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

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The Federal Law Enforcement -Informer-

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

Welcome to this installment of *The Federal Law Enforcement Informer (The Informer).* The Legal Training Division of the Federal Law Enforcement Training Centers' Office of Chief Counsel is dedicated to providing law enforcement officers with quality, useful and timely United States Supreme Court and federal Circuit Courts of Appeals reviews, interesting developments in the law, and legal articles written to clarify or highlight various issues. The views expressed in these articles are the opinions of the author and do not necessarily reflect the views of the Federal Law Enforcement Training Centers. *The Informer* is researched and written by members of the Legal Division. All comments, suggestions, or questions regarding *The Informer* can be directed to the Editor at (912) 267-3429 or FLETC-LegalTrainingDivision@dhs.gov. You can join *The Informer* Mailing List; have *The Informer* delivered directly to you via e-mail, and view copies of the current and past editions and articles in *The Quarterly Review* and *The Informer* by visiting http://www.fletc.gov/training/programs/legal-division/the-informer.

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Supreme Court Preview

An annual review of the law enforcement and criminal law cases to be decided by the Court in the October 2013 term.

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Free FLETC Informer Webinar Series Schedule

December 2013

1. **Canines, Cops, and Curtilage – Using Police Dogs After *Florida v. Jardines***

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

   Dates and Times: Tuesday December 17, 2013: 12:30 pm EST Click **HERE** to Login
   or
   Thursday December 19, 2013: 12:30 pm EST Click **HERE** to Login

2. **Fourth Amendment Survey I - Searches and Seizures**

   50-minute webinar presented by John Besselman, FLETC Legal Division

   This is the first 50-minute installment of our four-part series on basic Fourth Amendment concepts. Though I expect to occasionally discuss emerging law and recent Supreme Court decisions, this short course is intended to reacquaint law enforcement officers with basic legal concepts. Each of the four sessions (December 10, 12, 16 and 18, at 2:30 p.m. EST) is designed to stand alone to serve as a refresher on the concepts covered for that session. A secondary purpose for this offering is to allow the student to "test-drive" webcasting as a possible means of obtaining legal training. Any and all feedback would be appreciated. A Certificate of Attendance will be available at the conclusion of each training session.

   Date and Time: Tuesday December 10, 2013: 2:30 pm EST Click **HERE** to Login.

3. **Fourth Amendment Survey II - Executing a Search Warrant:**

   50-minute webinar presented by John Besselman, FLETC Legal Division

   This is the second installment of our review of the basic Fourth Amendment principles that guide effective law enforcement practices. This session will cover the law and rules for obtaining and executing a lawful search warrant. Participants need not have viewed our previous session to learn about this topic.

   Date and Time: Thursday December 12**,** 2013: 2:30 pm EST Click **HERE** to Login

4. **Fourth Amendment Survey III - S.W. Exceptions w/P.C.**

   50-minute webinar presented by John Besselman, FLETC Legal Division

   This is the third installment of our review of the basic Fourth Amendment principles that guide effective law enforcement practices. This session will cover exceptions to the search warrant requirement that require probable cause. Participants need not have viewed any of our previous sessions to learn about

warrantless searches such as plain view, the mobile conveyance exception, hot pursuit, destruction of evidence, and emergency scenes.

Date and Time: Monday December 16**,** 2013: 2:30 pm EST Click **HERE** to Login

5. **Fourth Amendment Survey IV - S.W. Exceptions w/o P.C.**

   50-minute webinar presented by John Besselman, FLETC Legal Division

   This is the fourth installment of our review of the basic Fourth Amendment principles that guide effective law enforcement practices. This final session will cover exceptions to the search warrant requirement that do not require probable cause. Participants need not have viewed any of our previous sessions to learn about warrantless, probable cause-less searches such as frisks, SIA, consent, inventories and inspections.

   Date and Time: Wednesday December 18, 2013: 2:30 pm EST Click **HERE** to Login

6. **The Circuit Split in Using Deadly Force to Control Suicidal People**

   50-minute webinar presented by Tim Miller, FLETC Legal Division.

   When is it objectively reasonable under the Fourth Amendment to use deadly force to a control a suicidal person. Some circuits confine the inquiry to the facts confronting the officer at the time the force is used. Others look at the totality of the circumstances and ask whether the force was avoidable. The type of inquiry matters. In one circuit, the force may be deemed objectively reasonable and in another it would not. This one-hour webinar will discuss the circuit split and make some recommendations as to how an officer can be reasonable in any circuit.

Date and Time: Tuesday December 17, 2013: 1:30 pm EST Click **HERE** to Login.

If there are any specific legal topics that you would like to see offered in future FLETC Informer webinars, please let us know!

Address any inquiries to lgdwebinar@fletc.dhs.gov

Supreme Court
Law Enforcement Cases
October 2013 Term

Fourth Amendment: Consent to Search

Fernandez v. California
Decision Below: **208 Cal.App.4th 100 (Cal. Ct. App. 2012)**

Police officers investigating an assault and robbery saw Fernandez run into an apartment building. Once they were inside the building, officers heard screams coming from one of the apartments. The officers knocked on the door and Roxanne Rojas opened it. When the officers asked Rojas to step outside so they could conduct a sweep of the apartment, Fernandez stepped forward and told the officers not to enter. The officers arrested Fernandez for the assault and robbery and removed him from the scene. The officers obtained consent from Rojas to search the apartment. The officers seized weapons, gang paraphernalia and other evidence. The trial court denied Fernandez's motion to suppress the evidence recovered from the apartment. The California Court of Appeal held Rojas' consent to search the apartment she shared with Fernandez was valid.

In *Georgia v. Randolph*, the United States Supreme Court held police officers may not conduct a warrantless search of a home over the express refusal of consent by a physically present resident, even if another resident consents to the search.

After *Randolph*, in *United States v. Murphy*, the Ninth Circuit Court of Appeals extended *Randolph*, holding if a defendant expressly withholds consent to search, a warrantless search conducted after the defendant has left or been removed from the residence is not valid, even if a co-tenant subsequently consents.

However, the Fourth, Fifth, Seventh, and Eighth Federal Circuit Courts of Appeals, as well as the Colorado and Wisconsin State Supreme Courts have rejected the Ninth Circuit's analysis in *Murphy*. These courts have held even if a defendant expressly refuses consent to search his residence, a co-tenant's consent obtained after the defendant leaves or is lawfully removed will support a warrantless search by police officers.

The issue before the Supreme Court is whether a defendant must be personally present and objecting when police officers ask a co-tenant for consent to conduct a warrantless search or whether a defendant's previously stated objection, while physically present, to a warrantless search is a continuing assertion of his *Fourth Amendment* rights which cannot be overridden by a co-tenant.

The Court heard oral arguments in this case on November 13, 2013.

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18 U.S.C. § 1382. Entering military, naval or Coast Guard property

United States v. Apel
Decision Below: **676 F.3d 1202 (9th Cir. 2012)**

Apel, who was barred from Vandenberg Air Force Base, was convicted of three counts of trespassing on the base in violation of *18 U.S.C. § 1382*. After Apel's conviction, the Ninth Circuit Court of Appeals held that because a stretch of highway running through Vandenberg Air Force Base is subject to an easement granted to the State of California, which later relinquished it to the County of Santa Barbara, the federal government lacked the exclusive right of possession of the area on which Apel's trespasses occurred. Consequently, the court held Apel could not be convicted under *18 U.S.C. § 1382*, even if he was barred from the base.

The issue before the Supreme Court is whether *18 U.S.C. § 1382* may be enforced on a portion of a military installation that is subject to a public roadway easement.

The Court will hear oral arguments in this case on December 4, 2013.

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18 U.S.C. § 922(g)(9). Unlawful Possession of a Firearm by a Person Convicted of a Misdemeanor Crime of Domestic Violence

United States v. Castleman
Decision Below**:** **695 F.3d 582 (6th Cir. 2012)**

In 2001, Castleman pleaded guilty to one count of misdemeanor domestic assault in violation of *Tennessee Code § 39-13-111(b)*.

Several years later, a federal grand jury indicted Castleman on two counts of possession of a firearm after being "convicted . . . of a misdemeanor crime of domestic violence," in violation of *18 U.S.C. § 922(g)(9)*.

The district court dismissed the *§ 922(g)(9)* counts in Castleman's indictment, holding that Castleman's misdemeanor domestic assault conviction did not qualify as a domestic violence crime requiring the "use or attempted use of physical force" as defined in *18 U.S.C. § 921(a)(33)(A)(ii)*. The Sixth Circuit Court of Appeals affirmed the district court and the government appealed.

The issue before the Supreme Court is whether Castleman's Tennessee conviction for misdemeanor domestic assault by intentionally or knowingly causing bodily injury to the mother of his child qualifies as a conviction for a "misdemeanor crime of domestic violence."

The court will hear oral arguments in this case on January 14, 2014.

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Fourth Amendment: Corroboration of an Anonymous Tip

Navarette v. California
Decision Below: **No. A132353, 2012 Cal. App. Unpub. LEXIS 7415 (Cal. Ct. App. 2012)**

A police dispatcher received an anonymous call from a person stating a silver Ford pickup truck had just "run" the caller's vehicle off the roadway. The caller provided the pickup truck's license plate number, approximate location and direction of travel. The dispatcher broadcast the caller's information and a few minutes later two police officers saw a silver Ford pickup truck with the same license plate number, near the location and traveling in the same direction reported by the caller. The officers conducted a traffic stop and as they approached the pickup truck, they smelled the odor of marijuana. The officers searched the pickup truck, found four large bags of marijuana and arrested the driver, Navarette and his brother, who was a passenger.

Navarette moved to suppress the marijuana, arguing the anonymous tip did provide the officers reasonable suspicion to conduct the traffic stop.

The California Court of Appeal disagreed and in an unpublished opinion affirmed the lower court's decision denying Navarette's motion to suppress the marijuana. The court held the officers' prompt corroboration of significant details contained in the tip, including a description of the vehicle, license plate number, location and direction of travel sufficiently established the reliability of the tip to establish reasonable suspicion. In addition, because the pickup truck had allegedly run another vehicle off the road, the court stated the ongoing danger to other motorists justified the officers conducting the traffic stop without direct corroboration of the pickup truck's illegal activity.

The issue before the Supreme Court is whether the *Fourth Amendment* requires an officer who receives an anonymous tip regarding a drunken or reckless driver to corroborate dangerous driving before stopping the vehicle.

The court will hear oral arguments in this case on January 21, 2014.

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18 U.S.C. § 922(a)(6). False Statements Concerning the Identity of the Buyer of a Firearm

Abramski v. United States
Decision Below: **706 F.3d 307 (4th Cir. 2013)**

Abramski agreed to purchase a Glock 19 for his uncle, because as a former police officer, he could obtain a more favorable price from the firearms dealer than his uncle. Abramski completed a Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) form indicating he was the actual buyer of the Glock 19.

Abramski was convicted of making a false statement that was material to the lawfulness of a firearms sale, in violation of *18 U.S.C. § 922(a)(6)* and making a false statement with respect to information required to be kept in the records of a licensed firearms dealer in violation of *18 U.S.C. § 924(a)(1)(A)*.

Abramski argued he could only be prosecuted under §§ *922(a)(6)* and *924(a)(1)(A)* if it was unlawful for his uncle to possess a firearm. Abramski claimed because his uncle could lawfully

possess the firearm, the "actual buyer" question on the ATF form was not material to the lawfulness of the sale.

The Fourth Circuit Court of Appeals disagreed. The court held the identity of the actual buyer of a firearm is always material to the lawfulness of a firearms acquisition under § *922(a)(6)*.

While the circuit courts of appeal all agree that a buyer's intent to resell a gun to someone who cannot lawfully purchase one is a fact "material to the lawfulness of the sale," there is a circuit split about whether the same is true when the ultimate recipient can lawfully purchase a firearm.

The issues before the Supreme Court are:

1. Whether a gun buyer's intent to sell a firearm to another lawful buyer in the future is a fact "material to the lawfulness of the sale" of the firearm under *18 U.S.C. § 922(a)(6)*, and

2. Whether a gun buyer's intent to sell a firearm to another lawful buyer in the future is a piece of information "required . . . to be kept" by a federally licensed firearms dealer under § *924(a)(1)(A)*.

The court will hear oral arguments in this case on January 14, 2014.

*****

Qualified Immunity

Plumhoff v. Rickard

Decision Below: **509 Fed. Appx. 388 (6th Cir. 2012)**

The families of Donald Rickard and Kelly Allen sued several police officers for excessive use of force after the officers shot and killed Rickard and Allen after a vehicle pursuit in July 2004. At the time of the shooting, the vehicle in which Rickard and Allen were riding was essentially stopped and surrounded by police officers and cars, although some effort to elude capture was still being made, when the officers fired fifteen shots at close range into the vehicle. The District Court and the Sixth Circuit Court of Appeals denied the officers qualified immunity and the officers appealed.

The issues before the Supreme Court are:

1. Whether the Sixth Circuit improperly denied the officers qualified immunity by analyzing whether the force used in 2004 was distinguishable from factually similar force ruled permissible by the Supreme Court three years later in *Scott v. Harris*.

2. Whether the Sixth Circuit improperly denied the officers qualified immunity by finding their use of force was not reasonable as a matter of law when: the suspect led police officers on a high-speed pursuit that began in Arkansas and ended in Tennessee; the suspect weaved through traffic on an interstate at a high rate of speed and made contact with police vehicles twice; and the suspect used his vehicle in a final attempt to escape after he was surrounded by police officers, nearly hitting at least one police officer in the process.

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CASE SUMMARIES

United States Supreme Court

Stanton v. Sims, 2013 U.S. LEXIS 7773 (U.S. Nov. 4, 2013)

Officer Stanton and his partner responded to a radio call regarding an "unknown disturbance" involving a baseball bat. When the officers arrived, they did not see any disturbance, but only three men walking in the street. Two men turned into an apartment complex and the third man, Nicholas Patrick, walked quickly toward Drendolyn Sims' home. Patrick was not carrying a baseball bat and there was no indication he had been involved in the disturbance the officers were investigating. Stanton got out of the patrol car and ordered Patrick to stop. Patrick ignored Stanton, opened the gate to Sims' front yard and entered the front yard with the gate shutting behind him. Believing Patrick was disobeying his lawful order, Stanton kicked opened the gate to Sims' front yard to go after Patrick. Stanton did not realize Sims was standing behind the gate, and when the gate flew open, it hit Sims in the head. Sims was knocked unconscious and suffered injuries to her head and shoulder.

Sims sued Stanton claiming her *Fourth Amendment* rights had been violated by Stanton's warrantless entry into her front yard.

The Ninth Circuit Court of Appeals held Stanton was not entitled to qualified immunity. The court ruled Stanton's warrantless entry into Sims' yard was unconstitutional. The court also found the law to be clearly established that Stanton's pursuit of Patrick did not justify his warrantless entry, given that Patrick was suspected of only a misdemeanor.

Stanton appealed and the Supreme Court reversed the Ninth Circuit. While not deciding whether Stanton's entry into Sims' yard in pursuit of Patrick was constitutional, the Supreme Court held it is not clearly established whether an officer with probable cause to arrest a suspect for a misdemeanor may enter a home without a warrant while in hot pursuit of that suspect.

Click **HERE** for the court's opinion.

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Circuit Courts of Appeals

3rd Circuit

United States v. Katzin, 2013 U.S. App. LEXIS 21377 (3d Cir. Pa. Oct. 22, 2013)

Police officers suspected Katzin was involved in a series of pharmacy burglaries. In December 2010, after consulting with the United States Attorney's office, FBI agents placed a magnetic GPS tracker on the exterior of Katzin's van. A few days later, the police tracked Katzin's van to a neighboring town where it remained parked near a pharmacy for over two hours. After the van began to move again, officers discovered the pharmacy had been burglarized. The police conducted a traffic stop on Katzin's van and discovered items stolen from the pharmacy. The

police arrested Katzin and his two brothers who were passengers in the van. The Katzins moved to suppress the evidence discovered in the van.

In January 2012, the United States Supreme Court, in *U.S. v. Jones*, held that attaching a GPS device to a suspect's automobile constituted a *Fourth Amendment* search. After *Jones*, however, the question remained whether the warrantless use of GPS devices would be reasonable under the *Fourth Amendment*. The court held the police must obtain a warrant prior to attaching a GPS device on a vehicle. As a result, because the police did not obtain a warrant, their GPS search of Katzin's van was unreasonable and violated the *Fourth Amendment*. The court further held the evidence discovered in Katzin's van was properly suppressed under the exclusionary rule.

The court discussed several exceptions to the warrant requirement and explained why they were not applicable to situations involving the installation of a GPS device on a suspect's automobile. For example, the automobile exception allows officers to search a vehicle when probable cause exists to believe the vehicle contains evidence. However, the court found attaching and monitoring a GPS tracker is different because the GPS tracker creates a continuous police presence designed to discover evidence that may come into existence and be placed inside the vehicle in the future.

The court further held the good faith exception to the exclusionary rule did not apply. The government argued the officers acted in good faith because in December 2010 the officers relied on guidance from two Supreme Court cases, *U.S. v. Knotts* and *U.S. v. Karo*, which held the use of electronic tracking devices did not violate the *Fourth Amendment*. The court disagreed, holding the facts from the cases relied on by the government could be easily distinguished from the facts of this case. First, the court noted neither case involved a physical trespass onto the target vehicle. Second, in both cases the police placed a beeper inside a container, which was then loaded into the target vehicle. Finally, the court stated there are significant technological differences between the use of beepers and GPS trackers.

The court also ruled the good faith exception did not apply because there was a split between the federal circuit courts of appeals on the validity of the use of warrantless GPS trackers.

Finally, the court stated the police acted in the face of unsettled law at a time when courts were becoming more open to the argument that warrantless GPS surveillance violated the *Fourth Amendment*. Consequently, the court concluded suppressing the evidence in this case would provide the police an incentive to err on the side of constitutional behavior and help prevent future *Fourth Amendment* violations.

The court further held Katzin's brothers had standing to challenge the admissibility of the evidence discovered in the van.

Click **HERE** for the court's opinion.

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4th Circuit

United States v. George, 2013 U.S. App. LEXIS 20902 (4th Cir. N.C. Oct. 16, 2013)

At 3:30 a.m., a police officer conducted a traffic stop in a high-crime area after he saw a car aggressively following another vehicle, as if chasing it, and then running a red light. As the officer approached the car, he saw four men inside, including George, who was sitting in the back seat behind the driver. George was holding up his identification card with his left hand, while turning his head away from the officer. George's right hand was on the seat next to his leg and was concealed from view by his thigh. The officer told George to place both of his hand on the headrest of the driver's seat in front of him, but George only placed his left hand on the headrest. The officer told George to place both hands on the headrest four or five times before George complied, and George still would not make eye contact with the officer. The officer ordered George out of the car and conducted a *Terry* frisk. The officer felt an object in George's right front pocket that he recognized as a handgun. The officer handcuffed George and another officer removed the handgun from George's pocket. George was charged with possession of a firearm by a convicted felon.

George argued the officer did not have reasonable suspicion to conduct the *Terry* frisk.

The court disagreed. The court found the officer's frisk of George was supported by objective and particularized facts to support reasonable suspicion George was armed and dangerous. The court noted the stop occurred late at night, in a high crime area and was based on the officer seeing a car aggressively chasing the vehicle in front of it. Once the officer encountered George, George acted nervously, did not make eye contact and repeatedly refused to place his right hand on the driver's headrest in front of him. In addition, there were four individuals in the car and the driver had given conflicting stories as to why he had been driving aggressively.

Click **HERE** for the court's opinion.

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United States v. Johnson, 2013 U.S. App. LEXIS 22032 (4th Cir. Md. Oct. 29, 2013)

Police officers pulled over Johnson's vehicle after they saw it weaving in and out of traffic and displaying a bent and illegible temporary registration tag in violation of Maryland law. The stop occurred in a neighborhood known for its high incidence of crime. The officers testified they often stopped motorists in this area for minor offenses in the hope that these encounters would lead them to information about more serious crimes. During the stop, Johnson spit out two small bags of marijuana he was hiding in his mouth. The officers arrested, handcuffed and placed Johnson in the back of a patrol car. The officers did not advise Johnson of his *Miranda* rights at that time and did not cite him for the registration tag violation.

During the drive to the police station, Johnson said to the officers, "I can help you out, I don't want to go back to jail, I've got some information for you." One of the officers replied, "what do you mean?" Johnson told the officer, "I can get you a gun." The officer then gave Johnson a verbal *Miranda* warning and the other officer told Johnson not to say any more until they reached the police station.

At the police station, the officer read Johnson a second *Miranda* warning. Johnson signed a written waiver of his rights and told the officers the gun was in his home. Johnson signed a

Consent-to-Search Form and the officers recovered the gun from Johnson's bedroom closet. The government charged Johnson with being a felon in possession of a firearm.

Johnson argued the officers did not have probable cause to stop his vehicle and that the officer's question, "what do you mean?" constituted an unwarned custodial interrogation in violation of *Miranda*.

The court recognized Maryland law requires a vehicle's registration tags be clearly legible. Consequently, regardless of the officers' true motives, and whether they pursued the traffic violation, it was reasonable for the officers to stop Johnson's vehicle when they saw it displayed an illegible registration tag.

The court further held the officer's question to Johnson, "what do you mean?" after Johnson voluntarily said, "I can help you out, I don't want to go back to jail, I've got information for you" did not constitute a custodial interrogation.

Miranda rules apply to police conduct that constitutes an interrogation or the functional equivalent of an interrogation. The functional equivalent of an interrogation is any police conduct the police know is likely to elicit an incriminating response from a suspect. In this case, the court found the officer's question, "what do you mean?" would not have seemed reasonably likely to elicit an incriminating response from Johnson. The officer's question would have reasonably been expected to elicit information incriminating someone else. The court was at a loss to explain why Johnson would have tried to get himself out of a misdemeanor drug charge by implicating himself in a felony gun charge.

Click **HERE** for the court's opinion.

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5th Circuit

United States v. Powell, 732 F.3d 361 (5th Cir. Tex. 2013)

A confidential informant (CI) told a police officer that Powell and a woman, later identified as Akin, had purchased crack cocaine in Lubbock, Texas, which the couple planned to sell in Midland, Texas. The CI described the make, model, and color of Powell's car and gave the officer a partial license plate number. The CI had worked with police in the past and had provided credible information. However, the CI failed to tell the officer he had cooked the crack cocaine Powell and Akin had just purchased.

Officers located Powell's vehicle on a road leading into Midland, Texas, and conducted a traffic stop. During the stop, the officers received consent to search the vehicle. Because of inclement weather and the amount of traffic on the highway, the officers moved Powell's vehicle to the police station. At the station, an officer pulled a button off the dashboard and saw drugs and currency concealed behind the dash, which were seized. During the search, the officers also found a cell phone between the door and the driver's seat. Akin denied ownership, claiming the phone belonged to Powell; however, Powell also denied ownership of the phone. Later in the evening, the officers examined the phone and identified several text messages between Powell and the CI concerning the purchase of crack cocaine. At trial, the court admitted the drugs, currency, cell phone, text messages and other evidence discovered from the search of Powell's vehicle.

Powell and Akin argued the CI's tip was not sufficiently reliable to provide the officers with reasonable suspicion they were engaged in a drug crime because the CI was a drug dealer and he concealed this fact from the officers. Additionally, Akin argued the evidence obtained from the cell phone should have been suppressed; therefore not admissible against her.

While the CI's role of the sale of the crack cocaine to Powell and Akin damaged his credibility, the court held the totality of the circumstances rendered the tip reliable; therefore, establishing reasonable suspicion Powell and Akin were involved in a drug crime. The CI's tip was based on first-hand knowledge of events that had just taken place. The CI identified Powell and a female companion. The CI also gave the officer a very specific description of Powell's vehicle and travel plans. Officers were able to corroborate this information when they saw a car matching the CI's description on a road leading into Midland. These factors were sufficient to overcome the flaws in the CI's personal credibility and reliability.

For the same reasons the CI's tip was sufficient to establish reasonable suspicion, the court held it was sufficient to provide probable cause the vehicle contained crack cocaine. Because the officers had probable cause Powell's vehicle contained crack cocaine, they could lawfully move the vehicle to a safer location to conduct their search. In addition, the existence of probable cause allowed the officers to search any part of the vehicle where crack cocaine might be concealed. Consequently, the officers were allowed to remove a button from the dashboard to see if the crack cocaine was concealed behind the dash.

Finally, the court held Akin did not have standing to object to the admission of the evidence from the cell phone because she denied ownership of it.

Click **HERE** for the court's opinion.

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7th Circuit

United States v. $304,980.00 in United States Currency, 732 F.3d 812 (7th Cir. Ill. 2013)

Police officers conducted a traffic stop on a tractor-trailer driven by Davis. After Davis denied he was transporting any drugs or large sums of money, he orally consented to a search of his truck and unlocked the driver's side door for one of the officers. While the officer began searching, another officer explained a Consent-to-Search Form that had been given to Davis. Davis became agitated and he asked the officer what they were looking for in his truck. The officer told Davis they were looking for drugs or large sums of money. After Davis refused to sign the form, the officer told his colleague to stop searching Davis' truck. When the search officer asked Davis if they still had his consent to search, Davis wrote something on the consent form and gave it back to the officer. The officer glanced at the consent form, saw what appeared to be a signature on the bottom, and put the form in his pocket. The search officer continued searching and found a piece of plywood underneath the mattress in the sleeping compartment. The officer used a screwdriver to pry up the edge of the plywood and discovered a hidden compartment containing $304,000 in United States currency. The officers took Davis into custody and seized the truck and the cash. A few days later, the officers examined the consent form and discovered that rather than signing his name on the signature line, Davis had written the words "UNDER PROTEST," in an elaborate script along with his initials.

Davis was not criminally charged, however the government kept the truck and the cash and filed a civil forfeiture action.

Davis moved to suppress the currency, arguing the search of his truck violated the *Fourth Amendment* because it was conducted without consent or probable cause.

The court held Davis consented to the search of his truck when he gave the officer oral consent and then unlocked the driver's side door. Once inside the truck, the officer lawfully searched the hidden compartment beneath the mattress because it was capable of concealing drugs or money.

The court further held Davis never withdrew or limited the scope of his consent. First, Davis wrote something on the consent form and gave the form back to the officer without saying anything. The court found this act would have led an objective officer to believe Davis had signed the form and affirmed his consent. Second, the officer looked at the form, and seeing two words written on the signature line, believed Davis had signed it. The court examined the form and found the officer's belief to be reasonable. Finally, Davis' conduct after he signed the form was not consistent with a person who had revoked his consent, as Davis engaged the officer in casual conversation and volunteered that he had been in trouble with the law in the past.

Click **HERE** for the court's opinion.

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Williams v. City of Chicago, 2013 U.S. App. LEXIS 21888 (7th Cir. Ill. Oct. 24, 2013)

Williams arrived home from work at 2:30 a.m. and saw his neighbor's house on fire. Williams went onto the porch and banged on the front door to rouse anyone who might be inside the house. Two police officers responded and saw Williams on the front porch. Williams told the officers he was a neighbor and was concerned there might be people in the house. The officers kicked open the locked front door and entered the house. The officers did not find anyone inside, but they saw a neatly stacked pile of wood, which was on fire, and burning sheets of newspaper stuffed into exposed insulation in the walls.

The officers arrested Williams on suspicion of arson. After the prosecutor declined to file the arson charge, the officers charged Williams with criminal trespass, which was later dismissed.

Williams sued the officers and the City of Chicago for false arrest and malicious prosecution.

The court held the officers were not entitled to qualified immunity on Williams' false arrest claim. When the officers arrived on scene, Williams was on the porch of a burning house, banging on the front door. The officers did not see anything that would indicate Williams had set the fire. Williams' mere presence on the porch, without more, was not enough to provide probable cause to arrest him for arson or criminal trespass. In addition, the court held it was not reasonable for the officers to even mistakenly believe Williams had set the fire.

The court further held the Williams offered sufficient evidence from which a jury could find the officers and the city are liable for an unconstitutional false arrest and malicious prosecution under state law.

Click **HERE** for the court's opinion.

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United States v. Lyons, 2013 U.S. App. LEXIS 21982 (7th Cir. Ill. Oct. 28, 2013)

Lyons was a passenger in a car driven by White. Police officers saw White and attempted to conduct a traffic stop because they knew White's driver's license was suspended. Additionally, the officers knew White had been involved in a vehicle chase previously where a gun had been recovered from his car. When the officers activated their emergency lights, White accelerated, drove two blocks and ran a red light before he finally pulled over. One of the officers ordered White out of the car and another officer frisked him. A third officer ordered Lyons out of the car. Lyons appeared nervous, his hands were shaking and he avoided eye contact with the officer. When the officer told Lyons he was going to frisk him, Lyons said, "I have a gun on me." The officer recovered a loaded firearm from Lyons' waistband. Lyons was arrested and charged with possession of a firearm by a convicted felon.

Lyons argued the officers did not have reasonable suspicion to believe he was armed and dangerous; therefore, the firearm seized during the *Terry* frisk violated the *Fourth Amendment*.

The court disagreed. First, Lyons appeared nervous and his hands were shaking when the officer approached him. Second, Lyons was in the car with White, whom the officers knew had been arrested for firearms offenses in the past. Finally, the officers could have reasonably believed, based on White's behavior and their experience, that White accelerated his car in order to buy time to transfer a firearm to Lyons before pulling over.

Click **HERE** for the court's opinion.

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8th Circuit

United States v. Guevara, 731 F.3d 824 (8th Cir. Neb. 2013)

A police officer stopped Guevara for "impeding traffic" because Guevara was driving seven miles-an-hour under the speed limit, in the left hand lane of the interstate highway, forcing other traffic to pass her in the right lane. Guevara told the officer she was going to visit her aunt and had borrowed the car from a person whom she did not know very well. After Guevara gave the officer consent to search her car, the officer had Guevara sit in his car while he conducted the search. Guevara's sister, who was a passenger in the car, separately told a back-up officer the women were going to visit their mother. After searching the passenger compartment and underside of the car, the officers began to search the engine compartment. The officers noticed the engine was very clean for such an old vehicle and saw the bolts on the intake manifold had an unusual amount of wear. The officers also saw fingerprints and smudge marks, which suggested someone, had touched the area. The officers removed the bolt securing the air manifold intake cover and discovered a hidden compartment. The officers drilled a hole into the compartment and saw cardboard and plastic. The officers detained Guevara and had her car towed to a garage. At the garage, methamphetamine was discovered in the hidden compartment. Guevara was convicted of possession with intent to distribute methamphetamine.

Guevara argued that even though she initially consented to the search of the car, her consent was rendered invalid because she was deprived of an opportunity to withdraw or limit her consent by being placed in the officer's car during the search.

After holding the officer had probable cause to stop Guevara, the court explained there were no decisions to date which held that officers have a duty to ensure an individual has an opportunity to withdraw or limit consent. Even if the officers had such a duty, the court held Guevara failed to make an effort to withdraw or limit her consent in a timely manner. Although Guevara claimed she knocked on the window of the officer's car to get his attention so she could withdraw or limit her consent, the squad car's video indicated the officers found the hidden compartment five or six minutes before Guevara claims to have knocked on the window.

Guevara also argued the officers did not have probable cause to conduct a destructive search of her car's engine compartment.

Again, the court disagreed. First, the women gave the officers inconsistent stories concerning their travel plans. Second, the engine compartment was unusually clean and bolts on the intake manifold looked like they had been taken on and off. Third, the car had been loaned to Guevara by a third party. Finally, the hidden compartment in the intake manifold was, in the officer's experience, a typical location in which to smuggle drugs in a vehicle of that type. Based on these facts, once the officers discovered the hidden compartment, they had probable cause to believe drugs were concealed in intake manifold and were entitled to search the vehicle in a destructive manner.

Click **HERE** for the court's opinion.

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United States v. Barraza-Maldonado, 732 F.3d 865 (8th Cir. Minn. 2013)

Federal agents in Phoenix, Arizona, installed a GPS tracking device on a car while it was in a public parking lot because the agents believed the car would be transporting drugs to Minneapolis, Minnesota. Several weeks later, Barraza borrowed the car from its registered owner to drive it from Phoenix to Minneapolis. When the car entered Minnesota, federal agents notified local police. After a police officer saw Barraza commit two traffic violations, he conducted a stop. Officers eventually seized a large quantity of cocaine in the spare tire compartment and arrested Barraza. The day after Barraza's arrest, the United States Supreme Court decided *U.S. v. Jones*.

Barraza argued the warrantless installation and use of the GPS tracking device to monitor the car's movements constituted a search that violated the *Fourth Amendment*; therefore, the cocaine seized from the car should have been suppressed.

The court disagreed, holding the good faith exception to the exclusionary rule applied because binding Ninth Circuit precedent at the time allowed the warrantless installation and use of GPS tracking devices. Specifically, the court held when the federal agents installed the GPS tracking device in Phoenix, it was lawful under Ninth Circuit case law to do so without a warrant as long as the car was located in a public place. The court further held Ninth Circuit case law at the time authorized the agents to use a GPS tracking device to monitor where the car travelled on public roads.

Click **HERE** for the court's opinion.

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United States v. Scott, 732 F.3d 910 (8th Cir. Mo. 2013)

Federal agents suspected Scott robbed a bank and then used his car as the get-away vehicle. Agents went to Scott's apartment complex, where they saw Scott's girlfriend, Michon Starnes, drive up and get out of Scott's car. Starnes told the agents the car belonged to Scott, but she had the only set of keys and was the primary driver because Scott's license was suspended. Starnes gave the agents written consent to search the car. The agents found a dark mask inside the car containing Scott's DNA, which was later admitted against him at his trial for bank robbery.

Scott argued mask should have been suppressed because Starnes did not have authority to consent to the search of his car.

The court disagreed, holding the trial court properly ruled that Starnes had common authority over car. The court noted Starnes was the car's only licensed driver, she possessed the only set of keys to the car, and Scott had allowed Starnes to drive the car home from work the day the agents encountered her. Consequently, Starnes had authority to consent to the search Scott's car.

The court further held Starnes' consent was obtained voluntarily. Starnes testified when the agents asked her for consent to search she said, "yes" and then unlocked the car for the agents.

Click **HERE** for the court's opinion.

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9th Circuit

United States v. Tosti, 2013 U.S. App. LEXIS 20008 (9th Cir. Cal. Oct. 1, 2013)

Tosti took his computer to a CompUSA store for service. After a computer technician found child pornography on Tosti's computer, he called the police. When an officer arrived, there were numerous photographs appearing on Tosti's computer monitor in a very small thumbnail format. Even though the officer could tell the thumbnail photographs depicted child pornography, the officer directed the computer technician open the photographs in slideshow format. In slideshow format, the photographs appeared larger and were viewable one by one. A second officer arrived later and scrolled through the photographs in thumbnail format. The officers seized Tosti's computer and eventually arrested Tosti.

A few days later, Tosti's wife gave a police officer a computer, several external hard drives and numerous DVDs that appeared to contain child pornography. Ms. Tosti signed a Consent-to-Search Form, which indicated the items came from a home office, to which she had access and that both she and her husband used the computer and storage devices.

Tosti was convicted of possession of child pornography.

On appeal, Tosti argued both officers violated the *Fourth Amendment* by exceeding the scope of the computer technician's private search. Tosti claimed the initial violation occurred when the first officer directed the computer technician to open the photographs in slideshow format and the second violation occurred when the other officer scrolled through the thumbnail photographs.

The court disagreed. First, the court held neither officer searched Tosti's photographs for *Fourth Amendment* purposes because the computer technician's prior viewing of the photographs destroyed Tosti's reasonable expectation of privacy in them. Second, even if the first officer

viewed the enlarged versions of the thumbnails in slideshow format, the officer did not exceed the scope of the computer technician's prior search because the thumbnail photographs clearly depicted child pornography. The officer learned nothing new by enlarging the photographs and viewing them in slideshow format. Finally, the court held Tosti was not entitled to suppression on the basis that the second officer scrolled through the thumbnails because the officer did not view any more photographs than the computer technician had viewed.

Tosti also argued his wife had neither actual nor apparent authority to consent to the searches of the items she turned over to the police.

Again, the court disagreed. The Tostis were married and resided in their shared residence for over twenty years. Ms. Tosti told the officer both she and her husband used the computer and storage devices located in their home. There was no indication at the time of the search the officer knew Ms. Tosti might not have the authority to consent. Even if Ms. Tosti's representations were not true, there was no objective indication her access to the home office was limited. In addition, the computer and electronic media were neither password protected nor encrypted. As a result, the officer reasonably believed Ms. Tosti had authority to consent.

Click **HERE** for the court's opinion.

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10th Circuit

United States v. Ponce, 2013 U.S. App. LEXIS 22081 (10th Cir. Okla. Oct. 30, 2013)

Police officers received information from a confidential informant that Ponce was selling methamphetamine from the duplex where he lived. While conducting surveillance, a police officer walked a drug dog along the garage door of Ponce's duplex. The drug dog gave a positive alert for the presence of narcotics. In late June 2011, the officers obtained a search warrant for Ponce's duplex and discovered methamphetamine, firearms and cash. The government charged Ponce with several drug and firearm offenses.

Ponce argued, in part, the sniff by the drug dog outside the garage door of his duplex was an illegal warrantless search in violation of the *Fourth Amendment*.

The court commented the United States Supreme Court decision in *Florida v. Jardines*, decided in 2013, might call into question some of its precedent in this area. However, without deciding whether the use of the drug dog violated the *Fourth Amendment*, the court held the officers acted in good-faith reliance on the warrant. The court held, in June 2011, the officer could have reasonably believed the drug dog's alert outside Ponce's garage door was not a search for *Fourth Amendment* purposes. In addition, the court found it was reasonable for the officer to believe the drug dog alert and the information from the confidential informant established probable cause to search Ponce's duplex.

Click **HERE** for the court's opinion.

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11th Circuit

United States v. Williams, 731 F.3d 1222 (11th Cir. Fla. 2013)

Two uniformed police officers went to a rooming house to conduct a knock and talk interview after receiving complaints of drug sales occurring there. Williams answered the door and after a brief conversation, gave one of the officers consent to search him. When the officer reached for Williams' pocket to search him, Williams pushed the officer, causing the officer to stumble backwards. Williams ran back into the rooming house with the officers in pursuit. Once inside, Williams fought with the officers. During the fight, a handgun fell out of Williams' waistband. After the officers handcuffed Williams, the officers conducted a search incident to arrest and discovered illegal drugs in Williams' pockets. Williams was convicted of firearm and drug offenses.

Williams argued the firearm and drugs should have been suppressed because he did not consent to being searched by the officer.

First, the court of appeals held the district court's finding that the officer's version of events was credible and Williams' version was not credible was not in error. Second, the officers lawfully approached the front door of the rooming house to conduct a knock and talk interview. Third, the officer obtained Williams' consent before attempting to search Williams. Fourth, after Williams pushed the officer, the officers had probable cause to arrest Williams for battery of a law enforcement officer. Because the officers had probable cause to arrest Williams, they were entitled to pursue him into the rooming house to effect the arrest. Finally, the discovery of evidence in Williams' pocket resulted from a valid search incident to arrest.

Click **HERE** for the court's opinion.

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