

**United States v. Herrera**, F.3d 05-3057 (10th Cir. (Kan.) Apr. 19, 2006)

Search and Seizure (Administrative Automobile Inventory Search -Mistake of Fact - Exclusionary Rule - Good Faith Exception Inapplicable).

A Kansas state trooper pulled over defendant's pickup truck to conduct a random commercial vehicle safety inspection pursuant to a state regulatory statute. Defendant's pickup, however, was not a commercial vehicle subject to such random inspections, about which the trooper was mistaken. The defendant was unable to produce proof of insurance, and the trooper arrested him. The trooper then conducted an inventory search, and discovered 23 kilograms of cocaine. The defendant was charged federally with possession of cocaine with intent to distribute. He filed a motion to suppress that was denied. He was convicted, and appealed.

Held: Conviction reversed and case dismissed.

Ruled: The traffic stop was not based on probable cause, or reasonable suspicion, and was not a valid administrative stop because defendant's pickup was not a commercial vehicle subject to random safety inspections. Hence, the warrantless stop was unconstitutional. Moreover, the trooper's mistaken belief concerning the statutory regulatory scheme did not save the stop, search, and seizure because the trooper had no lawful authority to make the random inspection and there was no reasonable suspicion or probable cause. Thus, the good-faith exception did not apply.