

NEWSLETTER

International Association of Directors of Law Enforcement Standards and Training
3287 Tasa Drive; Meridian, Idaho 83642-6444
<http://www.iadlest.org>



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June 2 - 5, 2013



(Left to right: Terry Wyllie, External Training and Outreach Coordinator, TSC; John Novak, Deputy Director – Outreach, TSC; Bill Muldoon, President, International Association of Directors of Law Enforcement Standards & Training (IADLEST); Mike Becar, Executive Director, CEO, IADLEST; Dr. Leo McArdle, Training Group, TSC; Terry Cahill, Assistant Deputy Director of Domestic Outreach, TSC)

IADLEST EXECUTIVES VISIT TERRORIST SCREENING CENTER (TSC)

On Tuesday, October 9, Bill Muldoon, President, and Mike Becar, Executive Director, visited the Terrorist Screening Center for discussions and a tour with Executive Leadership. During their visit, they engaged in meaningful discussion on the TSC's role and responsibilities on officer safety, counterterrorism and the role of state, local, territorial, and tribal law enforcement in national security.

The TSC was established as a result of Homeland Security Presidential Directive-6 (HSPD-6) in September 2003 and is responsible for managing the Terrorist Screening Database (TSDB), also known as the Terrorist Watchlist. The TSC, with a staff of nearly 500, provides

24/7 365-day coverage for law enforcement and the intelligence community. Prior to September 11th, 12 separate and distinct databases existed which contained some form of terrorist identity information and did not leverage the capability and capacity of each other. HSPD-6 assigned the TSC with the responsibility to build and deploy an integrated approach to terrorist screening for the U.S.

During the meeting, TSC discussed with President Muldoon and Executive Director Becar the importance of greater collaboration and integration of TSC training for the 18,000+ law enforcement agencies in the U.S. TSC stressed that it was critical for officer safety to ensure that local law enforcement took full advantage of the TSDB and the capabilities that the TSC call center can provide. When working properly, the TSC Law Enforcement Partnership is a "force multiplier" in the fight against

terrorism. Training and execution provides the opportunity to possibly save an officer's life while protecting communities and strengthening our National Security.

Each week in the U.S., hundreds of known or suspected terrorists are stopped by state, local, and tribal law enforcement for all sorts of reasons unrelated to terrorism. But only after a quick screening with the Terrorist Watchlist (a process similar to screening for warrants) can individuals be verified as a positive match for potentially having terrorist ties.

In fact, three of the 9/11 hijackers—Mohammed Atta, Ziad Jarrah, and Hani Hanjour—were stopped by state or local law enforcement for routine traffic violations in the days leading up to the deadliest terrorist attack in U.S. history. In those days, however, there was no central system to identify them as having an association with terrorism. Thankfully, that has all changed. Today, state and local law enforcement have a willing partner to help improve officer safety, strengthen national security, and expand U.S. counterterrorism efforts.

TSC Director Tim Healy states, "If the TSC [had been] operational prior to 9/11 and the process worked as it does today, it could have made that horrible day entirely different. Since the first day we started up the TSC operations center, we have always pushed to create a seamless relationship between federal, state, local and tribal law enforcement." Healy continues, "One call can make an enormous difference. The officer gets important information, the intelligence community gets important information, and our communities and our country are safer. So a big part of what we do is work with law enforcement agencies to open this conversation and make the call. Hundreds of thousands of lives are on the line."

One simple phone call to a specialist at TSC's 24/7 operations center is all it takes to verify if it's indeed a positive match. The process takes as little as five to ten minutes for an average stop.

Once connected, a TSC operations specialist works through a series of standard questions with dispatchers so that officers can elicit enough information to make an identity determination. After a positive match is made, the information flow begins, all to the benefit of enhanced national and homeland security.

Editorial Note: The IADLEST Newsletter is published quarterly. It is distributed to IADLEST members and other interested persons and agencies involved in the selection and training of law enforcement officers.

The IADLEST is a nonprofit organization comprised of law enforcement training managers and leaders. Its mission is to research and share information, ideas, and innovations that assist in the establishment of effective and defensible standards for the employment and training of law enforcement officers.

All professional training managers and educators are welcome to become members. Additionally, any individual, partnership, foundation, corporation, or other entities involved with the development or training of law enforcement or criminal justice personnel are eligible for membership. Recognizing the obligations and opportunities of international cooperation, the IADLEST extends its membership invitation to professionals in other democratic nations.

Newsletter articles or comments should be sent to IADLEST; 2521 Country Club Way; Albion, MI 49224; or pjudge@att.net.

MEETINGS HELD AND SCHEDULED

IADLEST held its fall business meeting Saturday, September 29, and Sunday, September 30, 2012, in San Diego, California, in conjunction with the IACP Conference.

The next business meeting is scheduled for the 2013 IADLEST Annual Conference, June 3-5, 2013, in Portland, Oregon.

The next Executive Committee meeting is scheduled for Thursday, January 31, and Friday, February 1, 2013, at the J. W. Marriott Hotel, Washington, DC.

PAY MEMBERSHIP DUES WITH CREDIT CARD

IADLEST Membership renewals are due January 1. IADLEST now accepts credit card payments for membership renewals. Members can log on to www.iadlest.org and click on "Join Now." Select "membership renewal" enter the member's user code, password, and provide the requested information.

Credit card payments are also available for purchases and those joining IADLEST for the first time.

New members can log on to the IADLEST web page and follow the prompts.

"PULL 'EM OVER" COMMERCIAL VEHICLE STOPS

The Baltimore County Police Department, in conjunction with the Federal Motor Carrier Safety Administration and the Community College of Baltimore County has produced two training videos about commercial vehicle traffic enforcement.

The first video, "Pull 'Em Over" is a 15 minute segment designed to stress the need to enforce traffic regulations by instructing law enforcement personnel on the proper steps to ensure highway and officer safety. The video is primarily directed at normal patrol officers/deputies who are not commercial vehicle inspectors and are enforcing routine traffic violations.

The second video, the 7-minute "CDL Enforcement: The Full Circle" traces the CDL enforcement from the citation, to adjudication, and to registration in CDLIS. This involves both law enforcement and the courts, and a "full circle" is completed when all parties do their part in ensuring federal laws are followed. The target audience for this video is primarily court personnel and prosecutors.

Both videos are available online at the following links, or DVD copies can be requested (while supplies last) by contacting Sgt. Joseph Donohue of the Baltimore County Police Department at jdonohue@baltimorecountymd.gov. **Pull 'Em Over:** <http://vstream.ccbcmd.edu/video/BCJL/justice/pullemover.wmv> <http://youtu.be/GmEATMjQShI>; **CDL Enforcement:** <http://youtu.be/ho94bc3ZdXU>; <http://vstream.ccbcmd.edu/video/BCJL/justice/cdlenforce.wmv>;

WELCOME NEW MEMBERS

The IADLEST is proud and privileged to add the following new members. These professionals complement our Association's already extensive wealth of talent and expertise. We welcome them to the IADLEST.

Carlos Champion, Lt, Edinburg PD, Edinburg, TX
Douglas Cooley, Dir., Training Academy, Bristol, VA
Jodi Crozier, Waukesha Tech. College, Pewaukee, WI
Pete Dunbar, Dir., Colorado POST, Denver, CO
Robert Grimm, Dir., Trng Academy, Beaver Falls, PA
John Maritato, Dir., Police Academy, Devils Lake, ND
Bernard Melekian, Dir., USDOJ/COPS, Bethesda, MD
James Parlow, Assist. Prof., CJ, Winona, MN
Duane Stanley, Dir., POST, Bismarck, ND
Robert Weltzer, Ph.D., Board Advisor, Golden, CO
Jonathan Zitzmann, Madisonville PD, Madisonville, TX

POST DIRECTOR CHANGES

Colorado: Pete Dunbar was appointed Director of the Colorado Training and Standards Board. He started his law enforcement career with the Oakland, California, Police Department in 1982. He worked as an officer in Patrol and Special Operations and was promoted to Sergeant. As a sergeant, he worked in Investigation and Patrol. He was promoted to Lieutenant in 1991 where he worked in Training and Patrol. He was promoted to Captain in 1996 where he oversaw Investigations and worked in Patrol. Pete was appointed Deputy Chief, where he was assigned to Field Operations and Services. In February of 2006, he was appointed as Chief of Police of the Pleasant Hill, California, Police Department.

He has taught in the California POST Basic and Reserve academies as well as an in-service instructor in criminal law, search and seizure, administration of justice, critical incident management, legal update, ethics, strategic and succession planning. He has been a member of the California POST Subject Matter Expert (SME) committees for criminal law, search and seizure, emergency management, and domestic terrorism.

Pete served as the 2nd Vice President and the Training Chair for the California Police Chiefs Association. He served as a Commissioner for the California Commission for the Fair Administration of Justice.

He holds a Bachelor of Science degree in Commerce from the University of Santa Clara. Pete received a Master of Arts Degree in Education from San Diego State University. He is also a graduate of the California POST Command College and from the California POST Master Instructor Development Program. Pete has been involved with the Special Olympics Law Enforcement Torch Run.

North Dakota: Duane Stanley was appointed Executive Secretary (Director) of the North Dakota Police Officers Standards and Training Board. He is a graduate of North Dakota State University and has worked in Law Enforcement for the state of North Dakota for more than 25 years.

Duane started his law enforcement career as a Trooper with the North Dakota Highway Patrol. He was stationed in the west central part of the state. In 1991, Duane transferred east to Fargo and was assigned as a Trooper out of Cass County.

In January of 1996, Duane took a position with the North Dakota Bureau of Criminal Investigation as a Special Agent in Fargo. He worked as a federally deputized Task Force Officer assigned to the Fargo Resident DEA Office working specifically on federal narcotics cases. After completing his assignment with DEA, Duane became coordinator of the Cass County Drug Task Force.

In 2006, Duane graduated from the FBI National Academy in Quantico, Virginia. In November of 2009, Duane accepted the position as Coordinator of the North Dakota Fusion Center located in Bismarck until November of 2012. In December, he started his new duties as Executive Secretary for the North Dakota POST Board.

California: Bob Stresak is the California POST Interim Executive Director. Paul Cappitelli retired in December 2012 after serving as California's POST Director since 2007.

MIKE CREWS APPOINTED DIRECTOR OF FLORIDA CORRECTIONS

Florida Governor Rick Scott announced the appointment of Michael D. Crews as Secretary of the Florida Department of Corrections (DOC) effective September 12, 2012.

Mike is best remembered as an active IADLEST member, committee chair, Executive Committee member, and president from March 2009 to June 2010.

Before his appointment as Deputy Secretary of Corrections in 2011, Mike was the Director of the Florida Department of Law Enforcement Programs. He began his career with the Florida Department of Law Enforcement (FDLE) in 1987. Prior to joining FDLE, he was employed as a certified correctional officer at Apalachee Correctional Institute and as a correctional probation officer in Tallahassee.



**DIRTRICT OF COLUMBIA POLICE
CHOOSSES ACADIS®ONLINE TO
TRACK OFFICER TRAINING**

by: Cory Myers, Envisage

Envisage Technologies, a Bloomington, Indiana-based high-technology firm, announced today that it was awarded a contract by the Washington DC Metropolitan Police Department (MPDC) for its Acadis Online service. MPDC will use the service to manage its officer training records to track certifications, and automate its academy operations.

Acadis Online is Envisage's turn-key service which provides the same robust functionality as the Acadis Readiness Suite software, but in the cloud. The MPDC will leverage Acadis to reduce the operating costs and expensive capital investment in hardware, software, or IT staff typically required for enterprise software.

"We are pleased to add the MPDC to our growing list of law enforcement customers," stated Cory Myers, Vice President of Homeland Security Solutions. "The MPDC now has greater control over their officer training records, delivery of traditional and online training, and Academy operations. The cloud-based model provides significant cost savings and real-time access to all approved users."

"Modern law enforcement departments are increasingly turning to technology to manage compliance and proactively support workforce development as it significantly lowers their training costs," said Ari Vidali, Envisage CEO. "We look forward to working with the MPDC to implement Acadis Online, which uses proven best practices to support all aspects of officer lifelong learning."

About ENVISAGE: Envisage is a high tech software company founded in 2001 to automate complex training operations for high liability industries. We create solutions that make our world a safer place. Our clients include military commands, federal law enforcement academies including the U.S. Department of Homeland Security (DHS), and many state law enforcement and public safety organizations (www.envisagenow.com).

About the Acadis Readiness Suite: The Acadis Readiness Suite is designed to make certain that our law enforcement, emergency responders, and military are trained, equipped, and ready. The Suite measures readiness by automating complex, high-risk training and compliance operations. Acadis increases the accuracy and effectiveness across every level of critical incident response by consolidating information about personnel and resources. The modular system enables organizations to implement functionality where needed to support the compliance lifecycle. For further information contact: Cory Myers at 812-330-7101 or cory.myers@envisagenow.com.

**BUSINESS MEETING MINUTES
San Diego, California
September 29, 2012, 1:00 PM**

CALL TO ORDER: President Muldoon called the meeting to order on September 29, 2012, at 1:55 pm.

ROLL CALL: Twelve member states present. Lack of quorum.

DISCUSSION ITEMS: Paul Cappitelli (CA) updated the members on the EVOC initiative. A workshop was held at the IACP conference including a panel discussion on emergency driving called "Cops and Collisions." They will be holding a two-and-half day driving symposium in San Diego in the near future. Below 100 is going strong in California, and they are planning several train the trainers. Legislation was passed to allow for a civil penalty of up to \$1,000 fine for non-sponsored academy students who are found to have cheated on a police academy examination. They had sought legislation that would make it an offense for all academy students but fell short when the law was passed.

Meeting Adjourned.

BUSINESS MEETING MINUTES
San Diego, California
September 30, 2012, 9:00 AM

CALL TO ORDER: President Muldoon called the meeting to order at 9:00 am, September 30, 2012.

ROLL CALL: Present: Alaska, Arizona, California, Idaho, Indiana, Iowa, Kentucky, Massachusetts, Michigan, Nebraska, Nevada, North Dakota, Oregon, South Carolina, Texas, and Utah. A quorum was present with sixteen member states.

AGENDA ADDITIONS: Approval of minutes from June 12, 2012.

APPROVAL OF MINUTES: **MOTION** by Harvey (MI) to approve the minutes of the General Business Meeting from June 12, 2012, in Savannah, GA. **SECOND** by Melville (KY). **MOTION CARRIED** with all in favor.

EXECUTIVE DIRECTOR BRIEFING:

POST Director Update: New Directors were appointed in Rhode Island and South Dakota. The POST Director in Colorado has left, and the POST Director in Montana is currently on leave.

Memberships: Becar reported that a branch of the military police has inquired about membership in IADLEST, and there is a possibility of additional international members as well.

2012 Conference: The IADLEST Conference in Savannah had a net profit of \$15,573.

Future Meetings: Executive Committee Meeting: January 31 and February 1, 2013, in Washington, DC, at the NSA Midwinter Conference. General Business Meeting: Portland Oregon, June 4, 2013.

2011 Audit: The audit for 2011 is currently underway.

IADLEST TREASURY: Chuck Melville provided the financial statement for the period of January 1, 2012, through August 31, 2012. He

explained how current bills are paid and the checks and balances that are in place. Melville also reported briefly on the Association's solid financial footing. Our assets are currently at \$415,762. The year-to-date excess of support and expenses over revenue report shows an excess of \$51,065.44. Last month, the Executive Director moved \$150,000 from checking to savings on the recommendations of the auditors. Personnel expenses are within the expected range. **MOTION** to approve the Treasurer's Report by Clark (NV). **SECOND** by Harvey (MI). **MOTION CARRIED** with all in favor.

ADMINISTRATIVE REVIEW:

Bylaws Revisions: Committee Chair Lloyd Halvorson reported that the Bylaws Committee has completed their work. The recommended changes were forwarded to the Executive Committee who voted electronically on August 17, 2012, to adopt them as presented. The proposed changes to the bylaws were then sent to all members electronically on August 22, 2012, as required by Article 8 of the Bylaws. Lengthy discussion to both tradition and the future direction of IADLEST took place. The proposed rate structure was also debated with the members suggesting an alternative to what has been proposed. Halvorson clarified for the members that the rate structure is included as an appendix to the Bylaws and is subject to change only by the Executive Committee. Members suggested that the General Membership fee increase to \$125 (down from the proposed \$150.00) and the Academy Director membership be set at \$300.00 (down from the proposed \$400.00). Muldoon agreed to have the Executive Committee consider these rate changes at their special meeting later today. **MOTION** by Melville to approve the Bylaw changes as presented. **SECOND** by Harvey. **MOTION CARRIED** with one director member opposed.

Northeast Regional Representative: President Muldoon appointed Daniel Zivkovich to replace Tony Silva as the Regional Representative from the Northeast.

Membership Approval Process: Becar updated the members on how new members are currently getting approved. As Becar is responsible to approve new members, when an application for membership comes in without a POST Director nomination, he sends an email to the POST Director with a request for approval. If the POST Director agrees to nominate, the membership will be approved. If the POST Director in the applicant's home state does not agree to nominate, the applicant is informed that they may seek a nomination from another POST Director. The new Bylaw changes will also allow an Academy Director member to nominate new members.

COMMITTEE AND SPECIAL ASSIGNMENT REPORTS:

NHTSA: Earl Hardy was present and spoke about the great partnership we have enjoyed. He also commented on the DDACS initiative that was consolidated under IADLEST. Hardy hopes to be able to help IADLEST develop a business model that will allow us to continue with projects after the initial grant dollars have been expended. He stated the Pursuit Policy work is going well and that NHTSA did receive an additional appropriation of \$500,000 to continue the project. He would like to see a study completed to evaluate the effectiveness of the pursuit policy initiative. NHTSA stated that IACP, NSA, and IADLEST all have a highway traffic safety committee' and he would like to see us consolidate our efforts. Hardy also informed the members that he has been appointed to the Motor Vehicle Carrier Division.

Federal Highway Administration: Tim Light was present and spoke regarding the Strategic Highway Research Program and the Traffic Incident Management Training that is now available. He is currently working with Becar to get this training out to the agencies. He would like to see the states have access to the basic responder course and the train the trainer that is available.

NLEARN: The NLEARN Committee met during the meeting. Setzer provided the monthly report for September. The agenda included new member totals,

programs that were added to the training bookshelf, DOJ training curricula, IADLEST training initiatives, NHTSA training curricula, Google Analytics, and updates to the email lists and NLEARN accounts.

NEW BUSINESS: Essential Learning Services represented by Michael Dooley made a presentation regarding web based learning that they currently provide for close to 1,000 organizations in the US and Canada including 81 correctional facilities, jails, and community corrections agencies. They currently collaborate with the ACA, AJA, and APPA. They would like to collaborate with IADLEST to begin offering training programs to law enforcement officers.

REGIONAL REPORTS:

West Region: A regional meeting is planned for March or April. As the IADLEST Representative to the IACP Training Committee, Lyle Mann has agreed to host the interim committee meeting in California.

Central: Dave Harvey reported that the last regional meeting was held in Ohio. The next one is anticipated to be in Indiana in April. Michigan is working with the military to enable returning military members to enter the law enforcement workforce without having to attend the full academy.

Northeast: No Report.

Midwest: Ciechanowski was appointed by President Muldoon to serve as the regional representative after Vickers was elected 2nd VP. He reported that Vickers will be hosting the regional meeting in San Antonio, Texas, in the spring.

South: Bill Floyd reported that June Kelly and Peggy Schafer provided training in South Carolina. Peggy is returning on October 15th to provide a DDACS session. Regional meeting was in April and well attended. The next one is scheduled for February or March in Columbia, SC.

ADJOURNMENT: MOTION to adjourn by Goodpaster. **SECOND** by Clark. **MOTION CARRIED.**

WYOMING LAW ENFORCEMENT ACADEMY PROMOTES IADLEST PURSUIT POLICY TRAINING

by: Paul Smith, Wyoming Training Academy

The Wyoming Law Enforcement Academy has partnered with IADLEST to promote and offer the newly developed online Pursuit Policy Training to Wyoming officers. Initially, WLEA had been interested in providing the Pursuit Policy Training Course via their current learning management system, but it was determined that the conversion process was too resource intensive.

Since IADLEST had already built an online hosted training course, WLEA decided to do the next best thing and that was to provide an easy link to the IADLEST Pursuit Policy Training login page via a web page on the WLEA

website. WLEA also included instructions on how to register with IADLEST to take the course and how to apply to Wyoming POST for the credit they just earned. To help assess the site's effectiveness, quarterly we'll be tracking the number of hits from the link to the training site and compare that figure to the number of students submitting certificates to POST for credit from Wyoming.

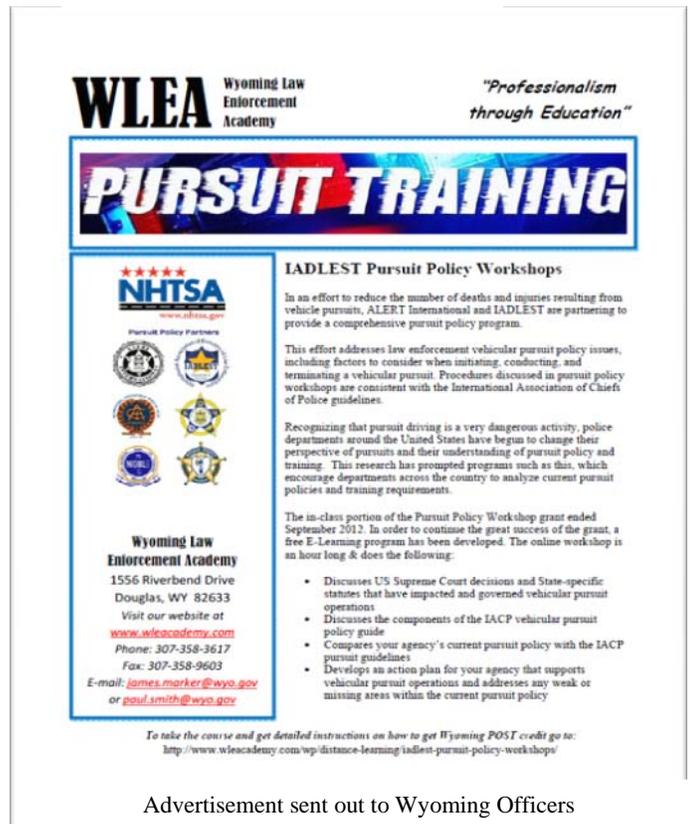
Prior to offering the training, the Director of the WLEA had worked with the Wyoming POST Director to coordinate how students completing the course would apply to POST for credit. This preplanning allowed for the streamlining of the process for the students and removed potential delays or problems in the students receiving their credit.

Screenshot of www.wleacademy.com



Clickable Banner/Button Available on every page of www.wleacademy.com

Screenshot of IADLEST Pursuit Policy Training Webpage



Copy of Text from WLEA's IADLEST Pursuit Policy Training Webpage:

In an effort to reduce the number of deaths and injuries resulting from vehicle pursuits, ALERT International and IADLEST are partnering to provide a comprehensive pursuit policy program.

This effort addresses law enforcement vehicular pursuit policy issues, including factors to consider when initiating, conducting, and terminating a vehicular pursuit. Procedures discussed in pursuit policy workshops are consistent with the International Association of Chiefs of Police guidelines.

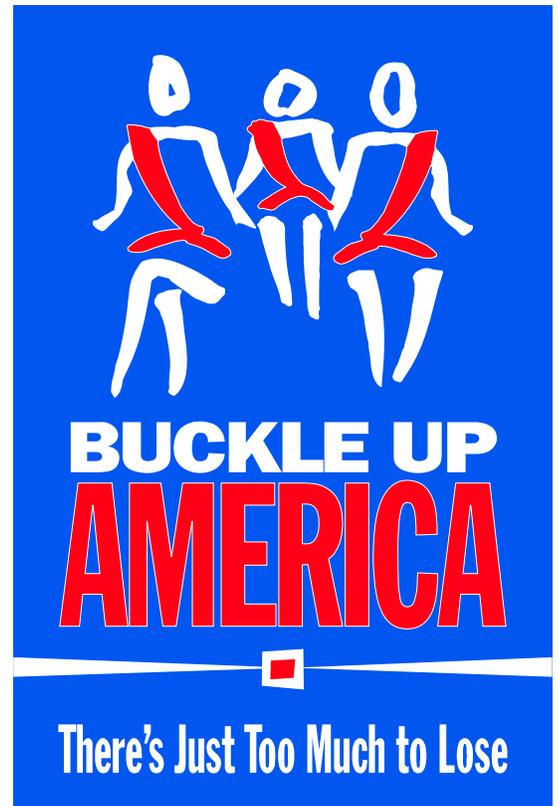
Recognizing that pursuit driving is a very dangerous activity, police departments around the United States have begun to change their perspective of pursuits and their understanding of pursuit policy and training. This research has prompted programs such as this, which encourage departments across the country to analyze current pursuit policies and training requirements.

The in-class portion of the Pursuit Policy Workshop grant ended in September 2012. In order to continue the great success of the grant, a free E-Learning program has been developed. The online workshop is one hour long and does the following:

- Discusses US Supreme Court decisions and State-specific statutes that have impacted and governed vehicular pursuit operations
- Discusses the components of the IACP vehicular pursuit policy guide
- Compares your agency's current pursuit policy with the IACP pursuit guidelines
- Develops an action plan for your agency that supports vehicular pursuit operations and addresses any weak or missing areas within the current pursuit policy

To take the Online Course, Follow these steps:

1. Click on this link
2. On the login page, select "Need an account?"
3. Complete the registration information following the online instructions
4. Return to the "login" screen
5. Login
6. Complete the course (to receive Wyoming POST credit, you must complete the assessments)
7. After successful completion of the course, print out your certificate when prompted
8. Send a copy of your certificate to Wyoming POST and receive your one (1) hour of POST credit (please, write "**Training Hours: 1 Hour**" on certificate prior to sending in to POST)
9. Call Paul Smith at (307) 358-3617 if you are having any problems logging in.



**INTERNATIONAL
ASSOCIATION OF DIRECTORS
OF LAW ENFORCEMENT
STANDARDS AND TRAINING (IADLEST)**

BYLAWS

Adopted September 30, 2012

ARTICLE 1. TITLE OF ASSOCIATION

1.1 The official name of the Association shall be the International Association of Directors of Law Enforcement Standards and Training.

1.2 The abbreviated form “IADLEST” may be used for purposes of identifying this Association.

1.3 For the purposes of these Bylaws, the peace officer standards and training (POST) agency is the board, council, commission, or other policy-making body which is established and empowered by law with the authority and responsibility for development and implementation of minimum standards and/or training for law enforcement personnel of the United States Federal Government, a state, commonwealth or territory of the United States of America, the District of Columbia, or any state or province of a foreign nation.

1.4 The business of the Association will be conducted in accordance with these Bylaws, supplemented by the rules of procedures in *Robert’s Rules of Order*. Eligibility to vote is determined by approved membership, and current in dues payment.

1.5 The primary mode of communications between the association and its members, outside of general meetings, is in electronic mode (i.e., e-mail).

1.5.1 Members are responsible to ensure the Executive Director has current and accurate electronic address information.

1.5.2 Members may opt for postal service communication. However, this option will not delay timely notification of association business as required by these bylaws if timely notification could be achieved electronically.

ARTICLE 2. GOALS AND OBJECTIVES OF ASSOCIATION

2.1 The mission of IADLEST is to research, develop, and share information, ideas, and innovations which assist states in establishing effective and defensible standards for employment and training of law enforcement officers; and in those states where dual responsibility exists, corrections personnel.

2.2 Focus: IADLEST is an association of standards and training managers and leaders. Its primary focus is criminal justice standards and training as they relate to law enforcement and, where appropriate, corrections personnel. To the extent this focus and the values promoted thereby can be furthered and shared, all training professionals are welcome as members.

2.3 In furtherance of the mission and focus of IADLEST, the Association and its activities shall accord the following objectives:

2.3.1. To conduct conferences and professional activities on a regular basis and to encourage communication among the various members;

2.3.2. To provide a clearinghouse of information regarding training, grants, research projects, programs, and instructor development for law enforcement or other criminal justice personnel;

2.3.3. To serve a liaison role with federal agencies responsible for planning, developing, and implementing programs which relate directly or indirectly to the training needs of law enforcement or other criminal justice personnel;

2.3.4. To serve a coordinating role with other national and international law enforcement associations, the United Nations, and other nations, for the productive exchange of information regarding law enforcement training programs or the delivery of law enforcement services;

2.3.5. To recommend and assist in the development and implementation of instructor training programs for law enforcement personnel;

2.3.6. To provide a forum for the exchange of information among the states and foreign countries regarding law enforcement training programs, standards, and research projects of common interest and benefit, to the extent such exchange does not compromise the national security of the United States;

2.3.7. To provide a clearinghouse of information regarding police litigation and Supreme Court and appellate decisions affecting law enforcement;

2.3.8. To support research and development, and assist in the implementation of standards for the programs and administration of criminal justice academies;

2.3.9. To provide and coordinate technical assistance to any IADLEST member upon request.

ARTICLE 3. MEMBERSHIP AND DUES

Membership in the Association shall be limited to one of the following categories:

3.1 Director Membership: The criteria for director membership include:

3.1.1. POST Director membership: is available to the director, chief executive officer, or the individual responsible for the regulations of training and standards for criminal justice officers. In no instance shall any federal government or any state be represented by more than one POST director member.

3.1.2. Academy Director membership: is available to the director, chief executive officer, or other individual responsible for the operations of a publicly funded law enforcement or criminal justice academy or training center at a national, state, or local level.

3.2 General membership
The criteria for general membership shall include:

3.2.1. Any professional employee of a POST agency represented by a director member;

3.2.2. Any member of the board, council, commission, or other policy-making body of any POST, to which a director member is responsible;

3.2.3. Any member or employee of any state or comparable jurisdiction whose official duties are supportive of the POST agency for that jurisdiction;

3.2.4. Any professional employee of a publicly funded law enforcement or criminal justice academy or training center at the national, state, or local level, or other persons, governmentally employed and actively involved in the training/education of law enforcement personnel;

3.2.5. Any individual employed by and/or within any country other than the United States and whose public employment and responsibilities are deemed to be the equivalent of that otherwise required herein for membership.

3.2.6. A request for general membership shall require sponsorship from a POST or Academy director who is a member in good standing with the Association.

3.3 Life Membership

3.3.1. Is available to: Director members, general members, and complimentary members who have been members of the Association for a minimum of five years; and

3.3.1.1. Served as an elected officer, or regional representative, or

3.3.1.2. Served as chair of an IADLEST committee or major project initiative, or

3.3.1.3. In a capacity representing IADLEST, furthered the mission and goals of the Association as determined by the Executive Committee.

3.3.2 Is not available to director members, complimentary members, or general members who are still active in the capacity that provided membership eligibility.

3.3.3. The Executive Committee may waive one or more of the eligibility requirements under

3.3.4. Nomination for life membership must be made by a director member or Executive Committee Member and require a majority vote of the Executive Committee.

3.4 Sustaining Membership

Sustaining membership: shall be limited to any individual not publicly employed but is involved directly or indirectly with the development or training/education of law enforcement officers or other criminal justice personnel.

3.4.1. Applications for sustaining membership shall require the approval of the Executive Director. Any applicant for sustaining membership whose application has been denied by the Executive Director shall have the right to appeal to the Executive Committee.

3.5 Complimentary Membership

Each POST Director member and Academy Director member may designate two complimentary members. The complimentary member shall meet the same criteria and shall have the same status as general members in the association.

3.6 Corporate Membership

The Executive Committee of the association may allow for small, medium, and large corporate memberships. The definitions, benefits, and restrictions for corporate membership shall be clearly identified in an approved policy and procedures manual.

3.6.1. Applications for corporate membership shall require the approval of the Executive Director. Any applicant for corporate membership whose application has been denied by the Executive Director shall have the right to appeal to the Executive Committee.

3.7 Conference Sponsorships

The Executive Committee of the association may allow for the sponsorship of the annual conference. Sponsorship fees, benefits, and /or restrictions shall be clearly identified in an approved policy and procedures manual.

3.7.1. In consultation with the President, the Executive Director shall have the authority to approve conference sponsorships.

3.8 When eligibility for any category of membership is in question, approval or disapproval shall be determined by majority vote of the Executive Committee.

3.8.1. The Executive Committee may deny or discontinue any director membership or life membership for arrears or nonpayment of dues or assessments, or for other action inconsistent with the mission and focus of this organization.

3.8.2. The Executive Director may discontinue any general, sustaining, or corporate membership for arrears or nonpayment of dues or assessments, or for other action inconsistent with the mission and focus of this organization. Any general, sustaining, or corporate member whose membership has been discontinued under this section shall have the right to appeal to the Executive Committee.

3.9 The annual dues for membership shall be determined by a majority vote of directors present at a general meeting and may likewise be modified thereafter.

3.9.1. Renewal dues shall be paid by January 1 of each year and shall be in arrears April 1 of that year. New members whose dues are paid on or after October 1 will have their dues applied through the end of the following year. New members who join in the first nine months of the calendar year shall be billed for the full 12 months with the dues to be prorated the following year thereby bringing the billing in line with the January billing date.

3.9.2. General and Director memberships paid by a federal, state, or local government entity may be transferred from one named recipient to another named recipient within the period of the

paid membership without additional membership cost.

ARTICLE 4. ORGANIZATION

4.1 The fiscal year for the Association shall begin on the first day of January and conclude on the last day of December each year.

4.2 The Association shall maintain a corporate and principal office and such other offices as may from time-to-time be designated by the Executive Committee. The Association will be incorporated as a private, non-profit organization and will maintain the appropriate status with the Internal Revenue Service.

4.3 A general meeting of the Association may be called by the president or at the request of not less than one-half of the directors, provided however:

4.3.1. A notice and agenda are sent to each member at least 30 days in advance of such meeting;

4.3.2. The meeting is conducted by the president, or other such officer by order of succession;

4.3.3. A quorum shall exist when director members or their designees representing not less than 15 states are present for the purpose of conducting the Association's business. Such designee shall meet the proxy requirement as specified in 4.5.2.1.

4.3.3.1. Once the presence of a quorum has been confirmed, business may continue despite any failure to maintain a quorum during the remainder of the meeting;

4.3.3.2. The designee and proxy provisions outlined in 4.3.3 and 4.5.2.1 of these bylaws may be used to satisfy the required number of directors for a quorum; however no director member may be counted twice for purposes of establishing a quorum.

4.3.4. Robert's Rules of Order (Revised) shall be the parliamentary authority for the conduct of all meetings of the Association; and

4.3.5. A parliamentarian may be appointed by the president to be present at each session of the meeting where business is conducted. Any ruling by the parliamentarian shall prevail unless overturned by a two-thirds majority vote of the directors present.

4.4 The president, with the advice and consent of the Executive Committee, shall establish such committees as are necessary to fulfill the mission and focus of IADLEST. Each committee chairperson shall be a member in good standing of the Association.

4.5 Unless otherwise specified in these Bylaws, agreement on the business of the Association shall be determined by the numerical majority of all members in good standing eligible to vote, regardless of membership type, who are present at the time the question is called.

4.5.1. Following any vote, any POST director or his or her designee, may move a "division by POSTs." When such motion is sustained by three POST directors or their designees, the presiding officer shall allow no less than five minutes and no more than fifteen minutes for the members within a jurisdiction to caucus for the purpose of casting a single vote for the jurisdiction on the matter. The caucus is convened to provide advice and input to the POST director. However, the POST director, or designee member shall solely determine the POST's position on the matter. Upon reconvening, the presiding officer shall cause a secret ballot vote to be called. Such votes shall be cast by the director or his or her designee. Tallying the votes on the matter shall be in accordance with these Bylaws. The purpose of this provision is to maintain balance within the Association. As all POSTs are deemed to be equal in the Association, the above provision protects from undue influence upon the Association by any one jurisdiction or membership category. Moreover, the provision also preserves the unique position of each

POST's director in the setting of policy and direction for IADLEST.

4.5.2. Each POST director shall have one vote representing the jurisdiction's POST in which he or she serves as a chief executive officer.

4.5.2.1. The POST director may designate a general member in good standing from that jurisdiction or another POST director in good standing to vote in his or her absence as a proxy vote. Such proxy designation must be in writing and state a specific time period that such proxy may vote on behalf of the POST director member.

4.5.2.2. A proxy vote for any director may be used for a general business vote and a proxy vote for a POST Director member may be used for a "division by POSTs vote.

4.5.3. Each member voting on any issue or question is obliged to disclose any conflict of interest which may affect or appear to affect their vote or that of another voting member.

4.5.3.1. Should the executive committee determine that a conflict of interest exists, the member shall be excused from voting.

4.5.3.2. The executive committee may authorize a proxy vote if a determination of conflict of interest limits the representation of a jurisdiction.

4.6. The president, with the advice and consent of the Executive Committee, shall appoint an Audit Committee consisting of not less than three director-members, no more than one of whom shall be from any one region. The audit committee shall:

4.6.1. Review the financial records of the Association, reports from the Treasurer, and any independent external audits.

4.6.2. Inquire into any of the operations of the Association as the Executive Committee deems necessary.

4.6.3. Recommend to the executive committee, for its approval, the appointment of an independent external auditor for the association.

4.6.4. The Executive Director shall oversee auditors retained by the association, and report to the executive committee. The Audit Committee chairperson or designee shall convey the report to the full membership.

4.7 A full and independent audit of the Association's financial records shall be conducted each year.

4.8 Professional financial services may be contracted with the approval of the executive committee as provided in 7.3 to assist with audits and other financial matters of the association.

ARTICLE 5. OFFICERS

5.1 The officers of the Association include a president, first vice-president, second vice-president, secretary, and treasurer. All officers must be in good standing in the Association. Only directors and general members may be officers of the Association.

5.2 The president, the first vice-president, and the second vice-president shall serve a term of one year or until a successor shall take office. The secretary and the treasurer shall serve a term of three years or until a successor shall take office.

5.3 An officer of the Association may be removed from office upon the acceptance of his or her resignation by the Executive Committee, by the officer becoming ineligible for membership, or upon an affirmative vote for removal by two-thirds of the POST director members in a "division by POSTs" vote. The balloting process shall be determined by the Executive Committee as the occasion permits.

5.4 In the event a vacancy occurs in the office of president, the first vice-president shall assume the office of the president and serve the remainder of the unexpired term. Should the first vice-president be unable to assume the duties of the president, the second vice-president shall

become the president. In the event the first vice-president or the second vice-president cannot or will not assume the duties of president, the treasurer shall become the president and serve the remainder of the president's term.

5.5 The officers for the Association shall be elected and installed at the first general meeting of the Association's fiscal year subject to the following provisions:

5.5.1. All nominations shall be made at the meeting in which the elections are held;

5.5.2. A candidate for any office must agree to having his or her name placed in nomination and must provide the members present with a brief statement of his or her position and goals for the Association;

5.5.3. The treasurer shall certify that each candidate is a director or general member who is not in arrears of dues and/or assessments to the Association and who is otherwise eligible to hold office pursuant to these Bylaws; and

5.5.4. All nominations shall be voted upon by secret written ballot unless there is only one candidate for the office to be filled. The candidate receiving the most votes cast for each office shall be declared elected. A tie will be broken through additional balloting involving those candidates receiving the same number of votes.

5.6 Members of the Executive Committee shall not receive any compensation for their services. With available funds, the Association shall reimburse the officers of the Association for reasonable expenses incurred in carrying out the duties of the office. Nothing herein shall preclude members of the Executive Committee from serving the Association in any other capacity and receiving compensation and being reimbursed for expenses in connection with such services.

5.7 It shall be the duty of the president to direct the Association in accordance with its mission and focus. In carrying out his or her duties, the president shall perform the following functions,

in addition to any other activity necessary for the Association:

5.7.1. Preside over all meetings of the Association;

5.7.2. Serve as the chairperson of the Executive Committee;

5.7.3. Appoint committee members and designate committee chairs where appropriate. The president may delegate the appointment of the committee chair to the committee members.

5.7.4. Appoint an Audit Committee in compliance with the Bylaws of the Association; and

5.7.5. Represent the Association as its official spokesperson.

5.7.5.1. In the predictable absence of the president, the first vice-president, and the second vice-president, the president may designate any other officer, member of the executive committee, or member in good standing to represent the Association.

5.7.5.2. No member shall present themselves as the representative of the Association without express authorization from the president as to the time, location, audience, and purpose of such designation.

5.8 It shall be the duty of the first vice-president to serve as a member of the Executive Committee and perform the duties of the president during his or her absence, including but not limited to representing the Association. It will be the responsibility of the first vice-president to work with the host jurisdiction for the annual IADLEST conference and provide advice and counsel in the conference preparation.

5.9 It shall be the duty of the second vice-president to serve as a member of the Executive Committee and perform the duties of the president during the absence of the president and the first vice-president, including but not limited to representing the Association.

5.10 It shall be the duty of the treasurer to serve as a member of the Executive Committee. In the event a vacancy occurs in the office of the treasurer, the Executive Committee shall appoint a successor who shall serve until the next general meeting when a new election shall be held to fill the vacancy. In addition, the treasurer, in coordination with the Executive Director shall perform the following duties:

5.10.1. Monitor the bookkeeping records necessary to account for all receipts and disbursements of Association funds;

5.10.2. Oversee all accounting and fiscal services firms retained by the association;

5.10.3. Present a complete financial report to the membership at the first general meeting after the close of each fiscal year and ensure all legally required financial reports are filed;

5.10.4. Provide the Executive Committee such financial reports as it requests;

5.10.5. Ensure that suitable bonding covers the president, treasurer, and any other person with authority to receive or disburse funds on behalf of the Association;

5.10.6. Be available to assist in the preparation of the budget for the Association;

5.10.7. Certify the availability of funds necessary to cover the proposed budget of the Association or any amendment thereto;

5.10.8. Certify the candidates for office are directors or general members in good standing and not in arrears of dues and assessments to the Association;

5.10.9. Supply, upon request, any and all documents requested by the audit committee of the Association; and

5.10.10. Send "dues notices" to members in a timely manner.

5.10.11. Maintain an up-to-date membership list.

5.10.12. Authorize or personally issue all checks and drafts on the association's financial business accounts.

5.10.13. In the absence or non-availability of the treasurer, the president, first vice-president, or second-vice president shall perform the duties of the treasurer in keeping with the provisions of 5.8 and 5.9 respectively

5.11 It shall be the duty of the secretary to serve as a member of the Executive Committee. In the event a vacancy occurs in the office of the secretary, the Executive Committee shall appoint a successor who shall serve until the next general meeting when a new election shall be held to fill the vacancy. In addition, the secretary, in coordination with the Executive Director shall perform the following duties:

5.11.1. Send out meeting notifications;

5.11.2. Keep copies of all Association correspondence; and

5.11.3 Keep the treasurer notified of changes in the membership list

5.11.4. Keep the minutes of the general and executive committee meetings which are a synopsis of the discussions and decisions and are not a verbatim rendering of the proceedings;

5.11.5. Provide minutes to the members.

ARTICLE 6. REGIONAL REPRESENTATIVES

6.0 The Association shall consist of regions, the boundaries of which shall be approved by the members of the Association. The regions, when approved, shall be integral and subordinate parts of the Association consistent with its Bylaws and operating policies.

6.1 Each region shall select a representative from the directors and general members within the region. The regional representatives shall serve as members of the Executive Committee. Such regional representative will serve a term in

office of one year and shall be limited to serving not more than three successive terms. In the event a vacancy occurs in the office of regional representative, the president shall appoint a successor from the region until the next general meeting when a new election shall be held to fill the vacancy.

6.2 The selection procedure and duties for Regional Representatives shall be as follows:

6.2.1. Regional Representatives shall be selected by regional Caucus during the meeting in which elections are held, utilizing a method prescribed by the Executive Committee.

6.2.2. Notwithstanding the term limit provision specified in 6.1, Regional Representatives shall serve for as long as they are duly qualified members in good standing.

6.2.3. Regional Representatives' duties shall include:

6.2.3.1. Expression of regional interests in the business of the Association;

6.2.3.2. Coordination with new, existing, and retired members of the Association;

6.2.3.3. Conducting regional meetings on subjects of interest to the region's members at least annually;

6.2.3.4. Polling the members of their respective regions concerning issues affecting the Association as requested by the president; and

6.2.3.5. Such other duties as may be delegated by the president or Executive Committee.

ARTICLE 7. EXECUTIVE COMMITTEE

7.0 In addition to the officers of the association, the immediate past president, the second past-president, and the regional representatives shall constitute the Executive Committee. All committee members shall have full voting power in committee meetings.

7.1 The president shall serve as Chairman of the Executive Committee. A quorum for the Executive Committee to conduct its business shall exist when five or more Executive Committee members or designees are present.

7.2 The president may call a meeting of the Executive Committee at such times and places as he or she deems necessary to conduct the business of the Association, provided that:

7.2.1. A notice of any regular meeting of the Executive Committee shall be sent to all directors of the Association at least 30 days prior to conducting the meeting. Such notice shall include the time and location of the meeting and the agenda to be considered;

7.2.2. Notice of an electronic or telephonic meeting of the executive committee shall be sent to all directors of the association at least three days prior to conducting the meeting. Director members wishing to participate in the meeting shall notify the president or Executive Director who will accommodate such participation to the extent possible.

7.2.3. Meetings of the Executive Committee shall be open to all members as non-voting guests;

7.2.4. The president may call an emergency meeting of the Executive Committee whenever in his or her opinion such a meeting is necessary. The provisions for advance notice to all director members does not apply to emergency meetings; and

7.2.5. A report of all decisions and actions made in a regular, electronic, telephonic or emergency meeting of the Executive Committee shall be approved at the next scheduled meeting of the Executive Committee, shall be published in the newsletter once approved, and shall be available electronically upon request.

7.3 It shall be the duty of the Executive Committee to transact the business of the Association and take action consistent with these Bylaws. The Executive Committee shall be the trustees of the Association. The Executive

Committee's duties shall include, but not be limited to, the following:

7.3.1. Adopt policies and procedures to govern the business practices of the association.

7.3.1.1. Business policies and procedures shall be consistent with all applicable laws, the association's articles of incorporation, the association bylaws, and the professional standards of like-structured organizations.

7.3.1.2. Business policies and procedures are available for review by any member of the association.

7.3.2. Appoint and authorize the employment of staff as needed to carry out the business of the association. Should staff be employed, the Executive Committee shall ensure an accurate position description is approved and provided to the employee and retained by the association.

7.3.2.1 Executive Director; appointment, term, duties, compensation: The Executive Committee may appoint an Executive Director for the association. The Executive Director shall hold office at the pleasure of the Executive Committee. The Executive Director shall perform the functions and duties that are assigned to him or her by the Executive Committee. The Executive Director shall receive compensation and reimbursement for expenses as provided by the Executive Committee.

7.3.3. Approve all accounts and banking institutions involving Association funds;

7.3.4. Enter into contracts on behalf of the Association.

7.3.4.1. Contracts for employment shall be handled in keeping with 7.3.1 of these Bylaws.

7.3.4.2. The Executive Committee will be particularly mindful of the potential or perception of a conflict of interest when engaging in a contractual relationship with a member of the association.

7.3.5. Make recommendations to amend the Bylaws;

7.3.6. Approve and revise the annual budget for the Association;

7.3.7. Seek and accept funds by request, gift, or grant, or in payment for services rendered, from any source, public or private;

7.3.8. Support and cooperate with any venture deemed to be of mutual interest that would support the mission and focus of IADLEST and enhance criminal justice training. This does not include endorsement of any product or person.

7.3.9. Hear appeals of membership discontinuations or denials. Appeals heard by the Executive Committee shall be determined by a majority vote.

7.3.10 Call a general meeting of the Association, not less than once each fiscal year, and give proper notice to each director and member.

ARTICLE 8. AMENDMENT TO THE BYLAWS

8.0 An amendment to the Bylaws may be proposed for submission to the Bylaws committee in writing by any director member or by the action of the executive committee pursuant to Article 7 of the IADLEST Bylaws.

8.1 The proposed amendment shall be forwarded in writing to the chairperson of the Bylaws Committee who shall forward the amendment to the remaining committee members. The committee shall review the proposed language and, where deemed appropriate and necessary, shall have the authority to make revisions to the proposed amendment. Should revisions to the proposed language be recommended by the committee, the revised language shall be returned to the member requesting the amendment for his or her review. The Bylaws Committee shall have the authority to make changes to any proposed language prior to the amendment's submission to the Executive Committee.

8.2 Upon review and final approval by the Bylaws Committee, all proposed amendments shall be submitted to the Executive Committee for review.

8.3 Members of the Executive Committee shall review and consider the proposed amendment prior to the meeting of the membership in which the

amendment will be considered. The Executive Committee shall forward a copy of the proposed language to each member for review not less than 30 days before the meeting in which the proposed amendment will be considered. The Executive Committee shall report its final recommendation to the membership during the meeting in which the membership will be asked to vote.

8.4 Amendments to the Bylaws shall be effective by a two-thirds vote of the voting members present at the general meeting. In the event a membership meeting is not scheduled in the near future and/or it would be impractical to delay voting on the proposed amendment, or where it is otherwise deemed necessary by the members of the Executive Committee, the president shall have the authority to poll the membership consistent with the provisions of section 1.5 of these by-laws regarding any proposed amendments to the Bylaws. The president shall forward the proposed language for the amendment to each member as well as the recommendations of the Executive Committee. A response date shall be included by which each member's vote must be received in order for it to be counted.

Amendments to the bylaws shall be effective by a two-thirds vote of the voting members responding by the required date.

8.5 If any provision of these Bylaws or the application thereof to any person, organization, or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Bylaws which can be given effect without the invalid provision or application; and to this end, the provisions of the Bylaws are severable.

ARTICLE 9. DISSOLUTION

The Association shall use its funds only to accomplish the mission and focus specified in its Bylaws. No part of said funds shall benefit or be distributed to the members of the Association. If dissolution of the Association becomes necessary, any funds remaining shall be distributed to one or more regularly organized and qualified charitable, educational, scientific, or philanthropic law enforcement organizations to be selected by the Executive Committee.

APPENDIX Regions:

Region 1 Northeastern	Region 2 Central	Region 3 Southern	Region 4 Midwestern	Region 5 Western
Connecticut	Arkansas	Alabama	Iowa	Alaska
Delaware	Illinois	Federal Law Enforcement Training Accreditation (FLETA)	Kansas	Arizona
District of Columbia		Florida		
Maine	Indiana	Georgia	Missouri	California
Maryland	Kentucky	Louisiana	Nebraska	Colorado
Massachusetts	Michigan	Mississippi	New Mexico	Hawaii
New Hampshire	Minnesota	North Carolina	North Dakota	Idaho
New Jersey	Ohio	South Carolina	Oklahoma	Montana
New York	West Virginia	Tennessee	South Dakota	Nevada
Pennsylvania	Wisconsin	Virginia	Texas	Oregon
Rhode Island			Wyoming	Utah
Vermont				Washington

MEMBERSHIP DUES:

- \$400.00 Director Membership - includes two complimentary General Memberships
- \$300.00 Academy Director Membership- includes two complimentary General Memberships
- \$125.00 General Membership
- \$300.00 Sustaining Membership
- No Cost Life Membership
- \$1,000.00 Corporate Membership-Small 1-100 employees and includes five Sustaining Memberships
- \$2,500.00 Corporate Membership-Medium up to 500 employees and includes ten Sustaining Memberships
- \$5,000.00 Corporate Membership-Large- over 500 employees and includes twenty Sustaining Memberships



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THERMAL IMAGING SEARCH WARRANTS NOT ALLOWED IN GEORGIA

by Brian S. Batterton, Attorney

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On October 15, 2012, the Supreme Court of Georgia decided *Brundige v. State*ⁱ in which they held that the statute that authorizes search warrants, *OCGA § 17-5-21*, does not authorize search warrants for heat sources which are detectible by thermal imaging devices. The facts of *Brundige*, taken directly from the case, are as follows:

In May 2009, Detective Brandon Cain, a University of Georgia police officer assigned to a drug task force, after receiving a tip from a confidential informant, investigated an individual who was suspected of growing marijuana. The informant told Cain that the suspect had sold marijuana and growing paraphernalia to him, and offered to help the informant begin his own grow operation, and that the informant had been in a car with the suspect when marijuana was present. Investigation revealed that the suspect had been convicted of manufacturing marijuana and possession with intent to distribute in connection with an August 2000 incident. Detective Cain conducted a “trash pull” at the suspect's house, removing trash bags from trash cans located at the edge of the roadway, and found “an amount of green leafy material that field tested positive for marijuana” and items consistent with an operation devoted to growing marijuana indoors.

During his investigation, Detective Cain discovered that the suspect visited the residence of James Brundige nine times in one week. Cain then conducted a “trash pull”

at Brundige's residence and found pieces of plastic Ziploc bags ... [an] empty rolling papers packet[,] and an amount of marijuana in a size that is consistent with a marijuana grow operation." An examination of Brundige's criminal history revealed a felony arrest for marijuana possession in 2003 and a misdemeanor arrest for marijuana possession in 2008. Cain then compared the electrical use of Brundige's residence with that of a nearby home that was approximately the same size; it showed a "considerable disparity" in power consumption between the two homes over the course of a year, with Brundige's residence consuming up to nine times the electricity of the similar home.

Detective Cain resolved to gain further information regarding activity in Brundige's residence by using a thermal detection device that would remotely sense the differing temperatures of the surface of the home and of the immediate area around it. This would allow an inference to be made about the heat inside the various areas of the house, which might indicate an operation to grow marijuana. In *Kyllo v. United States*, 533 U. S. 27 (121 SC 2038, 150 LE2d 94) (2001), the United States Supreme Court determined that using thermal imaging to obtain information regarding the interior of a home constituted a search and, therefore, was presumptively unreasonable without a warrant. In light of that precedent, Detective Cain sought and obtained a warrant to conduct a thermal imaging search of Brundige's residence, citing the results of his investigation as the basis for probable cause. In issuing the warrant, the judge stated that "there is probable cause to

believe that a crime is being committed or has been committed," and that an indoor marijuana growing operation was on the premises. The warrant authorized Detective Cain to "search and seize" the "anomalous heat loss occurring at the described premises"

Pursuant to that warrant, on May 22, 2009, Cain and another detective used a thermal imaging device to examine the exterior of the house and detected an amount of heat coming from Brundige's garage considered to be abnormal, especially when compared with the heat loss from a nearby similar house. On May 26, 2009, Cain sought and obtained a second search warrant for a physical search of the interior of Brundige's home. The affidavit for the second warrant stated as the basis for probable cause the identical information that was contained in the application for the first search warrant, with the only additional information being the thermal imaging evidence. The judge authorized the law enforcement officers to "enter, search and seize ... the person, premises, or property," and listed a variety of items that would be connected with a marijuana growing operation that were suspected of being on the premises. The second search warrant was executed, and officers seized items that are alleged to be evidence of a marijuana growing operation. As a result, Brundige was charged with multiple crimes.ⁱⁱ

Brundige filed a motion to suppress the evidence found in the second search warrant. The trial court denied the motion. Brundige then filed an appeal to the Court of Appeals of Georgia. Brundige's argument stems from the language of *OCGA § 17-5-21*, the statute that provides for the search warrants in Georgia. This statute authorizes search warrants for

[a]ny item, substance, object, thing or

matter ... which is *tangible evidence* of the commission of the crime for which probable cause is shown.” *OCGA § 17-5-21 (a)(5)* (emphasis added).ⁱⁱⁱ

Brundige argued that “anomalous heat loss evidence” was not *tangible* evidence as contemplated *OCGA § 17-5-21*. The Court of Appeals disagreed and denied the motion to suppress.

Brundige then appealed to the Supreme Court of Georgia. The issue on appeal was *whether, based on Georgia law, a search warrant that authorized a law enforcement officer to use a thermal imaging device to search for anomalous heat loss evidence is lawful under OCGA § 17-5-21*.

After analyzing the opinion of the Court of Appeals, the Supreme Court of Georgia stated that they believe that court misapplied various United States Supreme Court precedent in determining that “tangible evidence” could be heat loss.

The Supreme Court of Georgia also looked to various dictionaries for the definition of “tangible.” The *New Shorter Oxford English Dictionary* (Clarendon Press 1993) defined “tangible” as “able to be touched; discernible or perceptible by touch; having material form.” The *Webster's Third New International Dictionary*, (G. & C. Merriam Co., 1971) stated that “tangible” means “capable of being touched: able to be perceived as materially existent, esp. by the sense of touch.” Further, the *American Heritage Dictionary of the English Language* (Houghton Mifflin Co., 1992) defined “tangible” as that which is “discernible by the touch; palpable ... [p]ossible to touch ... real or concrete”.^{iv}

The Supreme Court of Georgia, in examining the instructive United States Supreme Court case of *United States v. New York Tel. Co.*, 434 U. S. 159, 169-170 (III) (98 SC 364, 54 LE2d 376)

(1977), stated

The Supreme Court considered a Federal Rule that defined property that could be seized pursuant to a warrant “to include documents, books, papers and any other tangible objects,” and discerned that the definition *did not include a record of the electrical impulses* caused by a dialed telephone, as such are “intangible.” The thermal heat registers at issue here are akin to such impulses when viewed in light of the normal meaning of the word “tangible.”^v [emphasis added] Then, after examining the opinion of the Court of Appeals of Georgia, various dictionary meanings of the word “tangible,” and analogous United States Supreme Court precedent, the Supreme Court of Georgia held that

We [do not] believe that the term “tangible evidence” as used in the statute otherwise embraces the “amorphous heat loss” captured by the thermal imaging used here. Rather, the word “tangible” must be given some effect, or become mere surplusage. Although the Court of Appeals noted that heat radiating from a building is “real and substantial, rather than imaginary,” such a formulation would cause “tangible” to become superfluous in the wording of *OCGA § 17-5-21 (a) (5)*; there is no such thing as imaginary evidence.^{vi}

Thus, *OCGA 17-5-21(a)(5)* does not authorize Georgia peace officers to obtain search warrants to use thermal imaging devices to detect heat loss.

On a positive note, the case did not end based on the above ruling. Rather, the Supreme Court of Georgia observed that the officer had probable cause to obtain a search warrant to search Brundige’s residence based upon the facts of the first search warrant, which, at the time, was only

intended to grant the officer the authority to utilize a thermal imaging device in compliance with *Kyllo*. The second search warrant essentially contained identical information as the first search warrant but also included information gained from the use of the thermal imaging device. Specifically, the Supreme Court of Georgia stated

In issuing the first warrant, the judge specifically stated that “there is probable cause to believe that a crime is being committed or has been committed,” and that an indoor marijuana growing operation was on the premises. And, the second warrant, which authorized the entry of Brundige’s home and the seizure of physical, tangible evidence relating to the manufacture and sale of marijuana, was supported by the same information as that which was in the first warrant, with the only additional information being that gained from the thermal imaging search.^{vii}

The Supreme Court of Georgia then stated that when a search warrant affidavit is based, in part on information that should not be admissible, such as the thermal imaging evidence in this case, a court must review the warrant “excising” or cutting out the improper evidence to determine if probable cause still exists without the inadmissible evidence. Doing this, the Court then stated

Assuming that obtaining the thermal imaging information was not otherwise authorized, when faced with improperly obtained evidence, the question becomes whether, excising the evidence improperly obtained, probable cause nonetheless exists to issue a warrant. And here, we have no hesitation concluding that it does. Indeed, the other evidence was, by itself, actually found by the trial court to establish probable cause for a search of the premises. Accordingly, the evidence seized under the second warrant is admissible.^{viii} [internal citations omitted]

Therefore, the denial of the motion to suppress was affirmed and the evidence was held to be admissible.

The Bottom Line

- In light of this case, OCGA 17-5-21(a)(5) does not authorize Georgia peace officers to obtain search warrants to use thermal imaging devices to detect heat loss.
- The only thing that can change the above is the Georgia Legislature enacting a new statute or changing the existing statute. For example, in *Brundige*, the Supreme Court of Georgia stated

[S]hould the General Assembly wish to establish a statutory scheme to authorize warrants to capture heat loss from structures, it has the power to do so. See, e.g., *OCGA § 16-11-64* et seq., authorizing electronic surveillance warrants in order to capture sounds.^{ix}
- Any pending cases involving search warrants based, in part, on thermal imaging evidence will be viewed by the courts for probable cause while excluding any information obtained by the thermal imaging. If probable cause still exists, the case should be okay (barring any other issues).

Note: Court holdings can vary significantly between jurisdictions. As such, it is advisable to seek the advice of a local prosecutor or legal advisor regarding questions on specific cases. This article is not intended to constitute legal advice on a specific case.

ⁱ S11G1821, 2012 Ga. LEXIS 773

ⁱⁱ *Id.* at 1-4

ⁱⁱⁱ *Id.* at 5

^{iv} *Id.* at 11

^v *Id.* at 12-13

^{vi} *Id.* at 10-11

^{vii} *Id.* at 13

^{viii} *Id.* at 13-14

^{ix} *Id.* at 11, fn 4

**DOMESTIC DISPUTES, EXIGENT
CIRCUMSTANCES, AND
THE FOURTH AMENDMENT©**

By Brian S. Batterton, Attorney

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On October 1, 2012, the Tenth Circuit Court of Appeals decided *Storey v. Taylor, et al.*ⁱ which is instructive regarding constitutional law related to police response to domestic disputes. In *Storey*, the Los Lunas, New Mexico Police Department received an anonymous call reporting a loud argument at Storey's residence. Sergeant Taylor and another officer were dispatched to investigate.

When the officers arrived at Storey's residence, they heard no argument and saw no signs of violence. They knocked on Storey's door and he answered. The officer's belt tape recorder captured much of the conversation. During the conversation, Storey told the officers that he and his wife had argued, but that she was not home at that moment. The officers told Storey that a neighbor had called the police. The officers explained that they were there to make sure Storey and his wife were safe. They then asked Storey what he was arguing about. Storey then refused to answer that question; and when the officers told him he must, he replied that he did not have to tell them anything. At this point, Sergeant Taylor ordered Storey to step outside of the house and Storey refused. Sergeant Taylor then told Storey he would arrest him for violating a New Mexico obstruction statute if he did not comply. According to Storey's version of events, at this point, Sergeant Taylor pulled him out of the house and arrested him.

During the exchange, at some point, Mrs. Storey returned home and entered the home through the garage. She came outside and met with the officers after Storey was arrested.

Storey filed suit claiming, among other things, that the officers violated his *Fourth Amendment* right against unreasonable seizures because they arrested him in his home without a warrant or exigent circumstances. The district court granted summary judgment to Taylor. Storey

appealed the grant of summary judgment to the Tenth Circuit Court of Appeals.

At the outset, the Tenth Circuit noted several rules that apply to this case. First, the court stated

To enter a home and seize an individual for a routine investigatory purpose, police must have exigent circumstances and probable cause, or a warrant, ... *Armijo ex rel. Armijo Sanchez v. Peterson*, 601 F.3d 1065, 1073 (10th Cir. 2010).ⁱⁱ

Second, the court stated

In determining whether the risk of personal danger creates exigent circumstances, we use a two-part test: "whether (1) the officers have an objectively reasonable basis to believe there is an immediate need to protect the lives or safety of themselves or others, and (2) the manner and scope of the search is reasonable." *United States v. Najjar*, 451 F.3d 710, 718 (10th Cir. 2006). In determining whether officers had an objectively reasonable basis, "[w]e evaluate whether the officers were confronted with reasonable grounds to believe there was an immediate need 'guided by the realities of the situation presented by the record' from the viewpoint of 'prudent, cautious, and trained officers.'" *Id.* (quoting *United States v. Anderson*, 154 F.3d 1225, 1233 (10th Cir. 1998)). This inquiry "is essentially one of reasonable belief." *Id.* (citing *United States v. Gay*, 240 F.3d 1222, 1227 (10th Cir. 2001)).ⁱⁱⁱ

Third, the court noted, that even if no crime is committed, there are some situations that allow police action based upon the "community caretaking" role. The court stated

A warrantless arrest may also be justified if the arresting officer was acting in a "community caretaking" role. "We have recognized that, in fulfilling their duties, police officers may exercise functions—'community caretaking functions'—wholly separate and apart from detecting, investigating, or acquiring evidence of a crime." *Lundstrom*, 616 F.3d at 1120.^{iv}

Under the community caretaker role, a detention must meet three criteria which are as follows:

1. The detention must be based upon specific and articulable facts which reasonably warrant an intrusion into the individual's liberty.
2. The government's interest must outweigh the individual's interest in being free from arbitrary governmental interference.
3. The detention must last no longer than is necessary to effectuate its purpose, and its scope must be carefully tailored to its underlying justification.^v

With the above rules in mind, the Tenth Circuit then set out to determine if there was probable cause to arrest Storey for a violation of *N.M.S.A. 1978 § 30-22-1(D)*, which makes it illegal to “resist or abuse any ... peace officer in the *lawful discharge of his duties*” when he refused to obey the officer’s command to come outside his home.^{vi} Sergeant Taylor argued that he had probable cause to arrest Storey for this offense when he refused to come outside of his home when ordered by the sergeant. However, the Tenth Circuit stated

The problem with Taylor's argument is it relies on the assumption that the order in question was itself lawful. Absent exigent circumstances, Taylor had no basis on which to order Storey out of his house. Clearly, Storey disobeyed Taylor's order to step out of the house. **But a sufficiently coercive order requiring an individual to leave his own house counts as a seizure subject to the protections of the Fourth Amendment.** *Lundstrom*, 616 F.3d at 1124; see also *Kentucky v. King*, 131 S. Ct. 1849, 1862, 179 L. Ed. 2d 865 (2010).^{vii} [emphasis added]

In light of the above rule, the Tenth Circuit stated that the only way that Sergeant Taylor’s order for Storey to exit his home would be “lawful,” would be if the order was supported by exigent circumstances.

The Tenth Circuit then examined whether the circumstances in this case gave rise to exigent

circumstance necessary to support the command for Storey to exit his home.

The court first stated

A report of a domestic argument—standing alone—does not demonstrate exigent circumstances per se. *United States v. Davis*, 290 F.3d 1239, 1244 (10th Cir. 2002). **Thus, officers responding to a report of a domestic dispute must point to something beyond the mere fact of an argument to demonstrate an "objectively reasonable basis to believe there is an immediate need to protect the lives or safety of themselves or others."** *Najar*, 451 F.3d at 718. **Either additional depth and detail in the report, or additional facts learned in the course of the investigation, are required to support the exigency.** See *United States v. Martinez*, 643 F.3d 1292, 1297 (10th Cir. 2011).^{viii} [emphasis added]

The Tenth Circuit also examined a factually similar case, *Lundstrom v. Romero*, also from the Tenth Circuit.^{ix} In *Lundstrom*, an anonymous caller reported to police that he heard sounds of a woman screaming and a toddler being beaten in the plaintiff’s backyard. An officer was dispatched to check the welfare of the child. When the officer arrived, she heard a high pitched voice but no other noises that indicated there was an on-going altercation. The officer knocked, and the plaintiff answered the door. When the officer told the plaintiff the purpose of her visit, the plaintiff stated that there were no children at that location, shut the door, and refused to open it or come outside. Ultimately, over the phone, another officer ordered the plaintiff to go outside; he complied and was arrested. Officers searched the house to complete the welfare check and then let the plaintiff go (un-arrested him). The plaintiff filed suit, and the Tenth Circuit held that the officer violated the *Fourth Amendment* in that case. Regarding *Lundstrom*, the Tenth Circuit stated

We found the plaintiff was unlawfully seized when he complied with the order to exit his house. We found the officers had no probable cause because "nothing indicated he had done anything wrong and he did not pose a threat to the officers." *Id.* at 1124.

We also found no exigent circumstances that would justify the seizure because nothing known to the officers (apart from the anonymous caller) indicated the presence of a child in the house. Significantly, we noted that the plaintiff denied the presence of any children; the officers did not observe any children; and another occupant of the house, who was detained outside, likewise claimed there were no children in the house. We also found the law on this point was clearly established, making qualified immunity inapplicable.^x

The Tenth Circuit then examined the relevant facts of Storey's case. First, they noted that the police received an anonymous call of a domestic argument. Second, when the police arrived, they did not hear an argument, as it had ended. Third, there were no visual or audible indications of past violence or ongoing violence. Fourth, Storey answered the door and admitted to being in a previous argument with his wife, but said she had since left. Last, while the officers were talking to Storey, they saw his wife return home and saw nothing that suggested her safety was at risk.

The court noted that Storey's case was similar to Lundstrom's. Taylor argued that several cases support his argument that exigent circumstances were present in *Storey*. However, the court stated

All of those cases, however, involved some significant facts in addition to a report of a domestic dispute.

• *United States v. Holloway*, 290 F.3d 1331, 1338 (11th Cir. 2002) — reports of gunfire from two independent sources. Gunfire, obviously, is more indicative of exigent circumstances than a loud argument between spouses.

• *Tierney v. Davidson*, 133 F.3d 189, 192 (2d Cir. 1998) — before entering the dwelling, officer conferred with two witnesses on the scene, who reported "screaming and banging" continuing until the officer arrived. The officer also saw broken glass, indicating recent violence.

• *Schreiber v. Moe*, 596 F.3d 323, 330 (6th Cir. 2010) — investigating officer heard ongoing shouting as he approached the dwelling and was greeted "with a slew of profanities."

• *United States v. Brooks*, 367 F.3d 1128, 1134 (9th Cir. 2004) — caller reported sounds of an argument and physical beating in a hotel room, not just arguing. In addition, the investigating officer personally spoke with the caller in the hotel lobby to confirm the report and gather additional information before proceeding to the hotel room.

• *Fletcher v. Town of Clinton*, 196 F.3d 41, 47 (1st Cir. 1999) — police did not observe any signs of ongoing violence. But they did observe two individuals in the home, one of whom they knew had a restraining order against the other based on recent threats of violence. Thus, unlike Taylor, the officers in *Fletcher* were privy to additional facts that made violence more likely.

In summary, all of these cases involved credible evidence known to the officers of physical abuse or additional corroborating circumstances that increased the potential for violence. That is not the case here.^{xi}

The Tenth Circuit also examined two United States Supreme Court cases that address the issue of exigent circumstances. In *Ryburn v. Huff*,^{xii} officers went to a juvenile's home to investigate threats that he was going to engage in a future shooting at his school. When officers arrived, the juvenile's mother initially failed to answer the door. When she finally came outside, when asked if there were guns in the house, she fled back inside. Officers entered her home behind her. The Supreme Court held that the mother's demeanor and evasive actions, combined with the serious nature of the threat, provided the officers with a reasonable belief that an imminent threat of violence was present. The court, comparing this case to *Storey*, noted that Storey did not involve a serious crime nor were there any sudden, unexplained movements in response to a question about weapons.

Additionally, in *Brigham City v. Stuart*,^{xiii} officers responded to a loud party call and observed a physical fight in progress in the residence. They entered without consent or a warrant to stop the

fight. The Supreme Court upheld the warrantless entry based on exigent circumstances and held that the officers lawfully entered because they reasonably believed an injured person inside may need help and the violence was on-going. The court then noted that, in *Storey*, there were no observable facts to indicate that violence was on-going or anyone inside needed help.

The Tenth Circuit then held

In sum, a report of a loud argument—without more—that has ceased by the time an officer arrives, although relevant to the exigent circumstances inquiry, does not alone create exigent circumstances to justify a warrantless arrest. And, unlike in the cases cited by *Taylor*, there are no additional facts that would significantly increase the likelihood of violence. Accordingly, viewing the facts in the light most favorable to *Storey*, we find *Storey*'s arrest was not justified by exigent circumstances.^{xiv} [emphasis added]

Further, because the loud argument alone will not create sufficient exigent circumstances to justify a warrantless arrest, the order to exit the house was not lawful. Likewise, the loud argument alone will not justify a warrantless, non-consensual entry into private premises.

The last argument made by the officer was that the community caretaking duty justified the order for *Storey* to exit the home. To this argument, the Tenth Circuit stated

This argument, however, fails for the same reason as *Taylor*'s exigent-circumstances argument: the facts do not show a likelihood of violence such that *Taylor*'s actions were necessary to protect the safety of *Storey*, his wife, the officers, or others. See *Lundstrom*, 616 F.3d at 1124; cf. *Brigham City*, 547 U.S. at 406. Thus, there were no "specific and articulable facts" to justify the intrusion on *Storey*'s liberty. *Garner*, 416 F.3d at 1213... Absent additional facts indicating a greater possibility of violence, a loud argument between spouses does not suffice to justify a warrantless seizure within the home.^{xv}

As such, the Tenth Circuit held that the officer's conduct in this case was a violation of the *Fourth Amendment*.

The final issue for the court to decide was whether the law on this type of incident clearly established such that another reasonable officer in the same situation would have known that the conduct was unlawful. If the law is clearly established, the officer is not entitled to qualified immunity from suit. If the law is not clearly established, the officer is entitled to qualified immunity. The Tenth Circuit stated

In *Lundstrom*, we found the legal principles underlying the plaintiff's *Fourth Amendment* rights to be clearly established. See *Lundstrom*, 616 F.3d at 1125. Here, "[i]t was similarly established that community caretaking detentions must be based on specific articulable facts warranting an intrusion into an individual's liberty. It was also unambiguous that a police officer must have probable cause to arrest an individual." *Id.* And it was also clear that exigent circumstances were required. *Armijo*, 601 F.3d at 1070. Accordingly, *Taylor* is not entitled to qualified immunity.^{xvi}

As such, the Tenth Circuit reversed the district court's grant of summary judgment for the officer, and the case may proceed to a jury.

ⁱ No. 11-2180, 2012 U.S. App. LEXIS 20471 (10th Cir. Decided October 1, 2012)

ⁱⁱ *Id.* at 7

ⁱⁱⁱ *Id.* at 8-9

^{iv} *Id.* at 9

^v *Id.* at 9-10 (citing *United States v. Garner*, 416 F.3d 1208, 1213 (10th Cir. 2005) (citation, alterations, and quotation marks omitted).

^{vi} *Id.* at 10, fn 6

^{vii} *Id.* at 10-11

^{viii} *Id.* at 12

^{ix} 616 F.3d 1108 (10th Cir. 2010)

^x *Id.* at 14-15

^{xi} *Id.* at 15-17

^{xii} 132 S.Ct. 987 (2012)

^{xiii} 547 U.S. 398 (2006)

^{xiv} *Storey* at 19

^{xv} *Id.* at 20

^{xvi} *Id.* at 20-21

**FIRST CIRCUIT DECIDES CASE
INVOLVING GUN FOUND ON
PEDESTRIAN SEEN IN THE
AREA OF A GANG FIGHT**

by Brian S. Batterton, Attorney

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On November 23, 2011, the First Circuit Court of Appeals decided the *United States v. Camacho*¹, which serves as an excellent review of the law related to pedestrian stops, frisks, and the exclusionary rule. The facts of *Camacho* are as follows:

At 5:37 p.m., on January 11, 2008, a series of 911 calls reported a fight in progress in the North End neighborhood of New Bedford, Massachusetts, at the intersection of Nye and Brook Streets. One of the callers identified "most" of the combatants as members of the Latin Kings, a prominent national street gang. Sergeant Scott Carola of the New Bedford Police Department's Gang Unit was the first officer to arrive at the scene. Within a minute, two other Gang Unit members -- Officers Adelino Sousa and David Conceicao -- also arrived, driving an unmarked, police-issued Ford Crown Victoria and wearing jackets adorned with the image of a police badge and the words "New Bedford Police" on the front and the words "Gang Unit" on the back.

Sergeant Carola saw 12 to 15 people scattering from what appeared to have been a street brawl: Officer Sousa recognized several of them as affiliates of the Latin Kings. Sgt. Carola also noticed two men he did not recognize walking down the street. He directed Officers Sousa and Conceicao to intercept and question the two men. Those two men were Camacho and Louis Osario-Meléndez.

Still driving in the Crown Victoria, Officers Sousa and Conceicao followed the two men as they walked around the

corner, then pulled ahead of them into a driveway, partially blocking their path. Officer Sousa stepped out of the car and approached Camacho, while Officer Conceicao ordered Osario-Meléndez to put his hands on the hood of the car. Sousa and Conceicao did not recognize the two men, and neither officer had reason to believe that either Camacho or Osario-Meléndez was a member of the Latin Kings.

Officer Sousa did notice, however, that Camacho's clothes were wet and his breathing was labored. Sousa asked Camacho where he was coming from, and Camacho replied, "Nye Street." Camacho said that he had seen the Nye Street fight, but denied having been involved in it. Camacho's speech was normal, and he was wearing a hooded sweatshirt, which Officer Sousa did not consider unusual. During their colloquy, Camacho held his hands in the front pockets of the sweatshirt. When Officer Sousa told him to remove his hands, Camacho did so slowly and deliberately, clasping his hands in front of his waistband, seeming to protect his midriff.

Finding Camacho's studied movement and hand placement unusual, Officer Sousa tapped Camacho's waist with his open palm. Sousa immediately felt the butt of a gun, and yelled, "Gun!" Camacho then "automatically" shoved Sousa, and Officer Conceicao drew his service revolver and aimed it at Osario-Meléndez. Sousa and Camacho began struggling, which Officer Conceicao ended "within thirty seconds" by hitting Camacho over the head with his flashlight, knocking him to the ground. With Camacho now subdued, Officer Sousa seized a .40 caliber Glock revolver -- with a live round in the chamber and eight rounds in the magazine -- from beneath Camacho's belt.²

Camacho was indicted for federal firearms offenses. He filed a motion to suppress the gun and argued that it was obtained through an illegal stop and search. While the trial court agreed with Camacho that the officers conducted a *Terry* Stop without sufficient reasonable suspicion, the court held that the gun was admissible because it was seized after Camacho shoved the officer and was arrested for that offense. As such, the trial court found the gun was seized by a search incident to arrest. Camacho appealed to the First Circuit Court of Appeals.

The court of appeals first examined several legal principles relevant to this case. First the court stated

The *Fourth Amendment* prohibits "unreasonable searches and seizures." *U.S. Const. amend. IV*; see also *Terry v. Ohio*, 392 U.S. 1, 9, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968). Warrantless searches are per se unreasonable under the Fourth Amendment, unless "one of a few specifically established and well-delineated exceptions" applies. *Arizona v. Gant*, 556 U.S. 332, 129 S. Ct. 1710, 1716, 173 L. Ed. 2d 485 (2009). This prohibition on unreasonable searches and seizures is enforced through the exclusionary rule, which excludes evidence seized in violation of the Fourth Amendment. See *Terry*, 392 U.S. at 12 ("Ever since its inception, the rule excluding evidence seized in violation of the *Fourth Amendment* has been recognized as a principal mode of discouraging lawless police conduct.").³

Second, the court noted that the exploration of the outer surfaces of a person's clothing in an attempt to find weapons is considered a "search" and the ensuing stop that goes along with the search are both governed by the *Fourth Amendment*.⁴ The court then described the legal standard for a stop and frisk by discussing *Terry v. Ohio*. Particularly, the court stated

Terry held that where a police officer observes unusual conduct which leads

him reasonably to conclude in light of his experience that criminal activity may be afoot and that the persons with whom he is dealing may be armed and presently dangerous, where in the course of investigating this behavior he identifies himself as a policeman and makes reasonable inquiries, and where nothing in the initial stages of the encounter serves to dispel his reasonable fear for his own or others' safety, he is entitled for the protection of himself and others in the area to conduct a carefully limited search of the outer clothing of such persons in an attempt to discover weapons which might be used to assault him. Such a search is a reasonable search under the *Fourth Amendment*, and any weapons seized may properly be introduced in evidence against the person from whom they were taken. *Terry*, 392 U.S. at 30-31.⁵

In light of the above rules, the court stated that there were four main issues to decide in this case, specifically (1) Was the officers' initial encounter with Camacho a seizure governed by the *Fourth Amendment*, (2) did the officers have reasonable suspicion to believe that Camacho was involved in a crime, (3) was the frisk of Camacho legally justified, and (4) was the gun admissible under the search incident to arrest exception?

Issue One: Did the officers seize Camacho during their initial encounter?

The court articulated the applicable rule for this issue by stating

A *Fourth Amendment* seizure occurs when a police officer "has in some way restrained the liberty of a citizen" through "physical force or show of authority." *Terry*, 392 U.S. at 19 n.16; ...To determine whether an officer has restricted an individual's freedom of movement, courts determine the "coercive effect of the encounter" by asking whether "a reasonable person would feel free to decline the officers' requests or otherwise terminate the

encounter." *Brendlin*, 551 U.S. at 255 (quoting *Florida v. Bostick*, 501 U.S. 429, 435-36, 111 S. Ct. 2382, 115 L. Ed. 2d 389 (1991) (internal quotation marks omitted)).⁶

The court then applied the facts of Camacho's stop to the rule above. First, the court noted the officers blocked Camacho and his companion's path with their patrol car. Second, the court noted that both officers were in clothing identifying them as officers. Third, both officers began engaging Camacho and his companion with accusatory questions. Last, one officer ordered Camacho's companion to put his hands on the hood of the patrol car. In light of the above facts, the court held that Camacho's initial detention constituted a seizure rather than a consensual encounter.⁷

Issue Two: Did the officers have sufficient reasonable suspicion to justify Camacho's initial detention?

The court first stated that the applicable rule for this issue comes from *Terry v. Ohio* and various subsequent cases which have held that an officer may briefly detain a person for questioning if the officer reasonably believes the person being detained is committing or has committed a crime.⁸

The court then examined facts relevant to the issue at hand. First, the court noted the officers had no reason to suspect that Camacho and his companion were members of the Latin Kings. Second, there was no articulable reason to suspect that Camacho and his companion had been involved in the fight. Third, Camacho and his companion were walking normally on the sidewalk in a residential area and did not appear nervous or apprehensive when the officers approached them. Last, Camacho's responses to the officers were direct and non-evasive.⁹ In light of the above facts, the court held that the officers did not have sufficient reasonable suspicion under *Terry v. Ohio* to justify an investigative detention or stop of Camacho and his companion. Thus, the stop violated the *Fourth Amendment*.¹⁰

Issue Three: Was the frisk of Camacho legally justified?

To this issue, the court first stated that the "tap" of Camacho's waist was considered a search under the *Fourth Amendment*.¹¹ Next, the court stated

After a valid *Terry* stop, a police officer may conduct a protective frisk or pat-down search if "the officer is justified in believing that the person is armed and dangerous to the officer or others." *United States v. Romain*, 393 F.3d 63, 71 (1st Cir. 2004) (quoting *United States v. Schiavo*, 29 F.3d 6, 8 (1st Cir. 1994)) (internal quotation marks omitted).¹²

Thus, to decide whether the frisk of Camacho was lawful, the court stated that they first had to decide whether a frisk could be considered lawful when it immediately follows and results from an unlawful stop.

The court first noted that the exclusionary rule provides that evidence obtained during a search may be tainted by the illegality of an earlier *Fourth Amendment* violation such that the evidence obtained is rendered inadmissible in court as "fruit of the poisonous tree."¹³ Thus, if a search is sufficiently connected to the unlawful stop that led to the search, the evidence will be suppressed based on the exclusionary rule. In *Camacho*, the court stated

The officers' encounter with Camacho and the discovery of the gun "were both results of the officers' unconstitutional conduct. Discovery of the gun flowed directly from the original unlawful seizure of Camacho and was not so attenuated as to dissipate the taint" of the initial unlawful stop. Under these facts, we conclude that the gun was fruit poisoned by the unlawful seizure and, accordingly, should have been suppressed.¹⁴

Issue Four: Is the gun admissible under the search incident to arrest doctrine?

The government argued that the illegal stop ceased when Camacho shoved the officer and this shoving provided the officer with probable cause to arrest. As such, the gun was seized as a search incident to arrest. To this argument the court noted that

Some courts have held that a defendant's resistance to even an invalid *Terry* stop or arrest can be independent grounds for a new, independent arrest, and that evidence discovered in a search incident to that lawful arrest is admissible.¹⁵

However, in spite of the above rule, the court stated

The gun at issue here was not discovered in a search subsequent to or incident to Camacho's arrest. While the district court correctly noted that "[t]he gun was seized only after Camacho shoved Sousa and only after the officers succeeded in wrestling Camacho to the ground and placing him under arrest," the district court failed to account for the fact that Officer Sousa conducted the frisk -- the search that first discovered the gun -- before Camacho shoved him and before Camacho was arrested. *See Camacho, 608 F. Supp. 2d at 185*. The gun was not discovered by a search incident to his arrest, but rather by the frisk that preceded Camacho's subsequent actions of shoving Officer Sousa and resisting arrest.¹⁶

Therefore, since the officers discovered the gun prior to being shoved by Camacho, Camacho's intervening crimes cannot "purge the taint of the prior illegal stop."¹⁷

As such, the First Circuit Court of Appeals reversed the district court's denial of the motion to suppress.

Note: Court holdings can vary significantly between jurisdictions. As such, it is advisable to seek the advice of a local prosecutor or legal advisor regarding questions on specific cases. This article is not intended to constitute legal advice on a specific case.

¹ 2011 U.S. App. LEXIS 23502 (1st Cir. Decided November 23, 2011)

² *Id.* at 3-5

³ *Id.* at 9-10

⁴ *Id.* at 10, fn 2

⁵ *Id.* at 11-12

⁶ *Id.* at 12-13

⁷ *Id.* at 13

⁸ *Id.* at 15 (citing *Arizona v. Johnson*, 555 U.S. 323, 323, 129 S. Ct. 781, 172 L. Ed. 2d 694 (2009))

⁹ *Id.* at 16-17

¹⁰ *Id.*

¹¹ *Id.* at 20

¹² *Id.* at 21

¹³ *Id.* at 23 (See *United States v. D'Andrea*, 648 F.3d 1, 6 (2011) (quoting *Wong Sun v. United States*, 371 U.S. 471, 488, 83 S. Ct. 407, 9 L. Ed. 2d 441 (1963)) (internal quotation marks omitted))

¹⁴ *Id.* at 27 (internal citations and quotations omitted)

¹⁵ *Id.* at 28 (See, e.g., *United States v. Dawdy*, 46 F.3d 1427, 1430-31 (8th Cir. 1995) (citing cases from the Fifth, Ninth, Tenth, and Eleventh Circuits and holding that "a defendant's response to even an invalid arrest or Terry stop may constitute independent grounds for arrest," and "the evidence discovered in the subsequent searches of [the defendant's] person and his automobile is admissible"); see also *United States v. King*, 724 F.2d 253, 255-56 (1st Cir. 1984) (assuming some illegality in the police conduct, but denying suppression of evidence against a passenger in a car when: the driver of the car committed an intervening crime of shooting at the officers; "the shooting was an independent intervening act which purged the taint of the prior illegality"; and the passenger's gun was discovered and seized after the shooting).

¹⁶ *Id.* at 29

¹⁷ *Id.* at 30

FOURTH CIRCUIT UPHOLDS DRUG EVIDENCE FOUND DURING FRISK©

By Brian S. Batterton, Attorney

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On October 4, 2012, the Fourth Circuit Court of Appeals decided the *United States v. Alston*,ⁱ which serves as an excellent review of the law related to frisks, plain view, and search incident to arrest. The facts of *Alston*, taken directly from the case are as follows:

While executing a traffic stop, an officer noticed the odor of marijuana and that the passenger, Alston, was sweating profusely and repeatedly reaching toward his left pocket and the center console of the vehicle. In the interest of officer safety, Alston was asked to step out of the vehicle. As he did so, the officer noticed a bulge in the front of Alston's waistband. The officer asked Alston what it was and, as Alston reached for it, the officer grabbed and removed the object — a cigar box — from Alston's waistband. Looking through the clear cellophane window of the box, the officer saw what he believed to be three marijuana cigarettes. Alston was placed under arrest; and, during the search incident to arrest, the officers discovered a plastic baggie containing cocaine or cocaine base in Alston's pants pocket.ⁱⁱ

Alston filed a motion to suppress and argued that the officer had no reason to stop the vehicle, no reasonable suspicion to justify the frisk, and that the frisk exceeded the scope permissible for frisks for weapons. The trial court denied the motion to suppress, and he was convicted of possession of cocaine with intent to distribute. Alston appealed the denial of his motion to suppress to the Fourth Circuit Court of Appeals.

The four issues on appeal were as follows:

1. Whether the traffic stop was lawful under the *Fourth Amendment*?
2. Whether the officer possessed sufficient reasonable suspicion that Alston was armed and dangerous so as to make the frisk lawful under the *Fourth Amendment*?
3. Whether, if the frisk was lawful, the officer exceeded the permissible scope of the frisk when the officer seized the object from Alston's waistband?
4. Whether it was lawful for the officer to open the cigar box and seize the marijuana cigarettes?

As to the first issue, the Fourth Circuit noted that

The "decision to stop an automobile is reasonable when police have probable cause to believe that a traffic violation has occurred." *Whren v. United States*, 517 U.S. 806, 810, 116 S. Ct. 1769, 135 L. Ed. 2d 89 (1996). Observation of any traffic violation, no matter how minor, gives an officer probable cause to stop the vehicle. *United States v. Hassan El*, 5 F.3d 726, 731 (4th Cir. 1993).ⁱⁱⁱ

The district court credited the officer's testimony that he observed the driver of the vehicle fail to signal a turn in violation of traffic law. The court then stated that since the district court credited the officer's testimony that a traffic violation was observed, the stop was reasonable under the *Fourth Amendment*. As to the second issue, the Fourth Circuit noted that

During a traffic stop, the passenger may be required to exit the vehicle without any indication that the passenger poses a risk to officer safety. *Maryland v. Wilson*, 519 U.S. 408, 413-15, 117 S. Ct. 882, 137 L. Ed. 2d 41 (1997). Additionally, **if the officer has reasonable suspicion that a passenger is armed or is engaged in criminal activity, the officer may pat down the passenger for**

weapons. *Terry v. Ohio*, 392 U.S. 1, 30, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968); see *United States v. Sakyi*, 160 F.3d 164, 168-69 (4th Cir. 1998); *United States v. Raymond*, 152 F.3d 309, 312 (4th Cir. 1998).^{iv} [emphasis added]

First, it bears note that, based on the above rules, it was permissible for the officer to have Alston exit his vehicle. Once Alston exited the vehicle, the officer was in a position to observe a bulge in Alston's waistband. The officer described the bulge as large enough to be a weapon. Then, when the officer asked Alston about the bulge, he reached for that area of his waistband. Thus, it was reasonable for the officer to believe that Alston may be armed and dangerous such that a frisk was reasonable under the *Fourth Amendment*.

As to the third issue of whether it was reasonable for the officer to reach into Alston's waistband and seize the object, the Fourth Circuit stated

The officer — with justifiable concern for his safety — grabbed the object from Alston's waistband. See *United States v. Swann*, 149 F.3d 271, 275 (4th Cir. 1998) (holding that officer may conduct frisk search and seize item to ensure that it is not a weapon).^v [emphasis added]

It is also worth noting that Alston argued that it was not reasonable for the officer to believe that a weapon could be contained in a cigar box, however, the court credited the officer's testimony that a .25 caliber Lorcin pistol is small enough to fit into that size of box.^{vi} Thus, based on the officer's testimony and the rules above, the Fourth Circuit held that it was reasonable for the officer to grab and remove the object from Alston's waistband.

As to the fourth issue, the court noted that once the officer removed the object, which turned out to be a cigar box, from Alston's waistband, the officer observed three marijuana cigarettes in the box through the clear cellophane on the box. The Fourth Circuit noted that the

[P]lain view doctrine allows warrantless seizure of evidence when officer lawfully is in the area in which he sees the object, has lawful access to the object, and the incriminating nature of the object is apparent. *United States v. Green*, 599 F.3d 360, 376 (4th Cir.)^{vii}

Thus, it was reasonable for the officer to open the box and seize the marijuana cigarette because they were in plain view for the officer, the officer was lawfully in possession of the cigar box (it was seized during a lawful frisk), and the incriminating nature of the marijuana was immediately apparent. As such, Alston was lawfully seized, and Alston was lawfully arrested for the marijuana.

The Fourth Circuit also noted that

[U]pon lawful warrantless arrest, police may conduct a full search of an arrestee's person and personal items in his possession and control, without any additional justification.^{viii}

After the officer arrested Alston for the marijuana, he conducted a search incident to that arrest and located cocaine in his front pants pocket. Because Alston was lawfully arrested, the cocaine found during the search incident to arrest was properly admitted in court.

Thus, the Fourth Circuit affirmed the denial of the motion to suppress.

ⁱ No. 12-4241, 2012 U.S. App. LEXIS 20850 (4th Cir. Decided October 4, 2012 Unpub)

ⁱⁱ *Id.* at 1-2

ⁱⁱⁱ *Id.* at 3

^{iv} *Id.* at 3-4

^v *Id.* at 4-5

^{vi} Fn at 5

^{vii} *Id.* at 5

^{viii} *Id.* at 6 (citing *United States v. Robinson*, 414 U.S. 218, 235 (1973))

**ELEVENTH CIRCUIT
UPHOLDS DETENTION OF
SUSPECTED GANG MEMBER©**

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On October 5, 2012, the Eleventh Circuit Court of Appeals decided the *United States v. Durham*,ⁱ which involved the issue of whether it was reasonable for a state trooper to detain a suspect for approximately four minutes after the completion of a traffic stop based on the suspect's gang membership, as well as some additional facts such as "name dropping," tone of voice, and legal weapons possession. The facts of *Durham*, taken from the case, are as follows:

On May 16, 2011, at 4:18 p.m., George Roe, an Alabama State Trooper, observed Durham change lanes on his motorcycle without signaling, and initiated a traffic stop. After issuing a warning citation at 4:35 p.m., Trooper Roe and his partner, Trooper Brandon Christian, discussed the circumstances surrounding the traffic stop and conducted a protective pat-down search. Shortly thereafter, at 4:39 p.m., Durham consented to the search of his motorcycle, which revealed a set of brass knuckles, some buckshot, and a homemade "shotgun type" weapon.

At the suppression hearing, Trooper Roe testified to the circumstances surrounding the traffic stop. Once he initiated the stop, Trooper Roe noticed that Durham was wearing clothing with "Pistoleros" insignia; and based on Trooper Roe's training and experience, he knew that "the Pistoleros and Bandidos" were motorcycle clubs known for "violence, guns, drugs, [and] several felony type criminal activities." Trooper Roe asked Durham to wait in the patrol car during the license and registration check; and before they entered the car, Durham admitted to possessing several knives, which Trooper Roe allowed him to keep. Trooper Roe and Durham then engaged in "general conversation," and Durham indicated that he

was on his way to attend a motorcycle club meeting about upcoming bike rides and charity events. After Trooper Roe asked Durham about the meeting location, Durham became "serious," and began to mention the names of other law enforcement officers that Trooper Roe might know.

After issuing and explaining the traffic citation, Trooper Roe asked Durham to "hold tight" while he spoke to his partner for "just a second." Trooper Roe advised Trooper Christian of his "suspicion[s]," including that "[Durham] shut down and changed his tone of voice" after questions about the meeting location, and his motorcycle club was "notorious for criminal activity." Trooper Roe expressed concern that, after speaking openly about his club's charity work, Durham was secretive about other issues and began to "name drop." Further, Durham's vest indicated that he was the Pistoleros's "Sergeant-at-Arms," a person who normally carries weapons to "keep the peace" among the motorcycle clubs. Trooper Roe continued the traffic stop based on these concerns.ⁱⁱ

Durham, who was a convicted felon, was arrested and ultimately charged with federal weapons offenses. He filed a motion to suppress and argued that the trooper impermissibly extended the traffic stop for longer than was necessary to effectuate the purpose of the stop (the traffic violation and issuance of a citation). Particularly, the trooper made the stop at 4:18 p.m., issued the citation at 4:35pm, conducted the frisk at 4:37 .p.m.; and asked for consent to search at 4:39pm.

Durham argued the lawful stop ended at 4:35pm and therefore, his consent was invalid. The district court denied the motion and Durham was subsequently convicted by a jury. Durham then appealed the denial of his motion to suppress to the Eleventh Circuit Court of Appeals. Durham argued on appeal, among other things, that he was detained after the conclusion of the traffic stop without reasonable suspicion of criminal activity; and, as such, his consent was not valid.

The Eleventh Circuit first examined various precedents relevant to Durham's argument. Regarding the duration of stops and traffic stops, the court of appeals stated

Following a traffic stop, the officer's investigation "must be reasonably related in scope to the circumstances which justified the interference in the first place." *United States v. Ramirez*, 476 F.3d 1231, 1236 (11th Cir. 2007) (quotation omitted). **Also, "the duration of the traffic stop must be limited to the time necessary to effectuate the purpose of the stop." *Id.*** (quotation omitted). Nevertheless, **an officer may detain an individual for further investigation unrelated to the initial purpose of the stop in two situations: (1) where the officer "has an objectively reasonable and articulable suspicion that illegal activity has occurred or is occurring"; and (2) where "the initial detention has become a consensual encounter." *Id.* at 1237** (quotations omitted) [emphasis added]ⁱⁱⁱ

Regarding whether reasonable suspicion exists to extend the duration of the stop, the Eleventh Circuit noted that

In determining whether a reasonable suspicion exists, we must look at the totality of the circumstances to ascertain "whether the detaining officer ha[d] a particularized and objective basis for suspecting legal wrongdoing." *United States v. Arvizu*, 534 U.S. 266, 273, 122 S.Ct. 744, 750, 151 L.Ed.2d 740 (2002) (quotation omitted). **Officers may "draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that might well elude an untrained person." *Id.* at 273, 122 S.Ct. at 750-751** (quotation omitted). **"Also, a reasonable suspicion of criminal activity may be formed by observing exclusively legal activity." *United States v. Lindsey*, 482**

F.3d 1285, 1290 (11th Cir. 2007)
[emphasis added]^{iv}

The Eleventh Circuit then applied the above rules to the facts of Durham's case. First, the court noted that the trooper testified that, based on his training and experience, Durham's motorcycle club was "notorious" for criminal activity that involved violence, firearms, and drugs. Second, the trooper testified that he believed that Durham's position as Sergeant-at-Arms of the Pistoleros might indicate that he possessed weapons. Third, the fact that Durham possessed a knife, although legal, may be indicative that he might possess other weapons. Fourth, and lastly, the trooper testified that Durham's demeanor changed and he started "name dropping" after the trooper asked about the location of the club meeting.

Based on the above facts, the Eleventh Circuit held

Trooper Roe had an objectively reasonable suspicion that Durham may have been involved in criminal activity related to the Pistoleros, and as such, Trooper Roe was permitted to investigate further after issuing the traffic citation.^v

Thus, since the detention was reasonable under the *Fourth Amendment* at the time the trooper asked for and received voluntary consent, the evidence found during the consent search was properly admissible and the district court did not err in denying the motion to suppress.

ⁱ No. 12-11583, 2012 U.S. App. LEXIS 20826 (11th Cir. Decided October 5, 2012 Unpublished)

ⁱⁱ *Id.* at 1-4

ⁱⁱⁱ *Id.* at 8-9

^{iv} *Id.* at 9

^v *Id.* at 12

ELEVENTH CIRCUIT UPHOLDS FRISK OF SHOPLIFTER©

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On October 2, 2012, the Eleventh Circuit Court of Appeals decided the *United States v. Griffin*,ⁱ which serves as an excellent review of the law pertaining to *Terry* frisks and questioning during a *Terry* stop. The facts of *Griffin*, taken directly from the case are as follows:

On February 22, 2011, Officer Jay Edwards, a patrol officer with the Jacksonville Sheriff's Office, responded to an unverified 911 call from Rainbow Kids, a children's clothing store in Jacksonville, Florida. Officer Edwards was familiar with the strip mall where the store was located. He knew that there was drug activity in the surrounding area and that there had been several burglaries in the mall.

Officer Edwards arrived at approximately 8:57 p.m. The store's security guard came running out and informed him that a man had attempted to steal some clothing. The guard pointed to and identified a male walking quickly away from the store as the person who committed the attempted theft.

There were six to eight people in the direction where the guard pointed, but Mr. Griffin was the only one who fit the guard's description of "the black man in the green jacket and jeans."

Returning to his vehicle, Officer Edwards followed Mr. Griffin, who continued to look over his shoulder and walk away briskly. Officer Edwards got out of his car and told Mr. Griffin to stop. When Mr. Griffin disobeyed his command and continued to walk away—in what the district court described as

evasive behavior—Officer Edwards approached Mr. Griffin, put both hands on one of his wrists, and informed him that he was investigating a petit theft. Mr. Griffin said that he had not stolen anything. Officer Edwards nevertheless frisked Mr. Griffin to ensure his own safety.

During the frisk, Officer Edwards felt what he "believed to be" C-cell batteries in Mr. Griffin's back left pocket. Officer Edwards did not, however, reach into the pocket. Instead, because he "wasn't exactly sure what [the items] were," and because "it was odd that someone was carrying around . . . C-cell batteries," he asked Mr. Griffin, "Hey, what's in your pocket? Why do you have batteries?" Mr. Griffin responded that the items were shotgun shells and not batteries. Officer Edwards then asked Mr. Griffin if he had ever been to prison, and Mr. Griffin answered "yes." After Officer Edwards informed him that it was illegal for felons to possess weapons or ammunition, Mr. Griffin began to flee. Officer Edwards eventually arrested Mr. Griffin, who was charged with being a felon in possession of ammunition. See 18 U.S.C. § 922(g)(1).ⁱⁱ

Griffin filed a motion to suppress the ammunition and statements that he made during the stop. The district court granted the motion to suppress and held that, assuming the frisk was permissible, the statements which formed the basis for the probable cause to arrest and search Griffin should be suppressed because the questions by the officer regarding the ammo and whether Griffin had been to prison were outside of the scope of the reason for the stop, which was the theft investigation.

The government appealed the district court's decision to the Eleventh Circuit Court of Appeals. The three issues on appeal were as follows:

1. Whether it was constitutionally reasonable for the officer to frisk Griffin for weapons?
2. Whether the time it took the officer to ask the two questions that were unrelated to the theft measurably extended or prolonged the duration of the stop so as to make the stop unreasonable under the *Fourth Amendment*?
3. Whether the officers exceeded the scope of a lawful frisk?

Issue One: Was it constitutionally reasonable for the officer to frisk Griffin, who was a theft suspect?

Under *Terry v. Ohio*, the United States Supreme Court has previously stated that an officer who has lawfully detained a suspect may conduct a frisk or a limited search for weapons when the officer has a reasonable belief that the suspect may be armed and dangerous.ⁱⁱⁱ The Eleventh Circuit noted however, that

Terry does not demand definitive evidence of a weapon or absolute certainty that an individual is armed. The process of evaluating whether reasonable suspicion exists under *Terry* "does not deal with hard certainties, but with probabilities." [T]he 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."^{iv} [internal citations omitted]

Thus, each situation is fact driven and requires an analysis of the totality of the circumstances, rather than only one fact (such as the type of crime at issue). In *Griffin*, the Eleventh Circuit noted the following relevant facts: (1) the officer was alone on this call, at night, in a high crime area; (2) at the time the officer approached Griffin, he was in the vicinity of 6-8 other people; (3) Griffin initially acted evasively and refused to obey the officer's command to stop; and (4) at the time of the frisk, the officer had not yet finished investigating the theft.

The Eleventh Circuit also examined case law from other federal circuits regarding the legality of frisks of theft suspects. They noted that in similar factual circumstances as presented in *Griffin*, other federal circuits have upheld the lawfulness of a frisk for weapons.^v Further, the court noted that some federal circuits have held that individuals reasonably suspected of theft and burglary can be frisked for weapons because of the nature of those offenses.^{vi}

The Eleventh Circuit stated that, based on *Griffin*, they were not going to adopt a blanket type of rule regarding frisking all theft suspects. Rather, they held that the offense at hand plus the totality of the circumstances in *Griffin* supported the frisk. As such, it was constitutionally reasonable for the officer to frisk Griffin.

Issue Two: Did the time it took the officer to ask the two questions that were unrelated to the theft measurably extended or prolong the duration of the stop so as to make the stop unreasonable under the Fourth Amendment?

Regarding this issue, the Eleventh Circuit noted two important rules set forth by the United States Supreme Court. First, the court noted

The Supreme Court has "held repeatedly that mere police questioning does not constitute a seizure." *Muehler v. Mena*, 544 U.S. 93, 101, 125 S. Ct. 1465, 161 L. Ed. 2d 299 (2005) (citation omitted). For example, in *Mena* the Supreme Court did not find any constitutional infirmity in an INS officer questioning a person about her immigration status while she was detained during the execution of a search warrant—by other law enforcement officers—for deadly weapons and evidence of gang membership.^{vii}

Further, the Eleventh Circuit noted that

Four years after *Mena*, the Court held, in a case involving a traffic

stop, that "[a]n officer's inquiries into matters unrelated to the justification for the . . . stop . . . do not convert the encounter into something other than a lawful seizure, so long as those inquiries do not measurably extend the duration of the stop." *Arizona v. Johnson*, 555 U.S. 323, 333, 129 S. Ct. 781, 172 L. Ed. 2d 694 (2009).^{viii}

The Eleventh Circuit also examined cases from other federal circuits, noting that the Eleventh Circuit has no precedent on this issue. The court then stated

We concur with the Fourth, Sixth, Seventh, Ninth, and Tenth Circuits, and hold—consistent with *Mena* and *Johnson*—that **unrelated questions posed during a valid Terry stop do not create a Fourth Amendment problem unless they "measurably extend the duration of the stop."** *Johnson*, 555 U.S. at 333. This is because such questions, absent a prolonged detention, do not constitute a "discrete Fourth Amendment event." *Mena*, 544 U.S. at 101.^{ix} [emphasis added]

The court then looked at the facts of Griffin's case. The court noted (1) the brief nature of the questions and answers between the officer and Griffin, (2) the fact that Griffin did not raise an issue regarding the length of his detention, and (3) that the questions and answers regarding the shotgun shells and prison took about 30 seconds. The Eleventh Circuit then held

Because Officer Edwards had not yet completed his investigation into the alleged attempted theft, and because he acted diligently, his brief questions did not transform the stop into an unconstitutionally prolonged seizure.^x

Issue Three: Did the officer exceed the scope of a lawful frisk during his frisk of Griffin?

Griffin argued that the officer's frisk of the outside of his pocket in this case was a violation of the Supreme Court's holding in *Minnesota v. Dickerson*.^{xi} In discussing *Dickerson*, the court stated

In *Dickerson*, a police officer conducting a frisk for weapons felt a lump in the person's front pocket. Although the officer had not found any weapons during the frisk, and knew the lump in the pocket was not a weapon, he squeezed and manipulated the lump with his fingers from the outside of the pocket to determine what it was. He concluded that the lump was cocaine wrapped in cellophane, and reached inside the pocket and pulled out a small plastic bag with cocaine. *See id.* at 369. The Supreme Court concluded that the Minnesota Supreme Court had correctly suppressed the cocaine because the officer went beyond what Terry allows: "Here, the officer's continued exploration of [the] pocket after having concluded that it contained no weapon was unrelated to '[t]he sole justification of the search [under Terry]: . . . the protection of the police officer and others nearby.'" It therefore amounted to the sort of evidentiary search that Terry expressly refused to authorize[.]" *Id.* at 378 (alterations in original) (quoting *Terry*, 392 U.S. at 29).^{xii}

The Eleventh Circuit then noted that during Griffin's motion to suppress, the officer testified that he "ran his hand across" Griffin's back pocket and felt what he thought were C-cell batteries. When the defense asked him if he "kreed" (or manipulated) the pocket to try to figure out what the objects were, the officer answered "no." The district court found that the officer did not reach into Griffin's pocket after feeling the objects, but rather simply asked Griffin why he was carrying batteries.

The court then held that the above facts do not establish a violation of *Minnesota v. Dickerson*. The Eleventh Circuit stated

A frisk necessarily entails the officer's use of his hands to feel for weapons, and nothing that Officer Edwards did physically violated Mr. Griffin's *Fourth Amendment* rights. See *Dickerson*, 508 U.S. at 375 ("If a police officer lawfully pats down a suspect's outer clothing and feels an object whose contour or mass make its identity immediately apparent, there has been no invasion of the suspect's privacy beyond that already authorized by the officer's search for weapons[.]").^{xiii}

Therefore, the court held that the officer did not exceed the lawful scope of the frisk in Griffin's case.

As such, the Eleventh Circuit reversed the district court's grant of the motion to suppress.

ⁱ No. 11-15558, 2012 U.S. App. LEXIS 20543 (11th Cir. Decided October 2, 2012)

ⁱⁱ *Id.* at 2-4

ⁱⁱⁱ 392 U.S. 1 (1969)

^{iv} *Griffin* at 7

^v *Id.* at 9 (citing See *United States v. Moore*, 817 F.2d 1105, 1108 (4th Cir. 1987) ("The circumstances surrounding the stop support the officer's belief that a further frisk for weapons was warranted. The hour was late, the street was dark, the officer was alone, and the suspected crime was burglary, a felony that often involves the use of weapons."). See also *Hunter*, 291 F.3d at 1306-07 (officer could [*9] conduct frisk under *Terry* where encounter took place in a high crime area, individual who was seen observing illegal gambling walked away quickly when the police approached, and officer saw bulge in individual's waistband); *United States v. Aldridge*, 719 F.2d 368, 372 (11th Cir. 1983) ("Having made a valid investigative stop of a vehicle containing three men in a poorly lit area in the middle of the night pursuant to a radio report that the suspects may have been involved in criminal activity [i.e., tampering with a vehicle], [the officer] was entitled to take reasonable measures to neutralize the threat of physical harm."))

^{vi} *Id.* at 9-10 (citing *United States v. Banks*, 553 F.3d 1101, 1106 (8th Cir. 2009), *United States v. Snow*, 656 F.3d 498, 501 (7th Cir. 2011) ("Because burglary is the type of offense 'normally and reasonably expected [*10] to involve a weapon,' . . . police do not require additional information suggesting that a suspect might be armed before they may conduct a protective frisk of someone they reasonably suspect of being a burglar.") (quoting *United*

States v. Barnett, 505 F.3d 637, 640-41 (7th Cir. 2007)); *United States v. Bullock*, 510 F.3d 342, 347, 379 U.S. App. D.C. 114 (D.C. Cir. 2007) ("Like burglary, car theft is a crime that often involves the use of weapons and other instruments of assault that could jeopardize police officer safety, and thus justifies a protective frisk under *Terry* to ensure officer safety.").

^{vii} *Id.* at 12

^{viii} *Id.* at 13

^{ix} *Id.* at 14-15

^x *Id.* at 18

^{xi} 508 U.S. 366 (1993)

^{xii} *Griffin* at 20

^{xiii} *Id.* at 21

