. As such, if believed to be armed and dangerous, a frisk of the vehicle may be appropriate.

[13] U.S. v. Vacarro, 915 F.3d 431 (7th Cir. 2019).
[14] *Id.* at 437-438.
[15] *Id.* at 438. *See also U.S. v. Guerrero*, 19 F.4th 547 (1st Cir. 2021)(defendant handcuffed and in police unit when frisk occurred); *U.S. v. Ibarra-Sanchez*, 203 F.3d 356 (5th Cir. 2000).

CASE SUMMARIES

United States Supreme Court

Barnes v. Felix, No. 23-1239 (605 U.S. ____ (2025))

Officer Roberto Felix, Jr. conducted a traffic stop on Ashtian Barnes after hearing a dispatch from Harris County Toll Road Authority relaying the license plate number of Barnes' vehicle as one with outstanding toll violations, and Felix subsequently saw the vehicle and matching plates on the Tollway. After Felix engaged his emergency lights, Barnes pulled off the road into the median on the left-hand side of the Tollway. After parking his patrol vehicle behind Barnes' Toyota Corolla, Felix walked to the driver's side window and requested Barnes' driver's license and proof of insurance.

Barnes claimed that he did not have the requested documentation and informed Felix that the Toyota had been rented a week earlier in his girlfriend's name. During the discussion, Officer Felix saw Barnes moving in the vehicle and told him to stop "digging around." Felix also stated that he smelled marijuana and inquired if there was anything in the vehicle Felix needed to know about. Barnes stated that the documentation that Barnes requested "might" be in the trunk of the vehicle.

At this time, Felix ordered Barnes to open the trunk. While this was taking place, the left turn signal continued to flash. As the trunk to Barnes' Toyota opened, the left turn signal stopped flashing. Felix then ordered Barnes to step out of the vehicle, and the door could be seen beginning to open. At that point, the left turn signal began to flash again. As the signal began to flash again, Officer Felix ordered Barnes to stop moving and pointed his pistol at him. The Toyota moved forward and Officer Felix stepped onto the door sill. While the automobile continued driving forward with Officer Felix hanging on, Felix fired at least twice into the vehicle at Barnes. After a short distance, the Toyota came to a stop. Barnes was pronounced dead at the scene approximately eight minutes later.

On appeal to the Fifth Circuit, the court reviewed whether Felix "was in danger at the moment of the threat that caused him to use deadly force against Barnes." Since Felix was hanging on to the side of an accelerating vehicle at the moment he fired his weapon, the Fifth Circuit determined that he did not violate Barnes' Fourth Amendment rights and, therefore, affirmed the district court's finding of summary judgment for Felix.

However, in a concurring opinion, the Fifth Circuit stated that the moment-of-threat doctrine overly limited their ability to determine whether an officer's use of force was reasonable. Citing Scott v. Harris, which states that a Fourth Amendment analysis is a "factbound morass of reasonableness" by necessity, the Fifth Circuit claimed that they are deprived of potentially relevant facts at the expense of human life.

In the case of Barnes, the facts that the initial crime was driving with an outstanding toll fee, that Felix jumped into the door sill of the moving vehicle, and that Felix fired within two seconds are a collection of facts that "merits finding that Officer Felix violated Barnes' Fourth Amendment

right to be free of excessive force." Based, in part, on this concurring opinion, Barnes' estate appealed this decision to the U.S. Supreme Court. A Writ of Certiorari was granted in this case and oral arguments were heard on January 22, 2025. Specifically, the question before the Court was whether the framework of objective reasonableness under Graham v. Connor and its analysis of the "totality of the circumstances" allows courts the ability to limit their review solely to the moment of the threat when evaluating a use of force case.

Published on May 15, 2025, the Court held that the moment-of-threat doctrine applied by the Fifth Circuit is an "improperly narrowing" approach to reviewing the lawfulness of an officer's use of force. To properly review such claims, a court must assess any and all of those relevant facts, including those events and circumstances that led up to the final moment, instead of merely focusing on the officer's perceptions of the threat at the precise moment that force was applied.

According to the Court, the constitutionality of an officer's use of force is evaluated under the Fourth Amendment. Under Graham, this seizure is analyzed "from the perspective of a reasonable officer on scene" at the moment force is applied. The analysis also takes into consideration the balance of the individual's Fourth Amendment interests against those governmental interests present in the totality of circumstances. Of interest, the Court highlighted that the review of the totality of the circumstances does not have any sort of time restraints, and that those facts "cannot be hermetically sealed off from the context in which they arose."

The Court recognized that a suspect's conduct is "always relevant," as it points to both the type and degree of threat a suspect represents. However, the Court identified a number of other categories of facts that are not as time sensitive, but still relevant to the totality of the circumstances. Officers' attempts to control the encounter or otherwise give warnings may be relevant. The severity of the crime can also be given weight by the reviewing court. The Court acknowledged that "historical facts" will typically carry less relevance than those facts that are derived "in-the-moment," but stated that there is no legal ruling that forbids a court from considering those historical facts. The Court further acknowledged that the totality of circumstances cannot be viewed with such "chronological blinders" in place.

A secondary question, however, was left unaddressed. The Court stated that the lower courts never addressed whether, or how, a dangerous situation created by the officer's own actions would be considered within the framework of objective reasonableness. This question was not before the Court and, therefore, was not taken up by the Court.

In a concurring opinion authored by Justice Kavanaugh, he mentioned some of the legal considerations that make up the totality of the circumstances regarding traffic stops and pursuits. Primarily, Kavanaugh's opinion focused on highlighting that the underlying traffic violation might suggest a lesser threat. However, flight and the suspect's reasons for flight may often suggest a much higher type of threat than the traffic violation itself. Therefore, any evaluation of the totality of the circumstances for a use of force related event is incomplete if it does not take into account what actions the suspect made in their attempts to flee.

For the court's opinion: https://supreme.justia.com/cases/federal/us/605/23-1239/case.pdf

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Circuit Courts of Appeals

Fifth Circuit

Bakutis v. Dean, 24-10271 (5th Cir. 2025)

On October 12, 2019, at 2:25 a.m., officers of the Fort Worth Police Department responded to a call for service at the home of Atatiana Jefferson. This call, which was characterized as an "open structure" was phoned in by a neighbor who was concerned that Ms. Jefferson's door was standing open at that hour of the night, explicitly stating that the door was normally closed. Upon arriving at the scene, the officers parked around the corner with their lights off in accordance with agency policy, which was intended to avoid notifying a potential burglar of their presence. They then began sweeping or searching the perimeter of the residence to look for signs of burglary, checking the vehicles in the driveway, and shining flashlights through windows and doors.

What the officers did not know was that Ms. Jefferson was home watching her nephew who was up late playing video games. She had opened the door to the home earlier in the evening to allow in the night breeze. When she heard someone outside, she had no way to know that there were law enforcement officers outside her home rather than intruders. Ms. Jefferson retrieved her gun from her purse and approached the window. It was at this moment that one of the officers entered the yard through a gate at the side of the home and observed Jefferson as she appeared in the window. The officer, without identifying himself as law enforcement, gave the command to her as, "Put your hands up! Show me your hands!" Prior to finishing this command, he fired and subsequently caused Ms. Jefferson's death.

The officer was sued by Jefferson's estate for Fourth Amendment violations for an unlawful search based upon the officer's sweep of the property and an unlawful seizure by using excessive force, which resulted in her death. The officer was denied qualified immunity by the district court as to both claims, and he appealed.

The Fifth Circuit Court of Appeals evaluated each claim by determining whether: 1) the law was clearly established; and 2) that there were facts sufficiently alleged which a jury might rely upon to find a violation of the right.

As to the shooting, the court looked to Tennessee v. Garner, among other cases, finding that the law was clearly established. The court echoed the prohibition from Garner on the use of deadly force against someone which the officer did not believe was a significant and immediate threat to the officer or others, as well as the requirement that the officer give a verbal warning where feasible. The officer did not contend that he perceived Ms. Jefferson as an immediate threat or that he observed her holding a weapon. The court found that, based upon those facts and the failure of the officer to give a warning, qualified immunity would be inappropriate, at least for the excessive force claim.

Turning its attention to the unlawful search claim, the court reached a different result. The court reasoned that the law was not clearly established, since the officers were conducting a community caretaking function when they searched the perimeter of a home due to a call regarding an open structure. In making this finding, the court relied on the proposition that, when sweeping the

perimeter of the home, the officers were not seeking to discover evidence that might be used against the residents but, instead, were searching for burglars or trespassers and ensuring the residents were safe. The court recognized that there was no prior precedent in the Fifth Circuit or the Supreme Court which would govern this type of community caretaking function, thus the law was not clearly established on whether the officer was entitled to qualified immunity on that count.

For the court's opinion: https://cases.justia.com/federal/appellate-courts/ca5/24-10271/24-10271-2025-02-25.pdf

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Sixth Circuit

U.S. v. Taylor, 23-5344 (6th Cir. 2024)

Knoxville Police Officer Kristen Cox was patrolling Interstate 275 as part of the department's drug interdiction team when she stopped Nathaniel Taylor for speeding in January 2019. Officer Cox approached the vehicle and told Taylor that she had pulled him over because he was driving 69 miles per hour in a 55-mile zone. Without prompting, Taylor volunteered that he was coming from a job interview at a nearby restaurant, but the officer had neither asked where Taylor was headed, nor did he offer that detail. Taylor handed his license to the officer but could not immediately locate proof of insurance and proceeded to look in the glove box and the center console; Officer Cox then informed Taylor that he could continue searching the vehicle for proof of insurance and, if found, he could avoid a ticket. Before the officer returned to the patrol car to run Taylor's records and license information, she noticed several air fresheners on the gear shift.

Officer Cox returned to her patrol car and, after running Taylor's records, she discovered that he had a criminal history involving weapons, assaults, and simple possession of drugs. While there, Officer Cox noticed that Taylor was making large reaching movements in his car, which she admitted were consistent with looking for the insurance information that she had directed him to find. When he did finally find the documentation, he waved the paperwork out the window to summon her back to his car. As Officer Cox retrieved the paperwork, she told Taylor not to make any further movements because it was making her nervous; Officer Cox later admitted that Taylor's behavior was a result of what Officer Cox had asked Taylor to do, which was to look for documentation.

Officer Cox went back to the patrol car and began preparing Taylor's speeding ticket. While doing so, she requested a K-9 unit to come to the scene, stating that Taylor's travel plans, criminal history, and air fresheners were the "only reason[s]" she wanted a dog to sniff around the vehicle. Several minutes later, the K-9 unit arrived and Officer Cox removed Taylor from his vehicle and patted him down before the dog sniffed around the car. When the dog alerted to the presence of drugs, a search of the car was conducted but no drugs were found. However, the officers found a firearm in the trunk and Taylor was charged with being a felon in possession of a firearm.

Taylor moved to suppress the firearm as evidence found during the vehicle search, arguing that there was no reasonable suspicion that Taylor was engaged in criminal activity when Officer Cox prolonged the stop. The district court denied the motion and Taylor conditionally pleaded guilty, while reserving his right to appeal the district court's decision.

The Sixth Circuit Court of Appeals considered two issues: first, whether Officer Cox had reasonable suspicion to stop Taylor's vehicle and, if so, whether she had reasonable suspicion to further detain him after she completed the tasks necessary to resolve the initial stop.

As to the first issue, the Sixth Circuit found that Officer Cox did have reasonable suspicion to initiate a traffic stop of Taylor's vehicle when he was found driving 69 miles per hour, which was 14 miles per hour over the speed limit. Next, the court turned to whether Officer Cox had reasonable suspicion to detain Taylor any further after resolving the speeding violation. Citing to Rodriguez v. United States, the court noted that, to continue detaining the suspect, the officer would need reasonable suspicion of wrongdoing (other than speeding).

Looking at the totality of the circumstances, the court then considered four facts that Officer Cox relied on when prolonging the stop and weighed each in terms of how much emphasis should be applied when determining reasonable suspicion of other wrongdoing: 1) Taylor's travel plans; 2) Taylor's criminal history involving firearms and narcotics; 3) multiple air fresheners on Taylor's gear shift; and 4) Taylor's odd movements while searching for proof of insurance.

Starting with Taylor's travel plans, the court recognized that, historically, it has afforded significant weight to implausible or conflicting explanations of travel plans in some cases. In this case, Taylor offered – without prompting – that he had just come from a job interview and Officer Cox – without asking Taylor where he was headed to – just "didn't feel like he took the most efficient route" to get to the address on his driver's license. In fact, Officer Cox admitted that she was guessing about where Taylor was headed. As such, the court found that any perceived oddities in Taylor's travel plans deserved little to no weight in terms of the reasonable suspicion calculus being considered in the case at hand.

The court then turned to Officer Cox's knowledge of Taylor's criminal history involving firearms and drugs and noted that it is reasonable that a prior weapons conviction could create a safety concern or suspicion of illegal activity and, as such, deserved some weight in the analysis.

Next, the court addressed the presence of multiple air fresheners hanging from the gear shift of Taylor's vehicle. The court opined that the strong odor of air fresheners during a traffic stop might play a supporting role to other, stronger indicators of criminal activity when making a determination of reasonable suspicion. In the case at hand, Officer Cox did not indicate a strong smell of air fresheners, any odor of marijuana, or any other suspicious scent in Taylor's vehicle. As such, the court assigned little weight to the air fresheners on the gear shift of the vehicle.

The court then addressed Taylor's movement and noted that Officer Cox was the reason for the movement in the car because she instructed Taylor to locate his insurance documentation. In fact, Officer Cox had testified that, while she "expected some movement" from Taylor, the movement was not common to what she was used to seeing. Furthermore, after Office Cox directed Taylor to stop moving in his vehicle, he made minimal movements until she returned to the car to remove him from the driver's seat. The court noted that Officer Cox made no mention of Taylor's movements when she was requesting a K-9 unit and, instead, only mentioned Taylor's travel plans, criminal history, and air fresheners. Because Officer Cox was the reason for Taylor's movements and Taylor complied with her requests, the court found that this aspect held little weight in the analysis.

Ultimately, when weighing all of these factors under the totality of the circumstances, the court found that Officer Cox lacked a reasonable, articulable suspicion of any other strong indicators of criminal conduct and, therefore, it was not enough to justify extending Taylor's stop to conduct a dog sniff and the Sixth Circuit reversed the lower court's decision.

For the court's opinion: https://cases.justia.com/federal/appellate-courts/ca6/23-5344/23-5344-2024-11-15.pdf

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Tenth Circuit

United States v. Maytubby, 130 F.4th 1194 (10th Circuit 2025)

A police officer interviewed Lance Maytubby at the police station regarding allegations of sexual abuse made by Maytubby's nieces R.L. and Z.L. The interview, which was recorded on the officer's body camera, took place in the break room at the police station with the door open. The officer told Maytubby that he did not have to talk, that he was not under arrest, and that he could leave at any time.

After Maytubby denied the allegations, the officer told him the two nieces' stories were "dead-on similar," and that the accusations had "stuff to back it up." The officer then suggested that an "excuse" might explain what had happened, something like a mental-health issue, drinking, or drug use, but Maytubby continued to deny the accusations.

About a minute later, the officer told Maytubby that he needed to deliver an investigation report to the district attorney. He told Maytubby that he wanted the report to include all mitigating circumstances, like that Maytubby was a pastor who had made a mistake, had long been a "working man" and "family man," and had just "acted out of character." The officer reiterated he wanted to report that Maytubby made a mistake and that he was not "any kind of predator," and that the behavior "hasn't happened since."

After he continued to deny the accusations, the officer explained that Maytubby's denials put him in a difficult spot in reporting to the district attorney. The officer reminded Maytubby that he was not required to speak to him, and he reassured Maytubby that he was not going to arrest him that day. However, the officer also stated that his desire to include mitigating information in the investigative report depended on Maytubby's admitting his sexual contact with his nieces. The officer told Maytubby, "I can't help you out if you're not honest to me, I just can't. I can't go in there and say, ... 'Hey, he manned up. This is how it is. The guy acted out of character.'" Maytubby then told the officer that he wanted to go home, and the officer replied, "Okay." A few seconds later, Maytubby confessed to sexually abusing his nieces.

The government indicted Maytubby for several sexual abuse-related offenses. Maytubby filed a motion to suppress his interview statements as involuntary, arguing that the officer's coercive tactics overbore his will. The district court denied the motion. Upon conviction, Maytubby appealed.

The Fifth Amendment guarantees that "[n]o person ... shall be compelled in any criminal case to be a witness against himself." For an incriminating statement to be voluntary, it must not be "the product of coercion, either physical or psychological." Coercion may take the form of "acts, threats, or promises which cause the defendant's will to be overborne."

First, the court determined that the fact that the interview lasted less than thirty minutes, the tone of the interview was conversational, the interview occurred in a break room with the door open, and the interview included no physical punishment weighed in favor of finding a voluntary confession.

Next, the court found that the officer's offer to include mitigating facts in his investigative report to the district attorney if Maytubby admitted his nieces' accusations were proper. The officer never implied that he had control over the sentence Maytubby might receive but instead made general statements to Maytubby about the benefit of cooperating, which has repeatedly been held to be a permissible interrogation tactic. Based on these facts, the court concluded that Maytubby's statements were voluntary as none of the officer's statements were coercive, and Maytubby's will was not overborne.

For the court's opinion: https://cases.justia.com/federal/appellate-courts/ca10/23-7084/23-7084-2025-03-18.pdf

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