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The Federal Law Enforcement -Informer-

A MONTHLY LEGAL RESOURCE AND COMMENTARY FOR LAW ENFORCEMENT OFFICERS AND AGENTS

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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CASE SUMMARIES

Circuit Courts of Appeal

First Circuit

Begin v. Drouin, 2018 U.S. App. LEXIS 32448 (1st Cir. ME Nov. 16, 2018)

Jason Begin was on supervised release from a psychiatric hospital when hospital officials determined that he needed to be recommitted to the facility. Anticipating that Begin would be upset by this decision, a hospital official requested that a police officer be present when Begin was informed of the decision to recommit. Further, the office was asked to transport Begin to the facility upon being recommitted.

When Officer Drouin arrived, hospital officials told her that Begin might become uncooperative and that he had some history of violence. At the time, Begin weighed 265 pounds. and Officer Drouin was armed with her service gun, an electronic control device, an expandable baton, and pepper spray.

After Begin was told that he was going to be recommitted, he said that he was not going back to the hospital. As officer Drouin approached Begin, he stood up, reached into his pocket with his right hand, pulled out a black folding knife, and repeatedly slashed his left arm. Begin did not say anything during this time and as Begin continued to slash his arm, Officer Drouin shot Begin three times. After Begin fell to the floor, Officer Drouin handcuffed him and called for an ambulance. Approximately four to six seconds passed from the time Officer Drouin first saw Begin to the time she shot him.

Begin sued Officer Drouin under 42 U.S.C. § 1983, claiming that she used excessive force against him in violation of the Fourth Amendment. Officer Begin filed a motion for summary judgment based upon qualified immunity.

The court found that to determine whether an objectively reasonable police officer in Officer Drouin's position could have thought it lawful to shoot Begin, it was critical to know the exact number and location of each hospital employee relative to Begin at the moment Officer Drouin fired. However, the court noted that neither Begin nor Officer Drouin provided a diagram or described with any detail the exact location of hospital staff members at the time of the shooting. Although it was undisputed that Officer Begin was within twenty feet of Begin when she shot him, and that no one was between Officer Drouin and Begin when Begin raised the knife, the court was not able to determine the threat Begin posed to others who were nearby. Without this information, the court was left with the fact that Officer Drouin knew that Begin was intent on harming himself, that he did not threaten to harm anyone else, and that Begin did not receive any warning or order from Officer Drouin to drop the knife before she shot him. Based on these facts, the court held that a reasonable jury could find that find that Officer Drouin violated the Fourth Amendment by shooting Begin. The court concluded by adding that its opinion did not mean that Office Drouin "did anything wrong," but that the evidence in the record could support a verdict for Begin.

For the court's opinion: https://cases.justia.com/federal/appellate-courts/ca1/17-1451/17-1451-2018-11-16.pdf?ts=1542387605

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United States v. Davis, 2018 U.S. App. LEXIS 32799 (1st Cir. NH Nov. 20, 2018)

Police officers arrested Davis for driving under the influence of alcohol and/or marijuana. At the time of his arrest, Davis was driving his fiancée's car, which he had parked perpendicularly across a designated handicap parking spot. Pursuant to department guidelines, officers contacted a tow truck to remove the vehicle. While waiting for the tow truck, an officer conducted an inventory search of the vehicle as required by department policy. After finishing the inventory, the officer reached into the vehicle to place the keys in the ignition for retrieval by the tow truck operator. While doing so, the officer for the first time saw a handgun located between the driver's seat and the center console. The officer removed the weapon from the vehicle out of concern for public safety and out of reluctance to leave an item of value in the vehicle.

The government charged Davis with being a felon in possession of a firearm.

Davis filed a motion to suppress the handgun, arguing that the decision to impound the vehicle violated the Fourth Amendment.

Vehicle impoundments are governed by the "community caretaking exception" to the Fourth Amendment's warrant requirement. The community caretaking exception recognizes that police officers perform many community functions apart from investigating crime, such as "removing vehicles that impede traffic or threaten public safety and convenience." As such, courts have held that warrantless vehicle impoundments are reasonable when police officers are acting as community caretakers and not as criminal investigators.

In this case, the court held that the officers' decision to impound Davis' vehicle was reasonable under the community caretaking exception. First, the officers reasonably believed that the vehicle could pose a potential safety hazard to as it was parked perpendicularly across a handicap parking spot. Second, there was no other driver present to move the vehicle for Davis.

Davis further argued that the handgun should have been suppressed because it was discovered and seized after the officer finished the inventory search.

Again, the court disagreed. After conducting the inventory, the officer re-entered the vehicle to facilitate the towing. The officer then seized the handgun to protect public safety and to safeguard Davis' property. The court held that the officer's entry into the vehicle and seizure of the handgun for non-investigative purposes were also reasonable under the community caretaking exception.

For the court's opinion: https://cases.justia.com/federal/appellate-courts/ca1/17-1692/17-1692-2018-11-20.pdf?ts=1542740405

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Third Circuit

United States v. Hester, 2018 U.S. App. LEXIS 34029 (3d Cir. NJ Nov. 30, 2018)

At approximately 11:40 p.m., Hiddayah Muse parked a car in front of a corner store in Newark, New Jersey. Muse left the car idling while she entered the store with Michael Hester waiting in

the front passenger seat. In the meantime, four officers in two police cars, one marked and one unmarked, noticed that the idling vehicle was illegally parked. In addition, one of the officers had made multiple drug arrests at the store and another officer knew that the store had been the subject of several drug investigations.

As soon as Muse exited the store and re-entered the vehicle, the marked police car pulled up along the driver's side of the car and the unmarked car pulled up behind it. The officers exited their cruisers and approached both sides of Muse's vehicle on foot. When an officer questioned Muse, she admitted that she did not have a driver's license. At that point, the officer directed Muse to turn off the engine and step out of the car. Hester, who had remained in the passenger seat, offered to drive and then began to rise and exit the vehicle. As he did so, one of the officers saw Hester drop a handgun to the floor of the car. After the officer alerted the others to the presence of the weapon, Hester attempted to run away but was quickly apprehended.

The government charged Hester with being a felon in possession of a firearm.

Hester filed a motion to suppress the handgun. Hester argued that by the time the officers discovered the handgun, they had already seized him in violation of the Fourth Amendment.

As an initial matter, the court had to determine at what point during the encounter the officers seized Hester. A person is seized under the Fourth Amendment when he submits to a police officer's show of authority. The court held that the officers' conduct in positioning their patrol cars next to and behind Muse's vehicle and then approaching Muse's vehicle on foot constituted "a show of authority." Next, the court held that Hester indeed submitted to the officers' show of authority, and was therefore seized under the Fourth Amendment while he waited in the vehicle with Muse prior to and during questioning, before he attempted to flee.

The court then held that when the officers seized Hester they had reasonable suspicion criminal activity was afoot. First, the officers saw a vehicle illegally parked near a crosswalk. Second, the vehicle was parked in front of a store with a known history of drug-related activity, close to midnight in a high-crime area. Based on these facts, the court concluded that the officers had reasonable suspicion to detain the vehicle and its occupants before the officers seized the handgun from the vehicle.

For the court's opinion: https://cases.justia.com/federal/appellate-courts/ca3/16-3570/16-3570-2018-11-30.pdf?ts=1543600807

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Fourth Circuit

United States v. Terry, 2018 U.S. App. LEXIS 33617 (4th Cir. W. VA. Nov. 30, 2018)

A narcotics task force suspected that Brian Terry was involved in trafficking drugs. While conducting surveillance, officers saw Terry driving a Kia Optima and placed a GPS tracking device on the vehicle without first obtaining a warrant to do so. Later that day, an officer obtained a warrant to place the GPS tracker on the Kia, the same car on which the officers had placed the GPS tracker. The officer did not inform the issuing magistrate that officers had already placed the GPS tracker on the vehicle.

Two days later, the officers relied solely on the GPS data to track the Kia to Columbus, Ohio, where the task force suspected Terry had gone to obtain drugs. After the vehicle returned to West

Virginia, officers stopped the Kia for traveling five miles per hour over the posted speed limit. During the stop, an officer frisked Terry and found methamphetamine and a small amount of marijuana on Terry's person.

The government charged Terry with possession with intent to distribute methamphetamine.

Terry filed a motion to suppress the methamphetamine, arguing that the placement of the GPS tracker without a warrant violated the Fourth Amendment. The government argued that even if the placement of the GPS tracker was unlawful, the lawful traffic stop for speeding, two days later, purged the taint of the warrantless GPS installation.

The court disagreed. First, the court held that only two days passed between the unlawful placement of the GPS tracker and the discovery of the evidence, which was an insubstantial amount of time. Second, the officers stopped the Kia for speeding, a very minor infraction. Third, and most importantly, the court held that the officers' misconduct in this case constituted a flagrant disregard for the well-established warrant requirement set forth by the Supreme Court in United States v. Jones. To support this position, the court noted at the suppression hearing, the officer who placed the GPS tracker on the Kia testified that he knew a warrant was required to place the GPS tracking device on the vehicle. The officer further testified that task force officers had affixed GPS trackers to cars without first obtaining a warrant in other cases. The court added that the exclusionary rule exists to deter this type of official misconduct by police officers.

For the court's opinion: https://cases.justia.com/federal/appellate-courts/ca4/17-4799/17-4799-2018-11-30.pdf?ts=1543608038

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Seventh Circuit

United States v. Correa, 2018 U.S. App. LEXIS 31204 (7th Cir. Il Nov. 5, 2018)

Federal agents conducted a traffic stop and arrested Jason Correa after they found cocaine in his car. Inside Correa's car, the agents also discovered four garage door openers, three sets of keys, and four cell phones. The agents drove around the neighborhood testing the openers on multiple buildings. Eventually, a garage door opened for a multi-story condominium building. The agents did not enter the garage, but instead, they used one of the keys seized from Correa's car to enter the locked lobby of the building. Inside the lobby, the agents tested a mailbox key from the same key ring on various mailboxes and found a key that fit the mailbox for Unit 702. The agents then contacted another agent who obtained Correa's consent to search Unit 702. The agents entered Unit 702 and seized a large quantity of illegal drugs, a firearm, and equipment for weighing and packaging drugs. After a neighbor told the agents that Saul Melero, one of the residents of Unit 702 was standing outside, the agents arrested him.

The government charged Correa and Melero with drug and firearm offenses.

The defendants filed a motion to suppress the evidence seized during the traffic stop and from Unit 702. After the district court denied their motion, the defendants appealed to the Seventh Circuit Court of Appeals.

First, the court held that the agents lawfully stopped Correa for a traffic violation, obtained voluntary consent so search, and lawfully seized the evidence from Correa's car, to include the garage door openers and keys.

Second, the court held that the agent's use of the opener to locate the garage which it opened was not a Fourth Amendment search of the garage. The court reasoned that neither defendant had an exclusive property interest in the garage, as it was a shared common area. In addition, even if the agents had committed a trespass by using the opener, the trespass would have been against the building's owner, not against the defendants, who were individual tenants. Finally, the court held that neither defendant had a reasonable expectation of privacy in the shared parking garage.

Third, the court held that pushing the button on the garage door opener was a search of the opener itself under the Fourth Amendment. The court also held that the search was reasonable because it only identified the location of the defendants' building and did not disclose any private information about the interior or the contents of the garage.

Fourth, the court held that using the keys to enter the locked building lobby and testing the mailbox key were searches under the Fourth Amendment. Again, the court held that these searches were reasonable because the defendants had no reasonable expectation of privacy in lobby as it was a common area and that the defendants had no right to exclude anyone from this area.

Finally, the court held Correa had apparent authority to consent to the search. When the agent asked Correa for consent Unit 702, they knew he had possessed the garage door opener as well as keys to the lobby door and mailbox for the unit. Based on these facts, the court concluded that the officers could reasonably believe that Correa had authority to consent.

For the court's opinion: https://cases.justia.com/federal/appellate-courts/ca7/16-2316/16-2316-2018-11-05.pdf?ts=1541435443

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United States v. Brixen, 2018 U.S. App. LEXIS 31512 (7th Cir. WI Nov. 7, 2018)

A police officer posed as a fourteen-year-old female on a smartphone application called "Whisper" under the user name "Bored_4_teen_f." The officer contacted another user who represented himself as a 31-year-old male, later identified as Edmund Brixen, and the two agreed to go shopping for "underwear and bras." To facilitate this meeting, Brixen disclosed his telephone number, two photos of himself, and his Snapchat name, "Snappyschrader." Using Snapchat, Brixen arranged to meet "Bored_4_teen_f" at a local supermarket.

When Brixen arrived, officers arrested him and seized his cell phone, which was powered on at the time. After being read his Miranda rights, Brixen agreed to speak with the officers. Brixen told the officers he was at the store to purchase groceries and denied he intended to meet anyone. To illustrate that the officers knew why Brixen was there and to show Brixen that he had been interacting with a police officer, the officer used his police cell phone to send a Snapchat message to "Snappyschrader." Brixen watched as his cell phone, which was held up by the officer, received a Snapchat notification indicating that he had received a message from "Bored_4_teen_f." After witnessing the notification, Brixen admitted that he intended to meet a fourteen-year-old female to take her shopping for "undergarments."

Brixen was released from custody the next day and a short time later, the officer obtained a warrant to search Brixen's cell phone. The search revealed child pornography and evidence that Brixen transported a minor across state lines to engage in criminal sexual activity. The government charged Brixen with several criminal violations.

Brixen argued that the officer's sending the Snapchat message and then viewing the notification on his phone constituted an unlawful search of his phone under Riley v. California. In Riley, the Supreme Court held that before searching a cell phone seized incident to an arrest, law enforcement officers must generally obtain a warrant. The court noted that Riley and subsequent cases involving searches of cell phones incident to arrest involved law enforcement officers affirmatively accessing the content within cell phones to obtain evidence against the arrestees.

In this case, the court held that the officer's actions did not amount to a search of Brixen's cell phone under Riley. The officer did not open or otherwise manipulate Brixens' phone, nor did he gain access to any of the phone's content or attempt to retrieve any information from within the phone. The court further held that once the officer lawfully seized Brixen's phone incident to arrest that Brixen had no reasonable expectation of privacy in a conspicuous notification that appeared on his phone.

For the court's opinion: https://cases.justia.com/federal/appellate-courts/ca7/18-1636/18-1636-2018-11-07.pdf?ts=1541617216

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Strand v. Minchuk, 2018 U.S. App. LEXIS 31689 (7th Cir. IN Nov. 8, 2018)

Craig Strand, a commercial truck driver, stopped in Indiana to take a mandatory drug screening test. Unable to find a parking at the drug-testing facility, Strand obtained permission to park his rig outside a nearby Planned Parenthood office.

Curtis Minchuk, a local police officer, was working security the same day. Minchuk was wearing his police uniform and was working with authorization from his department. When Minchuk reported to work, he saw Strand's truck parked in the lot and wrote two parking tickets, which he left on the truck's windshield.

When he returned to his truck, Strand saw the parking tickets and was directed by a Planned Parenthood employee to discuss them with Officer Minchuk. The two men engaged in a verbal altercation concerning the tickets, which turned into a physical altercation, with both men falling to the ground. During the fight, Strand punched Officer Minchuk at least three times in the face and placed his hands on Officer Minchuk's throat. The fight ceased when Strand stood up, backed four to six feet away from Officer Minchuk, put his hands up and said, "I surrender. Do whatever you think you need to do. I surrender. I'm done." While on the ground, Officer Minchuk fired a single shot at Strand, striking him in the abdomen. Strand was later convicted in Indiana state court of committing felony battery of a police officer.

Strand sued Officer Minchuk under 42 U.S.C. § 1983 for using excessive use of force against him in violation of the Fourth Amendment.

Officer Minchuk filed a motion for summary judgment based upon qualified immunity. Officer Minchuk argued that he reasonably believed Strand was not subdued, and therefore continued to present a danger, when he shot Strand.

The court held that Officer Minchuk was not entitled to qualified immunity. The court found that it was undisputed that Officer Minchuk shot Strand after Strand stopped fighting, stood up, stepped four to six feet away from Officer Minchuk, raised his hands and stated: "I surrender, I'm done." The court added that it was also undisputed that Strand was not armed and that after

backing away, Strand never threatened Officer Minchuk or did anything to suggest that he might resume fighting or reach for a weapon.

The court concluded that a reasonable jury could find that Officer Minchuk violated Strand's constitutional right to be free from excessive use of force because Strand no longer posed an immediate danger to Officer Minchuk at the time he fired the shot. The court noted that additional facts needed to be developed a trial to determine whether the "rapidly evolving nature of the altercation" justified Officer Minchuk's use of deadly force or whether "he had time to recalibrate the degree of force necessary, in light of Strand's statement of surrender."

For the court's opinion: https://cases.justia.com/federal/appellate-courts/ca7/18-1514/18-1514-2018-11-08.pdf?ts=1541705473

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Eighth Circuit

United States v. Coleman, 2018 U.S. App. LEXIS 33199 (8th Cir. AR Nov. 27, 2018)

Police officers were dispatched to Coleman's home for a domestic dispute. When they arrived, the officers spoke to Ashlee Phillips, who lived in the home with Coleman. Phillips told the officers that Coleman had punched her in the mouth and that he had a gun. The officers entered the house with Phillips' consent and confronted Coleman in the kitchen. Coleman objected to the officers' presence in his house and then ran down the stairs to the basement. After an officer ordered him to stop, Coleman walked back up the stairs toward the officer. When the officer attempted to arrest Coleman, a struggle ensued and the officer deployed his taser against Coleman, who fell down the stairs. The officer secured Coleman at the bottom of the stairs and seized a large bag containing a white substance which he suspected to be cocaine and cash from Coleman's The office also seized several small baggies on the stairwell, as well as a handgun and more suspected cocaine in a nearby loveseat.

After Coleman was removed from the house, the officers conducted a protective sweep of the basement. The officers discovered a door, which they opened using Coleman's key, provided by Phillips. The officers saw a bag of marijuana in plain view on a bed, which they did not disturb. The officers stopped their search, secured the house, and obtained a warrant to search Coleman's house. Pursuant to the warrant, the officers searched Coleman's house and seized additional drugs, numerous cell phones, and a rifle. The officers also searched Coleman's car, which was located in the driveway, after a drug-sniffing dog alerted for the presence of narcotics in the vehicle. The officers searched the car and seized additional drugs and a firearm.

The government charged Coleman with a variety of drug and firearm offenses.

Coleman filed a motion to suppress the evidence seized from his house and from his car under several legal theories.

First, the court held that the officers' initial entry into Coleman's house was lawful because the officers entered with Phillips' consent. Even though Coleman objected to the officers' presence in his house when he encountered them, this objection did not invalidate the officers' lawful entry.

Second, the court held that the officers' protective sweep, to include entry into the locked room, was reasonable. The court noted that Coleman was in the basement prior to his arrest and the

locked room was connected to the area in which the officers arrested him. In addition, the officers knew that other people lived in the house, one firearm had been found, and officers needed to investigate the large amount of drugs discovered on the basement floor and nearby loveseat. Based on these facts, the court concluded that the officers had a reasonable belief that the basement and locked room could harbor a person posing a danger to the officers in the house.

Third, even though the search warrant did not specifically mention cell phones as items to be seized, the court held that cell phones were within the class of "instrumentalities of criminal activity" the warrant specifically described. As a result, the court held that officers lawfully seized Coleman's cell phones.

Finally, the court held that the search of Coleman's car was lawful because the car was located in the driveway and the warrant authorized the officers to search "the premises and curtilage area." The court found that this allowed the officers to either search the vehicle parked in the curtilage, or to have a drug dog sniff the vehicle's exterior to confirm there was probable cause to search the vehicle for drugs.

For the court's opinion: https://cases.justia.com/federal/appellate-courts/ca8/17-2644/17-2644-2018-11-27.pdf?ts=1543336224

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United States v. Reddick, 2018 U.S. App. LEXIS 33597 (8th Cir. AR Nov. 30, 2018)

Police officers responded to a domestic incident involving a vehicle. After the suspect fled on foot, Officer Dannar was left at the crime scene to secure the vehicle. During this time, a crowd of onlookers gathered around the vehicle. While Officer Dannar directed the onlookers to stay back, a man, later identified as Reddick, approached the vehicle several times. Officer Dannar repeatedly told Reddick to stop and that "If you're coming after the car, you're not going to get it." Officer Dannar testified that he made this comment to Reddick because he knew that persons with no legitimate ownership interest in a vehicle abandoned during an incident with police will often falsely claim ownership of the abandoned vehicle. Reddick responded by gesturing with his arms toward Officer Danner without removing his hand from his large, bulky coat pockets.

A short time later, Sgt. St. Laurent arrived to assist Officer Dannar. Officer Dannar told Sgt. St. Laurent about Reddick. Sgt. St. Laurent approached Reddick, asked him what he was doing and why he would not leave. During this time, Sgt. St. Laurent repeatedly asked Reddick to remove his hands from his pockets. While Reddick would briefly comply and remove his hands, he kept placing them back in his pockets. Sgt. St. Laurent was concerned that Reddick might be armed because in his experience, individuals carrying weapons will frequently touch it to assure themselves that it is still there. As a result, Sgt. St. Laurent frisked Reddick and found a revolver in his coat pocket.

The government charged Reddick with being a felon in possession of a firearm. Reddick filed a motion to suppress claiming that Sgt. St. Laurent lacked reasonable suspicion to conduct a Terry stop and the subsequent Terry frisk.

The court disagreed. First, the court noted that Reddick repeatedly attempted to access the crime scene after Officer Dannar told him to stop. In addition, Officer Dannar's experience with individuals attempting to illegally obtain possession of abandoned vehicles during a police investigation made him concerned about Reddick's "direct approach" to the vehicle. Finally,

Reddick gestured with his arms toward the officer while keeping his hands in his pockets. The court held that the combination of these facts established reasonable suspicion to believe that Reddick was involved in criminal activity, which justified a Terry stop.

Next the court held that Sgt. St. Laurent established reasonable suspicion that Reddick was presently armed and dangerous; therefore, Sgt. St. Laurent was justified in conducting a Terry frisk. Reddick repeatedly placed his hand in his coat pockets in disregard of Sgt. St. Laurent's requests to keep his hands out of his pockets and in a manner consistent with someone who was in possession of a weapon.

For the court's opinion: https://cases.justia.com/federal/appellate-courts/ca8/17-2741/17-2741-2018-11-30.pdf?ts=1543595421

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Tenth Circuit

United States v. Shrum, 2018 U.S. App. LEXIS 32343 (10th Cir. KS Nov. 15, 2018)

Walt Shrum called 911 in the early morning hours to report that his wife, Candice, was not breathing and that she may have overdosed on prescription medication. After Shrum's wife died later that morning at the hospital, Officer Cooke was assigned to investigate her death. Officer Cooke had been informed that Candice's death was not considered to be suspicious.

Officer Cooke met Shrum at the police station where he told Shrum that he needed to retrieve Candice's medication prior to her autopsy. At approximately 9:30 a.m., Officer Cooke and Shrum arrived at Shrum's house, which had been secured by other officers. After Officer Cooke refused to allow Shrum to enter the house, Shrum signed a consent-to-search form which authorized Officer Cooke to enter the house to "retrieve medication." Afterward, Officer Cooke entered Shrum's house, obtained Candice's medication and took photographs of the kitchen and bedroom.

Officer Cook returned to the police station at approximately 11:00 a.m. where he noticed one of the photographs depicted ammunition in plain view in the bedroom closet and learned that Shrum was a convicted felon. Officer Cook then met with federal agents who obtained a warrant to search Shrum's house at 10:00 p.m.. The officers executed the warrant at 11:18 p.m. and seized ammunition, two firearms, and methamphetamine from Strum's house, to which the officers had continued to deny Strum access.

The government subsequently charged Strum with drug and firearm offenses.

Strum filed a motion to suppress the evidence seized from his house. Strum argued that the officers unlawfully seized his home immediately after Candice's death, which tainted his subsequent consent to search the house for Candice's medication. It was during this alleged unlawful entry into the house that Officer Cooke saw the ammunition which established probable cause to obtain the search warrant.

A Fourth Amendment seizure occurs when there is some meaningful government interference with a person's possessory interest in his or her property. First, the court held that "securing" Strum's house without a warrant or an exception to the warrant requirement, while denying Strum access to his house constituted a Fourth Amendment seizure.

Second, when Officer Cooke denied Strum access to his house around 9:30 a.m., Cooke had been informed that Candice's death was not considered suspicious and he had no reason to believe that Strum or Candice were engaged in criminal activity. The court added that even though Officer Cooke established probable cause to obtain a search warrant for Strum's house at approximately 11:00 a.m., this had no bearing on the initial, unlawful seizure of Strum's house. The court reminded the officers that an unreasonable warrantless seizure of a person's home does not become reasonable based on facts discovered afterward by the officers. Consequently, the court held that law enforcement's initial securing of Strum's house on the morning of Candice's death constituted an unreasonable seizure in violation of the Fourth Amendment.

The court further held that Strum's consent to search for Candice's medication was the direct result of the illegal seizure of his home and not an act of freewill. First, officers seized Strum's house. Next, Officer Cooke told Strum that the coroner needed medication from the home to perform an autopsy. Finally, Officer Cooke denied Strum access to his home to retrieve the medication. The court reasoned that if Strum had been allowed to enter his home and retrieve Candice's medication himself, Officer Cooke's entry into the home pursuant to Strum's consent would have been unnecessary. Consequently, the court concluded that but for Officer Cooke's entry in the home, he never would have seen the ammunition upon which he relied to obtain the search warrant which led to the discovery of the evidence used to charge Strum.

For the court's opinion: https://cases.justia.com/federal/appellate-courts/ca10/17-3059/17-3059-2018-11-15.pdf?ts=1542301248

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