

Memorandum

To: Acting Supervisory Special Agent, Mark Moronovich
From: Joshua Russell
Date: November 12, 2024
Re: Warrants and Warrantless Searches

The constitutionality of Special Agent Dumas' search and seizure of Calderone's office is valid. Special Agent Dumas collaborated with a federal prosecutor (AUSA) to obtain a federal search warrant from the magistrate judge because there was probable cause the office contained evidence of narcotics and trafficking crimes. This warrant includes, "any evidence relating to federal narcotics offenses, including any material relating to the shipment, trafficking, movement of illegal drugs, as well as illegal narcotics." Also included in the search warrant was the ability to "seize and search all desktop computers, laptop computers, and any removable data storage devices" which refers to the thumb drives in question. The seized thumb drives found in the desk were searched for their contents, as the desk drawers were within the scope of the warrant. Rarely, full searches of computers and digital devices are performed onsite at the search location for security and technical purposes. As long as the thumb drives and other digital devices seized during the search were handled and transported pursuant to procedure, chain of custody documents were filled out, and integrity of the evidence was maintained, the search will remain lawful. Concerning the photograph depicting child pornography, SA Dumas was justified in the collection process of the evidence. The Plain View Doctrine notes that it is lawful to confiscate evidence of another crime not detailed in the warrant, since (1) the evidence was obtained within the scope of the warrant and (2) there is criminal behavior that is immediately apparent. The scope of the search had not been violated, because the desk and drawers of Calderone's offices were permitted to be searched. Therefore, the seizure of visible criminal activity is lawful, and Calderone can be charged with possession of child pornography. However, SA Dumas should have called the AUSA and relayed his findings of child pornography to get further advice on how to move forward. The AUSA would have been able to ask for an emergency hearing by a

magistrate judge in relation to the new crime; then, the AUSA could have requested a new search warrant for crimes in relation to the possession of child pornography.

With respect to the search and seizure of Calderone's phone, SA Dumas violated Calderone's Fourth Amendment, and the search is unlawful. If Calderone did not consent to the search, waive his rights, or if there is no warrant to search the cell phone, then the search is invalid. Calderone maintains a reasonable expectation of privacy regarding his cell phone which is what the defense is claiming with Riley. In the case *Riley v. California*, the Supreme Court ruled that law enforcement officers must obtain a search warrant for a seized cell phone during an arrest. The majority opinion states that cell phones are a special type of technology that holds the "privacies of life" and just because an individual can carry them around does not negate the need for their protection. With that said, SA Dumas may be able to exercise the notion of exigent circumstances as to the potential inadmissibility of the evidence. These circumstances may include: (1) the degree of urgency, (2) the amount of time necessary to obtain a warrant, (3) whether the evidence is about to be removed or destroyed, or (4) the ready destructibility of the contraband. If SA Dumas can prove that the cell phone has evidence of narcotics and trafficking crimes, and he can prove the evidence in question was in direct threat of being destroyed, there is a chance of the courts allowing the evidence at trial. However, if SA Dumas was worried that there was a chance Calderone had the ability of remote wiping the phone after its seizure, he should have exercised existing options that could have given him more time to request a proper search warrant for the phone. Use of a Faraday bag, which would block signals to the phone that would enable remote deletion of the data, would give SA Dumas additional time to process the data in a secured location. The cell phone search is an example of fruits of the poisonous tree; under this rule, evidence obtained through an illegal search will be deemed inadmissible as a violation of due process. Ultimately, SA Dumas was wrong to copy the phone data without a specified warrant permitting the action.

The criminal complaint and subsequent arrest of Calderone is in proper order, as these are the initial steps of the legal process. Rule 3 of the Federal Criminal Code lays out the steps needed to pursue actions against Calderone's illegal activities. The criminal complaint is only used to

establish the probable cause needed for a search warrant. After Calderone is arrested for the crimes, the Fifth Amendment of the U.S. Constitution establishes protections for him and his right of due process. It states that a person shall not be required to answer for a capital or other infamous crime unless an indictment is first presented to the grand jury. Legally, Calderone can be arrested and charged based on the criminal complaint, however with felony charges the grand jury must convene and move to indict him; this is a requirement by law. Going forward, SA Dumas needs to present his case and evidence of possession of drugs, trafficking of drugs, intent to distribute drugs, and the child pornography to the grand jury to secure an indictment. 21 U.S. Code § 841(a)(1), describes the illegal acts of Calderone's felonious drug and trafficking charges. This criminal code makes it unlawful to knowingly manufacture, possess, distribute, or dispense controlled substances such as cocaine. His shipping records directly show he is in violation of this criminal code and should be charged accordingly. Regarding the child pornography, 18 U.S. Code § 1466(a)(1)(A) indicates Calderone violated obscene visual representations of the sexual abuse of children by knowingly producing, distributing, receiving, or possessing with intent to distribute, a visual depiction of any kind that depicts a minor engaging in sexually explicit conduct. Any evidence recovered from Calderone's offices during the authorized search will be admissible; the evidence retained from the cell phone during the arrest process is off limits.

If you have any more questions, please feel free to reach out.

Regards

Works Cited

Cornell Legal Information Institute. (n.d.). *18 U.S. Code § 1466A - Obscene visual representations of the sexual abuse of children*. Retrieved from www.law.cornell.edu: <https://www.law.cornell.edu/uscode/text/18/1466A>

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