

To: Acting Supervisory Special Agent Mark Moronovich
From: Liana Davis, Attorney, FBI
Date: 04/11/2025
Subject: Legal Analysis - Search Warrant Execution, Phone Seizure, and Charging Procedure

PART I

SEIZING AND SEARCHING THE THUMB DRIVES

When SA Dumas discovered the two thumb drives during a lawful search of Calderone's office, he was authorized to seize them under the scope of the warrant. The warrant specifically allowed the seizure of all desktop and laptop computers, as well as any removable storage devices found on the premises. One drive labeled "cocaine shipping data" was retrieved from the suspected operational space of a drug network. Dumas had a reasonable basis to believe they contained evidence of a narcotics-based crime. While the second drive ultimately contained only family photos, the seizure of such devices is justifiable due to the facts available at the time and not as a result. Analyzing digital evidence on-site is also not required. Off-site examination is supported both practically and legally due to the complexity of reviewing electronic data.

THE PHOTOGRAPH

Although the image found containing child pornography falls outside of the warrant's original scope, it was a lawful seizure under the plain view doctrine. Dumas was lawfully present and had legal right to open the drawer. The criminal nature of the photo was clear and all requirements for plain view were met.

PART II

LEGAL BACKGROUND & DEA's ACTION

Calderone's phone was seized and searched without a warrant directly after he gave warning that it would soon be wiped. Although the seizure may be defensible as a way to preserve evidence, the search raises legal concerns. In *Riley v. California*, 573 U.S. 373 (2014), the Supreme Court ruled that police must obtain a search warrant before searching the contents of a phone, even during a lawful arrest. Only under exigent circumstances, such as the immediate threat of data destruction, can an exception to a warrantless search be justified.

FINAL TAKE & RECOMMENDATION

Although Dumas believed the data was at risk, the phone should have been seized and secured without extracting its contents right away. Preventive measures such as placing the device on airplane mode, isolating it, or using a Faraday bag could have been a reasonable alternative to preserve the data long enough to obtain a warrant. By extracting the contents immediately, he risked suppression of that evidence in court. It is my recommendation moving forward that agents document any threats to data integrity, secure the device, and coordinate quickly with a prosecutor to seek a proper warrant.

PART III

LEGAL BACKGROUND ON USING A COMPLAINT

SA Dumas chose to proceed by filing a criminal complaint instead of presenting the case to a grand jury. Under Federal Rule of Criminal Procedure 3, this is a valid way to initiate charges and obtain an arrest warrant. Complaints are often used early in an investigation when time is

limited or evidence is still being gathered. In this case, the complaint allowed Calderone to be arrested without delay and was procedurally lawful.

LIMITS OF SKIPPING THE GRAND JURY

Despite the complaint being a valid charging method, it is not a permanent solution nor does it replace a grand jury indictment. Under the Fifth Amendment, unless the defendant waives this right, federal felony charges must be brought through an indictment. The Federal Rules of Criminal Procedure also require a preliminary hearing unless the government files an indictment within a specific period. Failure to follow up with a grand jury could result in delays or dismissal of the case.

FINAL RECOMMENDATION

It is my recommendation that the best course of action is for Dumas to consult with the assigned AUSA and present the case to a grand jury as soon as possible. The complaint was useful as a short-term tool, however, in order for the felony charges to hold, the prosecution must follow proper procedures. Moving forward, indictments should be pursued in a timely manner in order to strengthen the case and avoid unnecessary legal challenges.

REFERENCES

***Riley v. California*, 573 U.S. 373 (2014).**

<https://www.oyez.org/cases/2013/13-132>

Federal Rules of Criminal Procedure, Rules 3 and 5.1.

<https://www.law.cornell.edu/rules/frcrmp>

U.S. Const. amend. V.

https://www.law.cornell.edu/constitution/fifth_amendment

***Horton v. California*, 496 U.S. 128 (1990)**

<https://supreme.justia.com/cases/federal/us/496/128/>

***United States v. Ganius*, 755 F.3d 125 (2d Cir. 2014).**

<https://epic.org/documents/united-states-v-ganias-2/>