
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 – December 2024

Circuit Courts of Appeals

Seventh Circuit

United States v. Davis: Whether officers possessed one or more Constitutional bases to search a suspect's vehicle after being pulled over due to a reported domestic violence threat. Michael Davis was arrested after a 911 call from a 15-year-old girl in Gary, Indiana, reported that he had threatened to kill the girl's mother and had an assault rifle in his car. Police located Davis following the family's minivan and arrested him. A search of his vehicle revealed a loaded, semi-automatic shotgun with an obliterated serial number. The court compared and contrasted the requirements of a search of a vehicle due to the arrest of the driver and the mobile conveyance doctrine.

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Tenth Circuit

United States v. Ruiz: Whether a drug courier's identification should be suppressed due to a suggestive pretrial photo array. The court applied a two-part test to determine if the identification violated Ruiz's Due Process rights. First, it assessed whether the photo array was unduly suggestive. Second, it evaluated the reliability of the identification using the five *Biggers* factors.

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United States v. Lowe: In what circumstances will a suspect lack a reasonable expectation of privacy in a storage unit in the apartment building where he resided? Using *Katz* analysis, the court determined that Lowe did not suffer any Constitutional harm, and the evidence was properly admitted.

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Eleventh Circuit

Meshal v. Commissioner, Georgia Dept. of Public Safety: Based on the two-prong Qualified Immunity analysis, in what circumstances will an officer be denied Qualified Immunity for extending a traffic stop? Specifically, is a call to the FBI concerning the driver's listing on the No-Fly List equivalent to a warrants check?

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FLETC Informer Webinar Schedule:

December 10, 2024, 2:30 EST – FLETC OCC Informer Webcast Series “A Survey of Article 134” presented by Major Stephen Ryder (USAF) and LTC Jonathan Larcomb (ANG) Senior Instructors, Federal Law Enforcement Training Center, Glynco, Georgia. The survey of Article 134 of the UCMJ will include a look at recent cases providing guidance on meeting the “service discrediting” and “prejudicial to the good order and discipline” elements of an Article 134 offense.

Link: [Click Here](#)

December 12, 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 of *Kalkines* with those of *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](#)

December 18, 2024, 2:30 EST – U.S. Supreme Court Case Update presented by Lyla Zeidan, Attorney Advisor/Senior Instructor, Federal Law Enforcement Training Center, Glynco, Georgia and John Besselman, Senior Advisor for Training, Federal Law Enforcement Training Center, Glynco, Georgia. This session will involve a discussion of United States Supreme Court cases arising from the 2023-2024 term that are relevant to law enforcement. Upon completion, attendees will be able to recognize the impact of new U.S. Supreme court cases on their specialized area of law enforcement and make necessary modifications to their training and policies.

Link: [Click Here](#)

FLETC OCC Article: “A Duty to Render Medical Aide” by Mary Mara, Attorney Advisor/ Senior Instructor, Federal Law Enforcement Training Center, Glynco, Georgia. Once a subject is seized, Due Process requires the officer to provide “adequate medical care” to the subject. What then constitutes “adequate Medical care”? Is it enough to summon EMS to the scene or is more required? The article can be accessed as the second attachment to this email.

CASE SUMMARIES

Circuit Courts of Appeals

Seventh Circuit

United States v. Davis, No. 23-2259 (7th Cir. 2024)

On February 22, 2022, police officers responded to a chilling 911 call from a fifteen-year-old in Gary, Indiana. The teenage caller reported that Michael Davis had threatened to kill her mother, was outside their home, and had an assault rifle in his car. She urged emergency dispatch to hurry, and relayed updates to the 911 operator as her family sought safety at the local police station. Within ten minutes of the 911 call, police caught up with Davis, who was following the family’s minivan. Officers arrested him and searched his vehicle, recovering a loaded, semi-automatic shotgun with an obliterated serial

number. Davis was subsequently charged with possessing a firearm illegally, in violation of 18 U.S.C. § 922(g). Davis contended that the warrantless search of his vehicle violated the Fourth Amendment, requiring the suppression of the shotgun.

Court's Analysis:

Warrantless searches are per se unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions. This case concerned two of these exceptions: search incident to arrest and the automobile exception. Either exception would justify the warrantless search of the SUV. Davis's claim raised two issues. First, whether the officers had probable cause to arrest him, as the search incident to arrest exception requires. Second, whether it was reasonable to believe his vehicle contained evidence of a crime, as both the search incident to arrest and automobile exceptions require.

As a predicate matter, the court first reviewed if law enforcement had sufficient probable cause to arrest Davis to determine if the subsequent search was valid. Courts have previously held that eyewitness and victim reports establishing the elements of a crime, absent credibility concerns, almost always suffice to find probable cause to arrest. Normally, an officer may base a determination of probable cause on information from the putative victim if the officer reasonably believes that the victim is telling the truth. Here, the teenage daughter established the elements of felony intimidation when she reported Davis's threats in her 911 call. The district court found her report credible, and Davis did not challenge its determination on appeal. Further, the officer did not solely rely on the 911 report—he corroborated it. Within 15 minutes of the call, Sgt. Manuel spotted a tan GMC Terrain following a brown Honda Odyssey a short distance from the caller's residence. He observed the mother hail him and gesture to the tan SUV behind her, indicating that Davis was the subject of the 911 call. Sgt. Manuel pulled both cars over, observed that Davis matched the description given in the 911 report, and confirmed Davis's identity. He then placed Davis in handcuffs.

Officers may search an automobile incident to the lawful arrest of its recent occupant under two circumstances: when the arrestee is within reaching distance of the passenger compartment at the time of the search, or when it is reasonable to believe the vehicle contains evidence of the offense of arrest. The

search incident to arrest exception derives from dual concerns for officer safety and evidence preservation.

Officers may search a vehicle incident to arrest when it is reasonable to believe the car contains evidence of the offense of arrest. The automobile exception to the warrant requirement (*Carroll* Doctrine) is not tied to an arrest. It permits an officer to search a vehicle without a warrant if the search is supported by probable cause, regardless of any arrest.

Because the search fell squarely within both the search incident to arrest and automobile exceptions to the warrant requirement, the court affirmed the lower court's denial of Davis's motion to suppress the shotgun.

For the Court's Opinion: [United States v. Davis, No. 23-2259 \(7th Cir. 2024\) :: Justia](#)

Tenth Circuit

[United States v. Ruiz, No. 23-2027 \(10th Cir. 2024\)](#)

United States Customs and Border Patrol (CPB) Officers seized Sergio Ruiz at the Columbus, New Mexico port of entry with 20.8 kilograms of methamphetamine and an active GPS tracker concealed inside his pickup truck's spare tire. Among other defenses, Ruiz argued his identification should have been suppressed because it was based on a purportedly suggestive pretrial photo array.

Court's Analysis:

The Government anticipated Ruiz would put on a defense at trial that he served as an unknowing courier or "blind mule" for the cartel. As such, the Government offered confidential informant Eric Weaver's testimony identifying Ruiz as "Senor de Llanta," or "Tire Man"—the person Weaver knew to be a courier who transported narcotics in spare tires. Weaver purchased a spare tire containing methamphetamine from the person he knew as Tire Man three times in August and September of 2020.

One or two days after his third encounter with Tire Man, Weaver described the man to police as an older Hispanic male with grey hair, dressed in "cowboy style," with skin discoloration on both arms resembling chemical burns. Weaver also described Tire Man's vehicle as a dark-colored '80s or '90s

square-bodied pickup—like the one Ruiz was driving at the time of his arrest. Weaver consistently recounted the same description to police in at least four more interviews. During his final interview with law enforcement in March 2022, Weaver identified Ruiz as Tire Man from a photo array. At the outset of the meeting, Weaver repeated the same consistent physical description of the courier who provided him methamphetamine. Then, HSI Special Agent Carlos Vargas presented Weaver with a six-person photo array. All six photos depicted similarly aged Hispanic men. Agent Vargas told Weaver that the defendant’s photo may or may not be in the array. Weaver “focused immediately” on Ruiz’s photo and asked for a lighter version. Agent Vargas then showed Weaver a second distinct photo of Ruiz. The second photo appeared to be taken at the same time and place as the first photo, but from a slightly different angle, with brighter lighting. Upon viewing the second photo, Weaver positively identified Ruiz as Tire Man. He expressed no doubt or uncertainty about his identification.

Before trial, Ruiz filed a motion to suppress Weaver’s pretrial photo array identification and his anticipated in-court identification. Ruiz argued the photo array was suggestive because his photo had three unique characteristics that set it apart from the other five photos: it was darker, had horizontal lines in the background indicative of a mug shot, and only Ruiz wore a mask around his neck, suggesting his arrest was during the COVID-19 pandemic and therefore more recent. These differences were magnified, Ruiz argued, by the fact that the array contained just six photos.

The Supreme Court has recognized a Due Process check on the admission of eyewitness identification, applicable when the police have arranged suggestive circumstances leading the witness to identify a particular person as the perpetrator of a crime. The suggestiveness must create a very substantial likelihood of irreparable misidentification to warrant exclusion of a witness’s identification testimony. In other words, the suggestive photo array must so affect the witnesses’ perceptions as to render their subsequent in-court testimony unreliable.

In its analysis, the court employed a two-part test to determine when an identification based on a suggestive photo array violates a defendant’s Due Process rights. First, the court must determine whether the photo array was unduly suggestive. Second, if so, it must determine whether the identifications were still reliable in view of the totality of the circumstances. In assessing reliability, the court considered the five so-called *Biggers* factors: (1) the

opportunity of the witness to view the suspect during the crime, (2) the witness's level of attention during the crime, (3) the accuracy of the witness's prior description of the suspect, (4) the level of certainty the witness demonstrated during the array, and (5) the time lapse between the crime and the array.

In this case, the court concluded that it need not decide whether the photo array procedure was unduly suggestive because it agreed with the district court that Weaver's identification was sufficiently reliable under the Biggers factors to dispel any risk of misidentification. First and foremost, Weaver had three encounters with Defendant, including a nearly ten-minute face-to-face conversation. All three encounters took place during daylight hours at close range. This was not the case of the stranger who jumps out of the dimly lit alley that might raise reasonable doubts about the witness's perception. Weaver's three meetings with the defendant were sufficient for him to become familiar with his physical characteristics.

Second, Weaver exhibited a high degree of attention during his meetings with the defendant. Weaver recalled Ruiz's clothing from each of the three meetings. Weaver noticed distinctive skin discoloration on Ruiz's hands and arms. He was attentive to Ruiz's vehicle and described it in detail as an '80 or '90s square-style, dark colored pickup truck. Moreover, Weaver learned a host of details about Defendant's activities as a courier including the length of his career, his cut of the profits, his strategies to avoid detection, and the port of entry he typically crossed.

Third, Weaver's detailed, pre-photo array description closely matched Ruiz. Weaver described Tire Man as an older Hispanic male with grey hair, dressed in "cowboy style," with skin discoloration on both arms resembling chemical burns. At the time of sentencing, Defendant was a 57-year-old Hispanic male with grey hair and skin discoloration on both hands. Weaver also described Tire Man's vehicle as a dark-colored '80s or '90s square-bodied pickup. The fact that Weaver provided an accurate description of Ruiz and his vehicle before viewing the allegedly suggestive photo array mitigates the risk of misidentification.

Fourth, Weaver expressed confidence in his identification. Special Agent Vargas testified that Weaver "focused immediately" on the defendant's photo when presented with the array. At trial, Weaver affirmed he had "no doubt" that Ruiz's photo represented the man who sold him methamphetamine.

Fifth, approximately eighteen-months lapsed between Weaver's last meeting with Ruiz and his photo array identification. However, Weaver's description was based on three interactions with Ruiz for an amount of time sufficient to become familiar with his physical features, vehicle, and practices as a courier. Weaver repeated that description consistently and accurately numerous times before the allegedly corrupting influence of the photo array. These circumstances provide sufficient independent basis for the identification. Weighing the Biggers factors, the court found no substantial likelihood of misidentification in this case. The identification was properly admitted before the jury.

For the Court's Opinion: [United States v. Ruiz, No. 23-2027 \(10th Cir. 2024\) :: Justia](#)

[United States v. Lowe, No. 23-1156 \(10th Cir. 2024\)](#)

Scott Lowe was convicted of drug trafficking and unlawful possession of a firearm. He argued that his Fourth Amendment rights were violated when Denver Police Department officers searched a storage unit in his apartment building without a warrant. The search revealed evidence linking him to drug trafficking. Lowe moved to suppress the evidence, claiming a possessory interest in the unit that required a warrant. The district court denied the motion.

The United States District Court for the District of Colorado adjudicated the case. Lowe had previously pleaded guilty to possession of a firearm by a felon and was on supervised release. His probation officer received tips from a confidential informant about Lowe using a storage unit for hiding narcotics and firearms. Despite Lowe's denials and the property manager's confirmation that he did not rent a storage unit, officers found incriminating evidence in a storage unit on the eighth floor of his apartment building. Lowe was arrested and charged with possession with intent to distribute MDMA, possession of a firearm in furtherance of a drug trafficking crime, and possession of a firearm as a felon. The district court denied Lowe's motion to suppress the evidence, ruling that he lacked a reasonable expectation of privacy in the storage unit.

[Court's Analysis:](#)

The Supreme Court has recognized that the unlicensed use of property by others is presumptively unjustified. Mr. Lowe failed to show that he lawfully obtained possession of the storage unit. Failing to present evidence of lawful possession may indicate that a defendant had no reasonable expectation of privacy in the property. Here, the record established that the apartment complex owned the storage units and only permitted the tenants to rent them out. Indeed, the property manager told Officer Diaz that “the vacant storage units should be vacant” and “nobody should have access to them unless they were paying for them.” Further, no evidence showed that Mr. Lowe rented a storage unit. Nor did Mr. Lowe provide evidence that he shared a storage unit with someone who did rent one. To be sure, property ownership is not necessarily controlling. But whatever interest Mr. Lowe had in the storage unit was certainly not as strong as it would have been if he had rented out the storage unit according to the conditions set by the property owner—the apartment complex. The district court noted that when a storage unit is used without permission, apartment management’s policy is to notify the user to remove the property improperly held in the unrented storage locker. After the notice period lapses, the apartment management removes the property from the storage unit, places it outside the building area, and discards it after 24 hours. These facts undercut Mr. Lowe’s claim that his expectation of privacy was reasonable. Absent any evidence showing lawful or legitimate use or possession, the court concluded that Mr. Lowe failed to provide sufficient evidence to establish an objectively reasonable expectation of privacy in the storage unit. Mr. Lowe countered by asserting that, as a tenant in the apartment building where the storage locker was located, he had “the right and ability to utilize the storage lockers.” He further contended that his situation is distinct because it involves “an apartment complex in which he legally resides” and “storage units that tenants have a right to use.” This argument failed. Mr. Lowe essentially argued that his legitimate presence on the premises of the apartment complex automatically grants him a legitimate expectation of privacy in all areas searched. The court rejected this reasoning. Mr. Lowe’s status as a legitimate tenant in the apartment complex, by itself, is “not determinative” of whether he had a Fourth Amendment interest in the particular area searched. The evidence was properly admitted.

For the Court’s Opinion: [United States v. Lowe, No. 23-1156 \(10th Cir. 2024\) :: Justia](#)

Eleventh Circuit

Meshal v. Commissioner, Georgia Dept. of Public Safety, No. 23-10128 (11th Cir. 2024)

Georgia State Police officers stopped Amir Meshal, a professional truck driver, for a minor traffic infraction. During the stop, the officers received notice that Meshal was on the FBI's No-Fly List. Despite clear language on the notice instructing the officers not to detain Meshal based on his presence on the list, they hand-cuffed him and placed him in the back of a patrol car while they sought and waited for guidance from the FBI.

While they waited, the Officers Frink and Janufka searched the inside of Meshal's truck and questioned him about his religion and his international travel. They learned that he had a long-ago arrest for driving under suspension and that he had just delivered a load to Miami, the site of the upcoming Super Bowl. After determining that his truck was free of contraband and receiving the all-clear from the FBI, the officers released Meshal with a warning citation for the original infraction. He was detained for 91 minutes in total.

Following his release, Meshal sued the officers in federal court, alleging that they violated his Fourth Amendment rights by unlawfully extending the traffic stop and searching his truck. The officers moved to dismiss the complaint on qualified-immunity grounds, arguing that Meshal failed to allege a violation of clearly established law. The district court rejected this argument, concluding that the complaint adequately alleged that the officers detained Meshal without arguable reasonable suspicion and searched his truck without arguable probable cause. The officers brought this appeal to challenge the district court's denial of qualified immunity.

Court's Analysis:

Qualified immunity shields public officials from liability for civil damages when their conduct does not violate a constitutional right that was clearly established at the time of the challenged action. To invoke qualified immunity, a public official must demonstrate that he was acting within the scope of his or her discretionary authority. Discretionary authority encompasses all actions of a governmental official that (1) were undertaken pursuant to the performance of his duties, and (2) were within the scope of his authority. If the official satisfies this requirement, the burden shifts to the plaintiff to demonstrate that qualified immunity is inappropriate. To do this, he must plead facts showing (1)

that the official violated a statutory or constitutional right, and (2) that the right was 'clearly established' at the time of the challenged conduct.

As such, the first question becomes did the officers' actions violate a Constitutional right? A police stop exceeding the time needed to handle the matter for which the stop was made violates the Constitution's shield against unreasonable seizures, unless that extension is supported by reasonable suspicion of other criminal activity. After discovering that Meshal was on the No-Fly List, however, Officer Janufka and the other officers extended his seizure for a total of an hour and a half—far longer than it should take to complete a simple traffic stop absent arguable reasonable suspicion of other criminal activity by Meshal.

The officers insisted that the extension was justified for two reasons. First, they argued that "officers may detain a driver after a traffic stop for as long as it takes the officers to complete tasks tied to the traffic infraction. Calling the FBI and waiting for a response was simply an "ordinary inquiry incident to the traffic stop"—like "determining whether there are outstanding warrants against the driver"—Meshal's prolonged detention was reasonable. Second, the officers argued that Meshal's detention was justified because the officers reasonably suspected that he was engaged in criminal activity unrelated to the traffic stop.

Neither of these arguments was found persuasive by the reviewing court. First, the officers' call to the FBI was not an ordinary inquiry incident to the traffic stop for following another vehicle too closely and was not plausibly related to the mission of that stop. Second, the officers lacked an independent basis to extend the traffic stop because they cannot point to specifics that provide anything more than a hunch that Meshal was involved in some kind of terrorist activity with regard to the upcoming Super Bowl.

Having addressed the first prong of Qualified Immunity analysis the Court looked to determine if Meshal's rights were clearly established. The relevant inquiry in determining whether a right is clearly established is whether it would be clear to a reasonable official that his conduct was unlawful in the situation he confronted.

Here, based on the facts as alleged in the complaint, a reasonable police officer could not have believed that Meshal's long-ago arrest for driving with a suspended license, his delivery trip to Miami, and his mere presence on the No Fly-List were sufficient to detain him for more than an hour and a half. This is especially true given the alleged numerous, explicit warnings in the same NCIC

notice that flagged Meshal’s no-fly status. As the district court aptly put it, “[t]he Complaint plausibly allege[d] that the officers merely equated Meshal’s presence on the list to ambiguous criminal activity, which they believed they were at liberty to investigate without regard for Meshal’s constitutionally protected rights.” That belief was not only wrong—it was unreasonable. Moreover, *Rodriguez v. United States*’ precedent established that the officers violated Meshal’s Fourth Amendment rights by extending the stop, without reasonable suspicion of other criminal activity, beyond the time it took for them to conduct tasks incident to the stop.

Besides his seizure claim, Meshal also brought a claim for the unlawful search of his truck, based on his allegation that Officer Frink, at the apparent direction of Officer Janufka, opened the passenger side door of the semi-truck and physically lifted his dog into the cabin of the vehicle before entering the truck himself for approximately a minute and a half. Based on the allegations in the complaint, the officers were not entitled to qualified immunity from this claim either. Generally, the Fourth Amendment requires officers to obtain a warrant supported by probable cause before searching a person’s property. Under the automobile exception to the Fourth Amendment, however, officers may search an automobile without having obtained a warrant so long as they have probable cause to do so. Probable cause to search a vehicle exists where an officer could conclude that there is a fair probability that contraband or evidence of a crime will be found in the vehicle. The court having already explained that, under Meshal’s version of events, the officers lacked reasonable suspicion of a crime sufficient to detain Meshal longer than it would have taken to check his license and registration and write his traffic ticket. That also meant that they lacked probable cause to search Meshal’s truck for contraband or evidence of a crime. Further, it was clearly established at the relevant time that probable cause was required. Without probable cause, the officers were not entitled to qualified immunity for searching Meshal’s truck.

The court agreed with the district court that the officers were not entitled to qualified immunity at this stage.

For the Court’s Opinion: [Meshal v. Commissioner, Georgia Department of Public Safety, No. 11th Cir. 2024](#) :: Justia