CJA LESSON PLAN COVER SHEET

LESSON PLAN TITLE:	LESSON PLAN #:	STATUS (New/Revised):
Legal Update 2014-2015 (January)	I0309	New

TRAINING UNIT:	TIME ALLOCATION:
Legal	2 Hours

PRIMARY INSTRUCTOR:	ALT. INSTRUCTOR:	REVISED & SUBMITTED BY:
Legal		Shari Driggers

ORIGINAL DATE OF LESSON PLAN:	JOB TASK ANALYSIS YEAR:
2014	

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:

Legal Update Handout

PERFORMANCE OBJECTIVES

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PERFORMANCE OBJECTIVES:

1. Discuss multi-jurisdictional drug-enforcement agreements.
2. Discuss the Fourth Amendment (deadly force, probable cause, reasonable suspicion, consent searches and cell phone searches).
3. Discuss various South Carolina statutes, regulations, and case law as it pertains to law enforcement misconduct.
4. Identify issues involving same sex marriage and Criminal Domestic Violence under South Carolina law.
5. Discuss Legislative updates to South Carolina Code of Laws.

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. MULTI-JURISDICTIONAL DRUG-ENFORCEMENT AGREEMENTS

State v. Burgess, 408 S.C. 421, 759 S.E.2d 407 (2014)

Facts

On March 2, 2006, officers with the Lexington County Narcotics Enforcement Team (NET) executed a search warrant for a trailer at 7120 Two Notch Road in Batesburg, South Carolina, which had been the site of several controlled drug buys. When Agent Billy Laney of the Lexington County Sheriff's Department and Officer Emmitt Gilliam of the Batesburg-Leesville Police Department pulled into the driveway, they saw Burgess and another individual standing by a trailer that was not the target of the search warrant. The officers then witnessed Burgess run around the back of the trailer. Officer Gilliam ran around the other side of the trailer "to cut him off." When Officer Gilliam got within five to six feet of Burgess, he commanded him to stop and put his hands up. Officer Gilliam placed Burgess under arrest and handcuffed him with the assistance of Agent Eric Kirkland of the Lexington County Sheriff's Department. Agent Laney "backtracked" Burgess's (sic) steps to where Burgess had been standing and discovered a pill bottle top and pieces of crack cocaine on the ground. The substance found on the ground was chemically tested and determined to be 5.67 grams of crack cocaine. As a result, a Lexington County grand jury indicted Burgess for possession of crack cocaine with intent to distribute, and he was ultimately convicted of that offense.

Issue

Whether the multi-jurisdictional drug-enforcement agreement, which formed the purported basis of the arresting officer's authority to arrest Burgess outside of the officer's territorial jurisdiction, satisfied the statutory prerequisites to constitute a valid agreement.

Rule

The South Carolina Supreme Court cited State v. Boswell, 391 S.C. 592, 707 S.E.2d 265 (2011) for the proposition that statutes governing multi-jurisdictional agreements must be strictly complied with to ensure the validity of the agreement. The court discussed two statutes, §23-1-210 and §23-1-215, and analyzed the agreement according to those statutory requirements.

As to §23-1-210, the Court found subsection (B) mandates that "the concerned municipalities or counties" enter into written agreements providing for the transfer of its law enforcement officers to another municipality or county.

As to §23-1-215, the court found subsection (E) requires written notification within seventy-two hours of execution of a multi-jurisdictional agreement. The court found this statute factually inapplicable to Burgess, as the language of the statute is "past tense", authorizing agreements for the investigation of completed crimes spanning multiple jurisdictions.

Analysis

The court found there was evidence that the Lexington County Council approved grant requests to fund staff positions associated with NET, and the Batesburg-Leesville Town Council was verbally informed of a [pending agreement] but those procedures "did not constitute express approval by "the concerned municipalities or counties" as to the actual NET agreement. The court found the terms of the NET Agreement were never presented to the governing bodies for their approval. While the Chief and the Sheriff entered into the agreement on behalf of their agencies, the court found the NET Agreement failed to strictly comply with the statutory requirements of §23-1-210, which requires agreement by the governing entity (in this case the county and city councils), not law enforcement.

No evidence was presented that the state complied with the seventy-two hour requirement outlined in §23-1-215. Also, as this statute contemplates a past crime and Burgess was not the subject of the investigation at 7120 Two Notch Road (the target of the search warrant), the court found Officer Gilliam was without authority to arrest Burgess.

For the above reasons the NET Agreement was found to be invalid, however, the court upheld Burgess' conviction. Although Officer Gilliam (of the Batesburg-Leesville Police Department) lacked authority to arrest Burgess, Agents Laney and Kirkland, who were authorized with territorial jurisdiction in Lexington County, played an integral role in the arrest and discovery of the drugs that formed the basis of the conviction. The court found the evidence was sufficient to prove Burgess possessed crack cocaine with intent to distribute.

The court reasoned that even if Burgess' arrest was invalid, the illegality of the initial arrest would not bar the accused's prosecution and conviction. No evidence used at trial came from the arrest. The drugs were not found on his person, nor were they located as a result of anything Burgess said after he was arrested. The drugs were found independently by Agent Laney of the Lexington County Sheriff's Office.

Conclusion

The NET Agreement was deemed invalid for failing to comply with the relevant statutes and Officer Gilliam of the Batesburg-Leesville Police Department was without jurisdiction in his actions. However, the invalid agreement did not negate the authority of Lexington County Agents Laney and Kirkland in charging Burgess with the offense for which he was convicted.

The court specifically mentioned this decision should not be construed as invalidating all multi-jurisdictional agreements and urged strict compliance with the applicable statutes for these agreements.

B. THE FOURTH AMENDMENT

1. Deadly Force

Plumhoff v. Rickard, 134 S.Ct. 2012, 188 L.Ed. 2d 656 (2014)

Facts

Near midnight on July 18, 2004, Lieutenant Joseph Forthman of the West Memphis Arkansas, Police Department pulled over a white Honda Accord because the car had only one operating headlight. Donald Rickard was the driver of the Accord, and Kelly Allen was in the passenger seat. Forthman noticed an indentation, "roughly the size of a head or a basketball" in the windshield of the car. He asked Rickard if he had been drinking, and Rickard responded that he had not. Because Rickard failed to produce his driver's license upon request and appeared nervous, Forthman asked him to step out of the car. Rather than comply with Forthman's request, Rickard sped away.

Forthman gave chase and was soon joined by five other police cruisers driven by Sergeant Vance Plumhoff and Officers Jimmy Evans, Lance Ellis, Troy Galtelli, and John Gardner. The officers pursued Rickard east on Interstate 40 toward Memphis, Tennessee. While on I-40, they attempted to stop Rickard using a "rolling roadblock", but they were unsuccessful. The District Court described the vehicles as "swerving through traffic at high speeds" and respondent does not dispute that the cars attained speeds over 100 miles per hour. During the chase, Rickard and the officers passed more than two dozen vehicles.

Rickard eventually exited I-40 in Memphis, and shortly afterward he made "a quick right turn", causing "contact to occur" between his car and Evans' cruiser. As a result of that contact, Rickard's car spun out into a parking lot and collided with Plumhoff's cruiser. Now in danger of being cornered, Rickard put his car into reverse "in an attempt to escape." As he did so, Evans and Plumhoff got out of their cruisers and approached Rickard's car, and Evans, gun in hand, pounded on the passenger-side window. At that point, Rickard's car "made contact with" yet another police cruiser. Rickard's tires started spinning, and his car "was rocking back and forth", indicating that Rickard was using the accelerator even though his bumper was flush against a police cruiser. At that point, Plumhoff fired three shots into Rickard's car. Rickard then "reversed in a 180 degree arc" and "maneuvered onto" another street, forcing Ellis to "step to his right to avoid the vehicle." As Rickard continued "fleeing down" that street, Gardner and Galtelli fired 12 shots toward Rickard's car, bringing the total number of shots fired during this incident to 15. Rickard then lost control of the car and crashed into a building. Rickard and Allen both died from some combination of gunshot wounds and injuries suffered in the crash that ended the chase.

Issues

The United States Supreme Court considered whether the officer's conduct violated the Fourth Amendment (in the use of deadly force and in the amount of deadly force that was used- number of rounds fired) and whether the officers are entitled to summary judgment based on qualified immunity.

Rule

Fourth Amendment. The Court began its Fourth Amendment analysis with the rule from Graham v. Connor, 490 U.S. 386 (1989). In Graham, the Court held that determining the objective reasonableness of a particular seizure under the Fourth Amendment "requires a careful balancing of the nature and quality of the intrusion on the individual's Fourth Amendment interests against the countervailing governmental interests at stake". The inquiry requires analyzing the totality of the circumstances from the perspective "of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight".

Summary Judgment Based on Qualified Immunity. As to summary judgment based on qualified immunity, the court cited Ashcroft v. al-Kidd, 563 U.S. ___, ___ (2011) for the rule that an official sued under §1983 is entitled to qualified immunity unless it is shown that the official violated a statutory or constitutional right that was "clearly established" at the time of the challenged conduct. A defendant cannot be said to have violated a clearly established right unless the right's contours were sufficiently definite that any reasonable official in the defendant's shoes would have understood that he was violating it… Existing precedent must have placed the statutory or constitutional question confronted by the official "beyond debate".

Analysis

a. Fourth Amendment. The court began its Fourth Amendment analysis by reviewing Scott v. Harris, 550 U.S. 372 (2007). In Scott the court considered a claim that a police officer violated the Fourth Amendment when he terminated a high-speed car chase by using a technique that placed a "fleeing motorist at risk of serious injury or death". The court held that a "police officer's attempt to terminate a dangerous high-speed car chase that threatens the lives of innocent bystanders does not violate the Fourth Amendment, even when it places the fleeing motorist at risk of serious injury or death."

As to this case, the court found that under the circumstances at the moment when the shots were fired, all that a reasonable police officer could have concluded was that Rickard was intent on resuming his flight and that, if he was allowed to do so, he would once again pose a deadly threat for others on the road. The court considered the pursuit in this case:

(1) Speeds in excess of 100 miles per hour

(2) Rickard passed more than two dozen other vehicles, several of which had to alter course

(3) Rickard collided with a police car and then resumed maneuvering his vehicle

(4) Rickard threw car into reverse just before shots were fired

(5) Even after shots were fired Rickard managed to drive away

On the issue of the number of rounds fired- 15- the court addressed Rickard's argument that 15 rounds was too many. The court found that if police officers are justified in firing at a suspect in order to end a severe threat to public safety, the officers need not stop shooting until the threat has ended. The court found it significant that during the 10 second time span when all shots were fired, Rickard never abandoned his attempt to flee.

b. Summary Judgment Based on Qualified Immunity. The court held the officers' conduct did not violate the Fourth Amendment but continued on to discuss why they would still be entitled to summary judgment based on qualified immunity.

The court found this to be an area of law "in which the result depends very much on the facts of each case" and that the cases "by no means clearly establish that the officer's conduct violated the Fourth Amendment".

Conclusion

On the Fourth Amendment questions, the court explicitly found no reason to reach a different conclusion on this case than it did for Scott v. Harris. In light of the circumstances of this pursuit the court found it beyond serious dispute that Rickard's flight posed a grave public safety risk, and here, as in Scott, the police acted reasonably in using deadly force to end that risk. The Fourth Amendment did not prohibit the officers from using the deadly force that they employed to terminate the dangerous car chase that Rickard precipitated. In the alternative, the court found the officers are entitled to qualified immunity for the conduct at issue because they violated no clearly established law.

2. Probable Cause

U.S. v. Ali Saafir, opinion No. 13-4049, 4th Cir. Ct. App., decided 06/11/2014

Facts

A Durham, NC officer pulled the defendant for speeding and excessively tinted windows. After the officer requested the driver's license and registration, the defendant produced a valid state ID, but told the officer that his license was suspended. After running the defendant's name through the department's database, the following was determined:

a. the defendant's license was revoked;

b. he was considered an armed and dangerous person;

c. he was a validated gang member;

d. he was a S.T.A.R.S. offender (which was described by the officer as an ex-offender "on his last chance");

e. he had been known to flee from law enforcement; and

f. he had been ordered to stay away from any property of the Durham Public Housing Authority.

After running the check, the officer called for back-up.

The officer wrote warning tickets for driving with a suspended license and tinted windows. When asked to step from the vehicle so the officer could explain the tickets, the officer noticed a flask (commonly used to carry alcohol) in the pocket of the driver-side door. After explaining the tickets and returning identification, the officer asked the defendant for permission to frisk him, citing shootings and violence in the area. The defendant consented, and the frisk revealed nothing.

The officer then requested permission to search the vehicle, but the defendant refused, stating that the vehicle did not belong to him. As the second officer arrived, the initial officer told the defendant that, as a temporary user, he could consent to a search of the vehicle. Again, the defendant refused consent.

While the officer never confirmed the contents of the flask, if any, he told the defendant that based on the presence of the flask in the vehicle, he had probable cause to search the vehicle. (The officer testified as to his reliance on a statute making it illegal to "possess an alcoholic beverage other than in the unopened manufacturer's original container.") The defendant "bowed his head and let out a sigh," but still did not consent to a search. Since the officer had declared his intent to search the vehicle, the defendant was asked if there was anything they should know about prior to doing so. After initially saying there "might" be something, the defendant stated that there "might" be a gun, and it "might" be under the seat.

The officers searched the vehicle, but found only "aged, dried-up marijuana" in the pocket of the driver door. Neither officer touched the flask, and there was no evidence that the defendant had been drinking. Officers stated that there was no odor of alcohol on the defendant or in the car. After the officers requested the key to the locked glove compartment, the defendant provided it and a pistol was found. The defendant was charged with felon in possession of a firearm. His motion to suppress the gun and his statements about a gun was denied based on the court's finding that the defendant's admission that there "might" be a gun in the vehicle gave the officers probable cause for the search.

Issue

Did the court err in failing to suppress the evidence obtained through the search because law enforcement was only able to obtain probable cause (the admission that there "might" be something in the vehicle) after falsely asserting that probable cause to search the vehicle already existed?

Holding

The officer's assertion of the existence of probable cause and his authority to search the vehicle irreparably taints the defendant's statements and the search of the vehicle.

Rationale

Probable cause to search exists "where the known facts and circumstances are sufficient to warrant a [person] of reasonable prudence in the belief that contraband or evidence of a crime will be found." The officer admitted he never checked the flask and stated there was no evidence that the defendant had been drinking or was intoxicated. It was also conceded that the officer's assertion that he had probable cause to search the vehicle based on the presence of the flask was a "misstatement of law."

A search or seizure is unreasonable and therefore, unconstitutional, if it is based on a law enforcement officer's misstatement of his authority to search. The defendant's statements gave rise to probable cause to search the vehicle. However, these statements were made after the officer's false claim of legal authority. The court states that such a claim is a "threat to engage in conduct that violates the 4th Amendment," and that this officer's claim could be interpreted as such a threat. They further state that a false claim of authority to search affects the validity of a defendant's subsequent statement.

The government argues that the misstatement of law is irrelevant because the defendant's admissions giving rise to probable cause were not a direct product of the officer's statement of authority to search the vehicle. The court rejects this argument, citing the defendant's multiple refusals to consent to a search and the fact that the defendant's statements were made only after the officer asserted that a search of the car was inevitable. The court concludes that, as a matter of law, probable cause for the warrantless search of the vehicle was directly obtained from incriminating statements elicited by the officer's "dishonest, reckless or objectively unreasonable asserted belief in the existence of probable cause." The court suppresses both the defendant's statements and the "fruits" of the ensuing search of the vehicle.

3. Reasonable Suspicion

a. Robinson v. State. 754 S.E.2d 862 (2014)

Facts

On February 26, 2008, at approximately 9:45 p.m., four men entered and robbed Benders Bar and Grill in the West Ashley area of Charleston. Each man carried a gun and covered his face with some sort of fabric fashioned into a bandana. The men left through the front door, but no witness was able to say whether they left in a vehicle or on foot. The responding officer briefly interviewed the patrons and staff and issued a "BOLO" for the subjects, who were described as four armed African-American men, approximately twenty years old, and wearing all black clothing.

Fifteen minutes later an officer spotted a parked vehicle with its lights off in the darkened, fenced-in parking lot of a closed church and decided to investigate, pulling his patrol car behind the parked vehicle and blocking it in. The officer was aware of the BOLO but testified the BOLO did not include a description of the getaway vehicle, so he initially "thought maybe it was a couple that was parked there, or somebody from the church left a car there." He called in the car's license plate to dispatch and then approached the car. At that point he noticed there were four men in the vehicle who matched the approximate description of the BOLO. The church is located within a short drive of Benders. The officer asked the driver, Robinson, for his driver's license and walked back to his patrol vehicle and requested backup. The officer claimed that he called in the license plate and requested the driver's license to check for outstanding warrants. The officer did not do anything further until backup cars arrived.

Three minutes later, two backup officers arrived. These two officers also received the BOLO alert and knew there were four robbery suspects at large. One of the backup officers (driving an unmarked vehicle) testified the subjects were talking and relaxed until he and his backup officer approached the vehicle. The subjects became "really nervous and silent", all looking straight forward.

The officers found the men's behavior suspicious. Therefore, the officers requested Robinson exit the vehicle so they could pat him down for weapons. Next, they requested each passenger exit the vehicle, one-at-a-time, and patted each down for weapons. While the police found no weapons on any of the men, when the final passenger, seated in the rear passenger-side of the vehicle, exited the vehicle at the officer's request, a .22 caliber revolver with its serial number removed became immediately visible on the floorboard. Because none of the four men would admit who owned the gun, the officers arrested all four, including Robinson, and read them their Miranda rights. At this point, several other officers responded to the scene to help secure the four suspects and search the vehicle.

At first, the officer detained the four suspects near the vehicle's trunk while other officers searched the car. (Finding a pair of black gloves, a yellow Nike knit hat, and a piece of red cloth tied into a bandana.) The trunk was locked, and the suspects claimed to be unaware of the key's location. The owner of the car (not Robinson) stood with his back to the trunk while talking to the officers; however, every time an officer searched near or touched the back seat, the suspect would "turn his head around extremely quickly just to see what was going on." Once the officer stopped searching that area, "he would act completely normal again." After this pattern repeated several times, the officers noticed a gap between the top of the backseat and the flat paneling between the seat and the back windshield. The officer pulled the seat forward slightly to peer into the trunk and saw three more guns in an area that would have been accessible to the suspects had they still been in the vehicle.

Issue

Whether the officer had reasonable suspicion to detain Robinson beyond his initial contact and check of his driver's license, license plate and warrant status.

Discussion/Holding

A person has been seized within the meaning of the Fourth Amendment at the point in time when, in light of all the circumstances surrounding an incident, a reasonable

person would have believed that he was not free to leave. A police officer may stop and briefly detain a vehicle if they have a reasonable suspicion that the occupants are involved in criminal activity. Reasonable suspicion is something more than an inchoate and unparticularized suspicion or hunch. Instead, looking at the totality of the circumstances, reasonable suspicion requires there be an objective, specific basis for suspecting the person stopped of criminal activity. The police officer may make reasonable inferences regarding the criminality of a situation in light of his experience, but he must be able to point to articulable facts that, in conjunction with his inferences "reasonably warrant" the intrusion.

If, during the stop of the vehicle, the officer's suspicions are confirmed or further aroused, even if for a different reason than he initiated the stop, the stop may be prolonged, and the scope of the detention enlarged as circumstances require.

The court pointed to the following facts as justifying the officer's reasonable suspicion when he first pulled up behind the car:

1. There was a parked car in a closed and darkened church parking lot on a Tuesday night;

2. The car was behind a fence with its lights off;

3. The car had no reason to be within the fence at that time of night when the church was closed; and

4. The area where the car was parked was not readily open to the public.

The court found that it was reasonable to suspect a potential misdemeanor, §16-11-760 (Parking on private property without permission) was afoot.

The court found it was reasonable for the officer's suspicions to be further aroused when he approached the vehicle and found these further circumstances:

1. The police were looking for four African-American men in their twenties who robbed a bar within twenty minutes of the officer's encounter with the men;

2. The bar was in close proximity to the church parking lot;

3. There were four young men in the vehicle who matched the approximate description of the BOLO, the correct number of men, the correct race, the correct age and the correct approximate clothing color; and

4. There were four potential suspects and "only one of him"

The court added that the officer did not specifically connect his awareness of the BOLO and the actions he took, but it would be preferable for him to do so. The court would have preferred for the State to make the "logical leap" connecting the BOLO to the car's occupants.

Also adding to the officer's reasonable suspicion was the vehicle occupant's behavior when back up arrived. The four men were suddenly nervous and silent, looking straight forward.

The court found there was evidence the police officers had a reasonable, articulable suspicion to detain Robinson and his co-defendants. The court then discussed exceptions to the warrant requirement.

The trial court found the police officers did not need a warrant to search the rest of the vehicle after discovering the initial gun because: (1) under the search-incident-to-an-arrest exception, the officers had a reasonable belief the vehicle contained evidence of the offense for which the co-defendants were arrested; (2) under the automobile exception, the officers had probable cause to believe the vehicle contained contraband; and (3) under the inventory exception, the officer would have inevitably discovered the evidence during an inventory check. The Supreme Court agreed and specifically discussed the Plain View Exception and the Search Incident to a Lawful Arrest exception.

Plain View Exception

Under the "plain view" exception to the warrant requirement, objects falling within the plain view of a law enforcement officer who is rightfully in a position to view the objects are subject to seizure and may be introduced as evidence. Therefore, for evidence to be lawfully seized under the plain view exception, the State must show: (1) the initial intrusion which afforded the police officers the plain view of the evidence was lawful; and (2) the incriminating nature of the evidence was immediately apparent to the seizing authorities.

The court found the initial intrusion that afforded the officers the plain view of the gun with the serial number removed was lawful because the officer had reasonable suspicion to initiate the stop. Further, the incriminating nature of the gun was immediately apparent upon the gun coming into view because officers each immediately noticed that the serial number had been removed.

Search Incident to a Lawful Arrest Exception

The court found the officers had a reasonable belief the vehicle contained evidence of the criminal offense for which the co-defendants were arrested, therefore the search was justified.

The court reminded us of the rule regarding searches of a vehicle incident to a recent occupant's arrest (after Arizona v. Gant): police may search the passenger compartment of a vehicle incident to a recent occupant's arrest only if (1) the arrestee is "unsecured and within reaching distance of the passenger compartment at the time of the search" or (2) it is reasonable to believe the vehicle contains evidence of the crime of arrest.

It is this second justification the court found applies in this instance. The officers arrested the suspects for the unlawful possession of a handgun with its serial number removed. Finding this gun, in conjunction with their knowledge of the BOLO and their suspicion that Robinson and his co-defendants were in fact the four men involved in the armed robbery at Benders, provided the officers with probable cause to likewise arrest them for armed robbery. Because there were four men involved in the armed robbery, and only one gun had thus far been recovered, it was reasonable to believe the vehicle contained further evidence of the armed robbery.

Search of a Vehicle's Trunk Incident to a Lawful Arrest

The court took this opportunity to address whether the trunk may, at times, be part of the passenger compartment. The court used this case to adopt the view that the trunk may be considered part of the passenger compartment and may therefore be searched pursuant to a lawful arrest when the trunk is reachable without exiting the vehicle, as it was in this case.

b. Prado Navarette v. California, 134 S.Ct. 1683 (2014). (decided 4/22/14)

Facts

A 911 caller reported that a silver Ford F150 pickup with license plate 8D94925, traveling southbound on Highway 1, had run her off the road at mile marker 88. She reported that the incident had taken place approximately five minutes earlier. The call went out at 3:47pm, and an officer spotted the vehicle at 4:00pm at mile marker 69. Though the officer observed no suspicious conduct, based on the 911 call, at 4:05pm, the officer pulled the truck over. When the officers approached the truck, they smelled marijuana. A search revealed 30 pounds of marijuana in the truck bed.

Issue

Did the anonymous 911 call demonstrate sufficient indicia of reliability to provide reasonable suspicion to make an investigatory stop?

Holding

The traffic stop complied with the Fourth Amendment because, under the totality of the circumstances, the officer had reasonable suspicion that the truck's driver was intoxicated.

Rationale

The Fourth Amendment permits investigative stops when the officer has a particularized and objective basis for suspecting the particular person stopped of criminal activity. The "reasonable suspicion" necessary to justify the stop is dependent upon both the content of the information possessed by law enforcement and its degree of reliability. An anonymous tip, alone, will seldom provide the basis for a lawful stop.

The 911 call, identifying a specific vehicle and license plate number, provides eyewitness knowledge of alleged dangerous driving. A tip involving firsthand observation is entitled to greater weight than one that does not. The Court finds it likely that the caller was telling the truth based on the location of the truck when the officer observes it in relation to the location reported where the incident took place and the amount of time that had elapsed. The timeline indicates that the caller made her report soon after she was run off the road.

Another indicator of reliability was the caller's use of the 911 system. Since a 911 call has some features that allow for identifying and tracing callers, this provides some safeguards against making false reports with immunity. Calls are recorded, and therefore, voices can be identified in the event a caller fabricates an incident. Additionally, cellular carriers are required to relay caller's telephone numbers to 911 dispatchers. Additionally, carriers are required to identify a caller's location with increasing specificity. The Court states that the caller's use of the 911 system is a relevant circumstance in their analysis of this case.

The Court outlines that it is necessary to determine whether the 911 call creates reasonable suspicion of an ongoing crime or an isolated episode of past recklessness. This is due to the fact that a tip may justify an investigative stop based on reasonable suspicion that criminal activity may be afoot. It is not enough to justify a stop if there is not an ongoing offense. The Court finds that the behavior reported by the 911 caller, viewed from the standpoint of an objectively reasonable officer, amounts to reasonable suspicion of drunk driving for the following reasons:

(1) Certain driving behaviors (weaving back and forth, crossing the center line, driving all over the road, driving in the median) are sound indicia of drunk driving. The 911 caller alleged a specific and dangerous result of the driver's conduct. The conduct bears too great a resemblance to manifestations of drunk driving to be dismissed as an isolated incident of recklessness. Running another vehicle off the road indicates lane-positioning problems, decreased vigilance, impaired judgment or a combination of recognized drunk driving cues. The Court refuses to second-guess the officer and states that they have consistently recognized that reasonable suspicion need not rule out innocent conduct.

(2) The absence of additional suspicious conduct, after the officer spotted the vehicle, does not dispel reasonable suspicion of drunk driving. The appearance of a marked police car may very well inspire more careful driving. Since the officer already had reasonable suspicion, he was not required to observe the vehicle at length to personally observe suspicious conduct. Once reasonable suspicion exists, the officer is not required to weigh less intrusive investigatory techniques since this may allow a drunk driver a second chance for dangerous conduct.

Dissent

Justice Scalia provides a very strong dissent.

- Law enforcement does not know the caller's name, address, phone number or from where she placed the call. Anonymity is often used for the purpose of eliminating accountability. If the caller had been run off the road, she surely would have provides her information so that when the suspect was caught, she could appear and testify.

- The caller's allegation that she was run off the road has little to do with the reliability of the information. The actual issue of reliability hinges on whether or not the caller was actually run off the road. Additionally, the fact that the vehicle was spotted at a location near the alleged incident provides no indication that the caller had been run off the road. Scalia also questions whether it is believable that the caller would be able to recall the exact license plate number of a vehicle that had just run her off the road and sped away.

- The Court finds that an indicator of veracity is the caller's use of the 911 system. Assuming that the Court is correct about the ease of identifying callers to the system, unless the caller, herself, was aware of identifying measures, it is of no consequence. Scalia states that a tipster's belief in anonymity, not its reality, is the true concern.

- The caller reported that a driver ran her off the road. She did not allege that the driver was drunk, and the actions of the driver do not raise the likelihood that he was drunk. A reasonable suspicion of an instance of irregular or hazardous driving does not lead to a reasonable suspicion of ongoing intoxicated driving.

- Even if the call suggested ongoing drunk driving, the five minute time period during which the officer observed nothing suspicious about the driving of the defendant was enough to undermine the suspicion of drunk driving.

Note: Navarette should be very strictly construed. While it was largely reported that the case held that an anonymous 911 call is sufficient basis for reasonable suspicion for an investigatory traffic stop, the holding was based on the totality of the specific circumstances surrounding this particular traffic stop. The following cases from other jurisdictions cite Navarette and give insight into the limits of its application.

- State of South Dakota v. Joseph Burkette (decided 6/25/14) – While the Court cites Navarette, the facts of the case are clearly distinguishable. In finding that the officer had reasonable suspicion to stop the defendant's vehicle, the Court looks at the totality of the circumstances. The officer had an "anonymous tip" by way of dispatch conveying a report of a possible drunk driver in an older, light blue van who had just left a NAPA store. The individual was driving in the officer's direction, and the officer was provided with the license plate number and registered address. Immediately after receiving the tip, the officer spotted the vehicle. He also observed the van stopped in the middle of a residential street, and the driver revving the engine. The Court states that unlike Navarette, they do not have to decide if the tip alone establishes reasonable suspicion. The tip, along with the officer's observations, clearly made it reasonable for the officer to stop Burkette.

- U.S. v. Edwards (9th Circuit Court of Appeals, decided 7/31/14) – The Court uses Navarette in stating that the case clearly establishes that "**under appropriate circumstances**, an anonymous tip can demonstrate sufficient indicia of reliability to provide reasonable suspicion to make an investigatory stop." In this case, an eyewitness called 911 to report that someone was, at that moment, "shooting at cars" as they were going down the street. The Court uses the factors from Navarette in stating that the person calling had firsthand knowledge, reported an ongoing emergency situation and used the 911 system to make the report. It was also obvious that the caller was witnessing the events as they unfolded, having seen the shooter take aim at his vehicle and observing the gun jam. This case, like Burkette, cites Navarette but uses Alabama v. White (1990) and Florida v. J.L. (2000) to primarily analyze the facts of the cases. The analysis involves long-standing precedent about anonymous tips, indicia of reliability and reasonable suspicion. In other words, if Navarette is omitted from the decision, the results of these cases remain the same.

- State of Nebraska v. Rodriquez (filed 8/29/14) This case most closely resembles the facts of the Navarette case. A 911 call was placed wherein the caller claimed that he had been pushed out of a moving vehicle near a rental car business. The vehicle was described as a GMC Envoy which was headed westbound on Highway 26. The officer who was in the vicinity of the business testified that he did not see the caller at the business, but did see a vehicle matching the description. The officer followed the vehicle and the driver stopped and pulled to the side of the road before the officer activated his lights. The officer began questioning the driver about the incident, but made other observations. He detected a strong odor of alcohol and noticed that the driver's face was flushed, eyes were bloodshot and watering and speech was slurred. After three field sobriety tests, the driver was placed under arrest and subsequently, his breath tested at 0.226. Controlled substances were also found in his wallet.

  Procedurally, the defendant's motion to suppress was denied and the Nebraska Court of Appeals affirmed the denial of the motion. The Nebraska Supreme Court rules that the Court of Appeals erred when it affirmed the denial of the motion to suppress for the following reasons:

- The reliability of the information supplied by the caller is the key in determining whether there was reasonable suspicion for the stop. The Court in Navarette cites eyewitness knowledge, contemporaneous reporting and the use of the 911 system as indicia of reliability. The Nebraska Supreme Court says that, unlike the facts of Navarette, the officer in this case made observations that raised doubts regarding the reliability of the caller's report. The officer rode by the business from which the caller said they were calling and observed no one. Additionally, the caller indicated that he had been pushed from the vehicle, and did not report a crime that was "ongoing."

The court in Navarette issued a 5-4 opinion. Though there was no report from the anonymous caller of any other activity but running her off the road, they use this information to infer that the driver was engaged in conduct that indicated drunk driving, an ongoing crime. Law enforcement needs to be aware that the case does not hold that an anonymous tip constitutes reasonable suspicion for a traffic stop. The reliability of the information provided by the caller is still the most important factor in the analysis. Without indicia of reliability, there is no reasonable suspicion. And without an ongoing crime, there is no Fourth Amendment basis on which to stop the vehicle. In relying on Navarette, law enforcement should proceed with caution.

c. US v. George, Op. No. 12-5043 (4th Cir. 2013)

Facts

At 3:30 a.m. on Sunday, November 27, 2011, Officer Roehrig, while patrolling Wilmington district Two, which he characterized as "one of the highest crime areas in the city," observed a dark-colored station wagon closely and aggressively following another vehicle – within a car's length – as if in a chase. As the two vehicles made a right turn, they ran a red light at the "fairly high rate of speed" of approximately 20 to 25 miles per hour such that their tires screeched. As Officer Roehrig pulled behind the vehicles following the turn, the station wagon, which had accelerated to approximately 45 miles per hour, slowed to 25 miles per hour and

broke off the chase, making a left turn. Officer Roehrig followed the station wagon as it made three more successive left turns, which Officer Roehrig interpreted as an effort by the driver to determine whether he was following the vehicle. When Officer Roehrig decided to stop the vehicle for its aggressive driving and red light violation, he called for backup, which was answered by K9 Officer Poelling. With Officer Poelling nearby, Officer Roehrig then effected the stop in a parking lot.

As Officer Roehrig approached the vehicle, he observed four males in it, including Decarlos George, who was sitting behind the driver's seat. George was holding up his I.D. card with his left hand, while turning his head away from the officer. His right hand was on the seat next to his leg and was concealed from view by his thigh. Roehrig instructed George to place both of his hands on the headrest of the driver's seat in front of him, but George placed only his left hand on the headrest. This caused Officer Roehrig concern, as he "didn't know what [George] had in his right hand, [but it] could easily have been a weapon." Officer Roehrig directed George again to place both hands on the headrest. As Officer Roehrig testified, "I had to give [George] several more requests to move his hand. Probably I asked four or five times. It was actually getting to the point that I was getting worried about what he had in his right hand." George ultimately complied, but he still never made eye contact with Officer Roehrig.

Once Officer Roehrig observed that George did not have a weapon in his right hand, he proceeded to speak with Weldon Moore, the driver of the vehicle. Moore denied running the red light and claimed he was not chasing anyone. When Officer Roehrig informed Moore that he had observed Moore chasing the other vehicle and going through a red light, Moore adjusted his story, now saying that his girlfriend was in the front vehicle and that he was following her home. Roehrig found this story inconsistent with Moore's aggressive chase of the other vehicle and the abandonment of that chase when the police were spotted. He found Moore's driving to be more consistent with hostile criminal activity, and he questioned the passengers in the car about recent gang violence.

Officer Roehrig then consulted with Officer Poelling, and the two decided to remove all four passengers from the car and interview them separately. Because the officers were outnumbered, they called for more backup. When backup officers arrived, Officer Poelling removed the right rear passenger of the vehicle and conducted a protective frisk. Officer Roehrig then directed George to step out of the vehicle. As George was doing so, he dropped his wallet and cell phone onto the ground. As George bent over to pick the items up, Officer Roehrig stopped him by holding onto George's shirt, fearing that letting George bend over to the ground would create an increased risk of escape. Officer Roehrig turned George around, had him place his hands on the car, and conducted a protective frisk. During the pat down, Roehrig felt an object in George's right front pocket that he "immediately recognized as a handgun." After announcing the presence of the gun to the other officers, Roehrig pressed George against the car and placed him in handcuffs, as a second officer removed the handgun from George's pocket.

After the gun was seized, Officer Roehrig secured George in the back of his patrol car and issued Moore a written warning for failing to stop at a red light. Upon checking George's criminal history, Officer Roehrig discovered that George was a convicted felon and that the serial number on the gun indicated that it had been stolen. George was charged and pleaded guilty to possession of a firearm by a convicted felon, in violation of 18 U.S.C. §922(g)(1).

Reasoning

To conduct a lawful frisk of a passenger during a traffic stop, "the police must harbor reasonable suspicion that the person subjected to the frisk is armed and dangerous." Arizona 8 v. Johnson, 555 U.S. 323, 327 (2009). "The officer need not be absolutely certain that the individual is armed; the issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger." Terry v. Ohio, 392 U.S. 1, 27 (1968). The reasonable suspicion standard is an objective one, and the officer's subjective state of mind is not considered. United States v. Powell, 666 F.3d 180, 186 (4th Cir. 2011).

In determining whether such reasonable suspicion exists, we examine the "totality of the circumstances" to determine if the officer had a "particularized and objective basis" for believing that the detained suspect might be armed and dangerous. United States v. Arvizu, 534 U.S. 266, 273 (2002) (quoting United States v. Cortez, 449 U.S. 411, 417 (1981) (internal quotation marks omitted)); see also United states v. Hernandez-Mendez, 626 F.3d 203, 211 (4th Cir. 2010) ("[C]ourts have relied on a standard of objective reasonableness for assessing whether a frisk is justified"); United States v. Mayo, 361 F.3d 802, 808 (4th Cir. 2004) (evaluating a frisk by the totality of the circumstances).

In this case, we conclude from the totality of the circumstances that Officer Roehrig's frisk of George was supported by objective and particularized facts sufficient to give rise to a reasonable suspicion that George was armed and dangerous.

First, the stop occurred late at night (at 3:30 a.m.) in a high-crime area. Officer Roehrig testified that he had patrolled the area of the stop for his five-an-a-half year tenure with the Wilmington Police Department and that, based on his experience, it had one of the highest crime rates in the city and was characterized by violence and narcotics. While George argues that such conclusory testimony given by an officer should not be given much weight, as the government could have employed crime statistics to make the point, George himself acknowledged in testimony that it was a "drug-related area." And although general evidence that a stop occurred in a high-crime area, standing alone, may not be sufficiently particularized to give rise to reasonable suspicion, it can be a contributing factor. See Wardlow, 528 U.S. at 124; United States v. Sprinkle, 106 F. 3d 613,617 (4th Cir. 1996). Likewise, that the stop occurred late at night may alter a reasonable officer to the possibility of danger. See United States v. Foster, 634 F.3d 243, 247 (4th Cir. 2011) (noting that the encounter occurred "in the middle of the day" in explaining why the officer lacked reasonable suspicion); United States v. Clarkson, 551 F.3d 1196, 1202 (10th Cir. 2009) ("[T]ime of night [is] a factor in determining the existence of reasonable suspicion").

Second, the circumstances of the stop suggested that the vehicle's occupants might well be dangerous. Officer Roehrig observed the vehicle aggressively chasing the vehicle in front of it, following by less than one car length. He also observed the two vehicles turn right through a red light at 20 to 25 miles per hour, which was a speed sufficient to cause the vehicles' tires to screech. But when Officer Roehrig began to follow the vehicles, the rear vehicle slowed down and ended its pursuit of the vehicle in front of it. Officer Roehrig concluded that the chase was consistent with the individuals in the rear vehicle "engaging in some type of crime against the people in the first vehicle," as it indicated hostility between the two vehicles. This suspicion,

which we conclude was objectively reasonable in the circumstances, was reinforced when the second vehicle disengaged from its pursuit of the first vehicle upon seeing law enforcement.

Third, the vehicle that Officer Roehrig stopped was occupied by four males, increasing the risk of making a traffic stop at 3:30 a.m. in a high-crime area. "[The] danger from a traffic stop is likely to be greater when there are passengers in addition to the driver in the stopped car." Wilson, 519 U.S. at 414.

Fourth, George acted nervously when Officer Roehrig approached the vehicle. Without request, George held up his I.D. card while at the same time pointing his head away from Officer Roehrig. Moreover, even after Officer Roehrig gave George a direct order to comply and continued not to make eye contact with Officer Roehrig. Such conduct can contribute to reasonable suspicion. See Wardlow, 528 U.S. at 124; Branch, 537 F.3d at 338; Mayo, 361, F.3d at 808. To be sure, while the failure of a suspect to make eye contact, standing alone, is an ambiguous indicator, see United States v. Massenburg, 654 F.3d 12 480, 489 (4th Cir. 2011), the evidence may still contribute to a finding of reasonable suspicion.

Fifth, the driver of the vehicle made arguably misleading statements and presented Officer Roehrig with an implausible explanation for his aggressive driving. He initially claimed that he did not run the red light and that he was not chasing anyone. After Officer Roehrig confronted him with the fact that he had personally observed the chase and the red light violation, the driver stated that he had been following his girlfriend. But even that explanation was inconsistent with the driver's conduct in breaking off the chase. If the driver's girlfriend had been in the front car, it would not have been logical for the vehicles to suddenly part ways when a marked police car showed up. Such implausible and misleading statements contribute to the establishment of reasonable suspicion. See Powell, 666 F.3d at 188-89.

Sixth and most importantly, George's movements indicated that he may have been carrying a weapon. When Officer Roehrig initially approached the stopped vehicle, George's right hand was on the seat next to his right leg and was concealed by his thigh. When Officer Roehrig ordered George to put his hands on the headrest, George placed his left hand on the headrest, but not his right hand, which he kept next to his thigh. Officer Roehrig had to repeat his order four or five times: "It was ... getting to the point that I was getting worried about what he had in his right hand." As Roehrig explained, he "didn't know what [George] had in his right hand, [but it] could easily have been a weapon." Although Officer Roehrig's subjective impressions are not dispositive, we conclude that his concern in this instance was objectively reasonable.

Seventh and finally, after Officer Roehrig ordered George to step out of the vehicle, George dropped his wallet and his cell phone onto the ground as he got out of the car. When George bent over to pick the items up, Officer Roehrig stopped him. George's actions could have created an opportunity for him to reach for a weapon or to escape. Officers in such circumstances are not required to "take unnecessary risks in the performance of their duties." Terry, 392 U.S. at 23.

4. Consent Searches

a. Fernandez v. California, 571 U.S. ____ (2014)

Facts

The events involved in this case occurred in Los Angeles in October 2009. After observing Abel Lopez cash a check, petitioner Walter Fernandez approached Lopez and asked about the neighborhood in which he lived. When Lopez responded that he was from Mexico, Fernandez laughed and told Lopez that he was in territory ruled by the "D.F.S.," *i.e.*, the "Drifters" gang. Petitioner then pulled out a knife and pointed it at Lopez' chest. Lopez raised his hand in self-defense, and petitioner cut him on the wrist.

Lopez ran from the scene and called 911 for help, but petitioner whistled, and four men emerged from a nearby apartment building and attacked Lopez. After knocking him to the ground, they hit and kicked him and took his cell phone and his wallet, which contained $400 in cash.

A police dispatch reported the incident and mentioned the possibility of gang involvement, and two Los Angeles police officers, Detective Clark and Officer Cirrito, drove to an alley frequented by members of the Drifters. A man who appeared scared walked by the officers and said: "'[T]he guy is in the apartment.'" The officers then observed a man run through the alley and into the building to which the man was pointing. A minute or two later, the officers heard sounds of screaming and fighting coming from that building.

After backup arrived, the officers knocked on the door of the apartment unit from which the screams had been heard. Roxanne Rojas answered the door. She was holding a baby and appeared to be crying. Her face was red, and she had a large bump on her nose. The officers also saw blood on her shirt and hand from what appeared to be a fresh injury. Rojas told the police that she had been in a fight. Officer Cirrito asked if anyone else was in the apartment, and Rojas said that her 4-year-old son was the only other person present.

After Officer Cirrito asked Rojas to step out of the apartment so that he could conduct a protective sweep, petitioner appeared at the door wearing only boxer shorts. Apparently agitated, petitioner stepped forward and said, "'You don't have any right to come in here. I know my rights.'" Suspecting that petitioner had assaulted Rojas, the officers removed him from the apartment and then placed him under arrest. Lopez identified petitioner as his initial attacker, and petitioner was taken to the police station for booking.

Approximately one hour after petitioner's arrest, Detective Clark returned to the apartment and informed Rojas that petitioner had been arrested. Detective Clark requested and received both oral and written consent from Rojas to search the premises. In the apartment, the police found Drifters gang paraphernalia, a butterfly knife, clothing worn by the robbery suspect, and ammunition. Rojas' young son also showed the officers where petitioner had hidden a sawed-off shotgun. 19

Reasoning

We first consider the argument that the presence of the objecting occupant is not necessary when the police are responsible for his absence. In *Randolph*, the Court

suggested in dictum that consent by one occupant might not be sufficient if "there is evidence that the police have removed the potentially objecting tenant from the entrance for the sake of avoiding a possible objection." 547 U. S., at 121. We do not believe the statement should be read to suggest that improper motive may invalidate objectively justified removal. Hence, it does not govern here.

The *Randolph* dictum is best understood not to require an inquiry into the subjective intent of officers who detain or arrest a potential objector but instead to refer to situations in which the removal of the potential objector is not objectively reasonable. As petitioner acknowledges, our Fourth Amendment cases "have repeatedly rejected" a subjective approach. *Brigham City*, 547 U. S., at 404 (alteration and internal quotation marks omitted). "Indeed, we have never held, outside limited contexts such as an 'inventory search or administrative inspection..., that an officer's motive invalidates objectively justifiable behavior under the Fourth Amendment.'" *King*, 563 U. S., at ___ (slip op., at 10).

Petitioner does not claim that the *Randolph* Court meant to break from this consistent practice, and we do not think that it did. And once it is recognized that the test is one of objective reasonableness, petitioner's argument collapses. He does not contest the fact that the police had reasonable grounds for removing him from the apartment so that they could speak with Rojas, an apparent victim of domestic violence, outside of petitioner's potentially intimidating presence. In fact, he does not even contest the existence of probable cause to place him under arrest.

Holding

We therefore hold that an occupant who is absent due to a lawful detention or arrest stands in the same shoes as an occupant who is absent for any other reason.

b. United States v. Robertson, 736 F.3d 677 (4th Cir. 2013)

Facts

Durham Police responded to a call reporting an altercation. The caller stated that three African-American males in white t-shirts were chasing an individual who was holding a firearm. Officer Doug Welch drove to the area in his patrol car.

Officer Welch noticed a group of six or seven individuals in a sheltered bus stop. Three of the individuals were African-American males wearing white shirts. Jamal Robertson was in the bus shelter but was wearing a dark shirt.

Officer Welch approached the bus shelter to investigate. By the time he arrived, three or four other police officers had already converged on the scene. Their patrol cars, like Officer Welch's, were nearby. While the other officers were already "dealing with the other subjects at the bus shelter", Robertson was still seated in the shelter, so Officer Welch decided to focus on Mr. Robertson.

Officer Welch stopped about four yards in front of Mr. Robertson, who was sitting with his back to the shelter's back wall. Thus, Mr. Robertson was blocked on three sides by walls, faced a police officer directly in front of him, and had another three or four police officers nearby who were "dealing with" every other individual in the bus stop. During the suppression hearing, Officer Welch could not recall if all of these individuals were searched, explaining that once he approached the bus shelter, he focused entirely on Mr. Robertson.

After approaching Mr. Robertson, Officer Welch first asked whether Mr. Robertson had anything illegal on him. Mr. Robertson remained silent. Officer Welch then waved Mr. Robertson forward in order to search Mr. Robertson, while simultaneously asking to conduct the search. In response to Officer Welch's hand gesture, Mr. Robertson stood up, walked two yards towards Officer Welch, turned around, and raised his hands. During the search, Officer Welch recovered a firearm from Mr. Robertson.

Issue

Whether Mr. Robertson's response to Officer Welch's prompting was voluntary consent to a request to search or a begrudging submission to a command.

Discussion

Searches without probable cause are presumptively unreasonable, but if an individual consents to a search, probable cause is unnecessary. The government has the burden of proving consent. Relevant factors include the officer's conduct, the number of officers present, the time of the encounter, and characteristics of the individual who was searched such as age and education. The court added that "whether the individual searched was informed of his right to decline the search is a 'highly relevant' factor".

Holding

The court found Mr. Robertson was not voluntarily consenting to a search of his person, he was submitting to a command. Factors the court found against voluntariness are: the area around Mr. Robertson was dominated by police officers (three patrol cars and five uniformed officers); every other individual at the bus shelter had already been "handled" by other officers; the officer's questioning was immediately accusatory; Officer Welch waved Robertson forward while blocking his exit from the shelter and Mr. Robertson was never informed he had the right to refuse the search. The court found Mr. Robertson's only options were to submit to the search peacefully or resist violently.

5. Cell Phone Searches

Riley v. California, United States v. Wurie, 573 U.S. ___ (2014)

Facts

Riley v. California and United States v. Wurie, 573 U.S. ___ (2014), address the applicability of search warrants to cell phones. In Riley, David Riley was stopped by a police officer for driving with expired registration tags. In the course of the stop, the officer also learned that Riley's license had been suspended. The officer impounded Riley's car, pursuant to department policy, and another officer conducted an inventory search of the car. Riley was arrested for possession of concealed and loaded firearms when that search turned up two handguns under the car's hood.

An officer searched Riley incident to the arrest and found items associated with the "Bloods" street gang. He also seized a cell phone from Riley's pants pocket. According to Riley's uncontradicted assertion, the phone was a "smart phone," a cell phone with a broad range of other functions based on advanced computing capability, large storage capacity, and Internet connectivity. The officer accessed information on the phone and noticed that some words (presumably in text messages or a contacts list)were preceded by the letters "CK"—a label that, he believed, stood for "Crip Killers," a slang term for members of the Bloods gang.

At the police station about two hours after the arrest, a detective specializing in gangs further examined the contents of the phone. The detective testified that he "went through" Riley's phone "looking for evidence, because... gang members will often video themselves with guns or take pictures of themselves with the guns." Although there was "a lot of stuff" on the phone, particular files that "caught [the detective's] eye" included videos of young men sparring while someone yelled encouragement using the moniker "Blood." The police also found photographs of Riley standing in front of a car they suspected had been involved in a shooting a few weeks earlier.

In Wurie, a police officer performing routine surveillance observed respondent Brima Wurie make an apparent drug sale from a car. Officers subsequently arrested Wurie and took him to the police station. At the station, the officers seized two cell phones from Wurie's person. The one at issue here was a "flip phone," a kind of phone that is flipped open for use and that generally has a smaller range of features than a smart phone. Five to ten minutes after arriving at the station, the officers noticed that the phone was repeatedly receiving calls from a source identified as "my house" on the phone's external screen. A few minutes later, they opened the phone and saw a photograph of a woman and a baby set as the phone's wallpaper. They pressed one button on the phone to access its call log, then another button to determine the phone number associated with the "my house" label. They next used an online phone directory to trace that phone number to an apartment building.

When the officers went to the building, they saw Wurie's name on a mailbox and observed through a window a woman who resembled the woman in the photograph on Wurie's phone. They secured the apartment while obtaining a search warrant and, upon later executing the warrant, found and seized 215 grams of crack cocaine, marijuana, drug paraphernalia, a firearm and ammunition, and cash.

Issue(s)

The Supreme Court had to determine the reasonableness of the warrantless cell phone searches incident to a lawful arrest.

Rule(s)

Ultimately, the Court stated that their "answer to the question of what police must do before searching a cell phone seized incident to an arrest is accordingly simple – get a warrant."

Analysis

An officer can only conduct a warrantless search, if a well-established exception applies. The search incident to arrest exception does not apply for two reasons. First, the cell phones were not a threat to the officers. Therefore, the search would not reveal the presence of weapons. Next, there was no evidence that evidence would be destroyed, if a search of the phone was conducted.

Conclusion

Currently, officers need to have a search warrant to search a cell phone incident to arrest.

C. SOUTH CAROLINA LAW ENFORCEMENT MISCONDUCT

Perform an interview discussing various South Carolina statutes, regulations, and case law as it pertains to law enforcement misconduct. In particular, interview Brandy Duncan, General Counsel for South Carolina Criminal Justice Academy, regarding the procedure to review, investigate and prosecute certification misconduct in this state. Statutes and Regulations to be covered are S.C. Code Ann 23-23-10, et. seq. and S.C. Code Regulations 38-001, et. seq.

D. IDENTIFY ISSUES INVOLVING SAME SEX MARRIAGE AND CRIMINAL DOMESTIC VIOLENCE UNDER SOUTH CAROLINA LAW.

On July 28, 2014, the Fourth Circuit Court of Appeals determined that Virginia state statutes and a state constitutional amendment prohibiting same-sex couples from marrying and refusing to recognize same-sex marriages performed elsewhere impermissibly infringes on its citizens' fundamental right to marry. The State of Virginia has been enjoined from enforcing those laws.

On November 12, 2014, in the case of Condon v. Haley, ___ F.Supp.3d ___, 2014. WL 5897175 (D.S.C.), 2014, the U.S. District Court ruled in favor of same-sex marriage in South Carolina. The U.S. District Court issued a permanent injunction, prohibiting the state from enforcing any state law that seeks to prohibit same-sex marriage or interfere in any way with gay couples "fundamental right to marry". The ruling was stayed until November 20 at noon to allow South Carolina an opportunity to appeal. South Carolina is asserting our state laws are fundamentally different from other states' and the Fourth Circuit's July 28th opinion is inapplicable.

On November 18, the U.S. Fourth Circuit Court of Appeals denied the state's request for an extension of the stay.

On November 20, 2014, the United States Supreme Court denied South Carolina's request to further stay the ruling. South Carolina has begun issuing same-sex marriage licenses and same-sex marriage ceremonies have been performed.

The U.S. District Court for the District of South Carolina has also recently held that same-sex couples have a constitutionally protected, fundamental liberty interest in the right to marry and same-sex couples who are married out of state can establish a violation of rights which are protected by the Equal Protection Clause of the Fourteenth Amendment if their out of state marriage is not recognized in South Carolina. Bradacs v. Haley, 2014 WL 6473727 (D.S.C.).

The Attorney General for South Carolina, Alan Wilson, is waiting on the United States Supreme Court to consider the above issues, citing conflicting rulings by federal appeals courts.

What this means for South Carolina officers investigating domestic violence:

The relevant portions of our CDV statutes are as follows:

Section 16-25-20. Acts prohibited; penalties; criminal domestic violence conviction in another state as prior offense.

(A) It is unlawful to:

(1) cause physical harm or injury to a person's own household member; or

(2) offer or attempt to cause physical harm or injury to a person's own household member with apparent present ability under circumstances reasonably creating fear of imminent peril.

Section 16-25-65. Criminal domestic violence of a high and aggravated nature; elements; penalty; conditional probation; statutory offense.

(A) A person who violates Section 16-25-20(A) is guilty of the offense of criminal domestic violence of a high and aggravated nature when one of the following occurs. The person commits:

(1) an assault and battery which involves the use of a deadly weapon or results in serious bodily injury to the victim; or

(2) an assault, with or without an accompanying battery, which would reasonably cause a person to fear imminent serious bodily injury or death.

Section 16-25-10. "Household member" defined.

As used in this article, "household member" means:

(1) a spouse;

(2) a former spouse;

(3) persons who have a child in common; or

(4) a male and female who are cohabiting or formerly have cohabited.

It is possible the statutorily defined "household member" may now include same-sex spouses, former same-sex spouses, same-sex persons who have a child in common.

E. LEGISLATIVE UPDATE

1. South Carolina Concealed Weapons Permit Law Amendment

The amended law, among other things, allows a person carrying a valid CWP to enter a premises, which serves alcohol, to be armed. However, the business can prohibit this with proper signage.

An act to amend Section 16-23-465, as amended, Code of Laws of South Carolina, 1976, relating to the prohibition on the carrying of a pistol or firearm into a business that sells alcoholic liquors, beer, or wine to be consumed on the premises, so as to provide that the prohibition does not apply to persons carrying a concealable weapon in compliance with a concealable weapon permit under certain circumstances, including that the person may not consume alcoholic liquor, beer, or wine while carrying the concealable weapon on the premises;

To provide that the business may choose to prohibit the carrying of concealable weapons on its premises by posting notice;

To revise the penalties for violations, and to make technical changes;

To amend Section 23-31-210, as amended, relating to definitions for purposes of the article on concealed weapon permits, so as to revise the definitions of "picture identification" and "proof of training", to delete the term "proof of residence", and to make conforming changes;

To amend Section 23-31-215, as amended, relating to the issuance of concealable weapon permits, so as to revise the requirements that must be met in order to receive a concealable weapon permit, to allow permit applications to be submitted online with sled, to provide that a person may not carry a concealable weapon into a place clearly marked with a sign prohibiting the carrying of a concealable weapon, to provide that a permit is valid for five years, to require sled to send a renewal notice at least thirty days before a permit expires, and to make conforming changes;

To amend Section 16-23-20, as amended, relating to the unlawful carrying of a handgun, so as to allow a concealable weapon permit holder to also secure his weapon under a seat in a vehicle or in any open or closed storage compartment in the vehicle;

And to amend Section 16-23-10, as amended, relating to definitions for purposes of the article on handguns, so as to redefine the term "luggage compartment".

2. Proof of Motor Vehicle Insurance

A driver of a motor vehicle may now provide proof of insurance via electronic means. If law enforcement is shown proof via electronic means, it does not allow law enforcement to further search the electronic device.

An act to amend the Code of Laws of South Carolina, 1976, by adding Section 38-77-127 so as to provide that an automobile insurer may verify the coverage of an insured by electronic format to a mobile electronic device upon request of the insured, and to provide a necessary definition;

And to amend Section 56-10-225, relating to requirements for maintaining proof of financial responsibility in an automobile, so as to permit the use of a mobile electronic device to satisfy these requirements, to provide an insurer is not required to issue this verification in an electronic format, to provide that presenting an electronic mobile device to law enforcement to satisfy proof of automobile financial responsibility does not subject information contained or stored in the device to search absent a valid search warrant or consent of the lawful owner of the device.

Be it enacted by the General Assembly of the State of South Carolina:

Insurer may provide proof electronically

Section 1. Article 3, Chapter 77, Title 38 of the 1976 Code is amended by adding:

"Section 38-77-127.

(A) An automobile insurer may issue verification concerning the existence of coverage it provides an insured in an electronic format to a mobile electronic device upon request of the insured.

(B) For purposes of this section, 'mobile electronic device' means a portable computing and communication device that has a display screen with touch input or a miniature keyboard and is capable of receiving information transmitted in an electronic format."

Insured may prove electronically, device not subject to search, exceptions

Section 2. Section 56-10-225(B) of the 1976 Code is amended to read:

"(B) The owner of a motor vehicle must maintain proof of financial responsibility in the motor vehicle at all times, and it must be displayed upon demand of a police officer or any other person duly authorized by law. Evidence of financial responsibility may be provided by use of a mobile electronic device in a format issued by an automobile insurer. This section does not require that an automobile insurer issue verification concerning the existence of coverage it provides an insured in an electronic format. Information contained or stored in a mobile electronic device presented pursuant to this subsection is not subject to a search by a law enforcement officer except pursuant to the provisions of Section 17-13-140 providing for the issuance,

execution, and return of a search warrant or pursuant to the express written consent of the lawful owner of the device."

Time effective

Section 4. This act takes effect upon approval by the Governor.

Ratified the 27th day of February, 2014.

Approved the 4th day of March, 2014.

3. Emma's Law

Emma's Law is a comprehensive DUI law. Generally, it requires an individual who submitted to a breath test and had an alcohol concentration of fifteen one-hundredths of one percent or more to have an ignition interlock device installed in their vehicle.

An act to amend the Code of Laws of South Carolina, 1976, so as to enact "Emma's Law";

To amend Section 56-1-400, as amended, relating to the suspension of a driver's license, a driver's license renewal or its return, and the issuance of a driver's license that restricts the driver to operating only a vehicle equipped with an ignition interlock device, so as to make technical changes, to provide for the issuance of an ignition interlock restricted license for the violation of certain motor vehicle offenses, to provide a fee for the license, and to provide for the disposition of fees collected from the issuance of the license, to revise the period of time that a person's driver's license must be suspended when he refuses to have an ignition interlock device installed on his vehicle when required by law and when he consents to have the device installed on his vehicle, to revise the procedure whereby a person who only may operate a vehicle during the time for which he is subject to having an ignition interlock device installed on a vehicle may obtain permission from the department of motor vehicles to drive a vehicle that is not equipped with this device; to amend Section 56-1-460, as amended, relating to driving a motor vehicle with a canceled, suspended, or revoked driver's license, so as to revise the penalty for a third or subsequent offense, make technical changes, and to provide that this provision applies also to a driver's license that is suspended or revoked pursuant to Section 56-5-2945;

To amend Section 56-5-2941, as amended, relating to the requirement that a person who is convicted of certain offenses shall have an ignition interlock device installed on any motor vehicle he drives, so as to make technical changes, to provide that this section applies to an offense contained in Section 56-5-2947, to provide that this section does not apply to certain provisions of law, to revise the procedures that the department of motor vehicles shall follow when it waives or withdraws the waiver of the requirements of this section, to revise the time that a device is required to be affixed to a motor vehicle, to revise the length of time a person must have a device installed on a vehicle based upon the accumulation of points under the ignition interlock device point system, to provide for the use of funds contained in the ignition interlock device fund, to revise the amount this ignition interlock service provider shall collect and remit to the ignition interlock device fund, to provide a penalty for a person's failure to have the ignition interlock device inspected every sixty days or fails to complete a running retest of the device, to revise the information that must be contained in an inspection report of a device and penalties associated with violations contained in the report, to decrease the number of ignition interlock device points that may be appealed, to provide that the department of probation, parole and pardon services must provide a notice of assessment of ignition interlock device points that must advise a person of his right to request a contested case hearing before the office of motor vehicle hearings and that under certain circumstance his right to a hearing is waived, to provide the procedure to obtain a

hearing, the potential outcomes that may result from a hearing, and the procedures to be followed during the hearing, to revise the time period in which a person may apply for the removal of an ignition interlock device from a motor vehicle and the removal of the restriction from the person's driver's license, to revise the penalties applicable to a person who is subject to the provisions of this section and is found guilty of violating them, to require a person who operates an employer's vehicle pursuant to this section to have a copy of the department of motor vehicle's form, contained in Section 56-1-400, to provide that obstructing or obscuring the camera lens of an ignition interlock device constitutes tampering, to provide that this provision does not apply to certain leased vehicles, to provide that a device must capture a photographic image of the driver as he operates the ignition interlock device, to provide that these images may be used by the department of probation, parole and pardon services to aid its management of the ignition interlock device program, to provide that no political subdivision of the state may be held liable for any injury caused by a person who operates a motor vehicle after the use or attempted use of an ignition interlock device, and to provide restrictions on the use and release of information obtained regarding a person's participation in the ignition interlock device program;

Be it enacted by the General Assembly of the State of South Carolina:

Emma's Law

Section 1. This act may be cited as "Emma's Law".

Ignition interlock device

Section 3. Section 56-1-400 of the 1976 Code, as last amended by Act 285 of 2008, is further amended to read:

"Section 56-1-400.

(A) The Department of Motor Vehicles, upon suspending or revoking a license, shall require that the license be surrendered to the department. At the end of the suspension period, other than a suspension for reckless driving, driving under the influence of intoxicants, driving with an unlawful alcohol concentration, felony driving under the influence of intoxicants, or pursuant to the point system, the department shall issue a new license to the person. If the person has not held a license within the previous nine months, the department shall not issue or restore a license which has been suspended for reckless driving, driving under the influence of intoxicants, driving with an unlawful alcohol concentration, felony driving under the influence of intoxicants, or for violations under the point system, until the person has filed an application for a new license, submitted to an examination as upon an original application, and satisfied the department, after an investigation of the person's driving ability, that it would be safe to grant the person the privilege of driving a motor vehicle on the public highways. The department, in the department's discretion, where the suspension is for a violation under the point system, may waive the examination, application, and investigation. A record of the suspension must be endorsed on the license issued to the person, showing the grounds of the suspension. If a person is permitted to operate a motor vehicle only with an ignition interlock device installed pursuant to Section 56-5-2941, the restriction on the license issued to the person must conspicuously identify the person as a person who only may drive a motor vehicle with an ignition interlock device installed, and the restriction must be maintained on the license for the duration of the period for which the ignition interlock device must be maintained pursuant to Section 56-1-286, 56-5-2945, 56-5-2947 except if the conviction was for Section 56-5-750, 56-5-2951, or 56-5-2990.

For purposes of Title 56, the license must be referred to as an ignition interlock restricted license. The fee for an ignition interlock restricted license is one hundred dollars, which shall be placed into a special restricted account by the Comptroller General to be used by the Department of Motor Vehicles to defray the department's expenses. Unless the person establishes that the person is entitled to the exemption set forth in subsection (B), no ignition interlock restricted license may be issued by the department without written notification from the authorized ignition interlock service provider that the ignition interlock device has been installed and confirmed to be in working order. If a person chooses to not have an ignition interlock device installed when required by law, the license will remain suspended indefinitely. If the person subsequently decides to have the ignition interlock device installed, the device must be installed for the length of time set forth in Section 56-1-286, 56-5-2945, 56-5-2947 except if the conviction was for Section 56-5-750, 56-5-2951, or 56-5-2990. This provision does not affect nor bar the reckoning of prior offenses for reckless driving and driving under the influence of intoxicating liquor or narcotic drugs, as provided in Article 23, Chapter 5 of this title.

(B) (1) A person who does not own a vehicle, as shown in the Department of Motor Vehicles' records, and who certifies that the person:

(a) cannot obtain a vehicle owner's permission to have an ignition interlock device installed on a vehicle;

(b) will not be driving a vehicle other than a vehicle owned by the person's employer; and

(c) will not own a vehicle during the interlock period, may petition the department, on a form provided by the department, for issuance of an ignition interlock restricted license that permits the person to operate a vehicle specified by the employee according to the employer's needs as contained in the employer's statement during the days and hours specified in the employer's statement without having to show that an ignition interlock device has been installed.

(2) The form must contain:

(a) identifying information about the employer's noncommercial vehicles that the person will be operating;

(b) a statement that explains the circumstances in which the person will be operating the employer's vehicles; and

(c) the notarized signature of the person's employer.

(3) This subsection does not apply to a person who is self-employed or to a person who is employed by a business owned in whole or in part by the person or a member of the person's household or immediate family unless during the defense of a criminal charge, the court finds that the vehicle's ownership by the business serves a legitimate business purpose and that titling and registration of the vehicle by the business was not done to circumvent the intent of this section.

(4) Whenever the person operates the employer's vehicle pursuant to this subsection, the person shall have with the person a copy of the form specified by this subsection.

(5) The determination of eligibility for the waiver is subject to periodic review at the discretion of the department. The department shall revoke a waiver issued pursuant to this exemption if the department determines that the person has been driving a vehicle other than the vehicle owned by the person's employer or has been operating the person's employer's vehicle outside the locations, days, or hours specified by the employer in the department's records. The person may seek relief from the department's determination by filing a request for a contested case hearing with the Office of Motor Vehicle Hearings pursuant to the Administrative Procedures Act and the rules of procedure for the Office of Motor Vehicle Hearings.

(C) A person whose license has been suspended or revoked for an offense within the jurisdiction of the court of general sessions shall provide the department with proof that the fine owed by the person has been paid before the department may issue the person a license. Proof that the fine has been paid may be a receipt from the clerk of court of the county in which the conviction occurred stating that the fine has been paid in full."

Ignition interlock device

Section 9. Section 56-5-2941 of the 1976 Code, as last amended by Act 285 of 2008, is further amended to read:

"Section 56-5-2941.

(A) The Department of Motor Vehicles shall require a person who is a resident of this State and who is convicted of violating the provisions of Section 56-5-2930, 56-5-2933, 56-5-2945, 56-5-2947 except if the conviction was for Section 56-5-750, or a law of another state that prohibits a person from driving a motor vehicle while under the influence of alcohol or other drugs, to have installed on any motor vehicle the person drives an ignition interlock device designed to prevent driving of the motor vehicle if the person has consumed alcoholic beverages. This section does not apply to a person convicted of a first offense violation of Section 56-5-2930 or 56-5-2933, unless the person submitted to a breath test pursuant to Section 56-5-2950 and had an alcohol concentration of fifteen one-hundredths of one percent or more. The department may waive the requirements of this section if the department determines that the person has a medical condition that makes the person incapable of properly operating the installed device. If the department grants a medical waiver, the department shall suspend the person's driver's license for the length of time that the person would have been required to hold an ignition interlock restricted license. The department may withdraw the waiver at any time that the department becomes aware that the person's medical condition has improved to the extent that the person has become capable of properly operating an installed device. The department also shall require a person who has enrolled in the Ignition Interlock Device Program in lieu of the remainder of a driver's license suspension or denial of the issuance of a driver's license or permit to have an ignition interlock device installed on any motor vehicle the person drives.

The length of time that a device is required to be affixed to a motor vehicle as set forth in Sections 56-1-286, 56-5-2945, 56-5-2947 except if the conviction was for Section 56-5-750, 56-5-2951, and 56-5-2990.

4. Retired Law Enforcement Officer's Carrying Firearms

To amend Article 8, Chapter 31, Title 23 of the 1976 Code, relating to identification cards issued to and firearm qualification provided for retired law enforcement personnel, by amending the Section 23-31-600(a)(2) to provide that the defined term is consistent with federal law, to amend Section 23-31-600(e) to remove the fee requirement for issuance of an identification card pursuant to this article; and to make conforming amendments.

Be it enacted by the General Assembly of the State of South Carolina:

Section 1. Section 23-31-600 of the 1976 Code is amended to read:

"Section 23-31-600.

(A) For purposes of this section:

(1) 'Identification card' is a photographic identification card complying with 18 U.S.C. Section 926C~~(d)~~.

(2) 'Qualified retired law enforcement officer' ~~means any retired law enforcement officer as defined~~ shall have the same meaning as in 18 U.S.C. Section 926C~~(c) who at the time of his retirement was certified as a law enforcement officer in this State and who was trained and qualified to carry firearms in the performance of his duties~~.

(B) An agency or department within this State ~~must~~ may comply with ~~Section 3 of the Law Enforcement Officers Safety Act of 2004,~~ 18 U.S.C. Section 926C, by issuing an identification card to any ~~person who retired from that agency or department and who is a~~ qualified retired law enforcement officer. If the agency or department currently issues credentials to active law enforcement officers, ~~then~~ the agency or department may comply with the requirements of this section by issuing the same credentials to qualified retired law enforcement officers. If the same credentials are issued, then the agency or department must stamp the credentials with the word 'RETIRED'.

(C) (1) Subject to the limitations of subsection (E), a qualified retired law enforcement officer may carry a concealed weapon in this State if ~~he~~ the qualified retired law enforcement officer possesses an identification card ~~issued pursuant to subsection (C)~~ along with a certification that ~~he~~ the qualified retired law enforcement officer has, not less recently than one year before the date the individual is carrying the firearm, met the standards established by the agency for training and qualification for active law enforcement officers to carry a firearm of the same type as the concealed firearm.

(2) The firearms certification required by this subsection may be reflected on the identification card or may be in a separate document carried with the identification card.

(D) The restrictions contained in Sections 23-31-220 and 23-31-225 are applicable to a person carrying a concealed weapon pursuant to this section.

(E) The agency or department ~~may charge the retired law enforcement officer a reasonable fee for issuing the identification card and~~ must provide the qualified retired law enforcement officer with the opportunity to qualify to carry a firearm under the same standards for training and qualification for active law enforcement officers to carry firearms. However, the agency or department, as provided in 18

U.S.C. Section 926C~~(c)(5)~~, may require the qualified retired law enforcement officer to pay the actual expenses of the training and qualification."

Section 2. This act takes effect upon approval by the Governor.

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.

INSTRUCTIONAL CONTENT
BIBLIOGRAPHY

LESSON PLAN TITLE:	LESSON PLAN #:	STATUS (New/Revised):
Legal Update 2014-2015 (January)	I0309	New

1. Select case law from the South Carolina Supreme Court.
2. Select case law from the United States Supreme Court.
3. Select case law from the United States Court of Appeals for the Fourth Circuit.
4. Select case law from the South Carolina Court of Appeals.
5. Select South Carolina Statutes and Regulations.