

Memorandum

To: Acting Supervisory Special Agent, Mark Moronovich

From: Akela Villegas

Date: November 16, 2024

Subject: Analysis of Legal Issues in DEA Investigation

Part One: Analysis of SA Dumas' Execution of the Search Warrant

1. Seizure and Offsite Search of Thumb Drive

In assessing SA Dumas' decision to seize the two thumb drives and conduct an offsite search, one has to analyze the authority granted by the search warrant and the Fourth Amendment standards. The warrant authorized the seizure of anything in connection with drug trafficking. One thumb drive, labeled "cocaine shipping data", could clearly be linked to this investigation. Thus, Dumas was justified in seizing this drive under the warrant's scope and could conduct an offsite forensic investigation since forensic examination often requires specialized technology not available at the scene.

The second thumb drive, labeled "Christmas 2023 family photos," raises a potential issue, as its label does not suggest a connection to drug trafficking. Seizing this drive could be considered outside the warrant's scope if there was no reason to believe it contained evidence. However, it could be justified under the plain view doctrine because the drive was located in the same place as the other labeled thumb drive which was properly identified for seizure. However, courts pay more attention to whether the incriminating features are readily identifiable by casual examination.

2. Seizure of the Photograph

The child pornography photograph presents a more complicated question. The warrant did not prescribe the arrest of other products other than drug trafficking. In any case, under the "plain view" doctrine, SA Dumas could seize evidence of a different crime when: 1) he was lawfully present, 2) the item was in plain view, and 3) its incriminating nature was immediately apparent. According to these criteria, the photograph presumably does so that Dumas could lawfully take it even though it was beyond the warrant's coverage.

3. Guidance on Handling the Photograph

From a best practice perspective, once the photograph had been realized, one could have included consulting with the AUSA or a supervisor. This approach would help align with departmental procedures and avoid potential legal complications by securing a separate warrant specifically for evidence of child exploitation. This extra step would protect against claims that the seizure exceeded the warrant's scope and help support the photograph's admissibility.

Part Two: Warrantless Search and Seizure of Calderone's Cell Phone

The warrantless search of Calderone's cell phone after his arrest is subject to scrutiny under the Fourth Amendment and current Supreme Court precedents. In *Riley v. California*, the court found that warrantless search of contents in a cell phone violates the Fourth Amendment because of the extensive personal information and that it is worthy of a higher level of protection.

Arguments for the Search: Dumas could counter such demands by citing extenuating circumstances, noting that Calderone warned the phone might be “wiped” remotely. Exception to the warrant requirement can be made when there are grounds that evidence may be destroyed, which may apply here. The DEA's prompt action could be viewed as necessary to preserve data that might otherwise be lost.

Arguments Against the Search: On the other hand, the Riley case clearly implies that because of the large amount of storage capacity in cell phones, a warrant must be sought even if the police are concerned that the cell phone in question will be wiped. Modern tools allow law enforcement to secure and preserve devices to prevent remote wiping, which would have been a preferable approach here.

Conclusion: In this case, while there is an argument for exigent circumstances, *Riley* emphasizes the need for a warrant for cell phone searches. Therefore, the search may be deemed unconstitutional, and the evidence obtained could be suppressed.

Part Three: Proceeding with Charges Based on the Complaint

In regards to SA Dumas' decision to proceed with a criminal complaint rather than a grand jury indictment, Dumas can review the Federal Rules of Criminal Procedure for guidance. According to Rule 3 under the Revised Rule on Criminal Procedure; a criminal complaint may be used in ordering an arrest. Nevertheless, under Rule 6, for the felony charges, the accused must be indicted by the grand jury, although the accused can waive this rule. Dumas was right by employing the criminal complaint to affect the first arrest, whereas taking the felony case to trial, without going through the grand jury indictment, would be a violation of Calderone's rights under the Fifth Amendment. To formally accuse Calderone on these charges, the AUSA must meet a grand jury in order to have him indicted. That would leave the case at the mercy of dismissal on procedural grounds. Altogether, it shall be suggested that Dumas' current approach should be changed in order to return to the correct process of making a formal grand jury charge.