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

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The Informer – May 2024

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United States v. Hutchings: Whether the validity of a warrant to search a suspect's iPhone depends on who *owns* the phone or who is *associated* with the phone. Pg. 4

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United States v. Jordan: Whether inconsistent and implausible answers to an officer's questions about travel plans is a sufficient reason to extend a traffic stop and call for a canine unit. Interesting quote: *"when it comes to reasonable suspicion, the whole is usually greater than the sum of its parts."* Pg. 8

Seventh Circuit

United States v. Ostrum: Whether a defendant can successfully suppress evidence found in a car that was parked some distance away from the location of the search warrant. The court reviewed alternative bases to conduct the search such as the Mobile Convenance exception and No Standing to Object. Important distinction: "*Courts have never held that merely claiming a possessory interest in a vehicle shifts the burden to the government to prove that the asserted privacy interest is not legitimate."* Pg. 12

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Link: Click Here

June 25, 2024, 2:30 EST – FLETC OCC Informer Webcast Series "Garrity – Kalkines" presented by James Stack, Attorney Advisor/Senior Instructor, Federal Law Enforcement Training Center, Charleston, South Carolina. We will present a refresher on the requirement to protect a government employee's Fifth Amendment rights during questioning by law enforcement officers or other government actors. The webinar will review the purpose of *Miranda* and then compare the options under *Kalkines* with those under *Garrity* to achieve the same end. While applicable in many government situations, it is of particular importance in supervisor and OIG investigations.

Link: Click Here

June 26, 2024, 1:00 MST (3:00 EST) – FLETC OCC Informer Webcast Series "Fifth Amendment in an Impaired Driving Case" presented by Rachel Smith, Attorney Advisor/Senior Instructor, Federal Law Enforcement Training Center, Artesia, New Mexico. In this session, we will discuss the nature of Fifth Amendment rights, when a suspect needs to be Mirandized, and how these principles apply in common impaired driving scenarios.

Link: Click Here

CASE SUMMARIES

Circuit Courts of Appeals

D.C Court of Appeals

United States v. Hutchings, No. 22-3069 (DC Cir. 2024)

The case revolves around James Hutchings, Jr., who was convicted of conspiracy to unlawfully traffic and transport firearms. The conviction was based on evidence obtained from Hutchings's iPhone, which was seized during the arrest of suspected firearms and narcotics trafficker Linwood Thorne. The phone was found in Thorne's apartment, and a separate warrant was obtained to search the phone based on its association with *Thorne*. It was only after the search began that the agents realized the phone belonged to *Hutchings*. Hutchings moved to suppress the evidence from his phone, arguing that the search was unsupported by the warrant because the probable cause finding depended on the phone's association with Thorne. The district court denied Hutchings's motion, stating that the phone was indeed associated with Thorne, *regardless of its ownership*. The case was then appealed to the United States Court of Appeals for the District of Columbia Circuit. Hutchings argued that the officers reviewing the report were required to discontinue their search after seeing the notation on its first page that the phone was "James's iPhone." The court disagreed, stating that the *validity of the warrant did not depend on who owned the phones, but on their association with Thorne*. The court affirmed the judgment of the district court, stating that the label "James's iPhone" did not contradict the facts that supported the warrant application.

Background: FBI agents found and seized Hutchings's iPhone while arresting suspected firearms and narcotics trafficker Linwood Thorne. At the time, Thorne was alone in an apartment with the iPhone nearby on a pile of his own clothes. After the arrest, an FBI agent applied for—and received—a separate warrant to search the phone, attesting that it was "associated with" Thorne and that it "may reveal evidence pertaining to Thorne's alleged violations of federal narcotics laws." It wasn't until agents began reviewing a report of the phone's contents that they had reason to think the iPhone was

Hutchings's. A digital forensics team spent several months "cracking"—that is, unlocking—the iPhone discovered on top of Thorne's clothing, eventually producing a 36,317-page digital forensic report describing its contents. The first page of that report indicates that the "owner name" of the phone is "James's iPhone." Agents Migliara and Christopher Ray reviewed the report. They determined, based on communications and photographs found in the report, that the phone belonged to Hutchings. The recovered information showed that Hutchings had been serving as the middleman between Georgia firearms dealer Kofi Appiah and Thorn. Based in part on the contents of the forensic report, a grand jury indicted Hutchings on one count of conspiracy to unlawfully traffic and transport firearms.

Court's Analysis: Hutchings and the government agreed that, under established case law (*Maryland v. Garrison*), officers executing a search warrant are required to discontinue a search as soon as they know or should know that there is a risk that they are searching an item or a premises that was "erroneously included within the terms of the warrant."

The only question, then, is whether the label "James's iPhone" on the first page of the forensic report conflicted with the basis on which the Magistrate Judge had found probable cause to search the iPhone's contents, and therefore put the officers on notice of a risk that the warrant had mistakenly authorized the search of Hutchings's iPhone. Because there was no conflict between the basis for the warrant and the forensic report's identification of "James's iPhone," that information did not trigger a duty under *Garrison* to halt the search. The validity of the warrant did not depend on who owned the phones. The warrant affidavit never mentioned the phones' ownership. It averred, simply, that the phones were recovered from the address along with Thorne's wallet containing his driver's license, were "associated with" Thorne, and that, given the use of cell phones in narcotics trafficking, the phones "may reveal evidence pertaining to Thorne's alleged violation of federal narcotics laws." All of that remained accurate even after the officers discovered that the phone was labeled "James's iPhone." Indeed, that one of the phones might be labeled with a name different from Thorne's is consistent with its being "associated" with Thorne, a leader of a vast drug-and-weapons enterprise who was evading arrest. Unlike *Garrison*, where the executing officers discovered during their search a material mistake in the facts supporting the warrant - here, the officers' discovery that

the phone was labeled "James's iPhone" did not contradict the facts that supported the warrant application. That is true even though the officers reviewing the forensic report knew that a man named James was stopped leaving Thorne's apartment shortly before the phone was seized from Thorne. That an iPhone bears the first name of Thorne's recent visitor does not mean that the phone was not "associated with" or used by Thorne. As the district court explained, the agents executing the search warrant had no reason to "presume that people who had visited the apartment were going to leave their phones there," since "[m]ost people take their phones with them." And, even if it had occurred to the officers that the phone may have belonged to Hutchings, it was plausible that Hutchings was lending his phone to Thorne for use as he evaded arrest. Accordingly, the label "James's iPhone" neither suggested that the iPhone was not "associated with" Thorne, nor put a reasonable officer on notice that the warrant may have erroneously included this iPhone.

For the Court's Opinion: USA v. Hutchings, No. 22-3069 (D.C. Cir. 2024) :: Justia

Fourth Circuit

United States v. Brisco, No. 23-4013 (4th Cir.2024)

Andre Ricardo Briscoe was involved in the purchase and sale of narcotics in the Baltimore area. He learned from a contact that Jennifer Jeffrey had received a large supply of heroin. Brisco and an accomplice decided to rob her. On May 27th 2015, they went to Jeffrey's house, robbed her of at least 80 grams of narcotics, shot and killed her, and shot and killed her seven year old son, whom Brisco feared might testify against him.

Jeffrey's brother discovered the bodies of Jeffrey and her son. Baltimore City Police homicide detectives responded to the scene and opened an investigation into the murders. They found a flip phone that belonged to Jeffrey and discovered that the last dialed call, placed one day before the murders, was to a number ending in -2413. That number belonged to Brisco. The investigators obtained a *tracking order* from the Circuit Court for Baltimore City to identify, among other things, cell site location information connected to Brisco's phone.

Using this information, on June 5, 2015, they pinged Brisco's phone using a cell site simulator, which led them to an apartment building. Investigators then obtained a warrant to search apartment 101 because the cell site data was directing them to that unit. After unsuccessfully searching apartment 101, the officers continued to receive cell site data indicating that Brisco's phone was nearby. Thus, the officers went to the second floor where they attempted, but failed, to enter apartment 201. They then knocked on the door of apartment 202, the unit where Brisco was ultimately located. The occupant who opened the door of apartment 202 allowed them to enter. Once inside apartment 202, the officers secured Brisco and his cell phone and conducted a protective sweep of the apartment. They discovered narcotics and drug paraphernalia in a bedroom and brought everyone in the apartment, including Brisco, to the police department for questioning. Brisco was only charged with narcotics possession, and those charges were later dropped. He was released from detention.

Federal investigators opened an investigation into the murders based in part on the evidence found at the apartment. Brisco was federally indicted and subsequently arrested. Convicted at trial, Brisco appealed, contending that the Maryland police lacked authority to use a cell site simulator to obtain his location because they never obtained a search warrant to do so.

Court's Analysis:

The court found that the police obtained the *functional equivalent of a warrant*: "a tracking order," procured pursuant to Maryland law, that "authorized police to track Brisco's location in real time." The Government emphasized that a tracking order of the kind police obtained here required them "to swear, upon a written affidavit, that a factual basis existed for finding *probable cause* that the location information was or would lead to evidence of a crime."

Further, the application for a tracking order required the affiant officer to swear that there was "probable cause to believe that a misdemeanor or felony has been, is being, or will be committed by the owner of the [cell phone.]" The application then set forth the phone number that was the subject of the search, Brisco's identity, and the facts supporting probable cause. These facts included a description of the crime scene at Jeffrey's home; the fact that Brisco's cell phone number was the last number dialed on the phone belonging to Jeffrey; that Brisco was the last person to see Jeffrey (according to

her family); and that Brisco was the last person to speak with Jeffrey via cell phone. Further, the affiant officer noted that Brisco discontinued a prior pattern of calls to the victim around the time of the murder. A judge for the Circuit Court of Maryland for Baltimore City granted the officer's application and authorized the tracking order.

As such, the 4th Circuit rejected Brisco's argument that the Government lacked probable cause to use a cell site simulator to obtain his location information.

For the Court's Opinion: [United States v. Briscoe, No. 23-4013 (4th Cir. 2024) :: Justia]()

Sixth Circuit

United States v. Jordan, No. 23-4013 (4th Cir. 2024)

This case involves Terrence Jordan and Damara Sanders, who were pulled over by a state trooper for speeding. During the stop, the trooper noticed inconsistencies in their travel plans and observed Jordan's heavy breathing, which raised his suspicion. He called for a canine unit, which detected the presence of drugs. A subsequent search of the vehicle and the defendants revealed marijuana, pill presses, digital scales, plastic baggies, firearms, and a significant quantity of pills containing a fluorofentanyl-fentanyl mixture.

Background: Damara Sanders was driving a rental car north along Interstate 71 with Terrence Jordan in the passenger seat. As she drove through Ashland, Ohio, State Highway Patrol Trooper Jeremy Burgett noticed she was driving ninety-one miles an hour—twenty-one over the speed limit. He initiated a traffic stop. During the stop, Trooper Burgett asked for Sanders's license and the car's rental agreement. One detail in the rental agreement stuck out: the car had been picked up from a rental facility near Tampa, Florida two days earlier and was due back there the following morning. Yet, Sanders was still driving north. Puzzled how Sanders would return the car on time, Trooper Burgett asked a few questions about her travel plans. She explained she was on her way home to Erie, Pennsylvania—seventeen hours away from Tampa. And she claimed she planned to extend the rental agreement "for a while," and would "eventually" drop it back off in Florida.

Burgett asked, when would Sanders return the car? She didn't know. How long had she been driving? Since 6 p.m. the day before—in other words, through the night. All the while, Burgett noticed, Jordan was breathing heavily in the passenger seat. Trooper Burgett then returned to his cruiser and began preparing a speeding ticket. Suspicious of Sanders's travel plans and Jordan's heavy breathing, he also called for a canine unit. About ten minutes later, a sheriff's deputy and his canine partner, Danny, arrived. Less than two minutes into the sniff, Danny alerted the officers to the presence of drugs.

The officers then removed both defendants from the car, patted them down, and searched the vehicle. During the pat down, a plastic bag containing blue pill fragments fell from Sanders's pocket. And in the car, police found marijuana, pill presses, digital scales, and plastic baggies. They also found a safe containing two pistols, loaded magazines, and a glasses case containing 650 pills split among seven bags. State police later confirmed the pills contained over 70 grams of a fluorofentanyl-fentanyl mixture.

Court's Analysis: First, otherwise innocent activity can form the basis for reasonable suspicion. An officer's suspicion can be (and often is) reasonable even if he doesn't directly witness illegal activity. Likewise, an officer doesn't need to rule out innocuous explanations for suspicious behavior in order for his suspicion to be "reasonable." Second, when assessing whether reasonable suspicion exists, courts must consider the relevant facts *collectively*. Courts may not "divide and conquer" the government's proffered bases for suspicion—they may not consider a factor in isolation, ascribe no weight to that factor, repeat for each factor, and then conclude there's no reasonable suspicion. Instead, courts must assess whether everything the officer observed, taken together and in context, is objectively suspicious. Third, law enforcement may rely on criminal "profiles" when choosing to make or extend an investigative stop. When criminals commonly use certain "modes or patterns of operation," officers may be reasonably suspicious of individuals whose behavior fits those patterns. To be sure, the fact that a suspect matches a "profile" won't always be enough to create reasonable suspicion. Nevertheless, profiles carry "independent evidentiary weight" and, in combination with other evidence, can suffice to extend an investigative stop. A quick example illustrates how these three principles apply in practice. Wearing a ski mask isn't inherently suspicious. Neither is carrying a firearm. Nor is visiting a local bank. But if a man in a ski mask entered a bank and told employees he's carrying a gun, police

would have reasonable suspicion to detain him. That's because, ***when it comes to reasonable suspicion, the whole is usually greater than the sum of its parts***. And in this example, the "whole"—walking into a bank armed, wearing clothing that hides one's identity—matches a bank-robber profile.

In the case at hand, Trooper Burgett had reasonable suspicion to extend the traffic stop. During the first portion of the traffic stop, Burgett observed the following: (1)Jordan and Sanders were in a three-day rental car they picked up in Florida; (2) the car was due back near Tampa the next morning, but Sanders was nearly seventeen hours away and still driving north; (3)Sanders had been driving nonstop since 6 p.m. the previous night; (4)Sanders gave implausible explanations for her travel plans; and (5)Jordan was breathing heavily during the stop. To start, the first three factors fit a drug-courier profile. Given the detection risks involved in mailing or flying, drug couriers commonly rely on rental cars to move drugs across the country. Specifically, couriers will often receive drug shipments from "source" cities in southern states like Florida or Texas. While there, couriers will rent a car for a few days and drive cross-country to deliver the drugs to a distributor in another state. Then, they'll head back south to return the car. Couriers will often make these long-haul trips with few stops, driving straight through the night. By limiting transit downtime, couriers reduce opportunities for police interdiction and increase the flow of drugs. And by using rental cars, couriers make it harder for police to uncover distribution schemes by tracking specific vehicles. Courts have previously found reasonable suspicion in situations matching this profile.

Sanders's behavior similarly met this profile. She rented a car in Florida, a drug source state, for three days and drove cross-country overnight. The rental was due back near Tampa less than twenty-four hours later. Given that it takes seventeen hours to drive from Erie to Tampa, Sanders would've had little time—just enough time to drop off a few packages—before she'd have to head back to Florida. Thus, Sanders presented a close match for a drug-courier profile. Sanders's explanation of her travel plans only exacerbated her itinerary's suspiciousness. When Trooper Burgett asked about the car's impending due date, Sanders explained she planned to extend the rental. According to Jordan, this explanation obviated any suspicion stemming from the rental's tight timeframe. But Burgett reasonably doubted Sanders's explanation. After all, she had just obtained the car two days earlier. If she

planned to keep it "for a while," why did she only arrange for a three-day rental period—just long enough to drive up to Pennsylvania, turn around, and drive back to Florida? Sanders's other comments provided even more reasons to doubt her explanation. If she was heading home after visiting a relative near Tampa, why get a rental that needed to be returned in Florida? Why not get a one-way rental? Likewise, if Sanders planned to extend the rental, why wait until less than a day before the due date? By that point, she was nearly seventeen hours from the return site. Had the rental company declined her extension, she'd have been forced to head back to Florida immediately. In sum, instead of allaying suspicion about her route, Sanders's implausible explanations only added to the suspicion. Lying about travel plans can form the basis for reasonable suspicion. Indeed, dubious travel plans are a weighty factor in establishing reasonable suspicion to extend a stop. Lastly, we have Jordan's heavy breathing, which the district court characterized as "nervous demeanor." To be sure, courts have made clear that nervousness alone is a weak basis for suspicion. Nevertheless, nervousness can contribute to reasonable suspicion in combination with other factors, such as questionable rental-car arrangements—precisely what we have here. Jordan's nervousness is more probative of criminality than defendants' nervousness in other cases. That's because the government usually points to the driver's nervousness as a basis for suspicion, which isn't indicative of much. After all, most drivers don't enjoy being pulled over. The prospects of an expensive ticket, insurance premium increases, or a suspended license perturb even the most innocent drivers. By contrast, it's less clear why a passenger would be nervous. Indeed, passengers usually don't interact with police at all during a traffic stop. Thus, a passenger's nervousness is less readily explainable. Even so, it's usually not enough by itself to create reasonable suspicion. Given the totality of the circumstances, Trooper Burgett had reasonable suspicion to prolong the traffic stop. The travel plans here—taking a short-term rental from a source state on a seventeen-hour, cross-country road trip—were indicative of drug-courier activity. When combined with Sanders's implausible responses and Jordan's nervousness, there was enough to justify further investigation.

For the Court's Opinion: [United States v. Jordan, No. 23-3334 (6th Cir. 2024) :: Justia]

Seventh Circuit

United States v. Ostrum, No.23-1364 (7th Cir. 2024)

The case revolves around Dylan Ostrum, who was under investigation for drug dealing and possession of firearms. During a search of his home, Ostrum revealed that he had moved his belongings, including his car, to his father's house. However, the car, which was reported stolen by a rental company, was found nearby with Ostrum's belongings inside, including a gun, methamphetamine, and marijuana, all stashed in two safes. The key issues on appeal were whether Ostrum had standing to challenge the search of the stolen car and whether the search violated his Fourth Amendment rights.

Background: The investigation into Ostrum began after law enforcement agents found text messages between him and another individual, Ricky Blythe, showing that they repeatedly sold each other methamphetamine and marijuana. Based on this evidence and information from confidential informants, law enforcement obtained a valid warrant to search Ostrum's residence. However, the search turned up little, and Ostrum informed the officers that he had moved his belongings to his father's house. The officers later located the car, which was reported stolen, and discovered the safes inside.

Ostrum was charged with multiple counts related to drug possession and distribution and being a felon in possession of a firearm. He moved to suppress the evidence found inside the car, arguing that it was the fruit of an illegal search. The district court denied the motion, finding that Ostrum lacked standing to challenge the search because the car was stolen, and that the search was valid under the automobile exception to the Fourth Amendment's warrant requirement. Ostrum was convicted on all counts and received a 240-month sentence.

Court's Analysis:

No Standing to Object: The car at issue was reported stolen by a rental company. If Ostrum stole the car or otherwise knew it was stolen, he would have no reasonable expectation of privacy in it or its contents, and thus no standing to object to its search. ***The distinction that Ostrum asserts is that he denies***

knowing the car was stolen. Even if a defendant's knowledge of the stolen nature of the vehicle has some bearing on his standing to challenge its search, "[the defendant] bears the burden of showing that he had a legitimate expectation of privacy." United States v. Sawyer. If Ostrum wanted to show that he was innocently driving the stolen car, he needed to offer evidence to that effect. He did not.

While Ostrum denied knowing the car was stolen, he failed to present any evidence to support this assertion. Further, the car displayed license plates registered to Ostrum but associated with another vehicle, even though Ostrum claimed it was a rental. ***Courts have never held that merely claiming a possessory interest in a vehicle shifts the burden to the government to prove that the asserted privacy interest is not legitimate***. So, the burden of proving a privacy interest never left Ostrum's shoulders. His failure to meet it means he cannot challenge the search of the vehicle.

Contents of the Car (Safes): Ostrum also asserted an expectation of privacy in the safes found inside the car. He had no reasonable expectation given the safes were found inside a stolen vehicle. While a person lawfully present in a vehicle might be able to assert a privacy interest in a container inside even without any expectation of privacy in the car itself, a person wrongfully present in a stolen vehicle is not so entitled. A stolen car is not a safehouse that society is prepared to recognize as reasonable. With similar facts, United States v. White, rejected the defendant's claim that he had a legitimate expectation of privacy in the contents of locked box in a stolen minivan.

Automobile Exception: Even assuming Ostrum had standing to object to the search of the vehicle, his suppression arguments must still fail. The searches of the car and safes also fall squarely within the automobile exception. "Warrantless searches are per se unreasonable under the Fourth Amendment, subject to only certain exceptions." One of those is the automobile exception, which allows law enforcement to conduct a "warrantless search of a vehicle ... so long as there is probable cause to believe it contains contraband or evidence of illegal activity." Authority to search the vehicle extends to all containers inside if there exists probable cause to believe they contain contraband or evidence.

In the case at hand, law enforcement had ample probable cause to believe the vehicle contained contraband. The same ample evidence that allowed law

enforcement to lawfully search Ostrum's residence for guns and drugs in the first place, coupled with Ostrum's statements during the search, gave law enforcement probable cause to search the car. Indeed, during the search Ostrum himself admitted to getting "rid of" of his guns and drugs and moving "everything," car and safes included, to his father's house. Ostrum discussed the car, the safes, and the contraband together, implying that he used the vehicle to move his belongings. That, coupled with his misdirection about the car's location, gave law enforcement good reason to think that the missing car, the missing safes, and the missing contraband would be in the same place.

For the Court's Opinion: USA v. Ostrum, No. 23-1364 (7th Cir. 2024) :: Justia

Eighth Circuit

United States v. Britton, No. 23-1700 (8th Cir. 2024)

Prior to his arrest, law enforcement received information from a tipster and two women arrested for possession of methamphetamine, all of whom identified Britton as their source of the drug. The information provided by these individuals was corroborated by law enforcement, including details about Britton's rental vehicle and his stays at a local hotel. A controlled buy was arranged with Britton at a local mall, but the deal fell through. However, Britton was arrested at the location of the planned deal, and his vehicle was searched, leading to the discovery of a pound of methamphetamine.

Britton argued that his arrest and the subsequent search of his vehicle were not supported by probable cause. The lower court found that the corroborated information from the tipster and the two women, along with Britton's arrival at the planned drug deal, provided probable cause for his arrest and the search of his vehicle. Thus, the search and subsequent arrest fell within the ambit of the Mobile Conveyance exception to the Fourth Amendment's warrant requirement.

Background: Before the buy, the officers met with the CI for a briefing. Both the CI and the undercover officer wore transmitters. The buy was originally planned for a McDonald's in Fargo. Just before the buy, Britton requested a

change of location. They agreed to the West Acres Mall. Agents moved to the mall parking lot, which was nearly empty. While in the parking lot, agents heard the CI speaking to Britton on the phone. During the call, they saw a blue Charger arrive with a man on a cell phone and a woman in the passenger seat. The CI told the undercover officer that the man in the Charger was Britton. Inside the mall, Britton met with the CI and the undercover officer. After speaking in private with Britton, the CI told the undercover officer she had paid Britton money to discharge her prior debt, but he did not give her the drugs. She said he wanted her to pay the remaining money in the mall. The undercover officer refused because he was worried Britton would not give her the meth. He and the CI walked to their car. In the car, the CI talked to Britton on the phone, requesting to rekindle the deal near his Charger. Britton refused. He asked the CI to come back inside the mall. The undercover officer called off the deal. The CI told Britton she was leaving. They saw Britton leave the mall. Other agents also saw Britton leave the mall and jog to his car. Before he reached it, officers activated their lights and siren on an unmarked vehicle, ordered Britton to the ground, and handcuffed him. A trained canine also arrived and gave a full alert for drugs on the passenger side of the Charger. Law enforcement searched and found a pound of meth.

<u>Court's Analysis</u>: Britton argues the court erred in denying his motion to suppress because neither the arrest nor the search was supported by probable cause. Searches conducted without a warrant are per se unreasonable, subject to a few well-established exceptions. The automobile exception is one such exception. It authorizes officers to search a vehicle without a warrant if they have ***probable cause*** to believe the vehicle contains evidence of criminal activity. In determining probable cause, courts examine the events leading up to the arrest, and then decide whether these historical facts, viewed from the standpoint of an objectively reasonable police officer, amount to probable cause. ***Arresting officers are not required to witness actual criminal activity or have collected enough evidence so as to justify a conviction for there to be a legitimate finding of probable cause to justify a warrantless arrest. Instead, the mere probability or substantial chance of criminal activity, rather than an actual showing of criminal activity, is all that is required.***

The district court found probable cause for Britton's arrest based on his arrival at the "predicted time and place of the deal." The officers identified Britton's

vehicle when he arrived at the mall and drove past Agent Grube and TFO Caro in an otherwise almost empty parking lot. When Britton entered the mall without the methamphetamine, it was natural to infer he left it in his vehicle. The absence of a completed transaction inside the mall did not extinguish the likelihood that Britton had arrived at the mall to sell methamphetamine. It was, after all, the undercover officer—not Britton—who called off the deal. Britton remained interested in completing the sale until the end, asking the informant to come back inside the mall with the remaining five-thousand dollars. Britton's actions generated sufficient reason to believe there was methamphetamine in his vehicle. A sale was not required to take place before an arrest. In addition to his arrival at the mall, several other facts known to officers at the time supported probable cause to arrest Britton. Three different individuals told TFO Moen they had bought drugs from Britton. Two of the individuals provided information about Britton that was confirmed by Agent Moen, including Britton's rental vehicle having a Michigan license plate, where he stayed in East Grand Forks, and the location of his rental car at a specific time and location. Britton was also known to be on parole for possession of a controlled substance with intent to deliver. Taken together, these facts and Britton's arrival at the mall gave officers probable cause to believe he possessed methamphetamine in his vehicle.

For the Court's Opinion: [United States v. Britton, No. 23-1700 (8th Cir. 2024) :: Justia]