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UNITED STATES SUPREME COURT

Physically present co-occupant's refusal to allow search overrides other co-occupant's consent to police

Georgia v. Randolph, No. 04-1067, Decide March 22, 2006

Scott Randolph and his wife were having marital problems. On the morning of July 6, she complained to the police that her husband had taken and hidden their son away. When officers reached the house she told them that her husband was a cocaine user whose habit had caused financial troubles. Mr. Randolph returned and stated that he had removed the child to a neighbor's house to keep Ms. Randolph from taking the boy out of the country again. He denied cocaine use and accused his wife of abusing drugs and alcohol.

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Upon reclaiming the child, Randolph's wife renewed her complaints, and even volunteered that there were items of "drug evidence" in the house. An officer at the scene asked Mr. Randolph for permission to search the house. He clearly and unequivocally refused. The sergeant then turned to Ms. Randolph and asked her for consent. She agreed, and led the officer upstairs to a bedroom. In that bedroom, the officer noticed a section of a drinking straw with a powdery residue he suspected was cocaine. He seized the evidence and contacted the district attorney's office which instructed him to stop the search and apply for a warrant. After getting a search warrant, officers returned to the house and seized further evidence of drug use. Scott Randolph was indicted for possession of cocaine.

He moved to suppress the evidence, arguing they were products of a warrantless search of his house unauthorized by his wife's consent because of his express refusal. The trial court denied the motion, ruling that his wife had common authority to consent to the search. The Court of Appeals of Georgia reversed and suppressed the evidence. That reversal was upheld by the Georgia Supreme Court and the decision was appealed to the United States Supreme Court.

The United States Supreme Court took the appeal in order (they stated) to "resolve a split of authority on whether one occupant may give law enforcement effective consent to search shared premises, as against a co-tenant who is present and states a refusal to permit the search." At the time the U.S. Supreme Court took the case, the four federal Courts of Appeals, and a large majority of the state courts, that had considered the issue had concluded that the consent of a co-occupant remains effective even in the face of an express objection by another co-occupant.

The United State Supreme Court disagreed and upheld the Georgia ruling suppressing the evidence. The Supreme Court had previously declared in *United States v. Matlock*, 415 U.S. 164, that a warrantless entry into a premises was valid when the police obtain the voluntary consent of an

occupant who shares, or is reasonably believed to share, common authority over the property, and no co-tenant is present or when no present co-tenant objects. The Court reasoned that this was reasonable in light of commonly held understandings about the authority that co-inhabitants may exercise in ways that affect other's interests.

The Court reasoned that the common understanding between co-tenants is that any one of them may admit visitors, with the consequence that a "guest" obnoxious to one may be admitted only in his absence. The Court stated that no sensible person would entered shared premises based on one occupant's invitation when a fellow present tenant said to stay out. Thus a disputed invitation gave an officer no better claim to reasonableness in entering the premises than the officer would have absent any consent.

The Court held that disputed permission to search the premises was no match for the Fourth Amendment's central value of respect for privacy in the home, and that the warrantless search was therefore unreasonable. Because the warrantless search violated the Fourth Amendment, the search was invalid and the evidence was suppressed.



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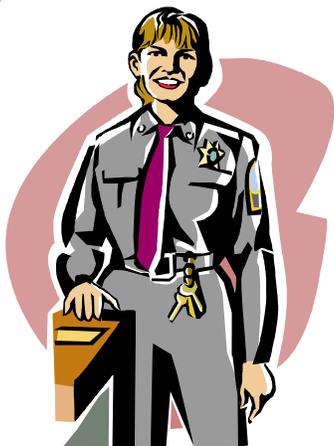
UNITED STATES CONGRESS

New law criminalizes improper use of official uniforms/credentials

Badge and Uniform Security and Trustworthiness Act (HR 3815), effective January 2006

The U.S. Congress amended 18 U.S.C. 716 to make it a crime to wear or use any part of the uniform or insignia of any public employee at any level of government for the purpose of misleading or deceiving someone. Congress passed the bill in December of 2005, and it was signed into effect by President Bush in January of this year. Prior to these amendments, the law prohibited only the deceptive or misleading use of badges.

This change was precipitated by a robbery in Rochester, NY. The suspect who robbed a credit union and killed a man in August 2003 wore an FBI jacket, police trousers, and a bulletproof vest. He also had the ID card of an official U.S. Marshal. It is believed that the suspect's apparel granted valuable getaway time without arousing suspicion, but the statute in question did not make his wearing the apparel a crime because he did not display a badge.



U.S. DIST. CT.- NORTHERN OKLAHOMA

Federal DNA statute upheld as valid under 4th Amendment

Myers v. Gonzales, 05-CV-278, Decided February 14, 2006

The DNA Backlog Elimination Act of 2000, 42 U.S.C. §14135a, provides for the collection of DNA samples to be taken from individuals in custody and on release, parole, or probation after a conviction for certain qualifying crimes. Effective October 30, 2004, the act was amended to require a DNA sample from those convicted of any felony, and other specific crimes. Thus, those amendments extended the reach of the federal DNA Act, for the first time, to federal felonies that are not violent or sexual in nature, such as bank fraud, wire fraud, and other white collar federal crimes.

Certain offenders convicted of non-violent felonies sued to keep their DNA samples from being taken. They alleged that the taking of the blood samples violated their Fourth Amendment rights by unreasonably seizing them without a warrant, and in violating their reasonable expectation of privacy.

The Trial Court judge deciding the issue noted that it is well settled law that parolees, supervisees, and probationers (such as plaintiffs in this lawsuit) have a significantly diminished expectation of privacy. In particular, individuals on supervised release have a reduced right to privacy in their identity.

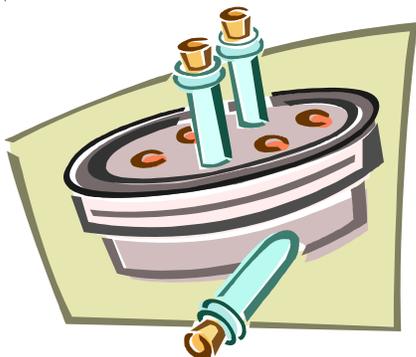
The Court held that the two intrusions into the probationers' privacy - the initial blood draw and the indefinite maintenance of the genetic

information in the DNA coding system - must be considered against the back drop of that reduced expectation of privacy in information related to their identity.

The Court then balanced the degree to which those intrusions interfered with the privacy interests of the probationers against the degree to which DNA profiling promotes a legitimate governmental interest. The Court reasoned that the legitimate governmental interest in obtaining and maintaining such samples were significant. Those include the use of DNA in identifying, detecting, and solving, crime. They also included serving as a means of conclusively identifying and tracking convicted felons.

Given the relatively minor intrusion upon the body integrity of the probationers by taking a blood sample, and the diminished expectation of privacy of probationers in information relating to their identity, the Court upheld the statute as constitutional.

This decision is of significance to local law enforcement because the state DNA statute was recently amended to include collection of samples from all convicted felons. The reasoning provided by this Court in upholding the federal DNA statute is applicable to Oklahoma's DNA statute with regards to the Constitutional issues. It is presently unknown whether the decision of this Court will be appealed. The *Legal Eagle* will keep you updated if it is.



10th CIR. CT OF APPEALS

Retention of license to do warrant check changed consensual encounter to involuntary seizure

U.S. v. Lopez, No. 05-1323, Decided April 11, 2006

During a routine patrol, Officer Jackson, a Denver police officer, observed two men standing in the middle of the street next to a car parked with its engine running. The officer testified that the car was not obstructing traffic, but he made the decision to contact the two men because it was very early in the morning, and the street borders a high-crime area. Before exiting his car, Jackson checked the license plate of the car on his mobile data terminal. He learned the car had not been reported stolen and was registered to a woman in a nearby community.

The officer stopped his car approximately twenty feet behind Bobby Jude Lopez and his friend Randy Romero. His spotlight was on, but not his overhead lights or siren. The officer asked if either of the men owned the car, and Lopez stated that it belonged to him. The officer then approached the two men and asked for identification. Both produced Colorado IDs. The address on Lopez's license match the address of the registered owner of the car. Nevertheless, Jackson took Lopez's license to his patrol car and ran a warrants check. The warrants check revealed that Lopez had an outstanding warrant for a misdemeanor charge. Lopez was arrested and searched. During the search, Jackson found crack cocaine in Lopez's pants pocket. When the officer searched Lopez's

vehicle, he discovered a .22 revolver under the front seat, some plastic sandwich bags, and an electronic scale.

Lopez was charged with possession with intent to distribute crack cocaine, and possession of ammunition by a previously convicted felon. Before trial, Lopez moved to suppress the evidence recovered from a search of his person and his car. The trial court granted his motion. During that hearing, the government had conceded that the officer did not have reasonable suspicion of criminal activity when he first contacted Lopez. They argued that it was a consensual encounter between Lopez and Officer Jackson which Lopez could have ended and left at any time. The trial court concluded that Lopez was not free to leave, and thus seized, once Jackson took possession of his driver's license and retained it to run the computer check. The prosecution appealed.

The courts have identified three categories of police-citizen encounters: 1) consensual encounters which do not implicate the 4th Amendment; 2) investigative detentions which must be supported by a reasonable suspicion of criminal activity; and 3) arrests, which are only supported by probable cause. The Court noted that it is also settled law that the nature of an encounter can change. What may begin as a consensual encounter may change to an investigative detention or an arrest depending upon the conduct of the parties involved.

The 10th Circuit also found that the discovery of the evidence was as a result of an unlawful seizure of the defendant. The Court focused on the point that Officer Jackson kept Lopez's ID to do the warrant check that led to his arrest and discovery of the evidence.

At the time the officer asked for the identification, Jackson knew the address of the owner of the car next to which Lopez had been standing and knew the car had not been reported stolen. Within seconds of reviewing the license, the officer was able to establish Lopez's identity and confirm that

his address matched the address on the car's registration. The Court held that at that point in time, the continued retention of Lopez's license was undue. Having considered all the factors, the 10th Circuit concluded the encounter was not consensual at the time of the warrants check. The uniformed officer not only held Lopez's license longer than necessary to confirm his identification, he instructed Lopez to remain by his vehicle while Jackson went to his patrol car to do the warrant check, thus rendering Lopez unable to leave. The Court held that under the totality of the circumstances, no reasonable person would have felt free to terminate the encounter with the officer. Therefore, what had started as a consensual encounter between Lopez and the officer changed into at least an investigative detention at the point the license was retained for the warrants check. Because the government conceded that the officer did not have probable cause or a reasonable articulable suspicion to detain Lopez until the warrants check was completed, the seizure violated the Fourth Amendment.



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Traffic stop based upon knowledge of past driving under suspension not reasonable after 22 weeks since last contact

U.S. v. Laughrin, No. 04-2207, Decided March 2, 2006

On December 31, 2001, Officer Brad Riley of the Lovington, N.M. Police Department recognized Clinton Laughrin buying gas at a convenience store. When Mr. Laughrin drove away from the convenience store, Officer Riley followed him for about a half mile. He observed no traffic violations at that time. Nevertheless, he decided to stop Laughrin based solely upon his knowledge of Laughrin's driving record. Officer Riley previously had about ten contacts with Laughrin. He had previously stopped him and discovered he was driving on a suspended license on more than one occasion. Officer Riley was not sure when the last encounter had been, but was sure that it had to have been no more recent than 22 weeks earlier because he had not seen Mr. Laughrin since his return from the 22 week long police academy.

Officer Riley stopped Laughrin for driving with an suspended license. Laughrin claimed that he had a valid license, but did not have the documents with him. During the encounter, Officer Riley noticed the barrel of a gun behind the driver's seat. After the scene was secured, it was discovered that the barrel was on a sawed off shotgun. Officer Riley also discovered that Mr. Laughrin did have a valid license when dispatch informed him of that information.

Laughrin was indicted in federal District Court on six weapons charges, three of which were based on possession of the sawed-off shotgun. He moved to suppress the gun on the grounds that the traffic stop violated the Fourth Amendment because it was not based upon reasonable suspicion. The trial court denied his motion, and he appealed his

conviction to the 10th Circuit District Court.

The 10th Circuit Court of Appeals agreed with Laughrin that Officer Riley's knowledge of his prior driving offenses was not sufficient to create reasonable suspicion that he was driving without a valid license on the day of the stop. The court held that knowledge of a person's prior criminal involvement is alone insufficient to give rise to reasonable suspicion.

The Court addressed the argument that Officer Riley had reasonable suspicion to stop Laughrin based not upon his *criminal history* of driving without a license, but on the *ongoing violation* of driving without a valid license - that he was still engaged in the same offense that he had been stopped for before. The Court stated that whether it would be reasonable to believe that he had continued to drive without a license would necessarily depend on the length of time since he was last found to be driving without a license. Various courts had upheld stops on that basis with knowledge that a drivers license was invalid a week before and twenty two days earlier. The Court, however, held that twenty two weeks was simply too long a period to provide such reasonable suspicion and was too stale to justify the stop on the belief that a suspension was still in effect.



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