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The Federal Law Enforcement -Informer-

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

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CASE SUMMARIES

Circuit Courts of Appeal

First Circuit

United States v. Gonsalves, 2017 U.S. App. LEXIS 10142 (1st Cir. Mass. June 7, 2017)

A confidential informant (CI) told officers that Joshua Gonsalves and his girlfriend, Katelyn Shaw, were driving Gonsalves' black Cadillac to the "New Bedford area" at approximately 4:30 p.m. that day to purchase 2,000 oxycodone pills from a known supplier. The CI claimed that he regularly bought oxycodone from Gonsalves, knew when Gonsalves' supply was running low, and knew when Gonsalves planned to restock. In addition, the CI had twice provided officers reliable information concerning Gonsalves, and his drug operation and earlier that month had made a controlled purchase of oxycodone from Gonsalves and Shaw.

Officers conducting surveillance followed Gonsalves, Shaw, and a woman later identified as Tavares, as they drove a black Cadillac to a town that bordered New Bedford. Gonsalves parked next to a car the officers knew belonged to the supplier. The officers saw Gonsalves, Shaw, and Tavares enter the house where the supplier's car was parked, where they remained for two hours.

After Gonsalves, Shaw, and Tavares left, the officers followed them and conducted a traffic stop. Officers frisked Gonsalves and found over $6,000 in his pocket. After the officers called for a drug-sniffing dog, Shaw pulled a bag of oxycodone pills from her bra and threw it into the woods. The officers recovered the pills and arrested Gonsalves, Shaw, and Tavares. In a post-arrest search the officers found over $16,000, a digital scale in the Cadillac, and additional oxycodone pills in Shaw's bra.

The government charged Gonsalves with a variety of criminal offenses related to his involvement in an oxycodone trafficking ring.

Gonsalves filed a motion to suppress the evidence seized during the traffic stop. Gonsalves argued that the traffic stop and subsequent searches violated the Fourth Amendment because the officers did not have reasonable suspicion to believe he committed a crime.

The court disagreed, holding that the officers had probable cause to stop Gonsalves and search his car under the automobile exception to the Fourth Amendment's warrant requirement. First, the court noted that the CI had a track record of supplying reliable information to the police. Second, the CI had firsthand knowledge of Gonsalves' operation that bolstered his credibility. Third, the CI's information included details of Gonsalves' future activities and almost all of these details were corroborated by police surveillance before the officers stopped Gonsalves. Finally, the officers assessed and understood the significance of the CI's information in the context of the larger investigation into Gonsalves' drug trafficking ring.

For the court's opinion: http://cases.justia.com/federal/appellate-courts/ca1/15-1194/15-1194-2017-06-07.pdf?ts=1496867404

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United States v. Dion, 2017 U.S. App. LEXIS 10239 (1st Cir. Mass. June 8, 2017)

A police officer pulled Dion over for speeding on Interstate 70 in Kansas. As the officer approached Dion's pickup truck, he noticed that it bore Colorado license plates. Dion gave the officer an Arizona driver's license and told the officer that he was driving home to Arizona after meeting with his accountant in Pennsylvania. As Dion accompanied the officer back to his patrol car, he told the officer he could search his truck, without being asked, which the officer found unusual. The officer also noticed that Dion appeared to be extremely nervous. While the officer wrote Dion a warning ticket, he asked Dion about his trip, as the officer thought it was suspicious that Dion had travelled from Arizona to Pennsylvania to meet with an accountant. The officer also discovered that Dion had a prior criminal history that included charges related to marijuana and cocaine. After the officer gave Dion back his driver's license, he told Dion that the "stop was over," but that he would like to ask Dion some more questions. Dion agreed to talk to the officer and again gave the officer consent to search his truck.

The officer opened the tailgate and saw deteriorating boxes, road atlases, and a refrigerator. Based on his experience, the officer believed these items were a "cover load" to deliberately disguise contraband. When the officer asked Dion about the items, Dion told him the items had come from Boston. The officer thought it was suspicious that Dion had never mentioned that he had gone to Boston as part of his trip. After a back-up officer arrived, the officers began removing items from Dion's truck. After a few minutes, Dion revoked his consent and the officers stopped searching his truck. The officer then asked Dion if he could run a drug-dog around Dion's truck. Dion said, "Yeah," and the officer walked his dog around the truck. The dog detected the odor of narcotics emanating from Dion's truck. The officers searched the truck and found $830,000 cash. In addition, the officers found information connecting Dion to a self-storage center in Boston. The officers provided this information to law enforcement officers in Massachusetts who obtained a warrant to search Dion's storage unit. Inside the storage unit, officers found 160 pounds of marijuana, drug ledgers, and $11 million in cash.

The government charged Dion with a variety of drug-related offenses. Dion filed a motion to suppress the evidence against him, arguing that it was discovered in violation of the Fourth Amendment.

The court disagreed. First, the court held that the officer did not unreasonably prolong the duration of the stop. While the officer was writing the citation, he was allowed to ask Dion about his travel history and conduct a criminal records check. During this time, Dion was extremely nervous and without being prompted, gave the officer permission to search his truck. In addition, the officer was allowed to ask Dion questions about his prior drug arrests after learning that Dion had a criminal history. The court concluded that the officer's questions were reasonable and to the extent those questions extended the stop, did not violate the Fourth Amendment.

Second, the court held that Dion voluntarily consented to the initial search of his truck. Dion told the officer that he could search his truck at the beginning of the stop and again after the stop had concluded. In addition, the officer's failure to tell Dion that he was free to go, did not make Dion's consent involuntary. The officer clearly told Dion when the stop was over, which implied that Dion was no longer being detained for speeding. Instead of leaving, Dion decided to stay and voluntarily speak to the officer.

Finally, the court concluded that the officers established probable cause to believe Dion was trafficking contraband; therefore, the second search was valid under the automobile exception to

the Fourth Amendment's warrant requirement. By the time Dion revoked his consent to search, the officers had established probable cause to search his truck the second time based upon, among other things: 1) Dion's unsolicited offers to search his truck; 2) Dion's extreme nervousness; 3) Dion's explanation for his trip; 4) Dion's criminal history; 5) the discovery of items connected to Boston when Dion did not mention Boston as stop during his trip.

For the court's opinion: http://cases.justia.com/federal/appellate-courts/ca1/16-1377/16-1377-2017-06-08.pdf?ts=1496952006

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Second Circuit

United States v. Delva, 858 F.3d 135 (2d Cir. N.Y. June 1, 2017)

Police officers obtained a warrant to arrest Gregory Accilien for kidnapping, robbery, and drug-related offenses and went to his apartment to arrest him. At the apartment, the officers encountered Accilien, a woman, two children, and three other men, including Delva. While conducting their protective sweep, the officers located Delva in the bedroom and handcuffed him. While in the bedroom, the officers saw drugs and a handgun on the floor of the closet. After the officers arrested Accilien and completed their protective sweep, they brought Accilien into the bedroom to ask him who the other individuals were and to whom the items found in the closet belonged. The officers brought Accilien into the bedroom because the apartment was approximately 500 square feet and the other individuals were being detained in the kitchen and living room. While in the bedroom, officers saw some envelopes lying on top of a cabinet addressed to Accilien that had been sent by another suspect in the same robbery and kidnapping case. The officers also saw a cell phone lying on a television stand and a cell phone on the bed. The officers seized the envelopes and cell phones. Sometime later, the officers discovered that one of the cell phones belonged to Delva. At the time of Accilien's arrest, Delva was not a suspect in the kidnapping and robbery; however, after reviewing the letters inside the envelopes and the cell phones seized from the bedroom, officers discovered that Delva had been involved with Accilien in the robbery and kidnapping case.

The government charged Delva with kidnapping, robbery, and drug-related offenses.

Delva argued that the warrantless search of the bedroom and subsequent seizure of the letters and cell phones violated the Fourth Amendment.

The court disagreed. The court held that the officers' warrantless re-entry into the bedroom did not violate the Fourth Amendment because it was justified by exigent circumstances. First, the officers lawfully entered Accilien's apartment where they saw drugs and a gun in plain view during their lawful protective sweep. Second, the court found that the officers needed to remain in the apartment long enough to determine who owned these items, as whoever owned them was subject to immediate arrest. Third, given that there were four men in the small apartment, the court concluded that the officers had probable cause to believe that one of the men owned these items. Finally, the court held that it was reasonable for the officers to question Accilien in the bedroom, outside the presence of the other men, to facilitate Accilien's candor and reduce the possibility of intimidation by the owner. The court concluded that under the circumstances, it was objectively reasonable for the officers to re-enter the bedroom to question Accilien in order to determine whom to arrest for possession of the drugs and gun.

The court further held that after the officers re-entered the bedroom to interview Accilien, the officers lawfully seized the envelopes and cell phones under the plain view doctrine. Officers may lawfully seize objects under the plain view doctrine if:

1) The officers are lawfully in a position from which they view the object;
2) The incriminating nature of the object is immediately apparent; and
3) The officers have a lawful right to access the object.

First, the officers were lawfully in the apartment with a valid warrant for Accilien's arrest. In addition, Accilien told the officers that he occupied the bedroom in which the letters and cell phones were found. Second, the letters addressed to Accilien were sent from another suspect in the robbery and kidnapping case. The court found that it was reasonable for the officers to believe the letters contained post-kidnapping/robbery communications between Accilien and the other suspect. Third, the court found the seizure of the cell phones was reasonable because the officers knew that one or more cell phones had been used during the kidnapping and robbery. The court added that even if it the officers believed that the cell phones belonged to Delva, their warrantless seizure would have been reasonable because Delva was detained in the bedroom where drugs were found and the association between drug trafficking and cell phones is well established.

For the court's opinion: http://cases.justia.com/federal/appellate-courts/ca2/15-683/15-683-2017-06-01.pdf?ts=1496327406

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Fourth Circuit

United States v. Giddins, 858 F.3d 870 (4th Cir. Md. June 6, 2017)

Police officers arrested three women for committing two separate bank robberies and seized their getaway car, which belonged to Giddins. During an interview one of the women told the officers that Giddins had been involved in a third, unrelated, bank robbery. Based on these statements and other evidence, Det. Taylor obtained a warrant to arrest Giddins for bank robbery.

A few days later, officers contacted Giddins and told him that his car had been used in a bank robbery. When Giddins went to the police station to retrieve his car, Det. Morano took him to an interview room. Giddins was seated at a table, with a door directly behind him, which was locked. Det. Morano sat across the table from Giddins, near an unlocked, second door. Det. Morano asked Giddins to whom he lent his car, and other questions related to one of the women charged with bank robbery. At some point, Giddins asked Det. Morano, "Am I in trouble?" to which Det. Morano replied, "No, you're here getting your car, right?" Det. Morano told Giddins that he needed to obtain this information to include in his report because Giddins' car had been used in a crime. A few minutes later, Det. Morano left the room and Det. Taylor entered. Det. Taylor, without telling Giddins that he had a warrant for his arrest, told Giddins that he would be taking over the interview.

During the interview, Det. Taylor allowed Giddins to answer a call on his cell phone; however, when he was done, Det. Taylor asked Giddins to put his phone on the table and moved it away from Giddins. A few minutes later, Giddins' phone rang. Det. Taylor handed Giddins his phone but told him to turn it off, and Giddins complied. A few minutes later, Det. Taylor produced a Miranda-waiver form and told Giddins that he had to read him his rights because his car was involved in a crime. After Giddins indicated that he understood his rights, he asked Det. Taylor,

"Is this the procedure for me to get my car back?" Det. Taylor told him that it was because Giddins' car had been used in a crime and he wanted to find out how the women had obtained Giddins' car. Giddins asked Det. Taylor, "But do I still get my car?" Det. Taylor replied, "Before I release the car to you, I would like to know some answers." Giddins then asked Det. Taylor, "I'm not in trouble or anything, am I?" Det. Taylor answered, "Not at this point, no." Giddins then signed the Miranda-waiver form. During the next fifteen minutes, Det. Taylor questioned Giddins. Some of Det. Taylor's questions required Giddins to look at his phone, and after each time Giddins finished, Det. Taylor instructed Giddins to put his phone down and move it away. Giddins eventually invoked his Fifth Amendment right to counsel and Det. Taylor stopped questioning him. Det. Taylor told Giddins that he was under arrest for bank robbery and had him transported to the jail.

The government charged Giddins with several bank-robbery related offenses.

Giddins filed a motion to suppress his statements to Det. Morano and Det. Taylor.

As an initial matter, the court held that Giddins was in custody for Miranda purposes prior to his formal arrest. First, the door behind Giddins was locked, so to leave the room, Giddins would have had to walk past Det. Taylor. In addition, twice during the interrogation, Det. Taylor moved Giddins' phone away from him. Based on these facts, the court concluded that a reasonable person would have felt unable to stop the interrogation and leave the room; therefore, giving up the opportunity to get his car back. As a result, the court found that, Miranda warnings were required before any of Giddins' statements concerning his car or his relationship to the three women who had borrowed his car could be admitted against him at trial.

Next, the court held that Giddins' waiver of his Miranda rights and subsequent statements were the result of police coercion. The court found that the detectives made it appear that if Giddins did not answer their questions, he would not be able to get his car back. When Giddins asked whether filling out the Miranda-waiver form and answering the officers' robbery-related questions was the normal procedure for obtaining his car, Det. Taylor told him that it was. The court concluded that a reasonable person in Giddins' position would have believed that it was necessary to sign the Miranda-waiver form and answer Det. Taylor's questions in order to get his car back.

In addition, the court added that the detectives engaged in coercive behavior when they lied to Giddins after Giddins asked them if he was "in trouble". The court had "no doubt" that Giddins was "in trouble," when he entered the police station, as a warrant existed for his arrest and the detectives affirmatively misled Giddins as to the true nature of the investigation by failing to inform him that he was the subject of the investigation.

Finally, the court held that the police coercion was sufficient to rise to the level such that Giddins' will was overborne. Consequently, the court concluded that Giddins' Miranda waiver and statements were made involuntarily.

For the court's opinion: http://cases.justia.com/federal/appellate-courts/ca4/15-4039/15-4039-2017-06-06.pdf?ts=1496775631

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Fifth Circuit

United States v. Bams, 858 F.3d 937 (5th Cir. Tex. June 1, 2017)

A police officer stopped the car in which Henry Bams and Frederick Mitchell were travelling, for making an unsafe lane change. When the officer asked Bams for his driver's license, he noticed that Bams' hands were shaking and that he was nervous. The officer also saw that one of the rear quarter panels appeared to have been tampered with, that there was a single key in the ignition, and that there were energy drinks in the vehicle. After Bams gave the officer consent to search, the officer found ten kilograms of cocaine concealed within two false compartments in the rear quarter panels.

The government charged Bams and Mitchell with two drug offenses.

Bams filed a motion to suppress the drugs seized from his car. Bams argued the officer did not have reasonable suspicion to conduct the stop. Bams further argued that even if the stop was valid, the officer unreasonably prolonged its duration without reasonable suspicion; therefore, his consent to search was invalid.

The court held that the officer established reasonable suspicion that Bams violated *Ark. Code Ann. § 27-51-306* when he passed a tractor-trailer on the left side of the road and then returned to the right side when he was only fifty feet in front of the tractor-trailer. The court further held that the officer's observations once he stopped Bams established reasonable suspicion that Bams was engaged in criminal activity. First, while speaking to Bams, the officer noticed his hand was shaking and he was nervous. Second, the officer testified that based on his training and experience he knew drug traffickers often drove third-party vehicles; and therefore, would only have a single key. Third, the officer testified that based on his training and experience drug traffickers consumed energy drinks to help them drive to their destination without stopping. Finally, the court noted the most important fact was that the officer saw the apparently modified quarter panel on Bams' car. Considering all of those factors, the court held the officer established reasonable suspicion that Bams was engaged in drug trafficking. As a result, the court concluded that the officer did not unreasonably extend the duration of the stop; therefore, Bams' consent was valid.

For the court's opinion: http://cases.justia.com/federal/appellate-courts/ca5/16-41197/16-41197-2017-06-01.pdf?ts=1496359835

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United States v. Zuniga, 2017 U.S. App. LEXIS 10656 (5th Cir. Tex. June 14, 2017)

Police suspected that Zuniga was transporting methamphetamine in his vehicle and followed it. After an officer witnessed a turn-signal violation, he immediately informed other officers in the area that they had grounds to stop the vehicle. Approximately fifteen minutes later, an officer who had not witnessed the turn-signal violation, stopped the vehicle. During the stop, the officer encountered Zuniga and his girlfriend, who was driving the vehicle. The officer arrested Zuniga on two outstanding warrants and his girlfriend because she did not have a valid driver's license. The officer searched Zuniga incident to arrest and found methamphetamine on his person. The officer searched Zuniga's car and found a backpack containing methamphetamine, a handgun, and other evidence related to drug trafficking.

The government charged Zuniga with several drug-related crimes.

Zuniga filed a motion to suppress the evidence seized during the stop. Zuniga argued that the fifteen-minute delay in conducting the stop for the turn-signal violation rendered the information provided by the officer who observed the violation stale.

The court disagreed, holding that the delay in conducting the stop was not enough to render the information stale or the stop unlawful. The court did not state a specific time limitation to which officers must adhere when conducting a traffic stop. Instead, the court stressed that stops following traffic violations must be reasonable in light of the circumstances. In this case, the court found that the fifteen-minute delay was reasonable. As soon as the officer observed the turn-signal violation, he immediately relayed this information to other officers, although none of those officers were in position to stop the vehicle at that time.

The court further held that the collective knowledge doctrine allowed the officer to lawfully stop the vehicle even though he did not personally observe the turn-signal violation. The collective knowledge doctrine allows an officer, who does not observe a violation, to conduct a stop when the officer is acting at the request of another officer who has observed the violation. Here, the officer who observed the turn-signal violation communicated this information to the officer who eventually stopped the vehicle; therefore, the first officer's knowledge transferred to the officer who conducted the stop.

For the court's opinion: http://cases.justia.com/federal/appellate-courts/ca5/14-11304/14-11304-2017-06-14.pdf?ts=1497483031

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Sixth Circuit

United States v. Riley, 858 F.3d 1012 (6th Cir. Tenn. June 5, 2017)

Police officers in Michigan obtained a warrant to arrest Riley for armed robbery. Two days later, Riley's girlfriend gave officers Riley's cell phone number. The next day, officers obtained a court order under *18 U.S.C. §§ 2703, 3123* and *3124* compelling AT&T to provide the government with a record of Riley's cell-site location information, a record of all inbound and outbound phone calls, as well as real-time GPS tracking of Riley's cell phone. Within hours of obtaining the court order, officers received real-time GPS data indicating that Riley's phone was located at the Airport Inn in Memphis, Tennessee.

Officers went to the Airport Inn and showed the front-desk clerk a picture of Riley. The clerk told the officers that the man in the photograph had checked in under a different name and was in Room 314. The officers went to Room 314, knocked on the door, and arrested Riley after he opened the door. While arresting Riley, the officers saw a handgun in plain view on the bed.

The government charged Riley with being a felon in possession of a firearm.

Riley filed a motion to suppress the handgun. Riley argued that the government was required to obtain a warrant based on probable cause to obtain his cell phone records and conduct real-time GPS tracking of his cell phone's location.

The court recognized that a criminal suspect has no reasonable expectation of privacy in his location while moving along public thoroughfares. However, the court noted that the use of a tracking device to obtain information from inside a dwelling that could not otherwise be observed by visible surveillance constitutes a Fourth Amendment search. In this case, the real-time GPS

tracking revealed only that Riley had traveled to the Airport Inn. The tracking did not reveal which room, if any, the phone was in at the time of the tracking. When the officers arrived at the Airport Inn, they learned that Riley was in Room 314 after questioning the front-desk clerk. The government learned no more about Riley's whereabouts from tracking his cell phone GPS data than what Riley exposed to public view by traveling to the motel lobby "along public thoroughfares." Consequently, the court held that the government did not conduct a search under the Fourth Amendment when it tracked the real-time GPS coordinates of Riley's cell phone.

For the court's opinion: http://cases.justia.com/federal/appellate-courts/ca6/16-6149/16-6149-2017-06-05.pdf?ts=1496683874

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Seventh Circuit

United States v. Fadiga, 858 F.3d 1061 (7th Cir. Ind. June 1, 2017)

A police officer stopped a car that had an expired license plate. The officer asked Mamadu Barry, the driver, for registration papers, but Barry did not have any. Barry told the officer he did not know who owned the car. The officer asked Fadiga, who was in the passenger seat, who owned the car and Fadiga replied, "A friend." Fadiga then gave the officer a rental agreement for the car. The car's return was past due under the agreement and neither Barry nor Fadiga was authorized to drive the car. When Barry opened his wallet to produce his driver's license, the officer saw a large bundle of plastic cards. The officer asked Barry and Fadiga for consent to search the car and both consented. The officer opened the trunk and found a bag full of gift cards. At this point, the officer contacted his dispatcher and requested someone with a card reader respond to his location to determine if the cards were legitimate. Approximately thirty minutes later another officer arrived with a card reader and the officers determined that the gift cards had been altered.

The government charged Fadiga with possession of access devices (gift cards) that had been fraudulently re-encoded.

Fadiga filed a motion to suppress the gift cards. Fadiga argued that the thirty-minute delay between the officer's request for the card reader and the card reader's arrival was unreasonable.

The court disagreed. First, Mamadu and Barry consented to a search of their car, which led to the officer's discovery of the large number of gift cards. This discovery, along with Barry's ignorance of the car's ownership, Fadiga's assertion that a friend owned the car, coupled with a rental contract that did not authorize either man to operate the car, justified the thirty-minute detention. The court added that whether or not the officer waited for a card reader, he was entitled to detain Fadiga and Barry until their authority to use the car had been determined. As result, the court held that extending the duration of the traffic stop was reasonable under the Fourth Amendment.

For the court's opinion: http://cases.justia.com/federal/appellate-courts/ca7/16-3870/16-3870-2017-06-01.pdf?ts=1496332864

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United States v. Tepiew, 859 F.3d 452 (7th Cir. Wis. June 12, 2017)

A seven-year-old child went to school and gave a counselor a drawing. Beneath the drawing, the student had written that she was sad because her mom "got hit in the ribs and has a black eye,"

and she "is hurting." The student told the counselor that her mother's boyfriend had beat her mom up, and that the boyfriend "hurts" her one-year-old brother, who had sustained a head injury. The counselor contacted the Menominee Tribal Police Department and an officer interviewed the counselor, who repeated what the student had reported.

After interviewing the counselor, the officer drove to the health department and asked a child protective safety worker to accompany him to the child's home to conduct a welfare check on the one-year-old child. While en route, the officer requested a backup officer meet him at the child's house.

Once the officer arrived, he approached the front door where he could hear the television from inside the house. The officer knocked on the door and announced his presence. After knocking, the officer heard fast-paced walking inside the home and saw a curtain move. The officer knocked again, and then heard someone lock the door. In the meantime, the backup officer had gone to the back door. The backup officer heard movement from inside the house, and then he heard someone lock the back door.

Based on these facts, the officer believed that whoever was in the house did not want to speak to the police. The officer also knew that it would take an hour and a half to two hours to obtain a warrant to enter the house. Concerned that the mother and one-year-old child were in the house, seriously hurt, and possibly being prevented from seeking medical attention, the officer contacted the tribal prosecutor, who informed the officer that he did not need a warrant to enter the home. Once again, the officer knocked on the front door, announced his presence, and warned whomever was inside that he was going to knock down the door. After waiting fifteen seconds and receiving no response, the officer kicked down the door and entered the house.

Inside the house, the officers found the seven-year-old child's mother, Tepiew, her one-year old brother, and Tepiew's boyfriend. It was later determined the one-year-old child had numerous injuries, to include a fractured skull. Although Tepiew was initially considered a victim of domestic violence, she later admitted to inflicting the injuries on her one-year old son.

The government charged Tepiew with assault resulting in serious bodily injury to her infant child.

Tepiew filed a motion to suppress all evidence obtained as a result of the warrantless entry into her home, including her confession.

The court held that the officers' actions were reasonable and their warrantless entry into Tepiew's home was justified by the emergency aid doctrine. The emergency aid doctrine allows officers to enter a house without a warrant to render emergency assistance to an injured occupant or to protect an occupant from imminent injury. In this case, the court found that it was objectively reasonable for the officers to believe that their entry was necessary to render emergency aid to the one-year-old child. First, the officer was given a drawing, which stated in the present tense, that the seven-year-old child's mother was "hurting," and that the one-year old child had sustained a head injury. Second, when the officers arrived at the house, they encountered someone within the house who actively trying to avoid speaking with the officers by not responding to their inquiries and was locking the doors. Finally, the officer testified that it would have taken one and a half to two hours to obtain a warrant, as the Menominee Nation's Constitution does not explicitly permit warrants to be obtained telephonically.

For the court's opinion: http://cases.justia.com/federal/appellate-courts/ca7/16-2543/16-2543-2017-06-12.pdf?ts=1497301241

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United States v. Jones, 2017 U.S. App. LEXIS 11523 (7th Cir. Ind. June 28, 2017)

Jones lived with his girlfriend, Kelley, and her three children in a mobile home. Kelley called the police and reported that Jones had sexually assaulted her daughter. Kelley also stated that Jones was a convicted felon and that he had guns in a safe in their shared bedroom. Officers ran a criminal history check, which confirmed that Jones was a convicted felon.

Officers went to the mobile home, where Jones opened the door and greeted the officers. The officers saw knives on a counter and told Jones that he needed to vacate the premises. When Jones stepped outside the mobile home, an officer handcuffed him and escorted him to a picnic table approximately ten to twenty feet away. While two officers remained with Jones, Kelley consented to a warrantless search of the residence. When an officer searched the bedroom shared by Jones and Kelley, he saw a large gun safe, a smaller gun safe that was partially open, boxes of ammunition, and an empty gun holster. Inside the smaller gun safe, the officer saw several guns. After seeing the guns inside the small gun safe, officers stopped their search, contacted a state prosecutor, and obtained a search warrant. The officers then conducted a full search of the mobile home and seized twelve firearms, ammunition, and other firearm-related paraphernalia.

The government charged Jones with being a felon in possession of a firearm.

Jones filed a motion to suppress the evidence seized from his residence. Jones claimed that Kelley's consent, by itself, was not valid because the officers did not ask him for consent, but rather, they removed him so he could not object to the search. As a result, Jones argued that information discovered during the unlawful consent search tainted the subsequent search conducted pursuant to the warrant.

Officers may search a home without a warrant when an occupant gives the officers voluntary consent. However, the consent of one person who has authority over the place to be searched is not valid if another party with authority is physically present and expressly refuses to give consent for the search. In addition, officers may not remove a potentially non-consenting party to avoid a possible objection to a search. The removal of a potential objector must be objectively reasonable, such as an objector who is absent due to a lawful detention or arrest.

First, without deciding the issue, the court assumed, that the officers had "removed" Jones. Second, the court held that Jones' removal was objectively reasonable under the circumstances. Before the officers searched the mobile home, Kelley told them that Jones was a convicted felon, with violent tendencies, who had several guns in the residence. The officers conducted a criminal history check and confirmed Jones' status as a convicted felon. When the officers arrived at the mobile home, they saw knives on a counter near where they initially encountered Jones. Under these circumstances, the court concluded that it was objectively reasonable to remove Jones for the officers' safety and because they had probable cause to arrest him. Consequently, the court held that Kelley's consent to search the mobile home was valid; therefore, the officers conducted a lawful warrantless search of the premises.

Jones further argued that even if Kelley gave valid consent to search the mobile home, she did not have the authority to grant the officers consent to search the gun safes, which the government conceded.

First, for the purposes of argument, the court assumed that the gun safes were closed; therefore, the officers could not have observed the guns in plain view. Nevertheless, the court held that the evidence discovered in the safes would have been admissible under the inevitable discovery exception to the exclusionary rule.

The inevitable discovery doctrine provides that unlawfully obtained evidence will not be suppressed if the government can establish that the officers would have inevitably discovered the evidence in question by lawful means. First, before entering the mobile home, Kelley told the officers that Jones kept guns in a gun safe in the bedroom, and that he was a convicted felon, a fact confirmed by the officers. Second, the officers lawfully entered the premises with Kelley's consent. Third, the officers saw the gun safes in the bedroom, along with an empty holster, and ammunition. At this point, the court concluded that the officers established probable cause to obtain a warrant to search the gun safes; therefore, they would have inevitably discovered the guns by "lawful means."

For the court's opinion: http://cases.justia.com/federal/appellate-courts/ca7/16-4254/16-4254-2017-06-28.pdf?ts=1498685444

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Eighth Circuit

United States v. Council, 860 F.3d 604 (8th Cir. Mo. June 19, 2017)

Officers received a report that Council had been involved in a road-rage incident where he pointed a sawed-off shotgun at Melanie Miller, a friend with whom he desired a more serious relationship. The officers knew Council from previous criminal complaints made against him, some of which involved violent behavior. Officers went to Council's camper, where he lived, to interview him about the incident. Officers knocked on the door to the camper, identified themselves, and told Council to come to the door. Council opened the door dressed only in his underwear. Council stood in the doorway and agreed to speak to the officers. Behind Council was a blanket hanging from the ceiling, which obstructed the officers' view into the camper. When the officers explained why they were there, Council denied involvement in the incident. Upon hearing who had made the accusation against him, Council called Miller a liar, cursed, and said he would "beat her half to death" the next time he saw her.

At this point, the officers decided to arrest Council. One of the officers grabbed Council's arm and ordered him to step out of the camper. Council resisted and tried to retreat behind the blanket back into the camper. While still holding Council's arm, and believing that Council had access to a shotgun, the officer crossed the threshold of the camper and tore down the blanket to see what was behind it. After a brief struggle, the officers handcuffed Council and while removing him from the camper they saw what appeared to be a black-taped handle of a gun wedged between the bed and a laundry basket.

As he was being escorted to the police car, Council asked if he could go back into his camper and get dressed. The officers denied this request but offered to go back into the camper themselves and get Council some clothes. Council agreed and when the one of the officers entered the camper to get Council a pair of pants, he confirmed the object he had seen was a shotgun with its handle wrapped in black tape. Based in part on this observation, the officers obtained a warrant to search the camper and seized a sawed-off shotgun.

The government charged Council with being a felon in possession of a firearm and possession of an unregistered sawed-off shotgun.

Council filed a motion to suppress the shotgun seized from his camper.

First, the court held that the officers had probable cause to arrest Council based on the information provided by the witnesses of the road-rage incident.

Second, the court found that Council was voluntarily in a "public place" when the officers arrested him. Under the Fourth Amendment, searches and seizures inside a home, without a warrant are presumed to be unreasonable. However, the warrantless arrest of a person in a public place based upon probable cause does not violate the Fourth Amendment. In this case, the court determined that Council was voluntarily in a public place when the officers arrested him. Council answered the door without coercion or deceit and stood in the doorway speaking to the officers. During this time, the court concluded that Council was exposed to public view as if he had been standing completely outside his camper. As a result, the officers were entitled to arrest him without first obtaining a warrant.

Finally, the court held that the officers' warrantless entry into the camper, which allowed them to initially see the shotgun, was justified by exigent circumstances. First, the underlying incident involved a firearm and the officers knew Council had previously exhibited violent behavior. Second, Council was uncooperative and made a threat toward Miller when the officers were discussing the road-rage incident with him. Third, Council resisted arrest and attempted to retreat behind a blanket, escalating an already tense situation. Under these circumstances, the court concluded that it was reasonable for the officers to believe a gun might be within Council's reach; therefore, it was reasonable for the officers to enter the camper to complete the arrest and ensure their safety.

For the court's opinion: http://cases.justia.com/federal/appellate-courts/ca8/16-1472/16-1472-2017-06-19.pdf?ts=1497886240

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Ninth Circuit

United States v. Orozco, 858 F.3d 1204 (9th Cir. Nev. June 1, 2017)

A state trooper received a tip that a red truck, with a white box trailer and Michigan license plates would be transporting drugs through Nevada on a specific day. Troopers stationed themselves on the side of the roadway along the truck's suspected route, planning to stop it to determine if it was being used to transport drugs. When the troopers saw the red truck, they pulled out behind a different commercial truck, drove around it, and stopped the red truck. After the stop, the troopers spoke with the driver, Orozco, and went through the motions of performing an NAS Level III paperwork inspection.[1] Although the troopers discovered numerous violations of the commercial

[1] Nevada law enforcement officers may make stops of commercial vehicles and conduct limited inspections without reasonable suspicion "to enforce the provisions of state and federal laws and regulations relating to motor carriers, the safety of their vehicles and equipment, and their transportation of hazardous material and other cargo." An NAS Level III inspection includes a stop of the vehicle and entry into the cab for a full view of the driver's papers. It is geared toward preventing and deterring dangerous driving, for example, reviewing the driver's log, which would reveal whether a driver had exceeded the maximum amount of time allowed on the road, among other possible safety violations.

vehicle regulations, they did not issue a citation. Instead, the troopers obtained consent to search from Orozco. Inside the truck, the troopers found a duffel bag containing twenty-six pounds of methamphetamine and six pounds of heroin in the sleeper compartment.

The government charged Orozco with two counts of possession with intent to distribute a controlled substance. Orozco filed a motion to suppress the drugs seized from his truck, arguing that the NAS Level III violated the Fourth Amendment because it was an impermissible pretext for a stop to investigate criminal activity.

The court agreed. The court found that the laws and regulations, or "administrative scheme," that authorizes officers to stop commercial vehicles without reasonable suspicion or probable cause of criminal activity and conduct limited inspections is reasonable because their purpose is to ensure the safe operation of commercial vehicles, not to provide "cover" for a criminal investigation like drug interdiction.

However, in this case, the court held that the evidence clearly established that the only reason for the stop was the troopers' belief that Orozco was possibly transporting illegal drugs in his tractor-trailer. First, the manner in which the stop was conducted strongly suggested that it was entirely pretextual. After the troopers received the tip, they went to a location along the truck's suspected route. When Orozco's truck drove past, the troopers pulled out behind a different commercial truck, drove around it, and then stopped Orozco. The court noted that if the troopers had not received the tip, they would not have been in position to stop the truck. Second, one of the troopers involved in the stop testified that it was "common knowledge that if you suspect criminal activity, that you can use your administrative powers to make a stop." Based on these facts, the court concluded the only purpose of the stop was to investigate criminal activity and that any alleged administrative purpose for the stop was "only a charade to camouflage the real purpose of the stop."[2]

For the court's opinion: http://cases.justia.com/federal/appellate-courts/ca9/15-10385/15-10385-2017-06-01.pdf?ts=1496336536

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United States v. Gorman, 859 F.3d 706 (9th Cir. Nev. June 12, 2017)

A state trooper stopped Gorman for a minor traffic violation. The trooper obtained Gorman's driver's license and registration and requested a routine records check through his dispatcher. In addition, the trooper requested a drug-detection dog, because he suspected that Gorman might be transporting drug money. A short time later, dispatch told the trooper that Gorman had no prior arrests or outstanding warrants, and that a drug-detection dog was not available. The trooper then performed a non-routine records check and asked Gorman a series of questions, unrelated to the traffic violation, which prolonged the duration of the stop. In addition, the trooper asked Gorman for consent to search his vehicle, but Gorman refused. After approximately thirty minutes, the trooper allowed Gorman to leave without issuing him a citation.

After Gorman left, the trooper immediately contacted his dispatcher who provided county deputies with a description of Gorman's vehicle, adding "a canine unit might want to take a second look at the car." Following this exchange, a county deputy contacted the trooper, and the trooper

[2] The court did not determine if the tip established reasonable suspicion for the stop because the government failed to address the issue in its brief to the court.

gave the deputy an account of the stop and explained his suspicions concerning Gorman's vehicle. The deputy, with his drug-detection dog, located Gorman's vehicle and conducted a traffic stop after he saw the vehicle's tires cross onto the fog line three times.

The deputy obtained Gorman's driver's license and registration. While the deputy waited for his dispatcher to complete a routine records check, he walked his drug-detection dog around Gorman's vehicle. After the dog alerted, the deputy obtained a warrant and searched Gorman's vehicle. Inside Gorman's vehicle, the deputy found $167,070 in cash.

No criminal charges were brought against Gorman. Instead, the federal government pursued a civil forfeiture action against Gorman and the seized cash. Gorman filed a motion to suppress the cash, arguing that the deputy seized it in violation of the Fourth Amendment.

The district court agreed, holding that the two traffic stops were "inextricably connected," and that officers unreasonably prolonged Gorman's detention in violation of the Fourth Amendment. As a result, the district court granted Gorman's motion to suppress the seized cash and awarded him over $146,000 in attorneys' fees. The government appealed.

The Ninth Circuit Court of Appeals affirmed the district court. The government conceded that the trooper unreasonably prolonged the duration of Gorman's first stop in violation of the Fourth Amendment. After the trooper's initial records check returned a "clean" license and criminal history report, the trooper performed a non-routine record check and questioned Gorman about matters unrelated to the traffic infraction he committed.

The court then concluded that the information obtained by the trooper during Gorman's unlawful detention tainted the evidence obtained by the deputy during the second stop. Specifically, the information obtained by the trooper during Gorman's unlawful detention caused the deputy to be on the lookout for Gorman's vehicle, which led to the second stop, the dog sniff, and the discovery of the cash. Because the court concluded that the seized currency was inadmissible as "fruit of the poisonous tree," it did not consider whether the second stop, by itself, was unlawful.

For the court's opinion: http://cases.justia.com/federal/appellate-courts/ca9/15-16600/15-16600-2017-06-12.pdf?ts=1497286982

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United States v. Cervantes, 859 F.3d 1175 (9th Cir. Cal. June 19, 2017)

Cervantes was convicted of counterfeiting and drug offenses in California state court. Cervantes received a "divided" or "split" sentence of three years in county jail. The court divided the sentence into two years of imprisonment followed by one year of mandatory supervision. One of the conditions of Cervantes' mandatory supervision required him to submit to warrantless, suspicionless searches of his person and property, including any residence or premises under his control at any time of the day or night by any law enforcement officer. . . with or without a warrant, probable cause or reasonable suspicion.

While serving his term of mandatory supervision, Cervantes and his girlfriend, Farish, were stopped by a police officer in Huntington Beach, California, for jaywalking. During the stop, Cervantes told the officer that he was on "probation" and subject to a search condition. The officer obtained Cervantes' identification and confirmed that he was on mandatory supervision and subject to a search condition. The officer searched Cervantes and found a room key for a local hotel in his pocket. Cervantes told the officer that he and Farish were renting a room at the hotel

and that his personal belongings were in the room. Nothing that occurred during the stop gave the officer reason to believe Cervantes was engaged in criminal activity and he allowed Cervantes and Farish to go, without citing them for jaywalking.

Believing that he had the authority to conduct a warrantless, suspicionless search under the terms of Cervantes' search condition, the officer and two of his colleagues went to Cervantes' hotel room. After the officers obtained entry from a hotel employee, they searched Cervantes' room and its contents, except for any items that appeared to belong to a woman. The officers saw counterfeit currency and the equipment used to make it in plain view. The officers subsequently located Cervantes and arrested him.

The government charged Cervantes with unlawfully possessing counterfeit currency and images of counterfeit currency.

Cervantes filed a motion to suppress the evidence seized from his hotel room, arguing that the warrantless, suspicionless search of the room violated the Fourth Amendment.

The court disagreed. The court recognized that for Fourth Amendment purposes, the Supreme Court has divided offenders subject to search conditions into two categories: those on probation and those on parole. In general, parolees are entitled to less protection under the Fourth Amendment than probationers. However, the court found that mandatory supervision, under California law, is neither probation nor parole, but instead, it fell somewhere in between on the continuum of punishments. The court then concluded that mandatory supervision under California law is more closely related to parole than probation; therefore, the rules applicable to parolees should apply to offenders serving terms of mandatory supervision. The court added that California courts concur with this reasoning.

Against this backdrop, the court held that the search of Cervantes' hotel room was authorized by the search condition of his mandatory supervision. Although the hotel room was not Cervantes' residence, it qualified as "premises" under the warrantless search condition. In addition, the court concluded that the officers established probable cause to believe that Cervantes had control over the room. First, Cervantes told the officers that he and Farish were sharing the room. Second, Cervantes had a key to the room in his pocket. Finally, Cervantes told the officers that his belongings were inside the room.

For the court's opinion: http://cases.justia.com/federal/appellate-courts/ca9/15-50459/15-50459-2017-06-19.pdf?ts=1497891713

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Eleventh Circuit

United States v. Spivey, 2017 U.S. App. LEXIS 11476 (11th Cir. Fla. June 28, 2017)

Chenequa Austin and Eric Spivey had their apartment burglarized. Afterward, they reported the crime to the police and installed a security system. When the burglar broke in the couple's apartment a second time, officers responded to the audible alarm and arrested Caleb Hunt. Hunt told the officers that the apartment was the site of a substantial credit-card fraud operation, and that he had burglarized it twice because it contained so much "high-end" merchandise.

Based on Hunt's information, two officers assigned to a fraud task force went to the apartment on the pretext of following up on the two burglaries, which was a legitimate reason for being there; however, but the officers' main reason was to investigate the suspected fraud.

When Austin saw the officers approaching, she went inside the apartment and told Spivey to hide the credit card reader/writer in the oven, which he did. After the officers told Austin that they were there to follow up on the burglary, she invited them inside the apartment. While in the apartment, one of the officers told Austin that he was a crime-scene technician and pretended to brush for latent fingerprints. Afterward, Spivey showed the officers home-surveillance video of the burglary, which was later used in prosecuting Hunt. During this time, the officers saw evidence of fraud, including a card-embossing machine, stacks of credit cards and gift cards, and large quantities of expensive merchandise such as designer shoes and iPads. Austin and Spivey separately told the officer that the embossing machine had been left in the apartment before they moved in. After the officers arrested Austin on an unrelated warrant and removed her from the apartment, they ended their ruse and told Spivey that they were fraud investigators. Spivey cooperated with the officers who seized among other things, an embossing machine, the credit card reader/writer from the oven, and seventy-five counterfeit cards.

The government charged Austin and Spivey with a variety of criminal offenses.

Austin and Spivey filed a motion to suppress the evidence seized from their apartment, arguing that Austin's consent was not obtained voluntarily because the officers' lied to them about their true reason for being at the apartment.

The Fourth Amendment allows some police deception as long as the suspect's will is not overborne. The Supreme Court has recognized that not all deception prevents a person from making an "essentially free and unconstrained choice." For example, when an undercover officer asks to enter a home to buy drugs, the consent is voluntary despite the officer's misrepresentations about his identity and motivation. The subjective motivation or intent of the officers is irrelevant, as consent is determined from the perspective of the suspect, not what the police intend.

In this case, Austin invited the officers into the apartment and volunteered to show them video footage of the burglary. Although one of the officers misrepresented himself as a crime-scene technician, the officer's exact position within his agency was not material to obtaining Austin's consent to enter the apartment.

In addition, the court noted that Austin and Spivey engaged in intentional, strategic behavior, which strongly suggested voluntariness. The couple reported the burglaries to the police and sought assistance from law enforcement to recover property, which they had stolen. Austin and Spivey voluntarily risked exposure to credit-card fraud prosecution to get this property back. Before allowing the officers into the apartment, they hid the credit card reader/writer in the oven and gave the officers a rehearsed story concerning the embossing machine. The court found that this prior planning established that Austin and Spivey understood that asking for the officers' assistance came with the risk that their own crimes would be discovered.

For the court's opinion: http://cases.justia.com/federal/appellate-courts/ca11/15-15023/15-15023-2017-06-28.pdf?ts=1498660259

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