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

April 2014

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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The Case Digests are comprised of all Informer case briefs arranged by subject matter and Supreme Court / Circuit. Instead of reviewing individual issues of The Informer to find a particular case or area of the law, check the case digests.

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Free FLETC Informer Webinar Series Schedule April / May 2014

(See the top of page 8 for instructions on how to participate in a webinar)

New Calendar View

1. **Curtilage in a Post-*Jones* Era**

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

   This webinar explores the *Fourth Amendment* concept of curtilage from its inception in *U.S. v Dunn*, to its application after *U.S. v. Jones*.

   Date and Time:

   Tuesday April 22, 2014: 9:30 am EDT

   To join this meeting: **https://share.dhs.gov/bab0401**

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

   1-hour webinar presented by John Besselman, FLETC Legal Division

   This is the first 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 is designed to stand alone to serve as a refresher on the concepts covered for that session.

   Date and Time:

   Monday May 19, 2014: 2:30 pm EDT

   To join this meeting: **https://share.dhs.gov/fourthasurvey01/**

3. **Fourth Amendment Survey II – Executing a Search Warrant**

   1-hour 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:

   Tuesday May 20, 2014: 2:30 pm EDT

   To join this meeting: **https://share.dhs.gov/fourthasurvey02/**

4. Fourth Amendment Survey III – Search Warrant Exceptions with Probable Cause

1-hour 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:

Wednesday May 21, 2014: 2:30 pm EDT

To join this meeting: **https://share.dhs.gov/fourthasurvey03/**

5. Fourth Amendment Survey IV – Search Warrant Exceptions without Probable Cause

1-hour 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:

Thursday May 22, 2014: 2:30 pm EDT

To join this meeting: **https://share.dhs.gov/fourthasurvey04/**

6. Government Workplace Searches

1-hour webinar presented by John Besselman, FLETC Legal Division.

This webinar examines how public employees might create a Reasonable Expectation of Privacy in their workplaces (computers, cars, offices, etc.), and, if so, how the government can intrude on that REP. This course is recommended for government supervisors, the IG community, and those whose duties include internal investigations.

Date and Time:

Wednesday April 30, 2014: 10:00 am EDT

To join this meeting: **https://share.dhs.gov/govtworksearch/**

7. Law Enforcement Legal Refresher Training (2-hours)

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

This is a two-hour block of instruction focuses on *Fourth* and *Fifth Amendment* law and is designed to meet the training requirements for state and federal law enforcement officers who have mandated two-hour legal refresher training requirements.

Dates and Times:

Thursday April 24, 2014: 9:30am EDT

Tuesday May 27, 2014: 1:00pm EDT

Thursday May 29, 2014: 3:30pm EDT

To join this meeting on any of the dates listed above: **https://share.dhs.gov/lgd0312**

8. *Miranda* 101

1-hour webinar presented by John Besselman, FLETC Legal Division

This course will identify and define the basic parameters of the *Miranda v. Arizona* decision. In this limited overview, the presenter(s) will discuss Police + Custody + Interrogation components that make up the basis of the law in this arena. A question and answer session will follow the presentation.

Date and Time:

Tuesday May 6, 2014: 2:30pm EDT

To join this meeting: **https://share.dhs.gov/miranda101/**

9. The Rules of Search Warrant Execution

1-hour webinar presented by John Besselman, FLETC Legal Division

This course looks at the rules that govern the proper execution of a search warrant, including the who, how, what, when and where of service. Items discussed will include who can issue and serve a search warrant, the use of force to execute the warrant, and how to properly and lawfully close out the warrant process.

Date and Time:

Monday April 21, 2014: 9:30am EDT

To join this meeting: **https://share.dhs.gov/swexecution/**

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FLETC Informer Webinar Schedule - April 2014						
Sun	**Monday**	**Tuesday**	**Wednesday**	**Thursday**	**Friday**	**Sat**
20	**21** **Rules of Search Warrant Execution** **9:30 a.m. EDT** **1-Hour** **https://share.dhs.gov/swexecution/**	**22** **Curtilage – Post *Jones*** **9:30 a.m. EDT** **2-Hours** **https://share.dhs.gov/bab0401**	**23**	**24** **Law Enforcement Legal Refresher** **9:30 a.m. EDT** **2-Hours** **https://share.dhs.gov/lgd0312**	**25**	**26**
27	**28**	**29**	**30** **Govt. Workplace Searches** **10:00 a.m. EDT** **1-Hour** **https://share.dhs.gov/govtworksearch/**			

FLETC Informer Webinar Schedule - May 2014						
Sun	**Monday**	**Tuesday**	**Wednesday**	**Thursday**	**Friday**	**Sat**
				1	**2**	**3**
4	**5**	**6** ***Miranda* 101** **2:30 p.m. EDT** **1-Hour** **https://share.dhs.gov/miranda101/**	**7**	**8**	**9**	**10**
11	**12**	**13**	**14**	**15**	**16**	**17**
18	**19** **Fourth Amendment Survey I** **1-Hour** **https://share.dhs.gov/fourthasurvey01/**	**20** **Fourth Amendment Survey II** **1-Hour** **https://share.dhs.gov/fourthasurvey02/**	**21** **Fourth Amendment Survey III** **1-Hour** **https://share.dhs.gov/fourthasurvey03/**	**22** **Fourth Amendment Survey IV** **1-Hour** **https://share.dhs.gov/fourthasurvey04/**	**23**	**24**
25	**26** **MEMORIAL DAY**	**27** **Law Enforcement Legal Refresher** **1:00 p.m. EDT** **2-Hours** **https://share.dhs.gov/lgd0312**	**28**	**29** **Law Enforcement Legal Refresher** **3:30 p.m. EDT** **2-Hours** **https://share.dhs.gov/lgd0312**	**30**	**31**

To participate in a FLETC Informer Webinar:

1. Click on the appropriate link to access the Homeland Security Information Network (HSIN).
2. If you have a HSIN account, enter with your login and password information.
3. If you do not have a HSIN account click on the button next to, "Enter as a Guest."
4. Enter your name and click the "Enter" button.
5. You will now be in the meeting room and will be able to participate in the webinar.
6. Even though meeting rooms may be accessed before a webinar, there may be times when a meeting room is closed while an instructor is setting up the room.
7. Meeting rooms will be open and fully accessible at least one-hour before a scheduled webinar.
8. Training certificates will be provided at the conclusion of each webinar.

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

CASE SUMMARIES

United States Supreme Court

United States v. Castleman, 2014 U.S. LEXIS 2220 (U.S. Mar. 26, 2014)

In 2001, Castleman pleaded guilty to having "intentionally or knowingly caused bodily injury to" the mother of his child, in violation of *Tenn. Code Ann. § 39-13-111(b).* In 2008, 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 *Title 18 U.S.C. § 922(g)(9).* The district court granted Castleman's motion to dismiss the *§ 922(g)(9)* counts of the indictment. The Sixth Circuit Court of Appeals affirmed the district court and held Castleman's conviction in 2001 did not qualify as a "misdemeanor crime of domestic violence" because Castleman could have been convicted for "causing a slight, nonserious physical injury with conduct that cannot be described as violent."

The Supreme Court disagreed, holding Castleman's conviction in 2001 qualified as a "misdemeanor crime of domestic violence." First, under *§ 922(g)(9)* a misdemeanor crime of domestic violence is defined as "an offense that . . . has, as an element, the use or attempted use of physical force." Second, the court recognized the common law element of force in the crime of battery "was satisfied by even the slightest offensive touching." Third, because perpetrators of domestic violence are "routinely prosecuted under generally applicable assault or battery laws," it made sense for Congress to have classified as a "misdemeanor crime of domestic violence" the type of conduct that supports a common-law battery conviction. Fourth, while the words "violent" or "violence" standing alone "connote a substantial degree of force," that is not true of "domestic violence." "Domestic violence" is not a type of "violence" but rather a term of art that covers acts that one might not characterize as "violent" in a non-domestic context. Consequently, the court held the requirement of "physical force" is satisfied, for the purposes of *§ 922(g)(9),* by the degree of force that supports a common-law battery conviction.

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

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Circuit Courts of Appeals

1st Circuit

United States v. Jacques, 2014 U.S. App. LEXIS 4486 (1st Cir. Mass. Mar. 11, 2014)

Police officers detained Jacques and brought him to the police station for questioning about his involvement in a church arson. The officers *Mirandized* Jacques and Jacques waived his rights. During the interview, the officers told Jacques an honest confession might lead to favorable treatment by the prosecutor and judge, while a failure to cooperate was likely to result in a maximum sentence. The officers also commented on the failing health of Jacques' father, suggesting that continued resistance might deprive Jacques of crucial years with his family. Finally, the officers exaggerated the

strength of the evidence against Jacques and misrepresented the involvement of high-profile federal agents in the case. At 1:45 a.m., approximately six and one half hours later, Jacques admitted his involvement in the church arson. In addition, Jacques signed a waiver of his right to prompt presentment to the United States Magistrate Judge.

Jacques moved to suppress his incriminating statements, arguing his confession was obtained involuntarily because the officers' coercive tactics had overcome his will. Jacques also argued the waiver of his right of presentment was not valid because the officers obtained it more than six-hours after his detention.

First, the court recognized in the First Circuit that confessions are not rendered involuntary when police officers promise to bring the defendant's cooperation to the prosecutor's attention or by suggesting that the defendant's cooperation may lead to favorable treatment. Next, the court held there was no evidence suggesting the officers' threats of a harsher sentence if Jacques refused to cooperate had any meaningful impact on Jacques' conduct during the interrogation. The officers repeated their threats numerous times over the six-hour interrogation without any identifiable effect on Jacques. In addition, when Jacques told the officers why he was confessing, he did not mention any of the officers' alleged threats. While the officers' threats were relevant to a determination of voluntariness, in this case Jacques failed to establish his will was overcome by the officer's threats.

Second, the court held the officers' comments to Jacques about his father's health did not coerce Jacques into confessing to the arson. The officers' comments occurred several hours before Jacques confessed and Jacques demeanor did not change significantly after the comments.

Third, the court held the officers' exaggeration of their case against Jacques, minimizing the gravity of Jacques' offense, and emphasizing the negative media attention Jacques' trial would generate did not constitute coercion. While extreme forms of deception by the police might be sufficient to render a suspect's confession involuntary, the interrogation tactics employed by the officers in this case did not amount to coercion in violation of Jacques' *Fifth Amendment* rights.

Finally, the court held the officers did not willfully violate Jacques' right to prompt presentment. Under *Federal Rule of Criminal Procedure 5(a)*, a defendant who has been arrested must be brought "without unnecessary delay before a magistrate judge." To protect this right, the *McNabb-Mallory* rule established by the Supreme Court holds that confessions made during a period of detention that violate the prompt presentment rule are inadmissible in federal court. In response to *McNabb-Mallory*, Congress enacted *18 U.S.C. § 3501*. Under *§ 3501*, a voluntary confession will not be suppressed because of delay in presentment to the magistrate judge as long as the confession was obtained within six-hours of arrest. Any voluntary confession obtained after six-hours may still be admissible if the judge rules the delay in presentment was reasonable.

In this case, the officer gave Jacques the written waiver-of-prompt-presentment-form one-minute past the six-hour window and Jacques signed the form four-minutes later. Such a brief delay in acquiring Jacques' waiver of his right to presentment was not "unreasonable or unnecessary" so as to require suppression of Jacques' confession.

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

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Macdonald v. Town of Eastham, 2014 U.S. App. LEXIS 4618 (1st Cir. Mass. Mar. 12, 2014)

Macdonald's neighbor called the police after she saw the door to Macdonald's house standing wide open. Two police officers interviewed the neighbor, approached Macdonald's house, and announced their presence. After receiving no response, the officers entered Macdonald's house through the open door. While searching the house, the officers discovered a marijuana growing operation. The officers arrested Macdonald when he arrived home thirty minutes later.

A state court judge suppressed the evidence discovered in Macdonald's home and the criminal charges against Macdonald were dismissed. Macdonald subsequently sued the town and the police officers, claiming the warrantless entry and search of his house violated the *Fourth Amendment*.

The court disagreed, holding the officers were entitled to qualified immunity. The officers responded to a call from a concerned neighbor, saw the door to Macdonald's house wide open, announced their presence without receiving a reply and then entered the house to check on the welfare of anyone who might be inside. Once inside, the officers conducted their search in a routine manner. Under these circumstances, the court concluded the law was not clearly established to put a reasonable officer on notice that entry into Macdonald's home might violate the *Fourth Amendment*.

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

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7th Circuit

Huff v. Reichert, 2014 U.S. App. LEXIS 4446 (7th Cir. Ill. Mar. 10, 2014)

Officer Reichert conducted a traffic stop on Huff and Seaton, claiming their car had crossed over the white divider line on the interstate highway without signaling. After sixteen minutes, Reichert issued Huff a written warning. However, Reichert continued to detain Huff and Seaton for an additional thirty-four minutes. During this time, Huff conducted a *Terry* frisk of both men, a dog sniff of the car's exterior and a search of the car's interior. Reichert found no contraband on Huff, Seaton or in their car. Huff and Seaton sued Reichert claiming a variety of *Fourth Amendment* violations concerning the traffic stop and the *Terry* frisks.

The court affirmed the district court's denial of qualified immunity for Officer Reichert on all of Huff and Seaton's claims. First, the court held there were genuine issues of material fact as to whether Reichert actually witnessed Huff commit a traffic violation. Consequently, it would be up to a jury, after hearing both sides, to determine if Reichert conducted a lawful traffic stop or if Reichert only conducted the traffic stop because Huff's car had out-of-state license plates on a portion of highway where Reichert claimed a great deal of drug trafficking occurred.

Second, the court held Reichert's justification for the initial stop ended when he handed Huff the written warning. Reichert's subsequent thirty-four minute investigation was not reasonably related to the reason for the initial stop. In addition, Reichert did not develop reasonable suspicion during the initial stop to support the prolonged seizure of Huff, Seaton, or their car.

Even though Reichert claimed Huff and Seaton were free to leave after he issued the written warning, the court disagreed. Reichert told Huff and Seaton they could leave, but not in their car. Reichert told Huff and Seaton if they walked away, Reichert would arrest them for unlawfully walking on the highway. Reichert told Huff and Seaton they could abandon their car and get in the back of a police car and they would be driven to a gas station. If Huff and Seaton chose that option, Reichert said

their car would be towed and impounded because it was illegal to abandon a car on the side of the highway. The court concluded under these circumstances, no reasonable person would feel free to leave.

Finally, the court held Reichert did not have reasonable suspicion to believe Huff or Seaton was armed and dangerous; therefore, Reichert was not justified in conducting a *Terry* frisk on either man. The court noted if there were a compelling need to frisk Huff or Seaton, one would have expected Reichert would not have waited more than twenty-seven minutes into the traffic stop to so.

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

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White v. Stanley, 2014 U.S. App. LEXIS 4467 (7th Cir. Ill. Mar. 11, 2014)

Police officers went to Hille's house, without a warrant, to arrest her for possession of a stolen vehicle registration sticker. When the officers knocked on the door, Hille's boyfriend, White, answered the door. The officers told White they wanted to come inside to speak with Hille. White refused to allow the officers to enter the house without a warrant. When White tried to close the door, an officer blocked the door with her foot. White turned around and ran back into the house. The officers entered the house behind White, tackled him and subdued him after a brief struggle. The officers claimed they entered the house because they smelled burning marijuana coming from inside the house while they spoke with White at the front door. The officers found Hille inside the house smoking marijuana and arrested her. The officers also arrested White for resisting or obstructing a peace officer. The charges against White were later dismissed. White sued the officers for false arrest.

First, the court held the smell of burning marijuana, by itself, does not constitute exigent circumstances that justify police officers to enter a home without a warrant. However, the court further held, when the officers entered Hille's house, it was not clearly established that the smell of burning marijuana, by itself, did not justify the officers' warrantless entry. As a result, the officers were entitled to qualified immunity. The court cautioned that officers, who might be faced with a situation like this in the future, should not expect to receive qualified immunity if they make a warrantless entry into a home solely based on the smell of burning marijuana.

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

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8th Circuit

United States v. Vore, 2014 U.S. App. LEXIS 3989 (8th Cir. Iowa Mar. 4, 2014)

Police officers were conducting surveillance of a residence where they suspected stolen trailers were being stored. The officers saw Vore and another man attach a trailer to the back of a pick-up truck and drive off the property. A police officer conducted a traffic stop after he saw that the trailer did not have a visible license plate. During the stop, the officer ran the trailer's vehicle identification number (VIN) through a police database and learned the trailer had been reported stolen. The officer also found a loose license plate in the trailer that was registered to another trailer that also had been reported stolen. The officers arrested Vore and transported the pick-up truck and trailer to the police station. At the police station, the officers searched the pick-up truck and found methamphetamine,

cash and drug paraphernalia. A federal grand jury indicted Vore for possession to distribute methamphetamine.

Vore filed a motion to suppress the evidence found in the pick-up truck.

The court held the officers had probable cause to conduct a warrantless search of Vore's truck under the automobile exception to the *Fourth Amendment's* warrant requirement. The officers saw Vore leave a residence where they suspected stolen trailers were located. Vore's truck was towing a trailer that did not have a visible license plate and that had been reported stolen. Inside the trailer, the officers found a license plate for another trailer that had been reported stolen. Based on the truck's nexus to the residence, the stolen trailer the truck was pulling and the stolen license plate in the trailer, there was a fair probability the truck contained evidence related to the ownership status and theft of the trailers. As a result, the officers did not need a warrant to search Vore's truck.

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

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Fagnan v. City of Lino Lakes, 2014 U.S. App. LEXIS 4372 (8th Cir. Minn. Mar. 10, 2014)

Fagnan's mother called 911 to report a possible gas leak at her house. Police officers accompanied the firefighters who were directed to a laundry room in the basement. While the firefighters searched for the leak, two police officers saw what they believed to be two sawed-off shotguns in a gun cabinet next to the laundry room door. Fagnan told the officers the shotguns were legal. All emergency personnel, including the police officers, left the house after the firefighters found no gas leak.

The police officers eventually obtained a warrant to search Fagnan's house for sawed-off shotguns. After the officers seized the two sawed-off shotguns from the gun cabinet, they arrested Fagnan. Fagnan pleaded not guilty and was acquitted at trial. Fagnan later sued the police officers, claiming the officers violated the *Fourth Amendment* when they initially entered the basement with the firefighters. Specifically, Fagnan claimed the officers exceeded the scope of their consent to be in Fagnan's house when they stood near the laundry room where they saw the sawed-off shotguns in the gun cabinet.

The court disagreed and held the officers were entitled to qualified immunity. The officers stayed near the door to the laundry room while the firefighters searched the room for the gas leak. A reasonable person would understand the officers had permission to remain near the location of the problem that brought them to the house in the first place. Accordingly, the officers were lawfully in the basement when they saw the sawed-off shotguns in plain view in the gun cabinet.

The court further held that upon seeing the shotguns, the incriminating nature of the firearms was immediately apparent to the officers. The requirement that the guns "incriminating nature" be "immediately apparent," does not mean an officer must know the items are contraband. Rather, the officer only needs only "probable cause" to connect an object to criminal activity. Here, the officers noticed the shotguns appeared to be unlawful because they had standard magazine tubes that hold four rounds and that the barrels were cut off just above the magazine tubes. In addition, the officers were familiar with shotguns with lawful barrel lengths.

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

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United States v. Noonan, 2014 U.S. App. LEXIS 5228 (8th Cir. Iowa Mar. 20, 2014)

At 2:30 a.m., shortly after the local bars closed, a police officer saw a car operated by Noonan that appeared to be travelling fifteen miles per hour under the speed limit. When the officer turned around to follow the car, Noonan slowed down and allowed the officer to pass him. Noonan then made a left turn down a street occupied by businesses including a mini-storage facility. The officer was aware of a rash of burglaries in the area involving storage facilities. As the officer continued down the street, he saw Noonan make a U-turn and reenter the road upon which they had originally been traveling. When the officer turned around to catch up with Noonan, he saw Noonan make another left hand turn in what the officer believed was an effort to evade the officer. The officer conducted a traffic stop and arrested Noonan after discovering Noonan had an active arrest warrant for manufacturing methamphetamine. During the search incident to arrest, the officer found a methamphetamine pipe in Noonan's pocket. In the back of Noonan's car, the officer found a black backpack. Because the officer knew Noonan to be a "meth cook," he asked Noonan if the backpack contained a "one-pot." A one pot is a method for manufacturing methamphetamine and the officer knew the chemicals used to manufacture methamphetamine were volatile. In addition, the officer knew the Governor's office had recently issued a "One Pot Meth Alert," which included a warning that "ordinary products are dangerous when used to make meth." Noonan denied there was a meth lab in the backpack but admitted there were materials in the backpack that could be used to produce methamphetamine.

The government indicted Noonan for possession of methamphetamine precursors based on the items discovered in the backpack.

Noonan filed a motion to suppress the items seized from the backpack and his post-arrest statements. Noonan argued the officer did not have reasonable suspicion to support the traffic stop and that the officer was required to give Noonan *Miranda* warnings before questioning him about the backpack.

The court disagreed. Because the local bars had recently closed, the officer was concerned the car's unusually slow speed meant the driver, Noonan, was impaired. In addition, Noonan's evasive driving and the officer's knowledge of storage facility burglaries in the area provided the officer reasonable suspicion to conduct the traffic stop.

The court further held Noonan's post-arrest statements about the contents of the backpack were admissible under the public safety exception to *Miranda*. In this case, it was reasonable for the officer to believe that dangerous items related to the manufacture of methamphetamine might be in the car and to ask Noonan questions without first providing Noonan *Miranda* rights. First, the officer was aware Noonan was a "meth cook," and that methamphetamine labs can be extremely volatile. Second, the officer's question about the presence of a "one-pot" was specifically focused on the threat an active methamphetamine lab could present to public safety.

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

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United States v. Douglas, 2014 U.S. App. LEXIS 4473 (8th Cir. Minn. Mar. 11, 2014)

Two different individuals called 911 and reported hearing gunshots from a neighboring property that had been vacant since the residence burned down several years earlier. Police officers responded to the heavily wooded lot where the officers saw a bonfire in a clearing near where the house once stood. The officers encountered Douglas and several other individuals. Douglas told the officers the property belonged to his aunt and uncle, who had given him permission to use it. When the officers

asked Douglas about the reported gunshots, Douglas denied having a gun and demanded the officers leave the property. While performing a protective sweep around the fire, officers saw an empty box of ammunition, several recently fired shell casings, and two teenage females hiding behind a vehicle. The women said Douglas had been firing a shotgun just before the officers arrived, but stated they did not know where the shotgun was located. One of the officers searched the thick brush at the edge of the woods and saw a rusted-out refrigerator lying on the ground, approximately twenty to twenty-five yards from the fire. The officer saw a shiny black plastic bag, partially covered by a board, inside one of the refrigerator's compartments. The officer moved the board, touched the bag and felt what he believed to be the stock of a gun. The officer eventually removed the bag from the refrigerator and took a sawed-off shotgun out of the bag. Douglas denied that he owned or ever possessed the bag or the shotgun. The officers later discovered the shotgun was lawfully registered to the stepfather of one of the other men at the scene. A federal grand jury indicted Douglas for being a felon in possession of a firearm.

Douglas argued the officers violated the *Fourth Amendment* by searching for and then seizing the shotgun.

The court disagreed, holding Douglas had no reasonable expectation of privacy in the plastic bag that was visible to anyone standing near the refrigerator, which was located in an "open field." Even if someone had an expectation of privacy in the refrigerator, there was nothing to establish Douglas had any connection to the refrigerator as it lay on his aunt and uncle's property. Next, the court held Douglas did not establish he had any ownership or possessory interest in the bag in which the shotgun was found. To the contrary, Douglas consistently denied that the bag or the shotgun belonged to him. Because of these denials, the court ruled Douglas was precluded from claiming that the bag was searched and its contents seized in violation of the *Fourth Amendment*.

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

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Bechman v. Magill, 2014 U.S. App. LEXIS 4474 (8th Cir. Iowa Mar. 11, 2014)

While conducting a computer check, Officer Magill learned of a "possible" outstanding arrest warrant for Bechman. The warrant stemmed from Bechman's failure to appear in court after having received a citation for failing to carry proof of automobile insurance. Magill and another male police officer went to Bechman's house and told Bechman of the existence of a "possible" warrant for her arrest. Bechman told the officers the matter had been resolved and the warrant had been recalled. When Magill contacted his dispatcher to confirm the validity of the warrant, the dispatcher told Magill Bechman's warrant would be confirmed with the Clerk of Court the next morning. Even though Magill did not have any reason to arrest Bechman other than the unverified "possible" warrant, Magill arrested Bechman. Before the officers arrived, Bechman had been breastfeeding her infant and she asked the officers if she could use the bathroom before being taken to jail. The officers refused to allow Bechman to use the bathroom without the door open and one of the two male police officers watching. In addition, the officers would not allow Bechman to exchange her breast milk soaked shirt for a dry one or to put on a bra without one of them watching. After Bechman declined, the officers handcuffed Bechman and took her to the jail. At the jail, Bechman was strip searched and given a body cavity search. Bechman was released the next morning after it was discovered the warrant for her arrest had been recalled by the court six months earlier.

Bechman sued Magill and the other officer for a variety of federal and state law claims, arguing the officers unlawfully seized her without probable cause in violation of the *Fourth Amendment*.

The officers conceded no valid warrant existed at the time they arrested Bechman; however, the officers claimed it was reasonable for them to believe the warrant for Bechman's arrest was valid.

The court disagreed. In each case cited to support their position, the police officers were mistakenly informed that the arrest warrant for the subject was outstanding. Here, all the officers confirmed was the possibility of an outstanding warrant for Bechman's arrest. When the officers attempted to confirm the validity of the warrant, they were told the warrant would be confirmed the next day. The officers never confirmed the existence of an arrest warrant for Bechman. As a result, the court agreed with the district court, which determined that no reasonable police officer could actually believe Bechman's warrantless arrest was lawful, given the information known to the officers and the circumstances surrounding her arrest.

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

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United States v. Glover, 2014 U.S. App. LEXIS 5389 (8th Cir. Mo. Mar. 24, 2014)

Police officers received an anonymous 911 call that Glover, who was a wanted felon, was located at a particular residence. The caller refused to give her name, but gave the officers her callback number. The officers verified the information provided by the caller to include the fact Glover had several outstanding warrants for his arrest. Officers went to the residence indicated by the caller, which was inside a gated community. The officers obtained the gate-code from the caller and saw a vehicle that matched the description of a vehicle linked to Glover. The officers knocked on the front door but no one answered. The officers called back the anonymous caller who told the officers Glover was still inside the residence and planning to flee. The officers looked through a living room window and saw Glover inside the residence. The officers then broke open the front door and entered the home. The officers arrested Glover and seized firearms, drugs and cash. The government indicted Glover for drug and firearm offenses.

Glover filed a motion to suppress the evidence seized inside the home during his arrest.

Police officers with an arrest warrant may lawfully enter the dwelling where the suspect lives when the officers have reason to believe the suspect is inside. Whether Glover actually resided in the residence was not material because when the officers entered the residence, they reasonably believed Glover resided in the home and that he was present at the time. The 911 caller, while choosing to remain anonymous, provided consistently accurate and detailed information concerning Glover and the gate code to the property. Once outside the residence, the officers saw a vehicle matching a vehicle connected to Glover. Consequently, the court held all of the facts available to the officers demonstrated the officers' reasonable belief that Glover resided at the home and was present inside. Once inside, the officers conducted a plain view seizure of the incriminating evidence.

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

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9th Circuit

United States v. IMM, 2014 U.S. App. LEXIS 5892 (9th Cir. Ariz. Mar. 31, 2014)

IMM, a twelve-year-old boy, was suspected of sexually assaulting his six-year-old cousin. A police officer drove to IMM's home and transported him and his mother to the police station for an interview. The officer did not provide IMM *Miranda* warnings, but instead provided IMM's mother a Parental Consent-to-Interview form and had her sign it. IMM's mother agreed to wait in the lobby while the officer interviewed IMM. At the time of the interview, the officer knew IMM had been in special education classes, had emotional problems, and could only read at a second-grade level. During the fifty-five minute interview, IMM made incriminating statements to the officer.

Before trial, IMM filed a motion to suppress his incriminating statements because the officer did not provide IMM *Miranda* warnings before questioning him. The district court denied the motion, holding IMM was not in custody for *Miranda* purposes when he made the statements.

The court of appeals reversed. The court held IMM was in custody for *Miranda* purposes because a reasonable twelve-year-old child in IMM's position would not have felt he was free to terminate the interrogation and leave the police station. As a result, the court should have suppressed IMM's incriminating statements.

First, while IMM's mother agreed to a voluntary meeting with the officer, there was no evidence IMM ever agreed to an interview or understood the interview to be voluntary. All IMM knew was an armed police officer arrived at his house and drove him and his mother 30-40 minutes to a police station where IMM remained in a small room for nearly an hour of questioning. The court concluded it was doubtful a juvenile in IMM's position would have seen the circumstances of his arrival at the police station as the result of a free and voluntary choice to be questioned.

Second, even though the officer did not raise his voice, he repeatedly confronted IMM with fabricated evidence of his guilt and engaged in elaborate deceptions. The officer fed IMM facts that fit the officer's predetermined account of what must have happened, accused IMM of dishonesty whenever IMM disagreed with the officer's false representations, and forced IMM to choose between adopting the officer's false account of events and his own.

Third, the officer interrogated IMM alone, behind a closed door that appeared to be locked, in a small room in a police station located 30-40 minutes away from his home.

Fourth, IMM spend 30-40 minutes in a police car and then nearly one hour being interrogated. Under these circumstances, IMM as a juvenile was more likely overwhelmed and intimidated than an adult would be by such prolonged direct questioning by an adult police officer.

Finally, even though IMM was neither handcuffed nor told he was under arrest, the officer's questions were hostile and accusatory.

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

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10th Circuit

United States v. Mosley, 2014 U.S. App. LEXIS 3901 (10th Cir. Kan. Mar. 3, 2014)

Police officer received an anonymous tip that two black males were handling a gun while sitting in a black Ford Focus while parked in a Denny's parking lot. Officers responded and saw only one black Ford Focus in the parking lot with two black males inside. The officers approached the car with weapons drawn and ordered the occupants to raise their hands. The driver immediately complied. The passenger, Mosley, did not. Instead, Mosley made movements with his arm that the officers believed were consistent with either trying to hide or retrieve a weapon. After ignoring repeated commands to put his hands up, Mosley eventually complied. After Mosley raised his hands, an officer opened the passenger's door and ordered Mosley out. Mosley did not immediately comply or respond, so the officer pulled Mosley from the car and handcuffed him. Another officer searched under the passenger seat and found a handgun. The government indicted Mosley for being a felon in possession of a firearm.

Mosley argued he was seized for *Fourth Amendment* purposes when the officers pointed their weapons at him. Mosley claimed this seizure was not supported by reasonable suspicion because the officers were responding to an anonymous tip; therefore, the gun discovered under the passenger's seat should have been suppressed.

The court disagreed. When an officer does not apply physical force to restrain a suspect, a *Fourth Amendment* seizure occurs only if the officer shows his authority and the suspect submits to the assertion of that authority. Here, the officers clearly showed their authority by raising their weapons and shouting for the occupants of the car to put their hands up. However, Mosley did not immediately comply with the officer's commands. Instead, Mosley began making furtive movements consistent with either hiding or retrieving a gun, which was directly contrary to the officer's commands. As a result, Mosley was not seized until he raised his hands.

The court then held by the time Mosley raised his hands, the officers had established reasonable suspicion to support a *Terry* stop. In addition to Mosley's furtive movements, the confrontation occurred at 3:00 a.m., at a location where the officers had previously responded to gun-related crimes in the past. Based on the totality of the circumstances, it was reasonable for the officers to believe Mosley was engaged in criminal activity.

Mosley next argued, even if the officers had reasonable suspicion to justify a *Terry* stop, the officers' use of force turned the *Terry* stop into a de facto arrest without probable cause.

Again, the court disagreed. Police officers may use a reasonable amount of force during a *Terry* stop to ensure their safety, but in many cases, the use of a firearm to effect a *Terry* stop may turn the stop into an arrest. However, under the circumstances, it was reasonable for the officers to point their firearms at Mosley to effect the *Terry* stop. Consequently, the officers' use of force did not transform the *Terry* stop into a de facto arrest without probable cause.

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

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United States v. Fonseca, 2014 U.S. App. LEXIS 4382 (10th Cir. Kan. Mar. 10, 2014)

A police officer was conducting surveillance in an industrial park because of a recent rash of automobile burglaries that had occurred at several of the businesses in the area. Around 2:45 a.m., the officer saw Fonseca walking through a parking lot carrying a dark bag. The officer approached Fonseca and asked to speak with him. Fonseca walked away from the officer, placed the bag on the ground, then turned around and walked back toward the officer. The officer asked Fonseca for identification, but Fonseca told the officer he did not have any. A few minutes later, Fonseca's girlfriend, White, drove up with another woman, Kaylin, and began speaking to Fonseca. The officer asked White to return to her car while the officer talked to Fonseca. On the way back to her car, White picked up the bag Fonseca had placed on the ground. After a few minutes, Fonseca gave the officer his name and date of birth. When the officer noticed the bag Fonseca had been carrying was not on the ground, he asked White if she had moved it. White told the officer she had placed the bag in the car, claiming the bag belonged to Kaylin. When the officer asked Fonseca why he was carrying Kaylin's bag, Fonseca replied, "I don't know." The officer then called dispatch to verify the name and birthdate provided by Fonseca. Dispatch confirmed Fonseca's identify and indicated Fonseca had an outstanding warrant for his arrest. After the officer confirmed the validity of the warrant, he arrested Fonseca. Following Fonseca's arrest, the officer walked over to White's car and saw a handgun sticking out of bag Fonseca had been carrying. The officer searched the bag and discovered eight stolen handguns.

The government indicted Fonseca for possession of stolen firearms. After he was convicted, Fonseca appealed the denial of his motion to suppress the eight stolen firearms, claiming the officer exceeded the scope of the *Terry* stop. Fonseca argued it was not reasonable for the officer to detain him after he initially answered the officer's questions and had told the officer his name and date of birth, approximately twelve minutes into the stop.

The court disagreed, holding it was reasonable for the officer to detain Fonseca for the additional ten minutes that passed after he finished questioning Fonseca but before the officer learned of Fonseca's current warrant. During this time, it was reasonable for the officer to locate the bag he had seen Fonseca carrying when the officer first approached him. The officer saw Fonseca walking alone in a high-crime industrial area in the middle of the night. After the officer asked Fonseca to speak with him, Fonseca continued to walk away from the officer and then placed the bag on the ground, in what appeared to be an effort to distance himself from the bag, before he returned to speak with the officer. Finally, when the bag disappeared from the ground where Fonseca had placed it, the officer reasonably decided to investigate where the bag had gone and what it might contain. In addition, the court concluded it was reasonable for the officer to ask Fonseca why he was carrying the Kaylin's bag as he walked alone in that particular location at night.

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

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District of Columbia Circuit

United States v. Peyton, 2014 U.S. App. LEXIS 5296 (D.C. Cir. Mar. 21, 2014)

Peyton lived with his great-great-grandmother, Hicks, in a small one-bedroom apartment. Hicks used the bedroom while Peyton kept his bed and personal property in the living room. After the police received a tip that Peyton was using the apartment to deal drugs, four officers went to the apartment. The officers knew Peyton was not home and they hoped Hicks would consent to a search of the apartment. Hicks signed a consent-to-search form that stated Hicks was freely agreeing to allow the officers to search the entire apartment. When the officers came near Peyton's bed, Hicks told the officers that part of the living room was where Peyton kept his personal property. After one of the officers saw a closed shoebox next to Peyton's bed, he opened it and discovered marijuana, crack cocaine and cash. Based on the evidence found in the shoebox, the government indicted Peyton.

Peyton filed a motion to suppress, arguing Hicks did not have authority to consent to a search of the shoebox. The trial court disagreed, holding Hicks' consent to search covered the entire apartment, to include the shoebox.

The court of appeals agreed with Peyton. During the search of the living room, Hicks told the officers that Peyton kept his personal property in the area around the bed where the officers found the shoebox. The court concluded Hicks' statement put the officers on notice there was an area of the living room that was not hers, and it was not reasonable for the officers to believe that Hicks shared use of the closed shoebox. As a result, Hicks did not have apparent authority to consent to a search of the shoebox, and the evidence discovered in it should have been suppressed.

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

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