CJA LESSON PLAN COVER SHEET

LESSON PLAN TITLE:	LESSON PLAN #:	STATUS (New/Revised):
Legal Update 2013-2014 (January)	I0292	New

TRAINING UNIT:	TIME ALLOCATION:
Legal	2 Hours

PRIMARY INSTRUCTOR:	ALT. INSTRUCTOR:	REVISED & SUBMITTED BY:
Legal		J. Rochelle, J. Fennell, S. Driggers

ORIGINAL DATE OF LESSON PLAN:	JOB TASK ANALYSIS YEAR:
November 2013	

LESSON PLAN PURPOSE:

The purpose of this lesson is to update the student about changes in the laws and procedures that relate to law enforcement.

EVALUATION PROCEDURES:

None

TRAINING AIDS, SUPPLIES, EQUIPMENT, SPECIAL CLASSROOM/INSTRUCTIONAL REQUIREMENTS:

PERFORMANCE OBJECTIVES

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PERFORMANCE OBJECTIVES:

1. Discuss First Amendment, qualified immunity, attorney's fees and self-incrimination.
2. Discuss reasonable suspicion and probable cause.
3. Discuss DUI law.
4. Discuss search warrants, warrantless searches, exigent circumstances, and DNA evidence.
5. Discuss statute revisions - §47-3-110, §56-7-10, §56-7-15 and the enactment of §23-23-140.
6. Discuss service animals and the ADA.

LESSON PLAN EXPANDED OUTLINE

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I. INTRODUCTION

This unit of instruction is designed to update the student about changes in law and procedure that relate to law enforcement.

II. BODY

A. FIRST AMENDMENT AND SELF INCRIMINATION

1. Lefemine v. Davis, 732 F.Supp.2d 614, United States District Court, South Carolina, Anderson/Greenwood Division.

- Freedom of Speech and Assembly
- Free Exercise of Religion
- Qualified Immunity (Individual Capacity, Official Capacity)
- Attorney's Fees

Factual And Procedural Background

This matter arises out of an incident that occurred on November 3, 2005, in Greenwood County, South Carolina. Plaintiff, Steven C. Lefemine, is the sole proprietor of Columbia Christians for Life ("CCL"), an organization that "actively seeks to raise public awareness of the horrors of abortion throughout the State of South Carolina." In order to fulfill CCL's mission, Plaintiff "and other like-minded persons, preach and carry signs" which "depict aborted babies in order to shock the consciences of those who see the signs to the horror of abortion." On "Thursday, November 3, 2005 at approximately 3:45 p.m., [Plaintiff] and about twenty other individuals began to establish a Christian pro-life witness" in Greenwood County, South Carolina. Specifically, the demonstration took place at the intersection of U.S. Highway 25 North and the S.C. 72 Bypass ("the intersection") which is "the busiest intersection in [Greenwood] County."

During the demonstration, Major Lonnie Smith ("Major Smith") received a telephone call from Lieutenant Randy Miles ("Lt. Miles") notifying him of complaints that had been received from motorists driving near the intersection. In particular, Major Smith was informed protestors were in the roadway holding graphic signs and one mother called saying that her son "was in the back seat screaming, crying because [he] had seen those signs." Major Smith proceeded to the intersection to investigate. Deputy Brandon Strickland ("Deputy Strickland") also proceeded to the intersection to serve as backup after hearing of the complaints over the dispatch

Prior to Major Smith or Deputy Strickland's arrival at the intersection, Lt. Miles informed Plaintiff that he "had several complaints about the graphic photographs and this was causing a disturbance in the traffic flow at th[e] intersection." When Major Smith arrived at the intersection, he observed a number of individuals holding signs and megaphones. Major Smith requested that Deputy Strickland take multiple pictures of the scene. Prior to approaching the CCL members, Major Smith called Chief Deputy Frederick to report the events occurring at the intersection. According to Major Smith, Chief Deputy Frederick informed him that "if we were getting complaints and these signs are graphic and people in

the community were complaining, then we were to tell [them] that they could continue to protest but they would either have to put away or take down the signs or ... possibly be ticketed for breach of peace."

Major Smith then approached Plaintiff and the following conversation ensued, in part:

Major Smith: How are you doing, sir?

Lefemine: Alright, sir, how are you?

Major Smith: Lonnie Smith with Greenwood County Sheriff's Office.

Lefemine: Steve Lefemine.

Major Smith: OK, we have a number of complaints from people that find this offensive and ... they don't want this on the street. So, at this time, I'm gonna ask you to put them up, OK? Put these signs up, because you can't distinguish what age of people are seein' these signs. OK, I'm asking you to put 'em up and go ahead, and if you want to stand out here on the corner, that's fine, but we cannot have these signs up because people do consider this is offensive material. OK?

Lefemine: Major Smith, if you're ordering us to leave under threat of arrest or being ticketed, we will leave, but I want you to know you're violating our constitutional right [**Major Smith:** OK] because you're discriminating based upon content of our signs.

Major Smith: Right, people do find this offensive, and this is an offensive manner, OK? This is offensive because you've got small children-you've got different ones that are seeing this. We have had so many complaints about people that this is offensive .... You're free to stay here, whatever, but we can't have these type of signs up where people can see 'em.

Lefemine: We will leave if you're ordering us to leave under threat of being ticked or being arrested .... Being offensive is not a basis for violating First Amendment rights....

Major Smith: You do not have a right to be offensive to other people in that manner.

Major Smith: ... I'm asking you if you will please take the signs down. If you do not take the signs down we will have no other choice we're gonna ticket you for breach of peace.

Lefemine: .... These are not obscene signs.

Major Smith: And I'm not saying you gotta leave the sidewalk. I'm not sayin' that. I'm just sayin' you got to put these signs down.

Major Smith: Like I said, this is the last warning. You can either go ahead and put 'em down or [I'll] ticket you.

Lefemine (to others in the group): Go ahead and remove the signs, he's violating*619 our constitutional rights. Go remove the signs ... remove the signs.

(*Id.* Attach. 3 (Transcript).) Following the conversation with Major Smith, Plaintiff and the other members of the CCL "packed up their signs and left shortly thereafter." (Am. Compl. ¶ 35.)

On November 13, 2006, an attorney from the National Legal Foundation ("NLF") wrote a letter to Sheriff Dan Wideman ("Sheriff Wideman") of Greenwood County to inform Sheriff Wideman that "CCL volunteers will be returning to the Greenwood area in the near future to exercise their First Amendment freedoms by highlighting the national tragedy of abortion." The letter continued to state that Sheriff Wideman was "hereby put on notice that any further interference with CCL's message by you or your officers will leave us no choice but to pursue all available legal remedies without further notice." The NLF lawyers also mailed the same

letter to Chief of Police Gerald Brooks ("Chief Brooks") of the City of Greenwood Police Department.

On November 17, 2006, Chief Brooks responded to the NLF's letter stating that CCL was welcome to visit the community and exercise their rights as there are "many public places where CCL can park, assemble, and convey their message." On November 28, 2006, Chief Deputy Frederick responded to the NLF stating, in part, that Major Smith's response in 2005 was based on CCL's methodology not their content and "should we observe any protester or demonstrator committing the same act, we will again conduct ourselves in exactly the same manner: order the person(s) to stop or face criminal sanctions." On November 25, 2006, Plaintiff "and others held their pro-life demonstration on the Greenwood city side of U.S. 25/S.C. 72 Bypass for fear of criminal sanctions from Greenwood County." No problems occurred during this demonstration.

a. Speech

The First Amendment of the United States Constitution protects an individual's right to freedom of expression through speech and public assembly. Virginia v. Black, 538 U.S. 343, 358, 123 S.Ct. 1536, 155 L.Ed.2d 535 (2003); Nat'l Socialist White People's Party v. Ringers, 473 F.2d 1010, 1016 (4th Cir.1973). "The protections afforded by the First Amendment, however, are not absolute, and ... the government may regulate certain categories of expression consistent with the Constitution."

In traditional public forums, such as streets, public sidewalks, and parks, "a State's right to limit protected expressive activity is sharply circumscribed: It may impose reasonable, content-neutral time, place, and manner restrictions ..., but it may regulate expressive content only if such a restriction is necessary, and narrowly drawn, to serve a compelling state interest."

Based on the foregoing, the court grants Plaintiff's motion for summary judgment as to the freedom of speech and assembly claims.

b. Religion

"The Free Exercise Clause of the First Amendment, applicable to the states through the Fourteenth Amendment, forbids the adoption of laws designed to suppress religious beliefs or practices unless justified by a compelling governmental interest and narrowly tailored to meet that interest." Booth v. Maryland, 327 F.3d 377, 380 (4th Cir.2003). Likewise, the government, through its actions, may not suppress religious beliefs absent a compelling governmental interest and narrow tailoring.

"The Free Exercise Clause, however, does not relieve an individual of the obligation to comply with a valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes)." Id. (internal quotation marks omitted). However, as discussed above, Defendants' prohibition of the graphic signs was not neutral and therefore must survive strict scrutiny. For the reasons discussed above, the court finds that Defendants' prohibition upon Plaintiff was not narrowly tailored to meet its interest. Defendants' prohibition was not narrowly tailored in order to balance meeting the government's interest in protecting children with Plaintiff's right to freely express his religious beliefs.

Therefore, the court grants Plaintiff's motion for summary judgment as to his free exercise of religion claim.

c. Qualified Immunity

(1) Individual Immunity

The court finds that, under the specific facts of this case, it was not unreasonable for Defendants to believe that their prohibition was lawful. After arriving at the intersection, Major Smith called his superior, Chief Deputy Frederick, now former Chief Deputy Frederick, to describe what was taking place. After speaking with Major Smith, Chief Deputy Frederick advised Major Smith that "the disturbance could be addressed as a breach of the peace based on the combination of the graphic nature of the signs and their proximity to the road, and that, in keeping with the law, he could order the protestors to stop waving the graphic signs; he further directed [Major] Smith to have the signs removed from areas visible from the roadway." Chief Deputy Frederick explained that based on "various constitutional law classes [he's] had, FBI Academy and in-service type training" he believed that he had a duty to "protect the public from what we see as, for example, roadway hazards, distracted motorists, et cetera. And that in this particular instance, [he] made the judgment that the danger to the motorist outweighed their right to stand six inches from the roadway and conduct themselves as they were." At the instruction of Chief Deputy Frederick, Major Smith spoke with Plaintiff about removing the graphic signs while Officer Strickland took pictures at the scene. As counsel for Plaintiff and Defendants stated during the hearing on the cross motions for summary judgment, Major Smith and Officer Strickland behaved professionally and courteously at all times during their interaction with Plaintiff and members of CCL. When faced with fulfilling its obligation to protect citizens on the roadways without infringing upon the free speech rights of Plaintiff, Defendants' decision to prohibit the graphic signs, while ultimately failing to survive scrutiny, was not unreasonable under the circumstances. "The qualified immunity standard gives ample room for mistaken judgments by protecting all but the plainly incompetent or those who knowingly violate the law. *627 This accommodation for reasonable error exists because officials should not err always on the side of caution because they fear being sued." Hunter v. Bryant, 502 U.S. 224, 229, 112 S.Ct. 534, 116 L.Ed.2d 589 (1991) (internal citation and quotation marks omitted).

Accordingly, Defendants are immune from suit in their individual capacity.

(2) Official Liability

The Sheriff's Office cannot be held liable pursuant to respondeat superior for the constitutional violations of their employees. Monell v. Dep't of Social Services of City of New York, 436 U.S. 658, 692-94, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978). Instead, "it is when execution of a government's policy or custom, ...inflicts the injury that the government as an entity is responsible." Id. at 694, 98 S.Ct. 2018. Plaintiff has not sufficiently pled facts to support the conclusion that it is the policy or custom of the Sheriff's Office to violate a citizen's First Amendment rights. Further, Plaintiff has not shown a policy or custom of the Sheriff's Office to utilize breach of the peace violations as a way to infringe upon a citizen's First Amendment rights.

As such, Defendants are immune from suit in their official capacity. Therefore, Plaintiff is not entitled to monetary damages.

The Court found the officers neither liable individually or officially.

The Plaintiffs rights were violated and the government must narrowly draw any restrictions the attempt to impose.

3. Self-Incrimination

Salina v. Texas, No. 12–246. U.S. Supreme Court 2013

Petitioner, without being placed in custody or receiving *Miranda* warnings, voluntarily answered some of a police officer's questions about a murder, but fell silent when asked whether ballistics testing would match his shotgun to shell casings found at the scene of the crime. At petitioner's murder trial in Texas state court, and over his objection, the prosecution used his failure to answer the question as evidence of guilt. He was convicted, and both the State Court of Appeals and Court of Criminal Appeals affirmed, rejecting his claim that the prosecution's use of his silence in its case in chief violated the Fifth Amendment.

Held:

The judgment is affirmed.

369 S. W. 3d176, affirmed.

Justice Alito, joined by The Chief Justice Roberts, and Justice Kennedy, concluded that petitioner's Fifth Amendment claim fails because he did not expressly invoke the privilege in response to the officer's question. Pp.3-12.

(a) To prevent the privilege against self-incrimination from shielding information not properly within its scope, a witness who "'desires the protection of the privilege . . . must claim it' " at the time he relies on it. Minnesota v. Murphy, 465 U. S. 420, 427. This Court has recognized two exceptions to that requirement. First, a criminal defendant need not take the stand and assert the privilege at his own trial. Griffin v. California, 380 U. S. 609, 613–615. Petitioner's silence falls outside this exception because he had no comparable unqualified right not to speak during his police interview. Second, a witness' failure to invoke the privilege against self-incrimination must be excused where governmental coercion makes his forfeiture of the privilege involuntary. See, *e.g.*, Miranda v. Arizona, 384 U. S. 436, 467−468, and n. 37. Petitioner cannot benefit from this principle because it is undisputed that he agreed to accompany the officers to the station and was free to leave at any time. Pp.3-6.

(b) Petitioner seeks a third exception to the express invocation requirement for cases where the witness chooses to stand mute rather than give an answer that officials suspect would be incriminating, but this Court's cases all but foreclose that argument. A defendant normally does not invoke the privilege by remaining silent. See Roberts v. United States, 445 U. S. 552, 560. And the express invocation requirement applies even when an official has reason to suspect that the answer to his question would incriminate the witness. See *Murphy*, *supra*, at 427−428. For the same reasons that neither a witness' silence nor official suspicion is sufficient by itself to relieve a witness of the obligation to expressly invoke the privilege, they do not do so together. The proposed exception also would be difficult to reconcile with Berghuis v. Thompkins, 560 U. S. 370, where this Court held in the closely related context of post-*Miranda* silence that a defendant failed to invoke his right to cut off police questioning when he remained silent for 2 hours and 45 minutes.

Petitioner claims that reliance on the Fifth Amendment privilege is the most likely explanation for silence in a case like his, but such silence is "insolubly ambiguous." See Doyle v. Ohio, 426 U. S. 610, 617. To be sure, petitioner might have declined to answer the officer's question in reliance on his constitutional privilege. But he also might have done so because he was trying to think of a good lie, because he was embarrassed, or because he was protecting someone else. Not every such possible explanation for silence is probative of guilt, but neither is every possible explanation protected by the Fifth Amendment. Petitioner also suggests that it would be unfair to require a suspect unschooled in the particulars of legal doctrine to do anything more than remain silent in order to invoke his "right to remain silent." But the Fifth Amendment guarantees that no one may be "compelled in any criminal case to be a witness against himself," not an unqualified "right to remain silent." In any event, it is settled that forfeiture of the privilege against self-incrimination need not be knowing. *Murphy*, 465 U. S., at 427–428. Pp. 6−10.

(c) Petitioner's argument that applying the express invocation requirement in this context will be unworkable is also unpersuasive. The Court has long required defendants to assert the privilege in order to subsequently benefit from it, and this rule has not proved difficult to apply in practice. Pp. 10−12.

Justice Thomas, joined by Justice Scalia, concluded that petitioner's claim would fail even if he invoked the privilege because the prosecutor's comments regarding his pre custodial silence did not compel him to give self-incriminating testimony. Griffin v. California, 380 U. S. 609, in which this Court held that the Fifth Amendment prohibits a prosecutor or judge from commenting on a defendant's failure to testify, should not be extended to a defendant's silence during a pre custodial interview because *Griffin* "lacks foundation in the Constitution's text, history, or logic." See Mitchell v. United States, 526 U. S. 314, 341 (Thomas, J., dissenting). Pp. 1−2.

B. REASONABLE SUSPICION/PROBABLE CAUSE

1. State v. Taylor, Opinion No. 27207, filed January 9, 2013. South Carolina Supreme Court

Facts:

On July 25, 2006, at approximately 11:00 p.m., the Florence County Sheriff's Office received a dispatch regarding suspected drug activity. The anonymous call indicated that a black male on a bicycle appeared to be selling drugs in an area well known to law enforcement for its high incidence of crime and drug traffic. Sheriff's deputies responded to the call and, from their vehicles, observed Respondent alone at a road intersection. Respondent is an African-American male and was on a bicycle. The officers parked their vehicles and approached Respondent's position on foot. Officers then observed Respondent "huddled up" with another male. Suspecting an illegal drug transaction, officers approached Respondent. Upon realizing that the officers were approaching, Respondent and his associate "immediately" split up, and Respondent rode the bicycle towards the officers in an apparent attempt to flee the area. Police called out to Respondent to stop, but Respondent continued his movement. Believing that he had reasonable suspicion under the circumstances, an officer conducted a takedown of Respondent and patted him down for weapons. During the search for weapons the deputy discovered crack cocaine.

Respondent was indicted for possession with intent to distribute crack cocaine. The case proceeded to trial, and the sheriff's deputy that conducted the search testified in camera regarding the discovery of the crack cocaine:

> I then push [sic] the subject to the top of his pocket without entering the pocket. It rolled out on the ground beside him with [sic] a green tennis ball. At the time, I picked the tennis ball up. As I picked it up, I squeezed it. It had a slit in the top of it. And inside the tennis ball, you could actually see the bag of what was believed to be crack cocaine at the time.

The officer later testified during the trial:

> I worked the item up until it dropped out on the ground beside him. I picked the object up. It was a green tennis ball. It did have a cut in the top of it. And as I pick the ball up, I could see the plastic bag what appeared to this deputy to be crack cocaine inside.

Respondent was found guilty and sentenced, as a third-time drug offender, to thirty years' imprisonment. The court of appeals overturned the conviction, finding that police did not have reasonable suspicion to stop Respondent. State v. Taylor, 388 S.C. 101, 694 S.E.2d 60 (Ct. App. 2010).

Law:

Whether police had reasonable suspicion to detain Respondent and conduct an investigatory search? The circumstances of the instant case closely mirror the facts of Lender. Police received an anonymous tip that a black male, on a bicycle, was possibly selling "dope" at an unpaved portion of a local street known for a high incidence of drug traffic. At approximately 11:00 p.m., police officers observed Respondent, an African-American male, on a bicycle in this same area. Respondent was "huddled up" with another male. Police testified that according to past experience, "ninety percent of the time," this sort of behavior indicated the presence of illegal activity. Unlike the scenario in Sprinkle, the Record does not reflect that police were unable to observe Respondent's hands, and thus nothing contradicted their suspicion that illegal activity was taking place. As the officers approached, Respondent pedaled toward them in an undisputed attempt to avoid them.[2] Evasive conduct may inform an officer's appraisal of a street corner encounter. Lender, 985 F.2d at 154 (citing United States v. Sharpe, 470 U.S. 675, 683 n.3 (1985)). Given the totality of the circumstances, it was proper for police to conduct a pat down of Respondent. The officers in this case suspected illegal activity and established law does not require them to simply "shrug their shoulders and allow a crime to occur." Id.

Whether police had probable cause to search the tennis ball discovered during the search of Respondent?

It is clear from the officer's statements that he had not yet determined whether Respondent had a weapon when he manipulated the tennis ball out of Respondent's pocket. The officer then noticed the drugs inside the tennis ball through a slit on its surface as he squeezed the tennis ball when he picked it up from the ground. Thus, the incriminating nature of the contents of the tennis ball became apparent while police were still in the process of ensuring that Respondent was unarmed. See Taylor, 388 S.C. at 128, 694 S.E.2d at 74 (Thomas, J., dissenting). The tennis ball could have easily contained a razor, or other sharp object, which could be used alone or in conjunction with the tennis ball as a handle. Moreover, unlike the sequence of events in Dickerson, nothing in the record indicates that the police officer in the instant case manipulated the tennis ball any more than was necessary in order to pick it up from the ground.

2. State v. Moore, 746 S.E.2d 352 (S.C. Ct. App. 2013)

Facts:

Around 1:10 am on June 30, 2010 Officer Dale Owens of the Spartanburg County Sheriff's Office stopped Moore for speeding- 70mph in a 60 mph zone and failing to maintain his lane on I-85. After Officer Owens initiated his blue lights, Moore first activated his left turn signal, then his right turn signal. Officer Owens made the following additional observations during his interaction with Moore: Moore took longer than the average time to stop; failed to release his left turn signal, was talking on a cell phone when Owens approached the vehicle; an odor of alcohol emanated from the vehicle; the vehicle was a rental; Moore's hand was shaking heavily; Moore's carotid pulse and breathing appeared accelerated; Moore picked up his cell phone as he exited the vehicle; lit a cigarette as he stood outside his vehicle; raised his hands to his head; had a large sum of money despite being unemployed and, while being questioned about drinking, lowered his head and placed his hands in his pockets in a "defeated look". Additionally, Officer Owens testified Moore claimed to have been traveling from Atlanta where he had visited his grandmother and the vehicle was rented by a third party.

Officer Owens administered field sobriety tests and Moore passed two out of three. Officer Owens asked Moore for consent to search the vehicle, but Moore refused. Officer Owens decided to issue Moore a warning ticket, but detained Moore until a K-9 drug detection unit could arrive.

The dog alerted to the vehicle and the officers found a bottle of alcohol, crack cocaine, a semiautomatic weapon and a bundle of currency in the vehicle. Moore was arrested and indicted for trafficking cocaine base (first offense), and possession of a weapon during the commission of a violent crime. After moving to suppress the evidence, the trial proceeded and Moore was convicted of both charges.

Issue:

Whether Officer Owens had developed a reasonable, articulable suspicion that Moore was trafficking drugs at the time he intended to issue the warning citation such that the continued detention was lawful.

Discussion:

The court reminded us that lengthening a detention for further questioning beyond that related to the initial stop is acceptable in two situations: (1) when the officer has an objectively reasonable and articulable suspicion illegal activity has occurred or is occurring; or (2) the initial detention has become a consensual encounter.

The court defined reasonable suspicion as involving common sense, nontechnical conceptions that deal with factual and practical considerations of everyday life on which reasonable and prudent persons, not legal technicians, act. Courts must consider the totality of the circumstances and give due weight to common sense judgments reached by officers in light of their experience and training.

The State argued that Officer Owens had reasonable suspicion to further detain Moore beyond the scope of the initial traffic stop and cited the above-listed suspicious behaviors/indicators.

The court expressed concern regarding what it termed "the State's inclination toward using whatever facts are present, no matter how innocent, as indicia of suspicious activity". The court found the totality of the facts to be innocuous and not sufficient to provide Officer Owens with reasonable suspicion. Without reasonable suspicion the continued detention of Moore was illegal, the court suppressed the evidence obtained during the search of the vehicle.

3. State v. Provet, 747 S.E.2s 453 (S.C. 2013)

Facts:

In May 2002, Corporal Owens of the South Carolina Highway Patrol stopped Provet on I-85 for following too closely and driving with a burned out tag light. Corporal Owens asked Provet for his driver's license and registration. As Provet produced those items, Corporal Owens observed his hands were shaking excessively and his breathing was accelerated. Corporal Owens observed the vehicle was registered to a third party.

As Corporal Owens was preparing a warning citation, he asked Provet where he was coming from. Provet answered that he had been visiting his girlfriend at a nearby Holiday Inn. (Corporal Owens had observed Provet pass the exit at which the only Holiday Inn in Greenville is located) Corporal Owens asked if Provet had gone to another location after leaving the Holiday Inn, he denied having done so.

Provet explained the vehicle belonged to a different girlfriend than the one he had been visitng in Greenville; that he had recently graduated from a technical college but did not yet have a job; and that he had been in Greenville for two days but without bringing luggage.

Corporal Owens observed Provet use delay tactics. Corporal Owens called for a canine drug detection unit, then called dispatch to check on the status of Provet's driver's license and vehicle registration.

Corporal Owens approached Provet's vehicle to check the VIN. While doing so, he observed several air fresheners, fast food bags, a cell phone, some receipts as well as a bag on the rear seat. The canine unit arrived before Corporal Owens received the dispatcher's return call regarding the status of Provet's license and registration. Corporal Owens issued Provet a warning citation.

Corporal Owens then asked for permission to search the vehicle, and Provet assented. The officer handling the drug detection canine began preparing for the search. As he did so, Provet fled the scene on foot but was apprehended. The drug detection canine alerted on a fast food bag, in which officers discovered a substance that field tested positive for and was later confirmed to be cocaine.

Provet moved to suppress the cocaine because it was obtained as a result of an illegal search. The trial court denied the motion.

Issues:

Did the officer have reasonable suspicion to seize Provet after the conclusion of a lawful traffic stop? Did Provet voluntarily consent to the search of his vehicle?

Discussion:

On the issue of the lawfulness of the seizure, particularly as to the extension of the duration of the traffic stop, the court cited United States v. Sullivan, for the proposition that the officer may not extend the duration of a traffic stop in order to question the motorist on unrelated matters unless he possesses reasonable suspicion that warrants an additional seizure of the motorist. The court cautioned that an officer cannot avoid this rule by employing delay tactics but reminded us of the rule from Pennsylvania v. Mimms- that an officer's observations while conducting the traffic stop may create reasonable suspicion to justify further search or seizure.

In this case, the initial seizure of Provet was extended, however the court found that extension was not unreasonable. The traffic stop, including the off-topic questioning, was concluded within ten minutes. The court informs us that the proper inquiry is not whether an

officer "unreasonably" extends the duration of a traffic stop with his off-topic questions but whether he "measurably" extends it. The inquiry is into time, not to reasonableness. The court found Corporal Owens had sufficient articulable facts to support reasonable suspicion that criminal activity was afoot, justifying a second seizure.

On the issue of the consent to search, the court found Provet's consent was voluntary. After returning Provet's driver's license, vehicle registration and issuing the warning citation the court found no show of force to constrain Provet. The court also found it significant that the drug detection canine was confined in the police vehicle, no guns were pointed and no threatening tone was used. Due to the totality of the circumstances, the court concluded Provet voluntarily consented to the search.

Holding:

The court used this case to clarify that off-topic questioning does not constitute a separate seizure for Fourth Amendment purposes so long as it does not measurably extend the duration of a lawful traffic stop.

C. DUI LAW

1. City of Greer v. Humble (Court of Appeals of South Carolina Decided March 27, 2013)

Facts:

On February 25, 2011, Humble was pulled over by Officer Jim Williams. Upon Humble's DUI arrest, Officer Williams, the arresting officer, submitted an affidavit certifying that the video recording equipment was inoperable at the time of the arrest and stating that reasonable efforts had been made to maintain the equipment in an operable condition.

Procedural History:

At trial, Humble moved to dismiss the DUI charge on the grounds that his affidavit was insufficient and that he had failed to comply with the video recording requirements of §56-5-2953(B). Specifically, Humble argued the affidavit was insufficient because it did not state which reasonable efforts had been taken to maintain the equipment in an operable condition.

The court heard testimony from Officer Williams on the issue. According to Officer Williams, the video recording system used by the City has an eight-gigabyte memory card and is built into the car mirror. When the video recording system malfunctions, there is no warning and there is no "real time" indication of a malfunction. Officer Williams testified that an officer has no reason to doubt he or she has a recording until the officer attempts to upload the images from the data card. Officer Williams testified that his department contacts Digital Ally every time they have a problem and that he has attempted to remedy the problem with his patrol car. Officer Williams also testified that he had ongoing problems with his patrol car.

Issue:

Whether the affidavit is deficient on its face.

Analysis:

Effective February 10, 2009, the legislature amended the affidavit requirement of §56-5-2953(B). The amended statute, applicable to this case, now requires an officer to state which reasonable efforts had been made to maintain the equipment in an operable condition. The oral testimony presented at trial to supplement the affidavit is insufficient to meet the affidavit requirements of the statute.

Holding:

The City's decision to merely report the malfunction in the video equipment while refusing to pay for the repairs and continuing to use the defective equipment is not a valid reason for failing to produce a video recording of Humble's conduct. Unexcused noncompliance with §56-5-2953 mandates a dismissal of the DUI charge.

2. Missouri v. McNeely, No. 11-1425 (United States Supreme Court, Decided April 17, 2013)

Facts:

A Missouri police officer stopped Tyler McNeely after observing him exceed the posted speed limit and repeatedly cross the centerline. McNeely displayed several signs of impairment and related that he had consumed "a couple of beers". McNeely performed poorly on a battery of field sobriety tests and was placed under arrest for driving while intoxicated (DWI).

The officer began to transport McNeely to the station, but when McNeely indicated he would refuse a breath sample, the officer took McNeely to a nearby hospital for blood testing. The officer did not attempt to secure a warrant. Under Missouri's implied consent law, the officer explained that refusal to submit to a blood test would lead to the immediate suspension of his license and could be used against him in court. McNeely refused the blood test.

The officer directed a hospital technician to take a blood sample. Subsequent testing showed McNeely's BAC at 0.15 percent.

Issue:

Whether the natural metabolization of alcohol in the bloodstream presents a per se exigency that justifies an exception to the Fourth Amendment's warrant requirement for nonconsensual blood testing in all drunk-driving cases.

Holding:

In deciding whether it is appropriate to proceed without a warrant the Court will look to the totality of the circumstances. The court was unwilling to depart from a "case by case" analysis and create a per se exception to the warrant requirement for impaired driving cases. While consent remains a valid exception to the warrant requirement, the body's natural metabolization of alcohol is not an exception. A warrant should be obtained before proceeding with the collection of a non-consensual blood or urine sample.

D. SEARCH WARRANTS/ WARRANTLESS SEARCHES/EXIGENT CIRCUMSTANCES/ DNA EVIDENCE

1. Search Warrants

a. Florida v. Jardines, 569 U.S. ___ (2013).

Facts:

In 2006, Detective William Pedraja of the Miami-Dade Police Department received an unverified tip that marijuana was being grown in the home of respondent Joelis Jardines. One month later, the Department and the Drug Enforcement Administration sent a joint surveillance team to Jardines' home. Detective Pedraja was part of that team. He watched the home for fifteen minutes and saw no vehicles in the driveway or activity around the home, and could not see inside because the blinds were drawn. Detective Pedraja then approached Jardines' home accompanied by Detective Douglas Bartelt, a trained canine handler who had just arrived at the scene with his drug-sniffing dog. The dog was trained to detect the scent of marijuana, cocaine,

heroin, and several other drugs, indicating the presence of any of these substances through particular behavioral changes recognizable by his handler.

Detective Bartelt had the dog on a six-foot leash, owing in part to the dog's "wild" nature, and tendency to dart around erratically while searching. As the dog approached Jardines' front porch, he apparently sensed one of the odors he had been trained to detect, and began energetically exploring the area for the strongest point source of that odor. As Detective Bartelt explained, the dog "began tracking that airborne odor by... tracking back and forth," engaging in what is called "bracketing," "back and forth, back and forth." Detective Bartelt gave the dog "the full six feet of the leash plus whatever safe distance [he could] give him" to do this—he testified that he needed to give the dog "as much distance as I can." And Detective Pedraja stood back while this was occurring, so that he would not "get knocked over" when the dog was "spinning around trying to find" the source After sniffing the base of the front door, the dog sat, which is the trained behavior upon discovering the odor's strongest point. Detective Bartelt then pulled the dog away from the door and returned to his vehicle. He left the scene after informing Detective Pedraja that there had been a positive alert for narcotics.

On the basis of what he had learned at the home, Detective Pedraja applied for and received a warrant to search the residence. When the warrant was executed later that day, Jardines attempted to flee and was arrested; the search revealed marijuana plants, and he was charged with trafficking in cannabis.

At trial, Jardines moved to suppress the marijuana plants on the ground that the canine investigation was an unreasonable search.

Reasoning:

1) the search occurred on the curtilage, not open field, which is a constitutionally protected area. 2) law enforcement did not have the occupants permission to enter the constitutionally protected area. No customary invitation to bring a police dog on the protected area.

Rule:

The government's use of trained police dogs to investigate the home and its immediate surroundings is a "search" within the meaning of the Fourth Amendment.

b. U.S. v. Fisher, Op. No. 11-6781 (4th Ct. App. 2013)

Facts:

On October 29, 2007, Mark Lunsford, a Baltimore City Drug Enforcement Agency ("DEA") Task Force Officer, applied for a search warrant for Defendant Cortez Fisher's residence and vehicle. In his sworn affidavit—the sole affidavit supporting the application for the search warrant—Lunsford averred that he targeted Defendant after a confidential informant told him that Defendant distributed narcotics from his residence and vehicle and had a handgun in his residence. Lunsford described the confidential informant as a "reliable" informant who had previously provided him with information that led to numerous arrests for narcotics violations. Lunsford further averred that the confidential informant provided him with a physical description of Defendant, Defendant's residential address, the make and model of Defendant's vehicle, and his license plate number. Based on the information provided by the confidential informant, Lunsford obtained a photograph of Defendant. Lunsford showed the photograph to the confidential informant, who then confirmed

Defendant's identity. Lunsford declared that he subsequently conducted surveillance and saw Defendant make narcotics transactions from his car, after which Defendant returned to his residence.

On the morning of October 29, 2007, Lunsford and other officers saw Defendant leave his residence and stopped him for questioning. According to Lunsford, Defendant declined questioning and backed into a police vehicle. Officers then arrested and searched Defendant and found fifty empty glass vials in his pants pocket.

Solely on the basis of his sworn affidavit, Lunsford obtained a search warrant for Defendant's residence and vehicle on October 29, 2007 and executed the warrant that same day. During the search, officers found crack cocaine and a loaded handgun.

Reasoning:

To set aside a defendant's plea as involuntary, defendant must show that impermissible government conduct occurred. Misrepresentation of evidence is impermissible conduct. An officer's deliberate lie led to the warrant that led to the discovery of the evidence against defendant.

Rule:

Given the totality of the circumstances of this case—a law enforcement officer intentionally lying in a affidavit that formed the sole basis for searching the defendant's home, where evidence forming the basis of the charge to which he pled guilty was found—Defendant's plea was involuntary and violated his due process rights.

c. U.S. v. Yengel, (No. 12-4317 4th Cir., decided February 15, 2013)

Facts:

The relevant facts are undisputed by the parties. In the late afternoon of December 31, 2011, Sergeant Brian Staton responded to a call regarding a domestic assault at the home of Joseph Robert Yengel, Jr. ("Yengel"). The 911 dispatcher informed Sergeant Staton that a domestic dispute had erupted between Yengel and his wife. Sergeant Staton also learned that Mrs. Yengel had vacated the residence, and Yengel was potentially armed and threatening to shoot law enforcement personnel.

At around 4:00 p.m., Officer J.M. Slodysko was the first to arrive on the scene. The Yengels' two-story home featured a walk-up front porch and was located in a dense residential neighborhood, with very little space separating adjacent homes. Upon his arrival, Officer Slodysko observed that Yengel was "extremely upset." Officer Slodysko was, however, able to calm Yengel, and to persuade him to come out of the residence onto the front porch, unarmed. Shortly thereafter, when Sergeant Staton arrived on the scene, Yengel was seated on the top step of the front porch, "agitated and emotional," but unarmed. The officers then further calmed Yengel, arrested him, and removed him from the scene.

While still at the scene, Sergeant Staton then interviewed Mrs. Yengel and Yengel's mother, Karol Yengel. During the interviews, Sergeant Staton learned Yengel kept a large number of firearms and a "grenade" inside the house. Sergeant Staton also learned that Mrs. Yengel's young son was sleeping in one of the upstairs bedrooms. Upon learning of the possible existence of a "grenade," Sergeant Staton did not immediately call for the assistance of explosive experts, nor did he evacuate the area. Rather, Sergeant Staton asked Mrs. Yengel to show him where the alleged grenade was kept.

Mrs. Yengel directed Sergeant Staton into the upstairs master bedroom. There, she collected a variety of firearms which were strewn about the bedroom, placed the firearms on the bed, and requested that Sergeant Staton remove them. She said nothing further at that point about the existence or removal of the alleged grenade. Therefore, Sergeant Staton reiterated his request to locate the "grenade," and Mrs. Yengel directed him to a nearby guest bedroom located at the end of the upstairs hallway, directly next to the bedroom in which her young son was sleeping. Mrs. Yengel led Sergeant Staton to a closet inside the guest bedroom that was locked with a combination keypad and thumbprint scanner. Mrs. Yengel informed Sergeant Staton that she did not know the combination to the lock and did not have access to the closet, but told him the "grenade" was kept inside. She then gave Sergeant Staton permission to "kick the door open" and told him to "do whatever you need to do to get in there." At this point, Sergeant Staton still did not notify explosive experts, did not evacuate the house or nearby homes, did not remove the sleeping child from the room located directly next to the room where the "grenade" was allegedly stored, and did not secure a search warrant. Instead, he simply pried open the closet with a screwdriver.

Once inside the closet, Sergeant Staton identified a variety of military equipment, including two gun safes, camouflage, and other weapons. Sergeant Staton also identified what he thought to be a military ammunition canister that he believed might contain the possible grenade.

After the warrantless entry into the closet, Sergeant Staton ordered an evacuation of the house, which at the time still included Mrs. Yengel's young son, as well as an evacuation of the surrounding residences. At approximately 6:25 p.m., he also notified the James City County Fire Marshal's office, and the Naval Weapons Station, requesting the assistance of its Explosive Ordnance Disposal ("EOD") team. At around 7:00 p.m., Investigator Kendall Driscoll of the James City County Fire Marshal's office arrived on the scene, and began gathering further information from Mrs. Yengel by telephone, as she had by then been removed from the scene. Mrs. Yengel informed Investigator Driscoll that she had seen her husband place a "grenade"—four inches by two inches, dark green in color, with a pin in the top—into the closet two years prior. Shortly thereafter, around 7:30 p.m., the EOD team arrived and searched the open closet. Once inside the closet, the EOD team found a backpack containing not a grenade, but a one pound container of smokeless shotgun powder and a partially assembled explosive device attached to a kitchen timer. Law enforcement had been on the scene approximately three and a half hours at this point.

On February 14, 2012, Yengel was charged with possession of an unregistered firearm, in violation of 26 U.S.C. §§5861 and 5845, that is, "a combination of parts designed and intended for use in converting a device into a destructive device, not registered to him in the National Firearms Registration and Transfer Record." On March 8, 2012, Yengel filed a motion to suppress evidence gained from the warrantless search of the locked closet.

On March 27, 2012, the district court conducted a hearing to consider Yengel's motion. The district court heard testimony from Yengel, Sergeant Staton, and Investigator Driscoll. The district court also admitted as exhibits a picture of a door lock similar to the one used by Yengel, Officer Slodysko's report, and pictures of the explosive device and shotgun powder recovered from the closet.

The district court granted Yengel's motion to suppress from the bench and stated its reasoning by order dated April 3, 2012. The district court concluded the warrantless search did not fall into one of the narrow and well-delineated exceptions to the warrant requirement, and, therefore, violated the Fourth Amendment. Specifically, the district court determined that neither Mrs. Yengel's consent to the search, nor exigent circumstances justified the warrantless search. The Government filed a motion for reconsideration on April 13, 2012, which the district court subsequently denied. On April 25, 2012, the Government filed a timely notice of appeal with the Court of Appeals.

Law:

The most basic principle of Fourth Amendment jurisprudence—and the genesis of our analysis here—is that warrantless searches and seizures inside a home are presumptively unconstitutional. Brigham City v. Stuart, 547 U.S. 398, 403, 126 S.Ct. 1943, 164 L.Ed.2d 650 (2006). "Nevertheless, because the ultimate touchstone of the Fourth Amendment is 'reasonableness,' the warrant requirement is subject to certain exceptions." Id. (citing Flippo v. West Virginia, 528 U.S. 11, 13, 120 S.Ct. 7, 145 L.Ed.2d 16 (1999) (per curiam)). Such reasonableness exceptions, however, must be narrow and well-delineated in order to retain their constitutional character. Flippo, 528 U.S. at 13 (citing Katz v. United States, 389 U.S. 347, 357, 88 S.Ct. 507, 19 L.Ed.2d 576 (1967)). One such exception is when exigent circumstances justify the warrantless entry of a home. See Mincey v. Arizona, 437 U.S. 385, 392–94, 98 S.Ct. 2408, 57 L.Ed.2d 290 (1978). The rationale underpinning the exigent circumstances doctrine is that when faced with an immediate and credible threat or danger, it is inherently reasonable to permit police to act without a warrant.

Regardless of the particular exigency being invoked, we have repeatedly found the non-exhaustive list of factors first provided in United States v. Turner, 650 F.2d 526, 528 (4th Cir.1981), to be helpful in determining whether an exigency reasonably justified a warrantless search. Hill, 649 F.3d at 265. The Turner factors include: (1) the degree of urgency involved and the amount of time necessary to obtain a warrant; (2) the officers' reasonable belief that the contraband is about to be removed or destroyed; (3) the possibility of danger to police guarding the site; (4) information indicating the possessors of the contraband are aware that the police are on their trail; and (5) the ready destructibility of the contraband.

We conclude the objective circumstances discernible at the time Sergeant Staton entered the closet did not constitute an emergency such that a reasonable officer would have believed a preventive entry was warranted. In fact, Sergeant Staton's own actions belie the Government's argument. We find a number of facts highly persuasive.

First, the information available to Sergeant Staton regarding the stable nature of the threat prior to the search indicated that the scope of any danger was quite limited.

Mrs. Yengel informed Sergeant Staton only that there was a "grenade" inside the house, and provided no indication that there might be other, more unstable explosives, inside as well. Mrs. Yengel also provided no indication to Sergeant Staton as to when she had last seen the grenade that could support a conclusion the grenade was somehow "live" or could detonate at any moment. Indeed, even the presence of explosive materials alone, while heightening the danger, would not automatically provide an exigent basis for a search. See United States v. Bonitz, 826 F.2d 954, 957 (10th Cir.1987) (concluding no exigency existed where officers found

cans of gunpowder because "[s]tanding undisturbed, cans of gun powder are inert"). The presence of explosive materials must be tied to objective facts that sufficiently increase the likelihood, urgency, and magnitude of the threat to the level of an emergency. We find no clear error in the district court's factual finding that a grenade is a stable, inert explosive device that typically requires human intervention to detonate and cause harm.

Second, the immobile and inaccessible location of the threat further diminished the scope of any possible danger. Mrs. Yengel informed Sergeant Staton that the "grenade" was inside a locked closet—a closet to which neither she, nor anyone else other than Yengel, had ready access. Once Yengel was arrested and removed from the scene, the threat that someone might access the closet and disturb a stable grenade contained therein dissipated even further. Accordingly, these facts weigh against concluding under the first, second, third, and fifth Turner factors that exigent circumstances were present: the facts did not establish a sufficient degree of urgency and an inability to secure a warrant, a reasonable belief that contraband could be removed or destroyed, danger to police guarding the site, or the ready destructibility of contraband. Finally, the fact that no officers on the scene sought to evacuate the nearby residences, or, in particular, to evacuate Mrs. Yengel's young son who was sleeping in the room directly next to the alleged grenade provides stark evidence that a reasonable police officer would not—and did not—believe an emergency was on-going, such as would justify a warrantless entry.

2. Maryland v. King, U.S. Supreme Court, No. 12-207, slip op.) (Decided June 3, 2013)

Facts:

Maryland law authorizes law enforcement authorities to collect DNA samples from "an individual who is charged with… a crime of violence or an attempt to commit a crime of violence; or… burglary or an attempt to commit burglary". Maryland law defines a crime of violence to include murder, rape, first-degree assault, kidnapping, arson, sexual assault and a variety of other serious crimes. Once taken, a DNA sample may not be processed or placed in a database before the individual is arraigned (unless the individual consents). DNA samples are destroyed if the charges are not supported by probable cause, if a criminal action does not result in a conviction, if the conviction is finally reversed or vacated and no new trial is permitted or the individual is granted an unconditional pardon.

In 2009 Alonzo King was arrested in Wicomico County, Maryland, and charged with first and second degree assault for menacing a group of people with a shotgun. As part of routine booking procedure for serious offenses, his DNA sample was taken by applying a cotton swab or filter paper- known as a buccal swab- to the inside of his cheeks. His DNA was found to match DNA taken from a previously-unsolved rape, six years earlier in Salisbury, Maryland.

Procedure:

At trial, King moved to suppress the DNA match on the grounds that Maryland's DNA collection law violated the Fourth Amendment. The Circuit Court Judge upheld the statute as constitutional, King was convicted and sentenced to life in prison without the possibility of parole. The Maryland Court of Appeals struck down portions of the act authorizing collection of DNA from felony arrestees as unconstitutional because "King's expectation of privacy is greater than the State's purported interest in using King's DNA to identify him".

Issue:

Whether the Fourth Amendment prohibits the collection and analysis of a DNA sample from persons arrested, but not yet convicted, on felony charges.

Analysis:

The Court conducted a "reasonableness" analysis, balancing "the promotion of legitimate governmental interests" against "the degree to which the search intrudes upon an individual's privacy". The Court recognized the need for law enforcement officers, in a safe and accurate way, to process and identify the persons and possessions they must take into custody. The Court then discussed five specific government interests DNA evidence serves:

1. In every criminal case it is known and must be known who has been arrested and who is being tried.
2. Law enforcement officers bear a responsibility for ensuring that the custody of an arrestee does not create inordinate "risks for facility staff or the existing detainee population and for a new detainee".
3. The Government has a substantial interest in ensuring that persons accused of crimes are available for trials.
4. An arrestee's past conduct is essential to an assessment of the danger he poses to the public, and this will inform a court's determination whether the individual should be released on bail.
5. The identification of an arrestee as the perpetrator of some heinous crime may have the salutary effect of freeing a person wrongfully imprisoned for the same offense.

The Court compared the collection of DNA samples to the advent of booking photos, "Bertillion Identification" (a 19th Century procedure documenting body measurements of arrestees), and fingerprinting.

The Court recognized that there are privacy interests implicated by this government intrusion on the person, but found "the legitimacy of certain privacy expectations vis-à-vis the State may depend upon the individual's legal relationship with the State". The expectations of privacy of an individual taken into police custody are of a diminished scope.

Holding:

In upholding the Maryland law, the court found that "unlike the search of a citizen who has not been suspected of a wrong, a detainee has a reduced expectation of privacy." The buccal swab was deemed a "minimal intrusion" on a person with a "diminished expectation of privacy". "A brief intrusion of an arrestee's person is subject to the Fourth Amendment, but a swab of this nature does not increase the indignity already attendant to normal incidents of arrest". The court reasoned that " in the context of a valid arrest supported by probable cause [King's] expectations of privacy were not offended by the minor intrusion of a brief swab of his cheeks", comparing the procedure to fingerprinting and photographing during booking procedures.

3. United States Court Of Appeals For The Fourth Circuit No. 12-4559

United States of America, plaintiff - Appellee, v. Dana Jackson, Defendant - Appellant.

Niemeyer, Circuit Judge:

Before dawn on May 26, 2011, Richmond, Virginia police officers pulled two bags of trash from a trash can located behind the apartment that Sierra Cox had rented from the Richmond Redevelopment and Housing Authority. The officers were looking to corroborate a tip from

confidential informants that Dana Jackson was selling drugs from the apartment. Jackson, who was Cox's boyfriend and the father of her children, regularly stayed at the apartment.

After recovering items from the bags that were consistent with drug trafficking, the police officers obtained a warrant to search Cox's apartment. The subsequent search uncovered evidence that ultimately led to Jackson's conviction for drug trafficking.

Jackson contends that the trash pull violated his Fourth Amendment rights because, as he argues, the police officers physically intruded upon a constitutionally protected area when they walked up to the trash can located near the rear patio of Cox's apartment to remove trash. See Florida v. Jardines, 133 S. Ct. 1409, 1414 (2013) (holding that officers conduct a Fourth Amendment search when they make an unlicensed physical intrusion into a home's curtilage to gather information). Jackson also argues that the officers violated his reasonable expectation of privacy in the contents of the trash can, relying primarily on the fact that the trash can was not waiting for collection on the curb of a public street, as was the case in California v. Greenwood, 486 U.S. 35, 41 (1988) (holding that there was no reasonable "expectation of privacy in trash left for collection in an area accessible to the public").

The Court rejects both arguments. The district court found as fact that at the time of the trash pull, the trash can was sitting on common property of the apartment complex, rather than next to the apartment's rear door, and we conclude that this finding was not clearly erroneous. The Court also holds that in this location, the trash can was situated and the trash pull was accomplished beyond the apartment's curtilage. The Court concludes further that in the circumstances of this case, Jackson also lacked a reasonable expectation of privacy in the trash can's contents. Accordingly, we affirm the district court's conclusion that the trash pull did not violate Jackson's Fourth Amendment rights.

4. United States v. Baker, 719 F.3d 313 (4th Cir. 2013)

Facts:

On March 3, 2008, Shawn Nelson, an officer with the Henrico County, Virginia, Police Department, stopped a vehicle that had a broken taillight and an expired license plate. Baker was driving the vehicle, and Dashawn Brown occupied the front passenger seat. On checking Baker's driver's license against state records, Nelson learned that Baker was the subject of an outstanding federal arrest warrant. While verifying the warrant, Nelson called for backup. Once additional officers arrived, Nelson arrested Baker and handed him over to one of the other officers, who searched him and, finding no contraband, secured him in a police car.

While the other officer was dealing with Baker, Nelson turned his attention to Brown, asking him to exit the vehicle. Brown did so but then began to walk away. Nelson ordered Brown to put his hands on the vehicle and started frisking him. When Nelson felt a handgun in Brown's pocket, Brown attempted to reenter the vehicle—claiming at the time that he wanted to retrieve his cellphone, which was on the passenger-side floorboard. Nelson struggled with Brown, wrestled him to the ground, and arrested him for possessing the handgun. He then searched Brown incident to the arrest, finding 0.90 grams of heroin, 0.40 grams of crack cocaine, $980 in cash, and a small digital scale on his person.

After securing Brown in a police car, Nelson searched the passenger compartment of Baker's vehicle, starting with the center console, where he found 20.6 grams of heroin, 0.24 grams of crack cocaine, 12.2 grams of methadone, and a burnt marijuana cigarette. He also found another handgun in the glove box.

Baker's lawyer never filed a suppression motion challenging the search of Baker's vehicle. Baker was convicted by a jury of various federal firearm and drug offenses. Baker appealed his convictions, through counsel. While his appeal was pending, the Supreme Court decided

Arizona v. Gant (holding that, under the Fourth Amendment, the "police may search a vehicle incident to a recent occupant's arrest only if the arrestee is within reaching distance of the passenger compartment at the time of the search or it is reasonable to believe the vehicle contains evidence of the offense of arrest").

Issues:

This case arises in the context of a motion by Baker, filed pro se, to vacate, set aside, or correct his sentence. The question in this case is whether Baker's lawyer was ineffective in failing to raise a Gant argument on direct appeal. To answer this question, the court considered exactly how the Gant holding impacts law enforcement.

Discussion:

The court began by reminding us that warrantless searches "are per se unreasonable under the Fourth Amendment—subject to only a few specifically established and well-delineated exceptions." Katz v. United States, 389 U.S.347, 357 (1967).

Gant dealt with a search of a vehicle, incidental to the arrest of a recent occupant, as an exception. Gant held that the exception for searches incident to an arrest authorizes vehicle searches only in two specific circumstances. The first circumstance is "when the arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search." The second is "when it is 'reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle.'"

The court used this case to clarify Gant "[leaves] unaltered other exceptions that might authorize the police to search a vehicle without a warrant even when an arrestee is secured beyond reaching distance of the passenger compartment and it is unreasonable to expect to find any evidence of the crime of arrest in the vehicle".

The exception most relevant to this case is the so-called automobile exception, which permits a warrantless search of a vehicle when there is probable cause to believe the vehicle contains contraband or other evidence of criminal activity.

While considering the specific facts of this case, the court noted that "even if the search exceeded the limits of the exception to the warrant requirement for searches incident to a lawful arrest, it was still justified by another, independent exception…." The court continues, discussing the "automobile exception", which allows police officers to search a vehicle without first obtaining a warrant if it "is readily mobile and probable cause exists to believe it contains contraband" or evidence of criminal activity.

The Gant holding itself recognized this exception, noting that "if there is probable cause to believe a vehicle contains evidence of criminal activity, United States v. Ross, 456 U.S. 798, 820-821 (1982), authorizes a search of any area of the vehicle in which the evidence might be found."

Holding:

Applying the law to these facts, the court found that after Officer Nelson found a gun, drugs, $980 in cash, and a digital scale on Brown's person, he had probable cause to search the passenger compartment of Baker's vehicle. Probable cause to search a vehicle exists when "reasonable officers can conclude that what they see, in light of their experience, supports an objective belief that contraband is in the vehicle. This standard is satisfied when a police officer lawfully searches a vehicle's recent occupant and finds contraband on his person.

Furthermore, the court applied the good faith exception to the exclusionary rule to allow the evidence, finding that the officers were following the law as it existed at the time of the search.

E. REVISIONS TO §47-3-110, §56-7-10, §56-7-15 AND THE ENACTMENT OF §23-23-140

1. §47-3-110 has been revised to provide that liability does not extend to a dog who was provoked or harassed by the person attacked or to trained law enforcement dogs under certain delineated circumstances.

Liability for attacks by dogs, provoked attacks, trained law enforcement dogs

Section 1. Section 47-3-110 of the 1976 Code is amended to read:

(A) If a person is bitten or otherwise attacked by a dog while the person is in a public place or is lawfully in a private place, including the property of the dog owner or person having the dog in the person's care or keeping, the dog owner or person having the dog in the person's care or keeping is liable for the damages suffered by the person bitten or otherwise attacked. For the purposes of this section, a person bitten or otherwise attacked is lawfully in a private place, including the property of the dog owner or person having the dog in the person's care or keeping, when the person bitten or otherwise attacked is on the property in the performance of a duty imposed upon the person by the laws of this State, the ordinances of a political subdivision of this State, the laws of the United States of America including, but not limited to, postal regulations, or when the person bitten or otherwise attacked is on the property upon the invitation, express or implied, of the property owner or a lawful tenant or resident of the property.

(B) This section does not apply if, at the time the person is bitten or otherwise attacked:

(1) the person who was attacked provoked or harassed the dog and that provocation was the proximate cause of the attack; or

(2) the dog was working in a law enforcement capacity with a governmental agency and in the performance of the dog's official duties provided that:

(a) the dog's attack is in direct and complete compliance with the lawful command of a duly certified canine officer;

(b) the dog is trained and certified according to the standards adopted by the South Carolina Law Enforcement Training Council;

(c) the governmental agency has adopted a written policy on the necessary and appropriate use of dogs in the dog's official law enforcement duties;

(d) the actions of the dog's handler or dog do not violate the agency's written policy;

(e) the actions of the dog's handler or dog do not constitute excessive force; and

(f) the attack or bite does not occur on a third party bystander."

2. §23-23-140 has been added to define the term “patrol canine team” and provide certification requirements for the teams.

Patrol canine teams, certification

Section 2. Chapter 23, Title 23 of the 1976 Code is amended by adding:

Section 23-23-140.

(A) For purposes of this section, 'patrol canine teams' refers to a certified officer and a specific patrol canine controlled by the handler working together in the performance of law enforcement or correctional duties. 'Patrol canine teams' does not refer to canines used exclusively for tracking or specific detection.

(B) The South Carolina Criminal Justice Academy shall verify that patrol canine teams have been certified by a nationally recognized police dog association or similar organization.

(C) No law enforcement agency may utilize patrol canine teams after July 1, 2014, unless the patrol canine teams have met all certification requirements."

3. §56-7-10 has been revised to provide that the offenses of shoplifting and criminal domestic violence first offense and second offense must be charged on a Uniform Traffic Ticket and that a Uniform Traffic Ticket may be used in an arrest for certain misdemeanor offenses under the jurisdiction of the magistrate court.

4. §56-7-15 has been revised to provide that the offense must have been freshly committed or is committed in the presence of a law enforcement officer and that the provision also applies to the arrest of a person who is charged with shoplifting.

F. SERVICE ANIMALS AND THE AMERICANS WITH DISABILITIES ACT (ADA)

There are only two types of service animals contemplated by the ADA. The issue is addressed in ¶571-1,"Service Animals". In 2010 the Department of Justice determined that only dogs, with one exception for miniature horses, qualify as service animals. Public accommodations must modify policies, practices and procedures to permit people with disabilities to be accompanied by these animals, unless doing so would fundamentally alter the nature of the goods and services provided or would jeopardize operational safety.

1. Allowable Inquiries 28 C.F.R. Part 35

§35.136 (f): A public entity shall not ask about the nature of extent of a person's disability, but may make two inquiries to determine whether an animal qualifies as a service animal. A public entity may ask if the animal is required because of a disability and what work or task the animal has been trained to perform. A public entity shall not require documentation, such as proof that the animal has been certified, trained, or licensed as a service animal. Generally, a public entity may not make these inquiries about a service animal when it is readily apparent that an animal is trained to do work or perform tasks for an individual with a disability (e.g., the dog is observed guiding an individual who is blind or has low vision, pulling a person's wheelchair, or providing assistance with stability or balance to an individual with an observable mobility disability).

2. South Carolina Statutes

a. §47-3-930 Interference with Use of a Guide Dog or Service Animal

(A) It is unlawful for a person who has received notice that his behavior is interfering with the use of a guide dog or service animal to continue with reckless disregard to interfere with the use of a guide dog or service animal by obstructing, intimidating, or jeopardizing the safety of the guide dog or service animal or its user.

(B) It is unlawful for a person with reckless disregard to allow his dog that is not contained by a fence, a leash, or another containment system to interfere with the use of a guide dog or service animal by obstructing, intimidating, or

otherwise jeopardizing the safety of the guide dog or service animal or its user…

(C) A person who violates subsection (A) or (B) is guilty of a misdemeanor triable in magistrate's court and, upon conviction, is subject to the maximum fines and terms of imprisonment in magistrate's court.

b. §47-3-940 Injury, Disability, or Death; Reckless Disregard

(A) It is unlawful for a person with reckless disregard to injure, disable, or cause the death of a guide dog or service animal.

(B) It is unlawful for a person with reckless disregard to allow his dog to injure, disable, or cause the death of a guide dog or service animal…

(C) A person who violates subsection (A) or (B) is guilty of a misdemeanor and, upon conviction, must be fined not more than two thousand five hundred dollars or imprisoned not more than six months, or both.

c. §47-3-950 Unauthorized Control Over Guide Dog or Service Animal

(A) It is unlawful for a person to wrongfully obtain or exert unauthorized control over a guide dog or service animal with the intent to deprive the guide dog or service animal user of his guide dog or service animal.

(B) A person who violates subsection (A) is guilty of a misdemeanor and, upon conviction, must be fined not less than two thousand dollars or imprisoned not less than one year, or both.

d. §47-3-960 Intentional Injury, Disability or Death

(A) It is unlawful for a person to intentionally injure, disable, or cause the death of a guide dog or service animal, except in the case of self-defense or humane euthanasia.

(B) A person who violates subsection (A) is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than three years, or both.

e. §2-7-35 Handicapped Person Defined

Wherever the term "handicapped person" appears in the laws of this State, unless it is stated to the contrary, it shall mean a person who:

(1) Has a physical or mental impairment which substantially limits one or more major life activities including, but not limited to caring for himself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working;

(2) Meets any other definition prescribed by federal law or regulation for use by agencies of state government which serve handicapped persons.

f. §43-33-20 Right of use of public facilities and accommodations of blind, other special need persons, and guide dog trainers.

(a) The blind, the visually handicapped, and the otherwise physically disabled have the same right as the able bodied to the full and free use of the streets, highways, sidewalks, walkways, public facilities, and other public places;

(b) The blind, the visually handicapped, and the otherwise physically disabled are entitled to full and equal accommodations, advantages, facilities, and

privileges of all common carriers, airplanes, motor vehicles, railroad trains, motor buses, street cars, boats or any other public conveyances or modes of transportation, hotels, lodging places, places of public accommodation, amusement or resort, and other places to which the general public is invited, subject only to the conditions and limitations established by law and applicable alike to all persons;

(c) Every handicapped person has the right to be accompanied by an assistance dog, especially trained for the purpose, in any of the places listed in item (b) of this section without being required to pay an extra charge for the assistance dog. Each handicapped person is liable for any damage done to the premises or facilities by the dog.

(d) Every person who is a trainer of an assistance or guide dog, while engaged in the training of an assistance or guide dog, has the same rights and privileges with respect to access to public facilities and accommodations as blind and disabled persons, including the right to be accompanied by an assistance or guide dog or assistance or guide dog in training, in any of the places listed in item (b) of this section without being required to pay an extra charge for the assistance dog. A person who uses premises or facilities accommodations accompanied by a dog under the authority of this item is liable for any damage done to the premises or facilities by the dog.

g. §44-33-40 Unlawful Interference with Rights of Blind or Other Physically Disabled Person

(A) It is unlawful for a person or his agent to:

(1) deny or interfere with admittance to or enjoyment of the public facilities enumerated in Section 43 33 20; or

(2) interfere with the rights of a totally or partially blind or disabled person under Section 43 33 20.

(B) A person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined in the discretion of the court or imprisoned not more than three years, or both.

Note: §44-33-40 "Unlawful Interference with Rights of Blind or Other Physically Disabled Person" is an offense separate and apart from §47-3-930 "Interference with Use of a Guide Dog or Service Animal". §47-3-930 (A) requires that a person first be given notice that his/her behavior is interfering with the use of a service animal and will require evidence the person persisted in their behavior with "reckless disregard". (Paragraph (B), which addresses interference from dogs, does not require notice that the dog is interfering) §44-33-40 specifically addresses denial of admittance to public facilities, attempts to charge a fee for use of an assistance dog and provides a penalty for interfering with the rights of a totally or partially blind or disabled person. Additionally, this statute does not require the offender be put "on notice" regarding his behavior.

In terms of penalties, a violation §47-3-930 "Interference with Use of a Guide Dog or Service Animal" is subject to the maximum penalty in magistrate's court ($500 or 30 days). §43-33-40 "Unlawful Interference with Rights of Blind or Other Physically Disabled Person" is a misdemeanor triable in General Sessions Court and punishable by a fine in the discretion of the court or imprisonment not to exceed three years.

III. SUMMARY

This handout addresses issues across a wide spectrum of legal issues. The cases are summarized to offer the officer a shorter if not easier version for study.

BIBLIOGRAPHY

LESSON PLAN TITLE:	LESSON PLAN #:	STATUS (New/Revised):
Legal Update 2013-2014	I0292	New

1. Selected case law from the United States Supreme Court.
2. Selected case law from the South Carolina Court of Appeals.
3. Selected case law from the South Carolina Supreme Court.
4. Selected case law from the Fourth Circuit United States Court of Appeals.