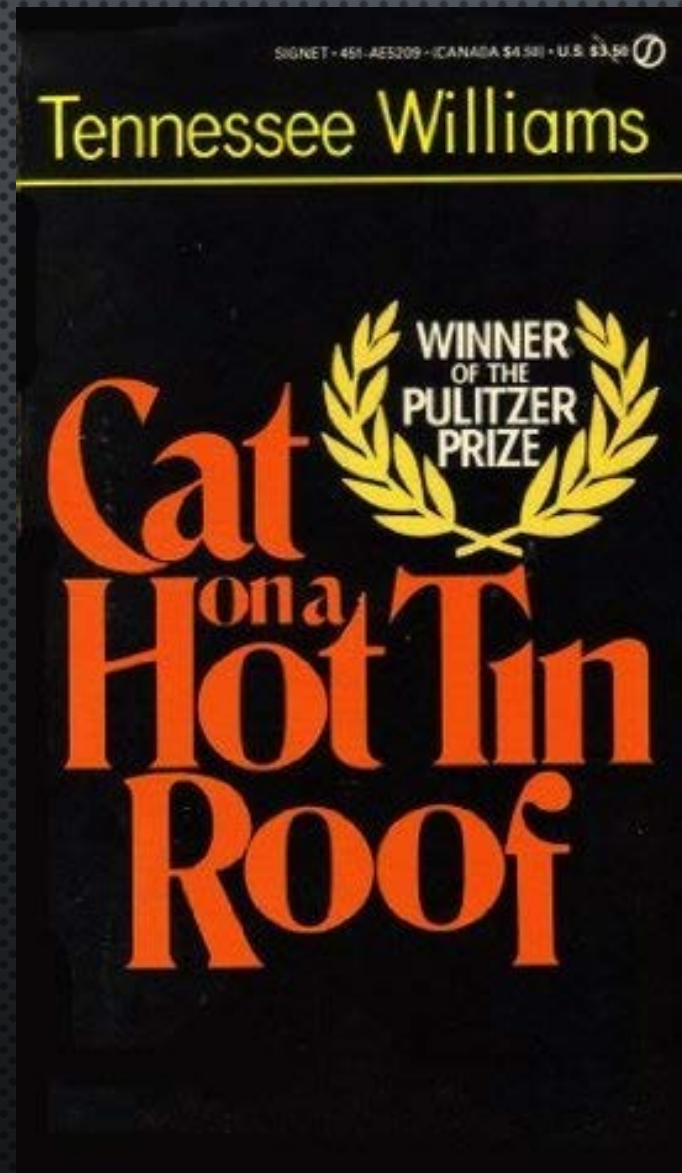
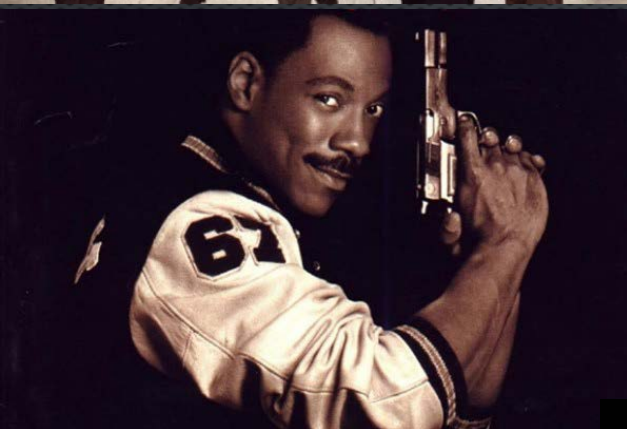


A blurred image of a police car at night, with its red and blue emergency lights flashing. The car is positioned in the center of the frame, and the background is dark with some light streaks.

LIAR, LIAR PANTS ON FIRE:
4TH AMENDMENT VICTORIES

<https://www.youtube.com/watch?v=eioyl7dllvw>





Look at all of these
honest, trustworthy,
by-the-book cops!



- 4TH AMENDMENT
 - 'THE RIGHT OF THE PEOPLE TO BE SECURE IN THEIR PERSONS, HOUSES, PAPERS, AND EFFECTS, AGAINST UNREASONABLE SEARCHES AND SEIZURES, SHALL NOT BE VIOLATED'
- *TERRY V. OHIO*, 392 U.S. 1 (1968)
 - 2 PART TEST
 - A. SEIZURE = 2 WAYS TO ARGUE = INITIAL SEIZURE **AND/OR** UNNECESSARILY PROLONGED SEIZURE
 - POLICE OFFICERS MAY DETAIN INDIVIDUALS BRIEFLY, EVEN THOUGH THERE IS NO PROBABLE CAUSE TO ARREST THEM, AS LONG AS THEY HAVE A **REASONABLE SUSPICION THAT CRIMINAL ACTIVITY IS AFOOT**.
 - REASONABLE SUSPICION UNDER **TERRY** MUST BE BASED ON "**SPECIFIC AND ARTICULABLE FACTS**," AND THE FACTS MUST "BE JUDGED AGAINST AN **OBJECTIVE** STANDARD."
 - *CAREFUL – 1. DIFFERENCE BETWEEN CASUAL ENCOUNTER AND SEIZURE; 2. MUST HAVE SHOW OF AUTHORITY
 - B. SEARCH (FRISK)
 - A POLICE OFFICER WHO REASONABLY BELIEVES THAT HE IS DEALING WITH **ARMED AND DANGEROUS INDIVIDUALS** MAY CONDUCT A LIMITED PROTECTIVE SEARCH FOR WEAPONS. "THE OFFICER NEED NOT BE ABSOLUTELY CERTAIN THAT THE INDIVIDUAL IS ARMED; THE ISSUE IS WHETHER A **REASONABLY PRUDENT MAN IN THE CIRCUMSTANCES** WOULD BE WARRANTED IN THE BELIEF THAT HIS SAFETY OR THAT OF OTHERS WAS IN DANGER."

What amounts to reasonable suspicion?

- Traffic violation? YES
- Commission of a crime in presence of officer – YES

Totality of Circumstances

- Nervousness?
 - Evasive behavior/Walking away from officers?
 - Time of day?
 - Known area of crime?
 - Car parked backwards?
 - Drug source cities?
 - Seating arrangement?
 - Officer safety?
- Standing alone = not enough (*Wardlow*)
 - Anything other than headlong flight is reasonable; citizens have a right to evade police
 - Contextual only; cannot provide RS alone
 - Known area of crime? = contextual only
 - nothing inherently illegal (*Hill*)
 - Courts are skeptical = large city could be one
 - Standing alone, no RS = *Bristol*, 819 F. Supp. 2d 135
 - NEVER been a factor for seizure; search only

1. reasonable suspicion that criminal activity is afoot

2. specific and articulable facts

3. objective standard

DEFENSE Friendly cases

United States v. Hill, 752 F.3d 1029 (2014) – Judge Dennis

- The police, around 11:00 p.m. at night, happened upon a car, backed into its space in the parking lot of an apartment complex with a reputation for drugs, and, at the same time that they arrived, the car's passenger stepped out and took a few steps away
- High crime area, nighttime, walking away, and what was NOT SHOWN (no tip of crime, no BOLO, no reason to suspect crime)

United States v. Monsivais, 848 F.3d 353 (2017) – Judge Dennis

- Monsivias's car broke down on the side of the road; officers noticed and turned on lights; attempted to help, but Monsivias walked away; officers seized him because he did not want their help; "appeared nervous and placed hands in pockets"
- Walking away/right to avoid officers, casual encounter turned into seizure

United States v. Rideau, 969 F.2d 1572 (1992) – Judge Jerry Smith dissent (SEARCH, NOT SEIZURE)

- Rideau was intoxicated and standing in the middle of the road in a bad part of town; officers pulled up and asked his name; Rideau began to "back away" = officers frisked him for "officer safety"
- "the court today comes dangerously close to declaring that persons in 'bad parts of town' enjoy second-class status in regard to the Fourth Amendment."
- Remarkably, what Officer Ellison unwittingly describes is akin to a general warrant or to an indiscriminate dragnet-like procedure whereby all persons detained in a "bad part of town" are subject to search, not for anything they have done, but for the general purpose of ensuring the officer's safety or finding evidence of criminal activity. In other words, Ellison frisked Rideau not because Rideau *did* anything (i.e., stepped backward) to arouse individualized suspicion but because he was there, in a bad part of town, and, like *anyone else* in that area that night, *might* have had a weapon.

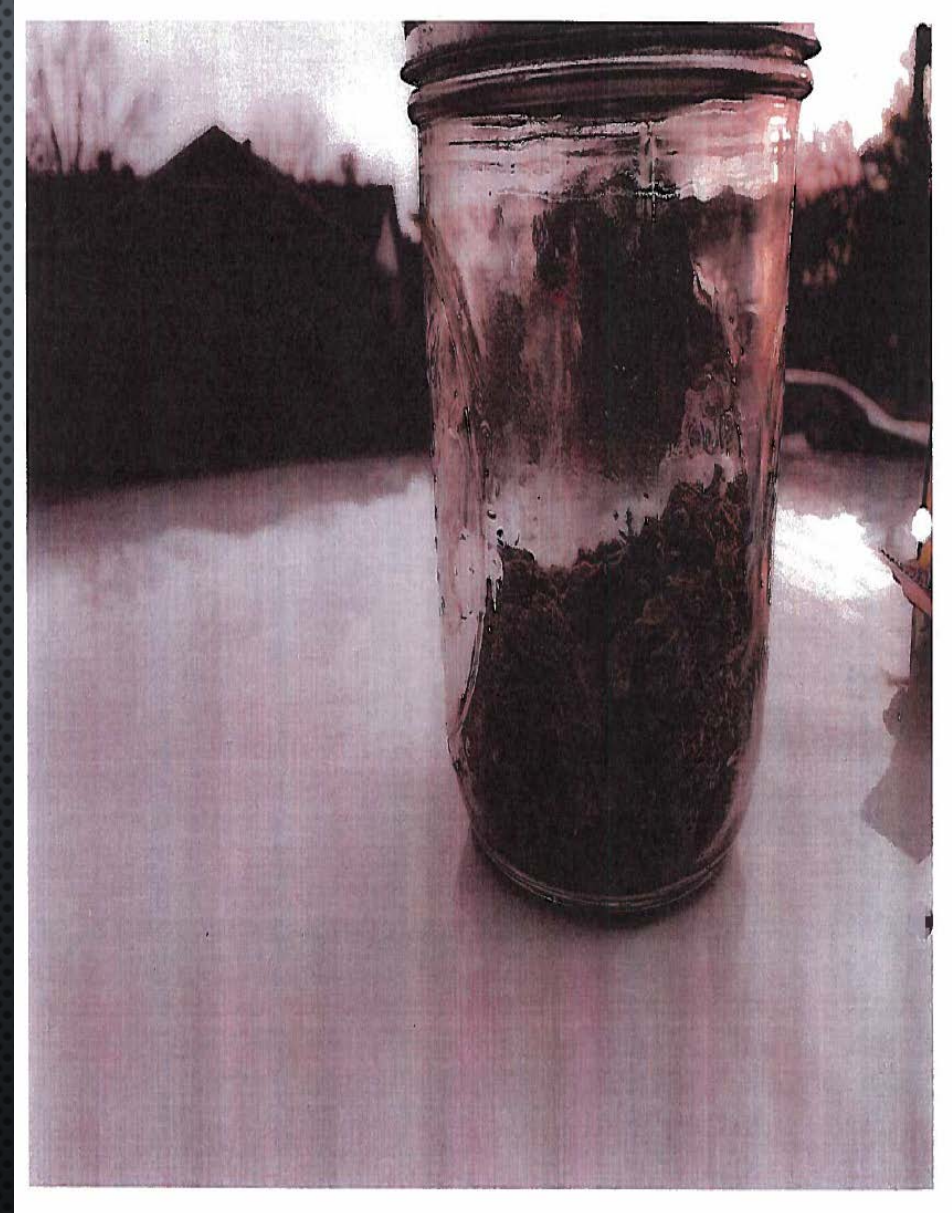
Rodriguez v. United States 2015, 135 S. Ct. 1609 (2015)

A case in which the Court held that a police stop exceeding the time needed to handle the matter, for which the stop was made, violates the Constitution's shield against unreasonable seizures (here, a dog sniff conducted after completion of a traffic stop).

- A seizure justified only by a police-observed traffic violation, therefore, "become[s] unlawful if it is prolonged beyond the time reasonably required to complete th[e] mission" of issuing a ticket for the violation.

THE CASE OF THE COP WITH THE SUPER-NOSE AKA USA V. CHADDWICK WILSON (2019) - BROWN

- **DECEMBER 27, 2017 – 26 DEGREES F**
- **CHIEF OF POLICE DELANDO WILSON AND ASSISTANT CHIEF OF POLICE MICHAEL MERCHANT PATROLLING THE STREETS OF GREENVILLE**
- **2 CAR LENGTHS BEHIND MR. WILSON**
- **SMELL GETS STRONGER THEN WEAKER DEPENDING ON DISTANCE BETWEEN VEHICLES**
- **SMELL “MARIJUANA”**
- **SEALED MASON JAR WITH UNBURNT MARIJUANA**
- **WHAT WOULD YOU ASK THE OFFICERS AT THE SUPPRESSION HEARING?**



Chief of Police Delando Wilson – Testimony from Suppression Hearing

Q Are we talking about a smell of burning marijuana or a smell of unburnt marijuana?

A It -- in my experience, it smelled like fresh marijuana. It didn't smell like it was burning marijuana.

Q Okay. And so you were driving with your windows open and you got a couple of car lengths away from another car that had its windows -- I'm sorry. You were driving with your windows up and got a couple of car lengths away from another car that had its windows up as well. Is that right?

A Yes, sir.

Q And you smelled -- and you think you smelled marijuana?

A Yes, sir.

Q So it's your testimony before this Court that you smelled marijuana sealed in a Mason jar inside a car that had all its windows up from several car lengths away in a car that had all its windows up?

A Yes, sir.

Q And it was not burning marijuana. It was just marijuana in a jar?

A Yes, sir.

Q Have you been able to smell things like that before?

A Yes, sir.

Q From that type of distance?

A Yes, sir.

In this case, both officers testified that they smelled marijuana, that the smell grew stronger as they drove closer to Wilson's car, and that the smell dissipated as the vehicle moved "a little distance away." Chief Wilson testified that in the past he had been able to smell fresh marijuana in a glass jar from a distance of several car lengths. However, apart from the officers' implicit belief in their abilities to not only smell untanned marijuana at approximately twenty feet through what amounts to at least three layers of glass (a sealed mason jar and two cars each with their

³ To the extent the officers testified they followed the car for only half a mile, the Court presumes they followed the car for approximately a minute.

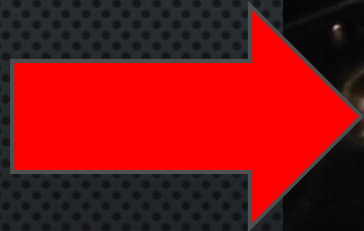
⁴ The Court suspects that if such detection were possible, marijuana smuggling would be next to impossible. period of time, there is no evidence such detection is possible. The Court finds the story implausible

on its face and, therefore, declines to credit the officers' testimony.⁴ While the officers may have smelled marijuana, their purported reason for identifying the source of such odor is preposterous under the circumstances present here. Accordingly, the Court concludes that the government has failed to establish reasonable suspicion for the stop of Wilson's car and that, therefore, the motion to suppress must be granted.

THE CASE OF THE COP WITH X-RAY VISION AKA USA V. CEDRIC GORDON (2019) - AYCOCK

- 10:30PM – MR. GORDON DRIVES PAST DEPUTY FORBERT; FORBERT SITTING IN PARKING LOT WITH SPOT LIGHT
- DEPUTY FORBERT CLAIMS TO SEE THE PASSENGER NOT WEARING A SEATBELT
- DEPUTY FORBERT GETS BEHIND VEHICLE AND CLAIMS THE TAG LIGHT IS OUT
- TRAFFIC STOP TURNS UP DRUGS AND GUNS
- **WAS THERE OBJECTIVELY REASONABLE SUSPICION TO PULL MR. GORDON OVER?**





At the hearing on this Motion [14], Deputy Forbert repeatedly contradicted the statements contained in his narrative and provided implausible testimony regarding the reasonable suspicion he had at the time of initiating the traffic stop. For example, Deputy Forbert's narrative stated that Notably, Deputy Forbert's uncorroborated assertion that the tag was not illuminated is not supported by any facts submitted by the Government and Deputy Forbert's narrative makes no mention of the tag being poorly illuminated. Given the photos and evidence presented, the Court finds Deputy Forbert's contradictory testimony on this matter unreliable. See Adams v. Williams, 407 U.S. 143, 158, 92 S. Ct. 1921, 32 L. Ed. 612 (1972) ("When we legitimated the conduct of the officer in Terry we did so because of the substantial reliability of the information on which the officer based his decision to act").

to see that the tag lights were not working and that the tag was illuminated once he stopped the vehicle.



George will pay \$500 to anyone who would be willing to testify, under oath, that they can see through the vehicle's window in this picture

alone was sufficient to justify the stop. At the suppression hearing, Deputy Forbert stated that he intended to perform a traffic stop for a seatbelt violation, contrary to the narrative he prepared the day of the traffic stop. Deputy Forbert maintained that he had reasonable suspicion to initiate the traffic stop because he was able to see the passenger attempting to put her seatbelt on through the tinted windows. However, when questioned by the Court, Deputy Forbert admitted that the windows were dark tinted and stated that he did not actually view the passenger without her seatbelt on. Based on the evidence and testimony presented at the hearing on this matter, the Court finds the evidence of a seatbelt violation unavailing.

The Court stresses that it has considered the totality of the described circumstances in this case, with due deference to the experience of Deputy Forbert. Nonetheless, the Court does not find Deputy Forbert's testimony regarding his reasonable suspicion warranting the traffic stop credible. Accordingly, the traffic stop on September 9, 2017, fails to survive the first prong of the *Terry* analysis and amounts to a violation of the Defendant's Fourth Amendment rights. *Terry v. Ohio*, 392 U.S. at 15.

THE CASE OF *IN VINO VERITAS*

- CLIENT IS DRIVING AN RV
- STOPPED FOR A MINOR TRAFFIC VIOLATION
- OFFICER ASKS FOR CONSENT TO SEARCH
- CLIENT DOES NOT GIVE CONSENT TO SEARCH
- OFFICER ASKS IF THEY HAVE ANY ALCOHOL IN VEHICLE
- RANKIN COUNTY - DRY
- USES BOTTLE AS “PROBABLE CAUSE” TO SEARCH RV
- MARIJUANA FOUND





Rehaif v. United States, 139 S. Ct. 2191 (2019) – 7-2 opinion (2019)

- In a prosecution under 18 U. S. C. §922(g) and §924(a)(2), the government must prove **BOTH** that the defendant (1) knew he possessed a firearm **AND** (2) that he knew he belonged to the relevant category of persons barred from possessing a firearm.
- Does NOT mean the defendant had to know he was not allowed to possess a firearm
- May only work for a few categories – ie 2, 3, 5 – or any where there is not a document/judgment signed by your client; OR if you're named M. P.
 1. Felon
 2. Fugitive from justice
 3. Unlawful user/addict of controlled substance
 4. Adjudicated as a mental defective or committed
 5. Alien
 6. Dishonorably discharged
 7. Renounced citizenship
 8. Subject to a restraining order
 9. Convicted of misdemeanor crime of DV

STATE OF FLORIDA

RICK SCOTT, GOVERNOR, CHAIRMAN
PAM BONDI, ATTORNEY GENERAL



JEFF ATWATER, CHIEF FINANCIAL OFFICER
ADAM PUTNAM, COMMISSIONER OF AGRICULTURE
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OFFICE OF EXECUTIVE CLEMENCY
4070 ESPLANADE WAY
TALLAHASSEE, FLORIDA 32399-2450
PHONE: (850) 488-2952
FAX: (850) 488-0695

April 8, 2011



Dear Mr. Peeler:

This office has determined after reviewing your case that you have no known felony convictions. Therefore, you have not lost any Civil Rights in accordance with the laws of Florida and we are returning your application to you.

Sincerely,

A handwritten signature in cursive script that reads "Julia McCall".

Julia McCall
Coordinator

JM/kjk

Enclosures

U.S. v. Davis, 139 S. Ct. 2319 – 5-4 opinion (2019)

A case in which the Court extended *Johnson/Dimaya* to the definition of “crime of violence” in 18 U.S.C. § 924(c)(3)(B) – possession/brandish/discharge a firearm in connection with a federal crime of violence – finding the residual clause unconstitutionally vague. (***conspiracy is NOT A COV**)

Call FPD or search for “crime of violence” and “??? Offense”

First Step Act

Basics: made the Fair Sentencing Act of 2010 retroactive to persons convicted of crack cocaine offenses **AND** sentenced BEFORE August 3, 2010; raised minimums from 5-28 grams and 50-280 grams

Call FPD – way too much to discuss – threshold questions, *Hegwood*, *Alleyne/Apprendi* issues, quantity, 3582, etc.

Carpenter v. U.S., 138 S. Ct. 2206 (2018) Big movement in CSLI information

A case in which the Court held a warrant is required for police to access cell site location information from a cell phone company; SCA allowed court orders to compel disclosure under a RS standard, rather than PC warrant

- **Not business records because people have legitimate expectation of privacy in their OWN MOVEMENTS, but not phone calls because those are voluntarily made and business records**

Molina-Martinez v. U.S., 136 S. Ct. 1338 (2016) (1st, 2nd, 3rd prong for plain error or abuse of discretion)

“[w]hen a defendant is sentenced under an **incorrect** Guidelines range—whether or not the defendant’s ultimate sentence falls within the correct range—the error itself can, and **most often will, be sufficient** to show a reasonable probability of a different outcome absent the error.”

Rosales-Mireles v. U.S., 138 S.Ct. 1897 (2018) (4th prong for plain error)

A miscalculation of a Guidelines sentencing range that has been determined to be plain and to affect a defendant’s substantial rights calls for a court of appeals to **exercise its discretion under Rule 52(b)** to vacate the defendant’s sentence in the ordinary case.

- **Use for any “prejudice” for sentencing miscalculations or issues on appeal – plain error**

Packingham v. North Carolina, 137 S. Ct. 1730 (2017)

- A case in which the Court determined that the North Carolina law prohibiting a sex offender from accessing various websites, where minors are known to be active, and the sex offender directly interacted with a minor violates the First Amendment.
- **You shall not possess, or use, a computer or other internet connection without the prior approval of your probation officer, you may use the computer for authorized employment.**

Neba, 901 F.3d 260 (5th Cir), Mathes (5th Cir), Feemster (8th Cir)

- Judge Edith Jones – concurrence in *Neba*; 900 months is within the COA to reverse (presumptively reasonable)
- *Mathes* – received 10 years **OVER** Guidelines sentence on charge because it was substantively unreasonable!
 - AUSA discovered Mathes did NOT commit firearms charge
- *Feemster* - “We adopt a posture today that is so deferential that it requires a bit of discussion to the relevant 18 U.S.C. § 3553(a) factors, a series of questions otherwise. This approach is not supported by Supreme Court precedent.”

US v. Moreland, 665 F.3d 137 (5th Cir. 2011)

- Joint occupancy and constructive possession – Julie Epps beat
- “[W]here ... A residence is jointly occupied, the mere fact that one person is in possession without more, provide evidence sufficient to support a conviction of the occupants.” = must present additional evidence of the defendant's knowledge of the contraband

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI

UNITED STATES OF AMERICA

V.

CAUSE NUMBER 1:18CR111

AUDIE LEE PARKER

DEFENDANT

ORDER

For reasons given by the court in its bench ruling on September 9, 2019, to the defendant's oral motion for a judgment of acquittal pursuant to Rule 29 of the Federal Rules of Criminal Procedure it is hereby ordered that the defendant's motion is GRANTED and that this case is DISMISSED.

It is further ordered that any bond posted on behalf of Audie Lee Parker be immediately released, with all accrued interest, if any, and directed to the surety at her usual mailing address on record with the Clerk of Court.

This the 11th day of September 2019.


UNITED STATES DISTRICT JUDGE
NORTHERN DISTRICT OF MISSISSIPPI