
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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Free FLETC Informer Webinar Series Schedule May / June 2014

(See the bottom of page 4 for instructions on how to participate in a webinar)

1. HIPAA and the Law Enforcement Officer

1-hour webinar presented by Charlie Kels of the Office of the General Counsel - Office of Health Affairs

This webinar will provide a general overview of HIPAA legislation, including a look at the definitions under Privacy Rule, who and what is covered under this rule, and provides examples of specific exemptions and the impact on law enforcement operations. Mr. Kels will be available for a Q&A session at the conclusion of the webinar.

Date and Time:

Wednesday June 4, 2014: 1:30pm EDT

To join this meeting: <https://share.dhs.gov/hipaa/>

2. *Kalkines* and *Garrity* Overview

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

John Besselman will look at these two important cases and how they affect the government's ability to obtain statements from its employees that may be suspected of criminal activity.

Date and Time:

Tuesday June 17, 2014, 2014: 2:30 pm EDT

To join this meeting: <https://share.dhs.gov/garrity/>

3. 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:

Tuesday May 27, 2014: 1:00pm EDT

Thursday May 29, 2014: 3:30pm EDT

Monday June 30, 2014 1:00 pm EDT

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

4. Law of Video Surveillance

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

This course will review statutory and case law concerning video surveillance.

Date and Time:

Friday June 20, 2014: 1:30pm EDT

To join this meeting: <https://share.dhs.gov/lawofvideosurveillance/>

5. *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:

Thursday June 12, 2014: 9:30am EDT

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

6. Understanding the Administrative / Inspection Search

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

This unique government authority and its limitations can be misunderstood. This webinar will explain how, why and when an agency has the ability to conduct an administrative inspection. All are welcome to attend. Recommended for those agencies that possess an inspection power.

Date and Time:

Thursday June 19, 2014: 10:30 am EDT

To join this meeting: <https://share.dhs.gov/inspections/>

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1. Click on the appropriate link above 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

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CASE SUMMARIES

United States Supreme Court

Navarette v. California, 2014 U.S. LEXIS 2930 (U.S. Apr. 22, 2014)

A police dispatcher received an anonymous call from a woman stating a silver Ford pickup truck had just run the woman's vehicle off the roadway. The woman provided the pickup truck's license plate number, approximate location and direction of travel. The dispatcher broadcast the woman's information and a few minutes later 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 woman. The officer conducted a traffic stop, and as he and a back-up officer approached the pickup truck, the officers 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 911 call did not provide the officers reasonable suspicion to conduct the traffic stop.

The California Court of Appeal disagreed and affirmed the lower court's decision denying Navarette's motion to suppress the marijuana. Navarette appealed. The United States Supreme Court held the traffic stop did not violate the *Fourth Amendment* because, under the totality of the circumstances, the officers had reasonable suspicion Navarette was driving while intoxicated.

The court held the 911 call was sufficiently reliable to credit the woman's claim that Navarette's truck had run her vehicle off the road. First, the woman described the truck, provided its license plate information and gave the truck's location to the 911 dispatcher. Second, the police officer located the truck approximately 19 miles away from the scene of the incident, approximately 18 minutes after the 911 call. Third, the woman's use of the 911 system was a factor to take into account when determining the reliability of the information she provided. The 911 system had features that allowed for identifying and tracing callers, which would allow a reasonable officer to believe that a person might think twice before calling in a false report. Consequently, the woman's detailed, firsthand description of Navarette's truck and dangerous driving along with the timeline of events suggested the woman called 911 shortly after she was run off the road, which entitled her tip to be considered reliable by the police officer.

Next, the court recognized a reliable tip will justify an investigative stop only if the tip creates a reasonable suspicion that "criminal activity may be afoot." In this case, the court held the woman's report of being run off the roadway created reasonable suspicion of an ongoing crime such as drunk driving. The court stated that running another vehicle off the road suggests lane-positioning problems, decreased vigilance, impaired judgment, or some combination of recognized drunk-driving cues. Because the 911 call established reasonable suspicion to stop Navarette, the officer did not need to follow Navarette to personally observe suspicious driving before conducting the traffic stop.

Click [HERE](#) for the court's opinion.

Circuit Courts of Appeals

1st Circuit

United States v. Almeida, 2014 U.S. App. LEXIS 6280 (1st Cir. Me. Apr. 4, 2014)

A police officer conducted a traffic stop on a pick-up truck registered to Maynard Martin. During the stop, the officer obtained identification information from the driver, Almeida, and his passenger. Almeida identified himself as John Martin and presented a temporary driver's license, without a photograph, with the name John Martin on it. After issuing a warning, the officer let Almeida and his passenger leave. A few minutes later, the officer ran a computer check on John Martin and saw Martin's photograph did not match the driver of the vehicle he had just pulled over. In addition, the officer discovered the passenger had also given a false name and identification. The officer pursued the pick-up truck again, planning to arrest the driver and passenger for presenting false identifications. When the officer pulled the truck over, he discovered Almeida was now in the passenger seat, and the previous passenger was driving. The officer arrested both men.

A short time later, a drug dog alerted to the presence of drugs in the truck. Officers searched the truck and found a bag of marijuana and counterfeit United States currency. In a subsequent inventory search of the truck, officers found evidence related to the counterfeit currency. The officers also searched Almeida's wallet and found genuine United States currency containing serial numbers that matched the serial numbers on some of the counterfeit currency recovered from the truck. The government indicted Almeida for possession of counterfeit currency.

Almeida argued the evidence obtained from both searches of the truck and the search of his wallet violated the *Fourth Amendment*,

The court disagreed holding Almeida did not have a reasonable expectation of privacy in the truck. Even though Almeida was driving the truck when first stopped, the court found Almeida had shown no pattern of repeated use or control over the truck that would allow the court to conclude his possession of the truck was anything more than "informal and temporary." As a result, Almeida could not challenge any of the evidence recovered from the truck in either of the searches conducted by the police officers.

Without deciding whether the officers lawfully searched Almeida's wallet when the officers arrested him, the court held the seizure of the currency from Almeida's wallet was valid under the inevitable discovery doctrine. First, the officer arrested Almeida for possession of false identification. Even if the officers had not searched Almeida's wallet, Almeida's wallet would have been searched at the jail during the booking process. The search at the jail would have inevitably resulted in the seizure of the cash, because it was the jail's policy to remove an arrestee's property during the booking process.

Click [HERE](#) for the court's opinion.

United States v. Oquendo-Rivas, 2014 U.S. App. LEXIS 7352 (1st Cir. P.R. Apr. 18, 2014)

Local police officers arrested Oquendo for his involvement in a shooting at a bar and recovered a firearm with an obliterated serial number they believed might be connected to the shooting. At the police station, an officer gave Oquendo a *Miranda* waiver form. After reviewing the form, Oquendo indicated he did not wish to make a statement. The officer did not ask Oquendo any questions and left the room. Approximately twenty minutes later, an agent from the Bureau of Alcohol, Tobacco, Firearm and Explosives (ATF) entered the interview room and handed Oquendo a blank *Miranda* waiver form. After reviewing the form, Oquendo wrote, "I do not understand this, my lawyer speaks," on the form. The agent then verbally read Oquendo his *Miranda* rights, and upon seeing the note on the form, asked Oquendo what he did not understand. Oquendo told the agent he was willing to speak without a lawyer present, but he did not want to answer any questions about the shooting at the bar. After the agent agreed to limit the scope of his questions, Oquendo signed the form and agreed to speak to the agent. During the interview, Oquendo made incriminating statements concerning the recovery of the gun with the obliterated serial number. The government indicted Oquendo for aiding and abetting in the possession of a firearm with an obliterated serial number.

Oquendo argued his incriminating statements to the ATF agent should have been suppressed because only twenty minutes elapsed between the time Oquendo invoked his right to remain silent and the agent approached him.

The court noted there are four factors to consider when determining whether the resumption of questioning is allowed after a person invokes the right to remain silent: (1) whether a reasonable period of time passed prior to the resumption, (2) whether the same officer resumed questioning, (3) whether the suspect received refreshed *Miranda* warnings, and (4) whether questioning concerned the same alleged crime.

In this case, although twenty minutes was a short period of time, a different law enforcement officer, an ATF agent, conducted the second interview, and before he questioned Oquendo, the agent re-advised Oquendo of his *Miranda* rights and limited the scope of his questioning as requested by Oquendo. While the first factor, by itself, favored Oquendo, the court held an analysis of all four factors established the agent did not violate Oquendo's *Miranda* rights.

Oquendo also argued his written statement, "I do not understand this, my lawyer speaks," was an invocation of his right to counsel.

The court disagreed. A suspect's request for counsel must be clear and unambiguous. The court held the phrase, "my lawyer speaks," was not a clear indication to the agent that Oquendo was requesting the assistance of an attorney. When confronted with this ambiguous statement, the agent sought clarification and continued questioning only after Oquendo made it clear he was willing to proceed without an attorney. As a result, Oquendo's right to counsel was not violated.

Click [HERE](#) for the court's opinion.

7th Circuit

United States v. Henderson, 2014 U.S. App. LEXIS 7018 (7th Cir. Ind. Apr. 15, 2014)

Police officers responded to Henderson's house after receiving a report that Henderson was holding a woman against her will at gunpoint inside the house. After a one-hour standoff, the woman emerged from the house. A short time later, Henderson voluntarily came out of the house and locked the door behind him. The officers handcuffed Henderson and searched him, but did not find any weapons. The officers forcibly entered Henderson's house and conducted a protective sweep. During the sweep, the officers saw remnants of a marijuana grow operation and firearms in plain view. After the sweep, the officers obtained a warrant, searched Henderson's house and seized cocaine, marijuana and several firearms. The government charged Henderson with being a drug user in possession of firearms.

Henderson argued the protective sweep violated the *Fourth Amendment* because there were no facts to support a belief that Henderson's house harbored anyone who posed a threat to the officers after Henderson exited.

The court disagreed. A protective sweep is a quick and limited search of a premises, incident to arrest, conducted to protect the safety of the officers and others. Police officers are allowed to conduct a protective sweep if they have a reasonable belief the area to be swept contains an individual who poses a danger to the officers or others. In this case, the officers responded to a hostage situation involving an armed suspect. The officers did not know how many occupants were inside the house or what the occupants were doing during the hour-long standoff. When the officers arrested Henderson, he was unarmed. At that point, it was reasonable for the officers to believe that an armed and dangerous person might still be in the house.

In addition, the court held the duration and scope of the protective sweep was reasonable. Once inside the house, the sweep lasted no longer than five minutes, the officers limited their search for additional victims or assailants, and the officers did not touch or move any evidence they saw.

Click [HERE](#) for the court's opinion.

United States v. Carroll, 2014 U.S. App. LEXIS 8109 (7th Cir. Ind. Apr. 29, 2014)

A thirteen-year old girl reported Carroll had sexually molested her, five years earlier, when she was eight years old. Specifically, the victim told a detective that Carroll took photographs of her bare genitals and showed her digital images on his camera of other children in partial states of undress. The victim stated the children in the photographs were posed in front of professional backdrops, and she described Carroll's camera. The victim's father told the detective he worked with Carroll and that Carroll was a professional photographer.

Later that day, the detective applied for a warrant to search Carroll's residence for evidence of child pornography and sexual exploitation of a child. In his affidavit, the detective outlined his law enforcement experience including the last seven years during which he primarily conducted child pornography and child exploitation investigations. The detective stated through his training and experience he developed a working knowledge and understanding that collectors of child pornography go to great lengths to secure and maintain their collections. The detective indicated that child pornography collectors value and retain their collections because the images supply sexual

gratification, are difficult to obtain, present a threat of prosecution, carry a highly negative stigma, and are used to trade for new images. The detective explained it was common to find discarded or outdated computers stored in closets, basements and attics for long periods of time and that deleted images may be retrieved years later through a forensic process. Finally, the detective stated in the past he found digitally stored images that were being used for sexual gratification up to five years after the images were created. The state court judge found there was probable cause to search Carroll's residence and issued the warrant. An analysis of Carroll's computer and other digital media located in his residence revealed numerous images of the victim in various states of undress engaged in sexually explicit conduct.

Carroll filed a motion to suppress the evidence discovered by the police. Carroll argued the information in the detective's search warrant affidavit was stale because it was five-years old; therefore, it did not establish probable cause to search his home.

The court disagreed. When receiving an application for a search warrant, a judge must make a practical, common-sense decision about whether the information in the affidavit establishes a fair probability that contraband or evidence of a crime will be found in the place to be searched. In child pornography cases, the issue of staleness must take into account the behavior of child pornography collectors and the capability of modern technology. Here, the court held the detective's affidavit adequately addressed these considerations. First, the detective stated he had learned through training and experience that collectors of child pornography hoard their images for long periods of time for a number of different reasons, which he outlined. Second, the detective sought the search warrant within days interviewing the victim and her father. Third, the detective articulated how deleted images might still be recoverable from a computer or other digital media through a forensic process. Finally, the detective explained how he had previously recovered five-year old digitally stored pornographic images of children.

Click [HERE](#) for the court's opinion.

8th Circuit

United States v. Woods, 2014 U.S. App. LEXIS 5978 (8th Cir. Mo. Apr. 1, 2014)

An individual called 911 and reported he saw a man carrying a concealed gun while riding the bus. The caller described the suspect as a black male wearing a black hat, tan pants and a white t-shirt. Police officers responded to the bus stop where the suspect was located and saw three men who matched the description given by the caller. The officers detained one of the men as he walking away from the bus stop, but determined he was not the man with the gun. After the officers released the man, one of the officers contacted the 911 caller by phone for further information. The caller told the officer he had stopped the wrong person. The caller told the officer the man with the gun was one of the two men sitting at the end of the bus stop, but did not specify which man had the weapon. The officers approached the two men sitting next to each other, one wearing a black hat and one wearing a camouflage hat. An officer frisked the man with the black hat and discovered a handgun in the waistband of his pants. Another officer then frisked the man in the camouflage hat, Woods, and discovered a handgun in the waistband of his pants as well. The officers arrested both men and the government indicted Woods for being a felon in possession of a firearm.

Woods claimed the firearm should have been suppressed because the officers lacked reasonable suspicion that criminal activity was afoot and that Woods was armed and dangerous.

The court disagreed. First, the court found the information provided by the 911 caller was reliable. The caller indicated he had firsthand knowledge of a man carrying a gun. When the officer contacted the caller after stopping the wrong man, the caller directed the officers to Woods and the other man seated at the bus stop. This additional firsthand information indicated the caller was watching the officers and provided the degree of reliability necessary to support the officers' reasonable suspicion to believe that at least one of the men identified by the caller was armed with a concealed handgun.

After discovering the man wearing the black hat had a handgun, the court further held it was reasonable for the officer to frisk Woods. Even though the Eighth Circuit has rejected the "automatic companion" rule, which allows officers to automatically search all companions of an arrestee, companionship can be one relevant factor to consider when establishing reasonable suspicion. The court found the information provided by the caller along with the handgun recovered from the man with the black hat supported the officer's minimally invasive frisk of Woods.

Click [HERE](#) for the court's opinion.

United States v. Harris, 2014 U.S. App. LEXIS 6231 (8th Cir. Mo. Apr. 4, 2014)

A Greyhound bus employee called the police and reported that a man at the bus station had fallen asleep on a bench with a handgun falling out of his pocket. Greyhound did not allow individuals to carry concealed firearms at the bus station. Police officers arrived at the bus station, which was located in a high crime area, and removed a handgun that was hanging from the sleeping man's pocket. The officers woke the man up and placed him in handcuffs. The officers learned the man, later identified as Harris, had an outstanding warrant for his arrest. The officers arrested Harris on the outstanding warrant and the government later indicted him for possession of firearm by a convicted felon.

Harris argued the police officers violated his *Fourth Amendment* rights because they did not have probable cause to believe he was committing a crime nor reasonable suspicion of criminal activity. As a result, Harris claimed the officers had no right to remove the handgun from his pocket and place him in handcuffs.

The court disagreed. While the court stated the government struggled to show the police officers had a reasonable suspicion of criminal activity, the officers were allowed to remove the handgun from Harris' pocket under the community caretaking doctrine. The community caretaking doctrine encompasses activities conducted by police officers that are not associated with the investigation of criminal activity or the seizure of criminal evidence. A police officer may act under the community caretaking doctrine when the officer has a reasonable belief that an emergency exists requiring his attention. In this case, the officers received a request from Greyhound to assist in dealing with a dangerous, potentially volatile situation. When the officers arrived, they saw Harris asleep with a handgun hanging out of his pocket. The court noted it was reasonable for the officers to remove the handgun because the officers knew Harris was carelessly handling a firearm in a dangerous public location where it was forbidden to carry firearms. In addition, the court held it was reasonable for the officers to handcuff Harris and determine his identity during the brief encounter.

Click [HERE](#) for the court's opinion.

United States v. \$45,000.00 in United States Currency, 2014 U.S. App. LEXIS 7057 (8th Cir. Neb. Apr. 16, 2014)

A police officer got behind a car on Interstate 80 and claimed he could not read the issuing state's name on the car's license plate. When the driver of the car, Martins, exited the highway, the officer conducted a traffic stop for a violation of *Nebraska Revised Statute § 60-399(2)*, which requires, in part, that all letters, numbers and other writing on a vehicle's license plate be "plainly visible" at all times.

At some point during the stop, the officer walked his drug dog around Martins' car. After the dog alerted to the presence of drugs, the officer searched Martins' car and found two empty coolers, whose interiors smelled like raw marijuana. The officer also discovered \$45,000 in cash inside vacuum-sealed bags, which he seized. The officer did not find any marijuana or other drugs. The officer did not issue Martins a ticket for the alleged license plate violation or charge him with any crime. The government, suspecting the seized money was connected to drug trafficking, instituted a civil forfeiture lawsuit against the currency.

Martins, who claimed an interest in the currency, filed a motion to suppress the evidence obtained from the traffic stop. Martins argued the officer violated the *Fourth Amendment* because the officer did not have probable cause to believe Martins had violated *Nebraska Revised Statute § 60-399(2)*.

The court commented that Nebraska state courts have interpreted the term "plainly visible," in § 60-399(2), to mean that letters, numbers and other writing on license plates must be "generally readable" for law enforcement and identification purposes from within a reasonable distance. In this case, the officer testified he was able to read the issuing state's name, Utah, on Martins' license plate from within 100 feet while traveling behind Martins on Interstate 80, before he pulled Martins over. Under these circumstances, the court held it was not objectively reasonable for the officer to believe Martins had violated *Neb. Rev. Stat. § 60-399(2)*; therefore, the officer lacked probable cause to stop Martins. As a result, the court held the evidence obtained from Martins' car should have been suppressed.

The court further held any reasonable suspicion the officer established to believe Martins was involved in criminal activity occurred after the unlawful traffic stop; therefore, that information could not be considered.

Click [HERE](#) for the court's opinion.

9th Circuit

United States v. Harrington, 2014 U.S. App. LEXIS 7296 (9th Cir. Cal. Apr. 18, 2014)

A federal park ranger in Yosemite National Park arrested Harrington for driving under the influence (DUI). At the police station, Harrington refused to submit to testing to determine his blood alcohol level. Another park ranger read Harrington an admonition, which informed Harrington that under California law, a refusal to submit to testing would result in Harrington's driver's license being suspended if Harrington was convicted of the underlying DUI charge. The ranger read the California admonition to Harrington three times. Harrington was never informed of the federal admonition, nor was Harrington informed of the consequences under federal law of his refusal to be tested.

The government charged Harrington with several federal misdemeanors in federal district court to include DUI and failure to submit to a blood alcohol test. The government dismissed the DUI charge;

however, Harrington was convicted of refusing to submit to the blood alcohol test, which carried a maximum penalty of 6 month in jail and/or a \$5,000 fine.

On appeal, Harrington claimed his right to due process was violated when the park ranger specifically told Harrington his refusal to submit to a blood alcohol test was not, by itself, a separate criminal offense.

The court agreed, holding it was fundamentally unfair to convict Harrington on the refusal charge when Harrington was told three times that his refusal would only result in a license suspension if convicted of DUI. The court stated, “[h]ad Harrington not been misled as to the consequences of his refusal, he might have preferred to submit to testing rather than to fight an additional criminal charge.” The court added, when police officers give DUI suspects an admonition, due process is violated when the admonition incorrectly informs the suspect that his refusal is not a separate crime, when in fact it is.

Click [HERE](#) for the court’s opinion.

10th Circuit

United States v. Romero, 2014 U.S. App. LEXIS 6955 (10th Cir. N.M. Apr. 15, 2014)

Police officers suspected Romero was involved in a murder, in which the victim was killed with a shotgun, based on statements obtained from several witnesses. Officers obtained a warrant to search a car driven by Romero the night of the murder. The officers learned the car was registered to Romero’s aunt at the same address where Romero lived. When the officers went to that address, they saw the car. The officers knocked on the door of the residence, planning to conduct a protective sweep so no one from the house would interfere with their search of the car. Romero’s stepfather, Martinez, opened the door, told the officers he owned the house, and gave the officers consent to walk through the house. During their sweep, the officers opened the door to Romero’s bedroom. Although there was a lock on the door, the lock was not clearly visible, the officers did not see it and the door was not locked when the officers opened it. Inside the bedroom, the officers found Romero asleep and saw a shotgun and red baseball cap, which they believed were connected to the murder. The officers seized both items.

Romero was convicted of a variety of offenses, including first-degree murder. Romero argued the district court should have suppressed the evidence police officers recovered from the car and from his bedroom.

The court disagreed, holding the warrant the officers obtained to search the car Romero had been driving was supported by probable cause. First, the search warrant affidavit included information that established that the victim was a passenger in a car driven by Romero shortly before his death. Second, the affidavit established the car was registered to Romeros’ aunt, at the same address where Romero lived. Third, the officers established Romero had driven the car the night of the murder and that officers had previously seized a shotgun from the car. Finally, the officers included information indicating either the victim was shot in the car or his body was transported in the car. Consequently, the search warrant affidavit offered sufficient reason to believe that a search of the car would uncover evidence related to the murder.

The court further held Martinez had apparent authority to allow the officers to enter the house and open the unlocked door to Romero's bedroom.

An owner of a house is presumed to have control of the entire house, including the bedroom of a stepchild who is living there. In this case, however, there was evidence that Martinez did not have actual authority over Romero's bedroom because Martinez claimed he did not usually enter Romero's bedroom and that there was a lock on the door to the room. Nevertheless, the court held the officers were entitled to rely on Martinez's apparent authority because at the time of the search, the officers did not know either of these facts. As a result, the officers reasonably relied on the presumption of actual authority established by Martinez's statement that he was Romero's stepfather.

Click [HERE](#) for the court's opinion.

11th Circuit

Gennusa v. Canova, 2014 U.S. App. LEXIS 6410 (11th Cir. Fla. Apr. 8, 2014)

In June 2009, Studivant agreed to a police interview with his attorney, Gennusa, present. The interview was non-custodial and took place in an interview room at the police station. After Studivant agreed to provide a written statement, the officer left the interview room and closed the door. While alone in the room, Studivant and Gennusa discussed matters related to the investigation while Studivant wrote his statement. Studivant and Gennusa did not realize their privileged attorney-client conversations were being recorded and actively monitored by police officers through a concealed camera in the interview room.

At some point, Gennusa left the interview room and spoke with the officer, who told Gennusa he planned to arrest Studivant. When Gennusa returned to the interview room and told Studivant he was going to be arrested, Studivant decided he no longer wanted to provide a written statement. The officer came back into the interview room and demanded Studivant's written statement. After Gennusa refused to turn over Studivant's written statement, the officer forcibly grabbed the statement off the table from underneath Gennusa's hand and then arrested Studivant.

Gennusa and Studivant sued the police officers claiming the warrantless recording of their privileged conversations and the seizure of the Studivant's written statement violated the *Fourth Amendment* and the warrantless recording of their conversations violated the Federal Wiretap Act under *18 U.S.C. § 2520(a)*.

The district court held the officers were not entitled to qualified immunity. The officers appealed the denial of qualified immunity to Gennusa and Studivant's *Fourth Amendment* claims only.

The court held Studivant and Gennusa had a reasonable expectation of privacy in their privileged conversations in the interview room at the police station. The court noted the attorney-client privilege is the "oldest of the privileges for confidential communications known to the common law." Consequently, the surreptitious recording and monitoring of those attorney-client conversations, without notice to Studivant or Gennusa, and without a warrant, violated the *Fourth Amendment*.

The court further held it was clearly established in June 2009 that the *Fourth Amendment* required a warrant be obtained before non-custodial privileged communications between attorneys and their clients could be electronically monitored, intercepted or recorded.

Finally, the court held the warrantless seizure of Studivant's written statement was unreasonable because the officers presented no evidence suggesting they reasonably believed Gennusa, an officer of the court, was going to destroy the statement or tamper with it before they could obtain a warrant. At the time, it was clearly established that the warrantless seizure of personal property was unreasonable under the *Fourth Amendment* unless one of the exceptions to the warrant requirement applied.

Click [HERE](#) for the court's opinion.
