Research Strategy--Spring 2016

• Finding the Law

• Reading the Law

• Updating the Law

• Christopher & Jill Wren, The Legal Research Manual (2d ed. 1986)
Goal

• Find mandatory authority. (Wren chart) S. Ct. and 7th Cir.

• Use persuasive authority when:
  – No mandatory exists
  – Weak mandatory
  – Challenge the mandatory
Issues

• Under Fourth Amendment, was the warrantless search of defendant’s bedroom and bathroom valid when co-tenant consented to the search?

• Was the witness identification of the defendant consistent with Fifth Amendment Due Process requirements?
  – A. Was the photo array impermissibly suggestive?
  – B. If it was impermissibly suggestive, was it still sufficiently reliable under the totality of the circumstances?
Thinking about the Problem

- You need search terms. Use TARP (things, action, relief, parties) to determine facts and legal theories.

- May not succeed at first, but must start somewhere.
Finding the Law—Search Methods

- Index
- Topic (Table of Contents)
- Known authority (case or statute on point)
- Full text searching (online only)
- Some combination of these
Finding the Law

- Start with secondary sources?
- Check for constitutional provisions and statutes.
- Try to find leading case(s).
- Use leading case(s) to find cases from your jurisdiction.
Narrative Secondary Sources

- Books
- American Law Reports
- Encyclopedias (national & state)
- Legal periodicals
- Restatements
Why Use Secondary Sources?

- To determine what law applies
- For analysis of the law
- To find jargons in the area
- To learn the black letter rules
- To identify important primary sources
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**Books on Westlaw**
Everytrial Criminal Defense Resource Book
Eyewitness Identification: Legal & Practical Problems

Search & Seizure Checklists
Search & Seizure: A Treatise on the Fourth Amendment
Search Warrant Law Deskbook
Searches & Seizures, Arrests & Confessions

Substantive Criminal Law
Sword & Shield: A Practical Approach to Section 1983 Litigation
Uncharged Misconduct Evidence
Chapter 1. The Exclusionary Rule and Other Remedies
Chapter 2. Protected Areas and Interests
Chapter 3. Probable Cause
Chapter 4. Search Warrants
Chapter 5. Seizure and Search of Persons and Premises
Chapter 6. Entry and Search of Premises
Chapter 7. Search and Seizure of Vehicles
Chapter 8. Consent Searches
Chapter 9. Stop and Frisk and Similar Lesser Intrusions
Chapter 10. Location and Recovery of Stolen Property

§ 8.4. Family relationships
§ 8.4(a). Consent by spouse
§ 8.4(b). Consent by parent
§ 8.4(c). Consent by child

§ 8.5. Real property relationships
§ 8.5(a). Consent by lessor
§ 8.5(b). Consent by lessee
§ 8.5(c). Consent by co-tenant or other joint occupant
§ 8.5(d). Consent by host
§ 8.5(e). Consent by guest

§ 8.6. Other relationships
§ 8.5(c) Consent by co-tenant or other joint occupant

The Supreme Court dealt specifically with the joint occupancy situation in *United States v. Matlock*. The evidence in that case, which the Court concluded had been improperly excluded by the trial court, established that the defendant jointly occupied a bedroom with a Gayle Graff in the home of her parents. This being the case, the Court was of the view that Mrs. Graff's consent was sufficient because "obtained from a third party who possessed common authority over or other sufficient relationship to the premises or effect sought to be inspected." In a footnote the Court explained that this common authority rests

on mutual use of the property by persons generally having joint access or control for most purposes, so that it is reasonable to recognize that any of the co-inhabitants has the right to permit the inspection in his own right and that the others have assumed the risk that one of their number might permit the common area to be searched.
This language was relied upon by the Court in *Illinois v. Rodriguez*[^54] in holding that a one-time joint occupant no longer had that status at the time of the consent.[^55] Gail Fischer, who consented to a search of Rodriguez's apartment, had lived there with him and her two small children for about six months, but moved out about a month before the consent. She took her and her children's clothes with her, but left behind some furniture and household effects. She thereafter sometimes spent the night at the apartment, but never invited friends there and never went there herself when Rodriguez was not at home. Her name was not on the lease and she did not contribute to the rent. She had a key to the apartment, but had taken it without Rodriguez's knowledge. On such facts, the Supreme Court noted, the lower court's "determination of no common authority over the apartment was obviously correct."[^56]

The language quoted above from *Matlock* is not particularly helpful with respect to the issue which most frequently arises in the joint occupancy context, namely, whether each joint occupant possesses the authority to permit a full police search of every part of the premises leased with another tenant or otherwise jointly occupied, or whether instead (at least in some cases) each joint occupant may be recognized as retaining certain zones of privacy within the jointly occupied premises. Admittedly, *Matlock* was not an ideal case for getting into this issue, for the jointly occupied area consisted of but a single room and both men's
§ 8.5(c) Consent by co-tenant or other joint occupant

It may also be useful to take account of the nature of the object actually subjected to search. Certain objects are by their character quite clearly not the kind of thing as to which any real sense of privacy vis-a-vis another occupant could be justifiably expected. Where the object is a container, the extent to which it is subject to ready access is an important consideration. A search of an overflowing and unsealed box is quite a different matter than a search of a locked attache case, unless of course the consenting party possesses a key to the locked container. A court may be more inclined to find that a co-occupant lacked a privacy expectation in the container if that co-occupant “stood by and watched without objection” as the police searched it upon the consent given by the other occupant.
§ 8.5(c) Consent by co-tenant or other joint occupant

Search And Seizure: A Treatise On The Fourth Amendment  (Approx. 15 pages)

80 United States v. Robinson, 479 F.2d 300 (7th Cir.1973). See also United States v. Caldwell, 516 F.3d 426 (6th Cir.2008) (woman sharing hotel room with defendant could consent to search “of partially opened (and thus less private) containers—such as a paper bag and an unzipped CD case” as here); People v. Posey, 99 Ill.App.3d 943, 55 Ill.Dec. 234, 426 N.E.2d 209 (1981) (defendant's girl friend living with defendant in motel room and had no other residence, she could consent to search of his shaving kit, as she “was given complete access to all areas of that room”); State v. Buschkopf, 373 N.W.2d 756 (Minn.1985) (man could consent to search of own shaving kit for note he had been given by woman he living with, notwithstanding her instructions to him not even to read it, as “she apparently did not seal it or otherwise physically prevent [him] from looking at it”).
§ 8.5(c) Consent by co-tenant or other joint occupant

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The language quoted above from *Matlock* is not particularly helpful with respect to the issue which most frequently arises in the joint occupancy context, namely, whether each joint occupant possesses the authority to permit a full police search of every part of the premises leased with another tenant or otherwise jointly occupied, or whether instead (at least in some cases) each joint occupant may be recognized as retaining certain zones of privacy within the jointly occupied premises. Admittedly, *Matlock* was not an ideal case for getting into this issue, for the jointly occupied area consisted of but a single room and both men's and women's clothes were observed in the closet where the stolen money was found in a diaper bag. Yet...
Admissibility of evidence discovered in warrantless search of property or premises authorized by one having own...

American Law Reports ALR Federal  Originally published in 1980  (Approx. 83 pages)

§ 7[b] Leased house—Held inadmissible
§ 8[a] Other property—Held admissible
§ 8[b] Other property—Held inadmissible

III Consent given by cotenant or common resident

A Generally
§ 9 Rule that cotenant or common resident can authorize search
§ 10 Effect of accused's prior refusal to consent
§ 11[a] Limitations on authority—Accused's personal effects
§ 11[b] Limitations on authority—Areas under accused's exclusive control

B Application to searches of particular areas
§ 12 House or apartment, generally
§ 13 Kitchen
§ 14 Garage
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§ 15[b] Bedroom—Held inadmissible
§ 16 Hotel or motel room
§ 17 Motor vehicle
§ 8.5(c) Consent by co-tenant or other joint occupant

Search And Seizure: A Treatise On The Fourth Amendment

Wayne R. LaFave
Chapter 8. Consent Searches
8.5. Real property relationships

§ 8.5(c) Consent by co-tenant or other joint occupant

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More from WestSearch
- Validity of Third Party Consent Search

Secondary Sources
- Authority to consent for another to search or seizure
  31 A.L.R.2d 1078 (Originally published in 1953)
  ...This annotation supersedes that in 58 A.L.R. 737. Questions as to the admissibility of evidence obtained by a wrongful search and seizure are merely incidental to the problem discussed herein, and thus...
  Admissibility of evidence discovered
§ 8.5(c) Consent by co-tenant or other joint occupant

Searches and Seizures: A Treatise on the Fourth Amendment

Overview
Cases
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Searches and Seizures/Waiver and Consent/Validity of Third Party Consent Search (125)

1 - 20

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Cases 1 - 20 of 45

1. Illinois v. Rodriguez

Supreme Court of the United States  June 21, 1990  497 U.S. 177  110 S.Ct. 2793

Defendant who was charged with possession of controlled substance with intent to deliver moved to suppress seized evidence. The Circuit Court, Cook County, Illinois, granted motion, and People appealed. The Appellate Court, 177 Ill.App. 3d 1154, 140 Ill. Dec. 583, 550 N.E.2d 65, affirmed without published opinion. People...

... Only a warrant or exigent circumstances, he contends, can produce “reasonableness”; consent validates the search only because the object of the search thereby “limit[s] his expectation of privacy,” post, at 2800, so that the search becomes not really a search at all...

... Instead of judging the validity of consent searches, as we have in the past, based on whether a defendant has in fact limited his expectation of privacy, the Court today carves out an additional exception to the warrant requirement for third-party consent searches without pausing to consider whether “the exigencies of the situation” make the needs of law enforcement so compelling that the warrantless search is objectively reasonable under the Fourth Amendment,” Minn. v. 497 U.S. at 304, 98 S.Ct., at 2414 (citations omitted)....

2. U.S. v. Matlock

Supreme Court of the United States  February 20, 1974  415 U.S. 164  94 S.Ct. 986

In bank robbery prosecution, the United States District Court for the Western District of Wisconsin suppressed certain evidence, and the Government appealed. The Court of Appeals for the Seventh Circuit, affirmed, 476 F.2d 1083, and certiorari was granted. The Supreme Court,
§ 8.5(c) Consent by co-tenant or other joint occupant

Search And Seizure: A Treatise On The Fourth Amendment  (Approx: 15 pages)

2. U.S. v. Matlock

Supreme Court of the United States  February 20, 1974  415 U.S. 164  94 S.Ct. 988

In bank robbery prosecution, the United States District Court for the Western District of Wisconsin suppressed certain evidence, and the Government appealed. The Court of Appeals for the Seventh Circuit, affirmed, 476 F.2d 1083, and certiorari was granted. The Supreme Court, Mr. Justice White, held that consent to warrantless search by one who...

...This search is impermissible because of the failure of the officers to secure a search warrant when they had the opportunity to do so....

...It is inconceivable that a search conducted without a warrant can give more authority than a search conducted with a warrant....

3. Georgia v. Randolph

Supreme Court of the United States  March 22, 2006  547 U.S. 103  126 S.Ct. 1515

CRIMINAL JUSTICE - Searches and Seizures. Warrantless search was unreasonable as to defendant who had expressly refused to consent.

... In resolving the defendant's objection to use of the evidence taken in the warrantless search, we said that "the consent of one who possesses common authority over premises or effects is valid as against the absent, nonconsenting person with whom that authority is shared." ...
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<td>United States Court of Appeals, Seventh Circuit</td>
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§ 8.5(c) Consent by co-tenant or other joint occupant

Search And Seizure: A Treatise On The Fourth Amendment  (Approx. 15 pages)

1. U.S. v. Groves

United States Court of Appeals, Seventh Circuit. June 27, 2008  530 F.3d 506  2008 WL 2550745

CRIMINAL JUSTICE - Searches and Seizures. Validity of co-resident’s consent to search of apartment was not undermined by officers’ knowledge of resident’s absence.

...Because there had been no argument as to those containers during the district court’s evidentiary hearing, this court remanded for additional findings on the defendant’s privacy interests in the closed, labeled containers and his wife’s apparent authority to consent to a search of those containers....

... The question then became whether she also had the apparent authority to consent to the opening of various closed containers within the room, including her husband’s briefcase, which was marked on the exterior with his name, and a metal file box labeled “Mike,” his first name...
U.S. v. Richards
United States Court of Appeals, Seventh Circuit. January 31, 2014. 741 F.3d 843. (Approx. 11 pages)

8
Searches and Seizures
A defendant assumes the risk that a co-occupant may expose a common area of a house to a police search, as long as the co-occupant possesses common authority over or other sufficient relationship to the premises or effects sought to be inspected; common authority is not based on a property interest, but is a social concept based on whether the consenting person had joint access or control of the area being searched. U.S.C.A. Const. Amend. 4.

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Persons Giving Consent
349k177
Joint occupants

Topic and Key Number System--Controlled Indexing--WestlawNext
Limit to 7th Cir. Cases

1. U.S. v. Brandon
United States Court of Appeals, Seventh Circuit | November 25, 2014 | 593 Fed.Appx. 553

Headnote: Defendant's girlfriend had actual or apparent authority to give consent to officers' search of defendant's apartment, even though girlfriend was not a party to the lease, did not pay rent, no mail addressed to her was found at the apartment, she had no forms of identification with that address, and most of her children resided elsewhere; girlfriend previously had told investigators that she lived at the apartment, at suppression hearing she admitted that she had lived at the apartment for a little while, that she kept her birth certificate there, and that she and a daughter both spent nights and kept clothes there, and it was no surprise that she did not sign the lease or change her address on forms of identification, as she had been paroled to her mother's address, and apparently she was violating her parole by living at defendant's apartment. U.S.C.A. Const.Amend. 4.
V. WAIVER AND CONSENT, k171-k190

171 In general

172 Words or conduct expressing consent; acquiescence

173 Persons giving consent

173.1 —In general

174 —Owners of property; hosts and guests

175 —Landlords and tenants

176 —Hotels and motels

177 —Joint occupants

178 —Family members

179 Validity of consent
§ 156. Generally; common authority doctrine; apparent authority doctrine

George L. Blum, J.D., Romualdo P. Eclavea, J.D., Alan J. Jacobs, J.D., and Eric C. Surette, J.D. | American Jurisprudence, Second Edition (Approx. 11 pages)

68 Am. Jur. 2d Searches and Seizures § 156

American Jurisprudence, Second Edition
Database updated November 2015
Searches and Seizures

George L. Blum, J.D., Romualdo P. Eclavea, J.D., Alan J. Jacobs, J.D., and Eric C. Surette, J.D.

II. Search and Seizure of Property or Persons
B. The Warrant Requirement and Its Exceptions
2. Exceptions to Warrant Requirement
d. By **Consent**
   (2) By **Third Parties**
   (a) In General
   (i) Owners, Occupants, Possessors, or Custodian of Property

**Secondary Sources**

Authority to consent for another to search or seizure

31 A.L.R.2d 1078 (Originally published in 1953)

...This annotation supersedes that in 58 A.L.R. 737. Questions as to the admissibility of evidence obtained by a wrongful search and seizure are merely incidental to the problem discussed herein, and thus...

Admissibility of evidence discovered
§ 156. Generally; common authority doctrine; apparent authority doctrine

The consent of a third person is invalid when it is obtained by coercion. ⁴

A third party who possesses common authority over, or possesses other sufficient relationship to, the premises or effects sought to be inspected also may consent to a warrantless search. ⁵ In other words, a person other than the defendant may give a valid consent to a search if he or she possesses common authority over, or possesses other sufficient relationship to, the premises or effects sought to be inspected. ⁶ The consent to a search of one who possesses common authority over the property is valid as against the absent, nonconsenting person with whom that authority is shared. ⁷ The "common authority doctrine" permits a third party possessing common authority over the premises to give a valid consent to a search against a nonconsenting person who shares the authority because it is reasonable to recognize that any of the coinhabitants has the right to permit the inspection in his or her own right and that the others have assumed the risk that one of their number might permit the common area to be searched. ⁸ Common authority over the premises that makes consent to a search of the premises sufficient is not to be implied from the mere property interest that a third party has in the property; the authority justifying a third-party consent to a search does not rest upon the law of property but, rather, rests on mutual use of the property by persons generally having joint access or control for most purposes so that it is reasonable to recognize that any of the coinhabitants has the right to permit inspection in his or her own right and that others have assumed the risk that one of their number might permit a common area to be searched. ⁹

A third-party consent to a search will validate the search if the third party has access to the area searched and has common authority over the area, or a substantial interest in the area, or permission to gain access. ¹⁰ When one voluntarily puts property under the control of another, he or she must be viewed as having relinquished any prior legitimate expectation of privacy with regard to that property as it becomes subject to public exposure upon the whim of the other person. ¹¹ While a warrantless search may be based on
31 A.L.R.2d 1078 (Originally published in 1953)

American Law Reports
ALR2d

The ALR databases are made current by the weekly addition of relevant new cases.

Authority to consent for another to search or seizure

R. P. Davis

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   § 3 Person who owns or controls premises or vehicle searched, generally
   § 4 Lessors or lessees
   § 5 Custodian of building

Third Party’s Lack of Authority to Consent to Search of Premises or Effects


...Under the Fourth Amendment of the States Constitution, as well as under a constitutions, the right of individuals to free from unreasonable searches and seizures is guaranteed. By vir...
Authority to consent for another to search or seizure

American Law Reports ALR2d  Originally published in 1953  (Approx. 258 pages)

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Even without actual authority, a warrantless search may be permissible if consent is obtained from a third-party with apparent authority. U.S.C.A. Const.Amend. 4. U.S. v. Richards, 741 F.3d 848 (7th Cir. 2014).

Even without actual authority, a warrantless search may be permissible if consent is obtained from a third-party with apparent authority. U.S.C.A. Const.Amend. 4. U.S. v. Richards, 741 F.3d 848 (7th Cir. 2014).

Employee of restaurant owned by defendant had apparent authority to consent to police officers' warrantless search of restaurant, even though officers knew that employee was not restaurant's owner; employee had keys to restaurant and code to deactivate alarm, employee opened restaurant alone and restaurant was small establishment, and employee's actions justified officers' belief that he had full control over premises, including authority to grant access to others. U.S.C.A. Const.Amend. 4. U.S. v. King, 627 F.3d 611 (7th Cir. 2010).

Employee of restaurant owned by defendant had apparent authority to consent to police officers' warrantless search of restaurant, even though officers knew that employee was not restaurant's owner; employee had keys to restaurant and code to deactivate alarm, employee opened restaurant alone and restaurant was small establishment, and employee's actions justified officers' belief that he had full control over premises, including authority to grant access to others. U.S.C.A. Const.Amend. 4. U.S. v. King, 627 F.3d 611 (7th Cir. 2010).

Someone has apparent authority to consent to a police search if the facts available to the officer at the moment warrant a man of reasonable caution in the belief that the consenting party had authority over the premises. U.S.C.A. Const.Amend. 4. U.S. v. Jackson, 598 F.3d 340 (7th Cir. 2010).

Even without actual authority, a warrantless search may be permissible if consent is obtained from a third-party with apparent authority. U.S.C.A. Const.Amend. 4. U.S. v. Richards, 741 F.3d 848 (7th Cir. 2014).

Consent to search or seizure may be obtained from any person who has common authority over property, even if that person has no standing in the premises. U.S.C.A. Const.Amend. 4. U.S. v. Jackson, 598 F.3d 340 (7th Cir. 2010).
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U.S. v. James, 571 F.3d 707 (7th Cir. 2009) — 2.5
U.S. v. King, 627 F.3d 641, 84 Fed. R. Evid. Serv. 221 (7th Cir. 2010) — 2.5
U.S. v. Marin, 761 F.2d 426 (7th Cir. 1985) — 6
U.S. v. Miller, 800 F.2d 129 (7th Cir. 1986) — 8
U.S. v. Miroff, 606 F.2d 777 (7th Cir. 1979) — 6
U.S. v. Parker, 469 F.3d 1074 (7th Cir. 2006) — 3
U.S. v. Pinola Buenaventura, 622 F.3d 761 (7th Cir. 2010) — 3
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Full Text Journals & Law Reviews

• **WestlawNext**: Secondary Sources > Law Reviews & Journals

• **Lexis Advance**: Category > Secondary Materials > Law Reviews and Journals

• **Bloomberg Law**: All Legal Content > U.S. Secondary Sources > Law Reviews & Journals

• Selected journals

• Date coverage varies, usually begins around 1990

• **HeinOnline**: More comprehensive coverage than Lexis Advance, WestlawNext, or Bloomberg Law. (PDF)
Keyword Search for Journal Articles

1. PICKING THE MATLOCK: GEORGIA V. RANDOLPH AND THE U.S. SUPREME COURT'S RE-EXAMINATION OF THIRD-PARTY-CONSENT AUTHORITY IN LIGHT OF SOCIAL EXPECTATIONS
   South Dakota Law Review | 2007

2. WHO'S THAT KNOCKING AT YOUR DOOR?
   Florida Bar Journal | November, 2003

3. THIRD-PARTY CONSENT TO SEARCH: ANALYZING TRIANGULAR RELATIONS

4. THIRD PARTY CONSENT SEARCHES AND THE FOURTH AMENDMENT: REFUSAL, CONSENT, AND REASONABLENESS
   Washington and Lee Law Review | Fall, 2005

5. GEORGIA V. RANDOLPH, THE RED-HEADED STEPCOHLD OF AN UGLY FAMILY: WHY THIRD-PARTY CONSENT SEARCH DOCTRINE IS AN UNFORTUNATE FOURTH AMENDMENT DEVELOPMENT THAT SHOULD BE RESTRAINED
Lexis/Westlaw/Bloomberg Law Search
Methods

Terms and Connectors
v.
Natural Language
Terms and Connectors

- Must link **terms** with **connectors** (/p, /s, +3)
- Phrases in quotation marks
- Allows truncation (* and !)
- Only retrieves docs within search parameters
- No term-dropping
Natural Language

- String together words that might be relevant
- No truncation or connectors
- Enclose phrases in quotation marks
- String alternative terms together
- Some term-dropping to achieve results
- No natural language searching on Bloomberg Law
Finding the Law

• Start with secondary sources?

• Check for constitutional provisions and statutes.

• Try to find leading case(s).

• Use leading case(s) to find cases from your jurisdiction.
• 21 U.S.C. §§ 841 (a)(1), 844, 846

• Fourth Amendment -- Search and Seizure

• Fifth Amendment -- Due Process

• Use annotated codes to find statutes & constitutions
Reading the Law--Statutes

- Read text carefully

- Note related sections in code’s statutory scheme -- Title, Chapter, Section

- Read the annotations
§ 844. Penalties for simple possession

Effective: August 3, 2010

21 U.S.C.A. § 844
§ 841. Prohibited Acts a
§ 842. Prohibited Acts B
§ 843. Prohibited Acts C
§ 844. Penalties for Simple Possession
§ 844a. Civil Penalty for Possession of Small Amounts of Certain Controlled Substances
§ 845. Transferred to § 859
§ 845a. Transferred to § 860
§ 845b. Transferred to § 861
§ 846. Attempt and Conspiracy
§ 847. Additional Penalties
CONSTITUTION OF THE UNITED STATES OF AMERICA, Criminal actions--Provisions concerning--Due process of law and just compensation clauses.

... identifying information; (3) victim had immediately chosen defendant's picture from array, she had accurately described... confirm... given that she appeared coherent and alert at hospital where photo lineup was held, and (3) fact that victim later changed ...

... because procedure used to obtain pre-trial identification was not unduly suggestive (in light of many substantial similarities between those in photo array, alleged differences in clothing and age were too minor to render spread unduly suggestive), and police officer's inquiry whether witness could identify robber from photo array was not unduly suggestive. United States v Peterson (2011, CA 6 Ohio) 2011 FED App ...

... conducted with same due process protections as given conducting of photo array identification, tape must not be unduly suggestive but, as with photo arrays, totality of circumstances must be examined to determine whether...

Annotations--not text of Constitution.

District court did not err in denying defendant’s motion to suppress pretrial identification because defendant’s due process rights were not violated where photographic lineup contained pictures of six individuals with similar physical characteristics and no other identifying information and there was no evidence that any law enforcement personnel made any suggestive sounds or gestures during photographic lineup. *United States v Boston* (2007, CA8 Iowa) 494 F3d 660.

Although photo array was impermissibly suggestive, cashier’s identification of defendant was reliable under circumstances where cashier had sufficient opportunity to view defendant during robbery, his initial description of defendant was generally accurate, photo identification took place shortly after robbery when cashier’s recollection was fresh, and there was other evidence connecting defendant to robbery; accordingly, admission of evidence of out-of-court identification did not violate defendant’s rights under Due Process Clause or taint in-court identification. *United States v Saunders* (2007, CA4 Md) 501 F3d 384.

Defendant’s Due Process Clause rights were not violated by admission of out-of-court identification because identification did not pose very substantial likelihood of irreparable misidentification under Bratthwaite in that witness had excellent opportunity to view defendant at crime scene, attention of witness was focused solely on drug buy, witness expressed no uncertainty regarding his identification of defendant’s mug shot, and identification was made only day or two after drug deal at issue. *United States v Moody* (2009, CA5 Tex) 564 F3d 754, cert den (2009, US) 77 USLW 3656.

Pretrial identification of defendant from single photograph coupled with identification at lineup, where defendant was represented by counsel, and where he was only one of five participants wearing dark shirt, was not violative of due
Searching for Lexis Advance case annotations

... from keyword search to topic outline

Searching for Lexis Advance case annotations
824. Photographs

Outline of annotations
suspected of armed bank robbery was highly reliable since attentive witness saw defendant’s unmasked face, provided specific details about robbery and defendant’s appearance, and positively identified defendant within minutes of robbery. United States v Whitehead (2014, CA11 Fla) 2014 US App LEXIS 9724
Neil v. Biggers: One Good Case (Known-Authority) from the Record

Convictions based on eyewitness identification at trial following a pretrial identification by photograph will be set aside only if the photographic identification procedure was so impermissibly suggestive as to give rise to a very substantial likelihood of irreparable misidentification.  *Shepardize - Narrow by this Headnote*

The factors to be considered in evaluating the likelihood of misidentification include the opportunity of the witness to view the criminal at the time of the crime, the witness' degree of attention, the accuracy of the witness' prior description of the criminal, the level of certainty demonstrated by the witness at the confrontation, and the length of time between the crime and the confrontation.
Topic Summary: Fair Identification Requirement

Practice Area: Criminal Law & Procedure
Jurisdiction: U.S. Federal
Context:
Criminal Law & Procedure > ... > Eyewitness Identification > Due Process Protections > Fair Identification Requirement

Definitions (1)
1. Eyewitness identification testimony violates a defendant’s right to due process of law when it creates a very substantial likelihood of irreparable misidentification. United States v. Jones, 454 F.3d 642

Seminal Cases (10)
1. Manson v. Brathwaite, 432 U.S. 98
2. Foster v. California, 394 U.S. 440
3. United States v. Hill, 967 F.2d 226
4. Abdur Raheman v. Kelly, 357 F.3d 122
5. United States v. Castillo, 599 F.2d 1209
6. United States v. Williams, 972 F.2d 1052
7. United States v. Reed, 893 F.2d 1350
8. United States v. Sanabria, 821 F.2d 1533
9. United States v. Correia, 949 F.2d 1326
10. United States v. Ulibarri, 170 F.3d 1050
Secondary Sources

Elements of (1)

1. In assessing whether identification procedures posed a substantial likelihood of irreparable misidentification, [appellate courts] consider several factors: (1) the opportunity of the witness to view the criminal at the crime scene; (2) the witness's degree of attention; (3) the accuracy of the witness's prior description of the criminal; (4) the level of certainty demonstrated by the witness at the confrontation; and (5) the length of time between the crime and the confrontation. United States v. Delgado, 364 Fed. Appx. 876

Statutes and Rules (2)

1. U.S. Const. Amendment Amend. 6
2. U.S. Const. Amendment Amend. 5

Secondary Sources (3)

1. 2-5 Criminal Constitutional Law § 5.05
2. 2-11 Criminal Constitutional Law § 11.02
3. 1-2 Criminal Defense Techniques § 2.03

Burden of Proof (1)

1. A defendant has the initial burden of proving that the identification procedure was impermissibly suggestive. It is only after a defendant meets this burden that the burden then shifts to the prosecutor to prove that the identification was reliable, independent of the suggestive procedure. Johnson v. Warren, 344 F. Supp. 2d 1081

Standards of Review (1)

1. Gregory-Bey v. Hanks, 332 F.3d 1036

Overview: Displays of inmate's photograph on more than one occasion was not unduly suggestive because his color photograph revealing his facial hair and acne scars was distinctly unique and different from the other photographs included in earlier arrays.

... employed by the police were unduly suggestive. Gregory-Bey claims that the police tainted the identification procedure when they allegedly singled him out by repeatedly showing the witnesses his picture along with a number of other pictures in photo arrays. Next, he alleges that the police improperly reinforced Grinter's identification by informing her that another witness had selected the same suspect in the photo array. Finally, Gregory-Bey claims that the identification procedures ...

2. Rodriguez v. Young, 906 F.2d 1153

Overview: Relief for habeas corpus was denied where identification testimony that despite the corrupting influence of prior suggestion remained reliable, was admissible and prisoner did not show that a motion to suppress would have led to its exclusion.

... did, that it does. And that is a reassuring indicium of reliability of the identification, if not a conclusive one.
More on Finding the Law

Use Shepard’s, KeyCite or Bloomberg Law to find additional cases and secondary sources
Use Shepard’s to Find More Cases
Applied Filters:
1. Depth of Treatment: 4 bars
2. Jurisdiction: 7th Cir.
Updating the Law

• Cases
  -- Shepard’s, KeyCite or BCite: Watch for negative history and treatment cases.

• Statutes
  -- Shepard’s or KeyCite: Watch for legislative and judicial treatment
  -- BCite: Can only watch for judicial treatment
Using Shepard’s for updating

Gregory-Bey v. Hanks, 332 F.3d 1036

United States Court of Appeals for the Seventh Circuit

February 13, 2002, Argued; June 13, 2003, Decided

No. 01-1066

332 F.3d 1036 | 2003 U.S. App. LEXIS 11700


Remember history v. treatment

1. Mayes v. City of Hammond

2006 U.S. Dist. LEXIS 53274

Distinguished by

... of which was Judge Maroc's order vacating the convictions. Similarly, the cases cited by the City in its Reply brief addressing suppression or habeas corpus issues do not implicate a vacated conviction. See id. at p. 6 (citing, among others, Gregory-Bey v. Hanks, 332 F.3d 1036, 1044-1051 (7th Cir. 2003); United States v. Sleet, 54 F.3d 303, 309-310 (7th Cir. 1995); Allen v. State, 813 N.E.2d 349, 360 (Ind. Ct. App. 2004)).

2. Alexander v. City of S. Bend


Distinguished by: 320 F. Supp. 2d 761 p.782

... this Court acknowledges that the lineups conducted by the South Bend Police Department may not have been perfect. Plaintiff has presented no evidence that the police department's lineup practices were constitutionally impermissible. See e.g. Gregory-Bey v. Hanks, 332 F.3d 1036, 1040-1041 (7th Cir. 2003) (finding it problematic to a lineup's efficacy where witnesses believed that the defendant could see them); 20 Unlike the lineup at issue in Gregory-Bey, the witnesses referenced ...
Manson v. Brathwaite, 432 U.S. 98, 97 S. Ct. 2243, 53 L. Ed. 2d 140 (1977), Court Opinion

1. Criticized in
   Quoted
   
   Extracts

Page 1 of 1
When Should I Stop?

- Stop when find same sources through independent means.

- Have you looked in the really important places?

- Did you update everything?

- Do you understand the law? If not, you are definitely not done!

- You are probably not going to find all law on an issue!
There is no **one** right way to do research.

Master a wide variety of research tools to develop an effective method.
THE END