

MEMORANDUM

TO: Acting Supervisory Special Agent, Mark Moronovich

FROM: Christian Coleman, Temporary Duty Attorney

DATE: November 7th, 2024

SUBJECT: Analysis of the Constitutionality of SA Dumas' Actions in Calderone Investigation

PART ONE:

According to the Constitution, SA Dumas was allowed to take both thumb drives during his search of Calderone's office. Even though only one thumb drive had drug-related data, it was legal to seize both of them. This is because of how the DEA agents were permitted to confiscate all detachable data storage devices as possible evidence of drug trafficking under the terms of the federal search warrant. This move is perfectly in line with *The United States v. Ross* case that allows the seizure of objects reasonably believed to contain evidence in a specified warrant. Dumas' choice to take these drives off-site for analysis aligns with the ruling in *United States v. Carey*, where the court acknowledged the need to conduct controlled investigations of digital evidence to guarantee data integrity.

Even though it was being discovered during a legitimate search, the seizure of a photograph showing child pornography presents complex Fourth Amendment questions. The warrant only permitted Calderone's office to be searched for evidence that pointed toward narcotics. As explained in *Arizona v. Hicks*, the plain view concept states that objects that are not covered by a warrant may be taken if they are quickly identified as illegal or evidence of a crime. Even though it was prohibited by definition, child pornography was not included in the initial warrant. So it may be argued that the photograph's significance was not immediately linked to the authorized search, the seizure then has the danger of being denied.

To make sure that the whole process could be backed up and defended, Dumas may have left the untouched, reported it to the magistrate, and requested a new warrant specifically for its seizure as proof of child exploitation. This approach would guarantee that evidence remains admissible while still following the warrant requirements. I believe that if Dumas were to follow this procedure, they would be in compliance with the Fourth Amendment, and protect the case from objections.

PART TWO:

Given the urgent situation, it can be argued that Calderone's cell phone needed to be searched and data extracted. Dumas made the case that it was necessary because of Calderone's threat that the phone would be "wiped within minutes". That posed an immediate risk of the destruction of evidence. By law, if police had a good reason to act right away, they may conduct warrantless searches to avoid the destruction of evidence. Calderone's response/threat might justify the emergency response to secure the evidence.

There are major Fourth Amendment concerns with the phone being seized without a warrant. There are legitimate privacy concerns that come with this situation, with people having an expectation of privacy due to the Katz V. United States case. Phones hold extremely private information, and safeguarding that privacy is important.

PART THREE:

When trying to bring charges against Calderone based on possibly unlawful searches, it creates a possibility of excluding important information due to the exclusionary rule. The prosecutor's case could be nullified because of how the contents on the phone were obtained, whether legally or illegally. If obtained illegally, that evidence would be admissible in court.

It is important to determine if there is other evidence that is free of constitutional error. An effective warrant may be able to preserve the admissible evidence that is contested. It is crucial to work closely with these prosecutors to assess strategic and legal ways of filing charges.

CITATIONS:

Cases - Search and Seizure. Oyez. (n.d.). <https://www.oyez.org/issues/227>

Legal Information Institute. (n.d.). *Charles Katz, petitioner, v. United States*. Legal Information Institute. <https://www.law.cornell.edu/supremecourt/text/389/347>

Arizona v. Hicks, 480 U.S. 321 (1987). Justia Law. (n.d.). <https://supreme.justia.com/cases/federal/us/480/321/>