

MEMO: Counsel to Clueleski

DATE: April 9, 2024

TO: Acting Supervisory Special Agent, James Clueleski

FROM: Branden Barnes

SUBJECT: Cyber Law

In analyzing the constitutionality of the execution of the search warrant obtained by SA Fecklis, I have some notes I would like to inform you of. (1) The warrant allowed for "any evidence relating to federal narcotics offenses, including any material relating to the shipment, trafficking, movement of illegal drugs, as well as illegal narcotics themselves." You were within rights to search drawers in the office of Calderone's Chesapeake, Virginia, for fruits listed in the details of the warrant, could be reasonably found in such places. However, you were also rightfully allowed to seize artifacts of child pornography that were found according to the Plain View Doctrine. When officers opened the drawer where reasonably concealed contraband was stored, upon plain view was evidence of child pornography. (2) This newfound evidence could be used as leverage for arrest while the cocaine was in the lab. To maximize the evidence recovered, a "freeze" of the current search warrant would allow for a broadened search to include grounds for sex trafficking and child pornography. This would expand the scope of the search to include computers, cell phones, and personal devices. Officers at the site could seize computers to be searched later while preserving the integrity through a chain of custody.

In addition, the propriety of your charges on Calderone based on the criminal complaint, I would advise you to follow due process of criminal prosecution. Constitutional criminal procedure is outlined in the constitutional amendments, and you must grant 5th Amendment rights to Mr. Calderone. This Amendment claims "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury,..."(Amdt5.2.2). You have accrued all the difficult parts of the criminal procedure; you just need to bear with the justice system to get everything in order. You have completed your investigation, you have an arrest in order (based on probable cause), and you merely need to have your indictments in order so you can allow Calderone to have his trial. With this trial, you may be able to properly charge Calderone with every wrongdoing that he has incurred.

The last thing I would like to leave you with is my opinion on the Fourth Amendment's warrant requirements and its exceptions. I am a big supporter of the Fourth Amendment and its ability to protect the rights of the people. On the other hand, I believe the exceptions that it has grants law enforcement the necessary abilities to properly uphold the law. The plain view doctrine is one of those exceptions, that for example, would tremendously help you in the situation you're in now. It does have its limitations in that law enforcement must stay within the scope of their original warrant but allows the seizure of additional criminal activities. This in all still gives the people protection and privacy but doesn't force officers to look the other way on crime in plain view. Warrant requirements are important to not allow law enforcement too much power. The processes involved in obtaining a warrant for searches and seizures keep the balance between a

person's reasonable expectation of privacy and a law enforcer's due diligence in a case. It is important that the "affidavit contains credible facts and circumstances and related information that establish probable cause to believe that specific crimes have been committed and that evidence of these crimes may be found at a particular location" (Mod 10) and sworn under oath. When presenting probable cause, the process of having a neutral and detached judge or magistrate sign the warrant allows for an unbiased objection to follow through with appropriate standards for how the warrant will be used. If these standards are not upheld, the people involved have the right to express this at trial.