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A MONTHLY LEGAL RESOURCE AND COMMENTARY FOR LAW
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Welcome to this installment of *The Federal Law Enforcement Informer (The Informer)*. The Legal Training Division of the Federal Law Enforcement Training Centers' Office of Chief Counsel is dedicated to providing law enforcement officers with quality, useful and timely United States Supreme Court and federal Circuit Courts of Appeals reviews, interesting developments in the law, and legal articles written to clarify or highlight various issues. The views expressed in these articles are the opinions of the author and do not necessarily reflect the views of the Federal Law Enforcement Training Centers. *The Informer* is researched and written by members of the Legal Division. All comments, suggestions, or questions regarding *The Informer* can be directed to the Editor at (912) 267-3429 or FLETC-LegalTrainingDivision@dhs.gov. You can join *The Informer* Mailing List, have *The Informer* delivered directly to you via e-mail, and view copies of the current and past editions and articles in *The Quarterly Review* and *The Informer* by visiting <https://www.fletc.gov/legal-resources>.

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The Informer – October 2017

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FLETC Informer Webinar Series

1. Tuesday November 21, 2017 (2:30 p.m. EST)

Live Webinar: Miranda and the Public Safety Exception (1-hour)

Presented by Paul Sullivan and Patrick Walsh, Attorney-Advisors,
Federal Law Enforcement Training Centers, Glynco, Georgia.

Paul Sullivan and Patrick Walsh will discuss the Public Safety Exception to the Miranda requirement, when it applies, and what a law enforcement officer can ask. They will also review how this exception has been applied in the last ten years in terrorism and non-terrorism related investigations.

To participate in this webinar: <https://share.dhs.gov/publicsafety/>

2. Wednesday November 22, 2017 (2:30 p.m. EST)

Live Webinar: The Law on Drones in the United States (2-hours)

Presented by Robert H. Cauthen, Attorney-Advisor / Acting Legal Division
Branch Chief, Federal Law Enforcement Training Centers, Glynco, Georgia.

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3. Wednesday November 29, 2017 (11:00 a.m. EST)

Live Webinar: Legal Issues in Drone Countermeasures (2-hours)

Presented by Robert H. Cauthen, Attorney-Advisor / Acting Legal Division
Branch Chief, Federal Law Enforcement Training Centers, Glynco, Georgia.

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CASE SUMMARIES

Circuit Courts of Appeal

First Circuit

United States v. Gordon, 2017 U.S. App. LEXIS 17423 (1st Cir. Me. Sept. 8, 2017)

In September 2012, the Drug Enforcement Administration (DEA) began investigating a drug-distribution ring based in Lewiston, Maine. Despite using a variety of investigative techniques, the DEA was unable to determine the identity or location of the drug ring's suppliers or determine the ring's organizational structure. As a result, the DEA obtained court orders to conduct wiretaps, pursuant to *18 U.S.C. §§ 2510-2522* (Title III), on several telephones connected to members of the ring. The government eventually charged Gordon and eleven other co-defendants with drug-related criminal offenses.

Gordon filed a motion to suppress the evidence obtained through the wiretaps.

First, Gordon argued that the wiretap orders failed to comply with Title III's particularity requirement because the orders were not limited to the phone numbers being used by the defendants when the judge issued the orders. Instead, the wiretap orders included phone numbers "subsequently assigned to or used by the instruments bearing the same" electronic serial number (ESN) or International Mobile Equipment Identity (IMEI) number as the original tapped telephone. For example, if a defendant changed the ten-digit telephone number assigned to a particular cell phone, the wiretap order would automatically cover the new ten-digit number, and the government would not have to seek a new wiretap order every time that number changed.

The court held that Title III's particularity requirement does not require limiting a wiretap order to a specific telephone number rather than a specific ESN or IMEI number reasonably believed to be used by the target. In this case, the affidavit submitted by the government outlined several convincing reasons for tracking telephones by ESN or IMEI numbers, such as the fact that drug traffickers change telephone numbers frequently in an attempt to avoid detection and they do not typically associate their names with telephone numbers. In addition, the court noted that the wiretap orders restricted interception to the specific serial numbers associated with the targets' cell phones.

The court further held that the wiretap orders satisfied Title III's particularity requirement because the government listed specific criminal statutes, which identified the offenses to which the sought-after communications related.

Finally, the court held that the wiretap orders were sufficiently particular in describing the DEA as "the agency authorized" to conduct the wiretapping.

Second, Gordon argued that the government failed to establish that it was necessary to conduct the wiretapping. To protect a person's right to privacy, Title III requires the government establish "necessity" as a prerequisite for obtaining a wiretap order.

The court disagreed. To satisfy the necessity requirement, a wiretap application must include "a full and complete statement as to whether or not other investigative procedures have been tried

and failed, or why they reasonably appear unlikely to succeed if tried, or to be too dangerous.” In this case, the government did not apply for wiretap orders until eighteen months into its investigation. At that point, the DEA already had employed a variety of investigative techniques, including the use of confidential informants, physical surveillance, controlled buys, analysis of telephone data and public records, and the issuance of subpoenas. The government’s application included this information as well as why other investigative techniques, such as obtaining cell-site location information and vehicle tracking, were not plausible. The court concluded that the government established that its investigation had reached a point where wiretapping was reasonably necessary.

Third, Gordon argued that the government violated Title III’s “minimization” requirement. Title III requires that wiretaps must “be conducted in such a way as to minimize the interception of communications not otherwise subject to interception.”

The court concluded that the wiretap orders in this case satisfied this requirement, as the orders directed the monitors to stop listening and/or recording when it became apparent that a conversation was not related to the criminal investigation. In addition, the government distributed a “minimization memorandum” to the wiretap monitors, which contained a similar warning.

For the court’s opinion: <https://cases.justia.com/federal/appellate-courts/ca1/15-2087/15-2087-2017-09-08.pdf?ts=1504902604>

Second Circuit

United States v. Pabon, 871 F.3d 164 (2d Cir. Vt. Sept. 11, 2017)

Officers suspected that Jaiden Paige transported narcotics from Connecticut to Maine. The officers also had information that indicated Paige would not carry the narcotics himself, but would instead have another person body-pack the narcotics during the drive. After receiving a tip that Jaiden Paige was transporting narcotics on a particular day, officers conducted a traffic stop when Paige committed a traffic violation. After Paige consented to a search of his vehicle, the officers directed Paige and his passenger, Pabon, to exit the vehicle. The officers conducted a canine sniff on the vehicle and the canine alerted on the exterior passenger-side front door. The officers transported Paige, Pabon, and their vehicle to the police station.

Officers subsequently obtained a search warrant that authorized the officers to direct medical personnel take x-rays of Pabon’s lower abdomen.

At the hospital, Pabon’s x-rays were taken and two doctors examined the images. The images revealed several shaded masses in Pabon’s pelvic area but in their written reports, the doctors concluded that the x-rays did not provide specific “evidence of a foreign body” or of any “rectal foreign body.” However, one of the doctors told the officers that x-rays are not the best way to determine if a person is body-packing narcotics. The doctor explained that it was possible there could be some type of “rectal packing . . . not identifiable in the x-ray image.” The doctor added that the lack of body-packing evidence on the x-ray did not mean that a foreign body was not present.

The hospital discharged Pabon, and the officers took him back to the police station. Several hours later, the officers obtained a search warrant, which authorized medical personnel to perform a CT

scan of Pabon's lower abdomen. The CT scan images revealed evidence that Pabon was body-packing narcotics. A few hours later, Pabon passed three packages containing narcotics. Pabon continued to pass packages over the next several days that contained cocaine and heroin. Approximately 63 hours after his arrest, a state court judge determined that there was probable cause to detain Pabon.

The government charged Pabon with possession with intent to distribute cocaine and heroin.

Pabon filed a motion to suppress the narcotics evidence. Pabon argued that after the doctors determined the x-ray images did not reveal evidence of body-packing, the officers no longer had probable cause to believe he was involved in criminal activity. As a result, Pabon claimed that the officers should have released him after his discharge from the hospital.

The court disagreed. While the doctors' written reports reflected their view that the x-ray images did not reveal positive evidence of any foreign objects in Pabon's system, one of the doctors told the officers that an x-ray examination is of limited value in determining if a person is body-packing narcotics. The doctor explained to the officers that an x-ray image will not necessarily capture evidence of body-packing even if someone is carrying narcotics because narcotics can have density similar to organic material in a person's body. The court concluded that it was clear to the officers that while the x-ray did not reveal the presence of narcotics in Pabon's body it did not mean that he was not body-packing. Consequently, the court found that probable cause to believe that Pabon was transporting narcotics had not dissipated, even taking into account the x-ray examination results.

Pabon also argued that the narcotics evidence and CT scan results should have been suppressed because the officers violated the Fourth Amendment by not bringing him before a state court judge within 48 hours of arrest for a probable cause determination.

Without deciding whether a violation of the 48-hour rule requires suppression of evidence, the court noted that the evidence Pabon sought to suppress was obtained within 24 hours of Pabon's arrest. As a result, the court held that there was no connection between any alleged violation of the 48-hour rule and the discovery of this evidence.

Finally, even if suppression was not warranted for a violation of the 48-hour rule, Pabon argued that after arresting him the officers unreasonably delayed his probable cause hearing so they could obtain additional evidence to support his arrest.

The court held that the officers did not delay Pabon's probable cause hearing while they attempted to obtain evidence to justify Pabon's arrest. The court noted that the officers had probable cause to detain Pabon when they arrested him immediately after the traffic stop. The court reiterated that probable cause continued to exist after the officers received inconclusive results from the x-ray examination and throughout the remainder of his detention.

For the court's opinion: <https://cases.justia.com/federal/appellate-courts/ca2/16-1754/16-1754-2017-09-11.pdf?ts=1505140215>

Seventh Circuit

United States v. Paige, 870 F.3d 693 (7th Cir. Wi. Sept. 1, 2017)

Around midnight, an employee of a McDonald's restaurant called 911, reported that a vehicle had been sitting in the drive-through lane for approximately one-hour, and expressed concern that the driver might be sick or injured. When a police officer arrived, she saw Paige standing outside the open driver's door of the vehicle talking to a firefighter who had also responded. As the officer approached, she smelled a strong odor of fresh marijuana coming from Paige. The firefighter told the officer that he had found Paige asleep in the driver's seat of the vehicle, and had awakened Paige by knocking on the vehicle's window. Paige told the officer that he had just fallen asleep and was "ok." Skeptical of Paige's story, the officer decided to detain Paige in her police car before she continued her investigation. Before placing Paige in her vehicle the officer frisked him for weapons and found a loaded handgun in Paige's waistband. The officer arrested Paige and placed him in her vehicle.

The officer walked over to Paige's vehicle, saw a bottle of alcohol on the driver's seat, and smelled a strong odor of marijuana coming from inside the vehicle. The officer searched the vehicle and found crack cocaine and marijuana inside the console.

The government charged Paige with possession of a firearm by a convicted felon, and possession with intent to distribute crack cocaine and marijuana.

Paige filed a motion to suppress the firearm seized from his waistband and the drugs seized from his vehicle.

First, the court held that the officer had probable cause to arrest Paige for possession of marijuana and operating a vehicle under the influence because she smelled marijuana emanating from Paige's body, knew that Paige had been sleeping in his car for approximately one-hour in an open McDonald's drive-through, and believed that Paige was not answering her questions truthfully.

Second, after the officer established probable cause to arrest, she was allowed to search Paige incident to arrest without any additional justification. As a result, the court concluded that the officer lawfully seized the firearm from Paige's waistband incident to arrest.

Third, the court held that the officer lawfully searched Paige's vehicle incident to his arrest. An officer may search a vehicle incident to an arrest when it is reasonable to believe that the vehicle contains evidence of the offense for which the suspect was arrested. Here, the court concluded that the officer reasonably believed that Paige's vehicle contained evidence related to the offenses of possession of marijuana, and driving while impaired, because as the officer approached the vehicle she smelled the strong odor of marijuana emanating from the interior. The court added that this fact also provided the officer probable cause to believe that Paige's vehicle contained marijuana and supported a warrantless search under the automobile exception.

For the court's opinion: <https://cases.justia.com/federal/appellate-courts/ca7/16-4128/16-4128-2017-09-01.pdf?ts=1504285424>

United States v. Brown, 871 F.3d 532 (7th Cir. Ill. Sept. 8, 2017)

Two Chicago police officers, Also Brown and George Stacker, went to a convenience store to investigate a tip that drugs were being sold there. After searching the store, Officer Brown directed Howard, a store employee, to lift his shirt to show his waistband. While Howard held his shirt, Officer Brown punched him in the face and then grabbed Howard by the neck, holding him against a large refrigerator. At Officer Brown's direction, Howard removed a small bag of marijuana from his back pocket and gave it to Officer Brown. Without provocation, Officer Brown punched Howard in the ribs and pulled him down an aisle toward the back of the store where he forced him to lie on the floor on his back. When Howard tried to sit up, Officer Brown hit him in the face again and forced him back to the ground on his stomach. Officer Brown then handcuffed Howard, searched his back pocket, and found a handgun. Officer Brown seized the handgun, walked to the front of the store to show it to Officer Stacker, and then returned to kick Howard in the ribs before arresting him. Surveillance cameras inside the store captured the incident.

The government charged Officer Brown with, among other things, depriving another of a federal right under color of law under *18 U.S.C. § 242*. Specifically, the § 242 count alleged that Officer Brown used excessive force against Howard, depriving him of his right to be free from unreasonable seizure.

At trial, Officer Brown planned to call a former Chicago police officer as an expert witness who would describe how the Chicago Police Department's "Use of Force Model" applied to Officer Brown's confrontation with Howard. The expert witness also planned to offer his conclusions that Officer Brown's actions were consistent with departmental policy and that his response was appropriate under the circumstances.

The government filed a motion to exclude this expert witness testimony, which the district court granted.

The jury convicted Officer Brown of willfully violating Howard's Fourth Amendment right to be free from excessive force. Officer Brown appealed, arguing that the district court improperly excluded his expert witness.

The court of appeals disagreed. First, the Fourth Amendment requires that seizures of persons be reasonable. As a result, it is a violation of the Fourth Amendment for police officers to use excessive force to effect an arrest. When an officer is accused of using excessive force, the issue that a court must determine is whether the officer's conduct was objectively reasonable under the circumstances.

Second, the issue of whether an officer used excessive force is governed by constitutional principles, not police-department policy. An officer's compliance with or deviation from departmental policy does not determine whether the officer used excessive force. Police department policies are not the same across the country. The court reasoned that if compliance with departmental policy were the standard, the Fourth Amendment's reasonableness requirement would vary from place to place and the police department would have the final say as to what constituted a reasonable seizure, "a prospect that would have horrified those responsible for the Amendment's ratification."

Third, the court noted that expert testimony concerning police policy is not categorically barred. Specifically, the court found that evidence of police policy or procedure in some cases might be

relevant to determine whether an officer's actions were objectively reasonable. Even though jurors can understand the concept of objective reasonableness, in some cases they may not fully grasp particular techniques or equipment used by police officers. In those cases, the court reasoned that expert testimony of this type may be relevant where specialized knowledge of law enforcement custom or training would assist the jury in understanding the facts, or resolving a contested issue.

Fourth, the court held that this case provided a "textbook example of easily comprehensible facts." Officer Brown was indicted for punching and kicking Howard. Officer Brown did not use a sophisticated tool or technique. He hit a motionless man in the face with his fist and continued to beat and kick him before placing him under arrest. The court concluded that an expert witness' explanation of the Chicago Police Department's Use of Force Model would have added nothing that the jurors could not ascertain on their own by viewing the surveillance video and applying their everyday common sense. Consequently, the court held that the district court properly excluded the expert witness' testimony about departmental use of force standards.

For the court's opinion: <https://cases.justia.com/federal/appellate-courts/ca7/16-1603/16-1603-2017-09-08.pdf?ts=1504899066>

United States v. Ford, 2017 U.S. App. LEXIS 18200 (7th Cir. Ill. Sept. 20, 2017)

A police officer with the Moline, Illinois Police Department saw a car with three male occupants enter Moline from Rock Island, Illinois around 2:00 a.m. on December 4, 2015. The officer ran the license plate after all three occupants looked away as they passed his marked car. The license plate check revealed that the vehicle was registered to Tyler Mincks. The officer recalled Mincks' name from an officer safety advisory that the Rock Island Police Department had emailed to the Moline Police Department on December 3. The advisory stated that a few days earlier, Bryan Brinker shot Cameron Hoefle after Hoefle had stolen marijuana from Brinker. The advisory noted that Hoefle did not cooperate with the Rock Island investigators, and neither did his friends Tyler Mincks and Michael Ford. Instead, the three men told the investigators they would "deal with the situation themselves." Consequently, the Rock Island Police Department sent the officer safety advisory to the Moline Police Department warning that Hoefle, Mincks, and Ford might go to Brinker's residence to retaliate.

The officer followed the car and conducted a stop when he observed a traffic violation. Mincks, Hoefle, and Ford were the occupants of the vehicle. After the officer removed an open beer bottle from the floor where Ford was sitting, he obtained identification from the men. A computer check revealed that Mincks, Hoefle, and Ford had extensive criminal histories as well as "alerts for gang activity, weapons, and drugs." The officer directed the men out of the car and frisked them. When the officer frisked Ford, he felt an object he recognized as a cell phone and an unknown object that felt like a handle. Because the feel of a handle "could be indicative of a firearm," the officer testified that he "scrunched" Ford's pocket two or three times before he "reached in and retrieved" a small pistol.

The government charged Ford with possession of a firearm by a convicted felon.

Ford filed a motion to suppress the firearm, arguing that the officer did not have reasonable suspicion to frisk him.

A police officer conducting a stop may frisk a suspect for weapons if the officer has an objectively reasonable suspicion that the suspect might be armed and dangerous. In this case, the court held that the officer had reasonable suspicion to believe Ford was armed and dangerous; therefore, the frisk was lawful. First, the officer had been warned via email that Ford and his companions might seek retaliation for the shooting of Hoefle two days earlier. Recent shootings, reports of discharged weapons, and indications of recent gang activity are factors that officers can use to support a finding of reasonable suspicion. Second, Ford and his companions likely had been drinking, as evidenced by the beer bottles found in the car. The court found that the consumption of alcohol gave the officer greater reason to be concerned that the men might be “unpredictable, unwise, and dangerous.” Finally, the officer knew that Ford, Mincks, and Hoefle had extensive criminal histories.

Ford also argued that the officer exceeded the scope of the frisk by “scrunching” his pocket several times before removing the pistol. Ford claimed that it was unlawful for the officer to continue manipulating the object when its incriminating nature was not immediately apparent.

The court disagreed. The “immediately apparent” restriction does not apply until the officer determines that the object in question is not a weapon. When an officer feels a small, hard object during a frisk, he may have reasonable suspicion to believe the object is a weapon. In this case, the officer never concluded that the unknown object in Ford’s pocket was not a weapon. Consequently, the court held that when the officer felt the “handle-like” object in Ford’s pocket it was reasonable for him to believe the object was a weapon.

For the court’s opinion: <https://cases.justia.com/federal/appellate-courts/ca7/16-3732/16-3732-2017-09-20.pdf?ts=1505937670>

United States v. Jones, 2017 U.S. App. LEXIS 18204 (7th Cir. Ill. Sept. 20, 2017)

Based on information provided by a confidential informant (CI), the government suspected that Jones was the leader of a drug-distribution operation. After federal agents arrested one of Jones’ drug dealers, Jones engaged in an effort to locate and kill the CI. To achieve this goal, Jones went to an apartment building and fired a gun through a door to the apartment where he believed the (CI) lived. However, instead of shooting the CI, who lived in the same building, but in the unit on the floor below, Jones shot Kensha Barlow.

A few days later, Barlow went to the local police station where Detective Taylor assembled a photo arrays based on information he received from the federal agents investigating Jones. Although Jones’ photograph appeared in the array, Barlow denied recognizing anyone in the array as the person who shot him.

Two months later, Barlow was arrested on unrelated drug charges. While being interviewed by Special Agent Labno, Barlow mentioned that the person who shot him had been depicted in the photo array assembled by Detective Taylor. Barlow said that he denied any recognition of the shooter because he feared for his safety. At that point, Agent Labno left and printed large-scale pictures of the six individuals from Detective Taylor’s photo array, intending to display the photos for Barlow in the same order as the previous array.

When Agent Labno re-entered the interview room, he held the six photos in the same order as the previous array, however, the top three photos, which included Jones’ photo, were more

prominently displayed than the other photos in the stack. Before Agent Labno could put the photos on the table, Barlow identified the person that shot him as the person depicted in Jones' photo. Agent Barlow then placed the photos on the table in the same order as the previous array, as he initially planned to do, and Barlow identified Jones again.

The government subsequently charged Jones with a variety of criminal offenses. Prior to trial, Jones filed a motion to suppress Barlow's identification of him on several grounds. The district court denied his motion and after he was convicted, Jones appealed.

First, Jones claimed that the identification procedure was unduly suggestive because Agent Labno showed Barlow the same arrest photo of Jones that was contained in the array first administered by Detective Taylor.

The court disagreed. The court found that "there is nothing per se impermissible about placing the same suspect in two different identification procedures," as the "danger to be avoided in identification procedures is that . . . of orchestrating the procedure so that the procedure implicitly suggests to the witness that 'this is the man.'" Here, the agent showed Barlow the same arrest photo of Jones as well as the same arrest photos of the five other individuals. Given that the six photos were the same in both identification procedures, the court concluded that the use of the same arrest photo did not implicitly suggested that Jones was the shooter.

Second, Jones claimed that when Agent Labno entered the room where Barlow was waiting, it was unduly suggestive to have his photo more prominently displayed than the other photos.

Again, the court disagreed. When Agent Labno walked into the room, Jones' photo was one of three photos that was more prominently displayed than the others were. However, the court found that Jones' photo was no more prominently displayed than the other two photos. In addition, Jones' photo, like the other two, was previously viewed at the initial identification procedure.

Finally, Jones argued that the identification procedure was unduly suggestive because two months elapsed between the first identification procedure and the second identification procedure.

The court noted that in a previous case it held that a two-month period between identification procedures did not make the second identification procedure unduly suggestive; therefore, the second identification procedure in this case was not unduly suggestive.

For the court's opinion: <https://cases.justia.com/federal/appellate-courts/ca7/16-2208/16-2208-2017-09-20.pdf?ts=1505939447>

Ninth Circuit

Sharp v. Cty. of Orange, 2017 U.S. App. LEXIS 18148 (9th Cir. Cal. Sept. 19, 2017)

Merritt Sharp III (Sharp III) and his wife were home when police officers arrived to execute an arrest warrant for their son, Merritt Sharp IV (Sharp IV), whom the officers believed lived with his parents. The officers mistakenly arrested Sharp III instead of his son. During the course of the arrest officers forcefully restrained Sharp III and searched him. After the officers discovered their mistake, the officers kept Sharp III handcuffed and locked in a patrol car for approximately twenty minutes while they continued to search the house for Sharp IV. Sharp III was furious and adamantly protested his detention, loudly swearing at the officers and threatening to sue them. In

response, one of the officers told Sharp III, “If you weren’t being so argumentative, I’d probably just put you on the curb.”

Sharp III subsequently sued the officers under 42 U.S.C. § 1983. Sharp III alleged several Fourth Amendment violations based on the seizure of his person to include the initial mistaken arrest, the continuing detention in the patrol car, and the use of excessive force against him. Sharp III also alleged Fourth Amendment violations based on the search of his person and his house. In addition, Sharp III brought a First Amendment retaliation claim based on the officers’ refusal to release him on account of his “argumentative” demeanor.

The court held that the officers were entitled to qualified immunity on Sharp III’s Fourth Amendment claims. Although the court found that much of the officer’s conduct was unconstitutional, their actions were not prohibited by clearly established case law.

However, the court held that the officers were not entitled to qualified immunity on Sharp III’s First Amendment retaliation claim. The officer told Sharp III, “If you weren’t being so argumentative, I’d probably just put you on the curb.” The court concluded that this statement constituted unconstitutional retaliation because the officer was essentially telling Sharp III, “If you weren’t [exercising your First Amendment rights], I’d probably [change the current conditions of your detention].” The court added that at the time of the incident Ninth Circuit Court of Appeals case law clearly established that this type of conduct was unconstitutional.

For the court’s opinion: <https://cases.justia.com/federal/appellate-courts/ca9/15-56146/15-56146-2017-09-19.pdf?ts=1505840584>

Eleventh Circuit

United States v. Williams, 2017 U.S. App. LEXIS 18202 (11th Cir. Ala. Sept. 20, 2017)

The government charged Williams and 24 other individuals with a variety of criminal offenses including conspiracy to distribute controlled substances, and a warrant was issued for Williams’ arrest. The agents confirmed that Williams’ residence consisted of a single-family, ranch-style house, with an outbuilding approximately twenty feet away in the back yard. The outbuilding resembled a guesthouse or mother-in-law-suite as it had a front and back door, several windows, and a garage door. During a pre-arrest operational meeting, the agents did not know whether Williams lived in the main house or the outbuilding. As a result, the agents planned to make simultaneous entries of both buildings. When agents performed a drive-by of Williams’ residence, they saw Williams’ car and two other vehicles parked in the driveway. Based on this observation the agents believed that Williams was possibly inside the residence with multiple other subjects.

The agents arrived at Williams’ residence at approximately 6:00 a.m. and entered the main house and the outbuilding. One team of agents arrested Williams in the main house while a second team of agents entered the outbuilding. Inside the outbuilding the agents saw a white powdery residue and razor blades on a table, and a drug press sitting in the corner of the room. After the agents cleared the main house and outbuilding they obtained a warrant to search those areas based on their observations from the initial entry. During the search pursuant to the warrant, the agents seized cocaine, heroin, drug paraphernalia, and weapons.

Williams argued that the agents unlawfully entered the outbuilding because it was unreasonable to believe that he lived there or would be inside it. As a result, Williams claimed that the items the agents saw in the outbuilding could not provide a basis to obtain the search warrant.

The court disagreed. The court concluded that it was reasonable for the agents to enter the main house and the outbuilding pursuant to the arrest warrant. First, the agents confirmed that Williams owned the property through a public records check and had seen Williams on the property during previous surveillance. Second, it was reasonable for the agents to believe Williams was present when they executed the warrant as the agents confirmed that Williams' car was in the driveway and the arrest occurred in the early morning. Finally, both buildings were possible living spaces, which made it reasonable for the agents to believe that Williams might be living or present in either structure.

Alternatively, the court held that the agents' entry into the outbuilding qualified as a valid protective sweep.

To ensure their safety during an arrest, officers may conduct a protective sweep by searching areas immediately adjoining the place of arrest where a person might be found. However, to search areas beyond those adjoining the place of arrest, officers must have reasonable suspicion that the area to be swept contains an individual posing a danger to those on the arrest scene. In this case, the court concluded that the close proximity of the outbuilding to the main house, the belief that drug distribution activities were occurring on the property, and the fact that there were three cars parked in the driveway suggested there might be other people besides Williams on the premises who could pose a threat to the agents' safety. As a result, once the agents lawfully swept the outbuilding, any evidence observed in plain view could be used to obtain a search warrant.

Williams also argued that evidence found in the outbuilding should have been suppressed because the agents executed the arrest warrant at approximately 6:00 a.m., which rendered the warrant invalid.

The court disagreed. The court noted that the Fourth Amendment does not contain any time limitations on reasonable searches and seizures. However, Federal Rule of Criminal Procedure 41 provides that warrants are to be executed "during the daytime," unless the issuing judge for good cause shown expressly authorizes another time. Daytime is defined as "the hours between 6:00 a.m. and 10:00 p.m. local time." Assuming for the sake of argument that agents entered Williams' residence a minute or two before 6:00 a.m., the court held that suppression of evidence was not proper because there was no evidence that the agents did so deliberately or that Williams' arrest would not have otherwise occurred.

For the court's opinion: <https://cases.justia.com/federal/appellate-courts/ca11/16-16444/16-16444-2017-09-20.pdf?ts=1505939508>
