Recent Case Report

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U.S. v. SDI Future Health, Inc. et al.

(9th Cir. 2009) 553 F.3d 1246

Issues

(1) Did the managers of a corporation have standing to challenge a search of their headquarters for business documents? (2) Was a warrant to search the premises fatally overbroad?

Facts

Following a two-year investigation, IRS investigators developed probable cause to believe that SDI Future Health, Inc. was engaged in widespread Medicare fraud, and that two of its top executives—Kaplan and Brunk—had committed extensive tax fraud. Consequently, the investigators obtained a warrant to search SDI's corporate headquarters in Nevada for a large number of documents.

Based in part on the seized documents, a federal grand jury in Nevada indicted the corporation and two executives on, among other things, 124 counts of health care fraud, conspiracy to provide illegal kickback payments, conspiracy to commit money laundering, and tax evasion.

The defendants subsequently filed a motion in the district court to suppress the documents on grounds that the warrant's descriptions of the documents was overbroad. The court granted the motion, also ruling that SDI and the two executives had standing to challenge the search. The Government appealed to the Ninth Circuit.

Discussion

The court began its discussion by addressing the standing issue. While it was apparent that the corporation had standing to challenge a search of its headquarters, the standing of Kaplan and Brunk was not so clear. In fact, the court pointed out that the case "presents the novel issue of the extent to which a business employee may have standing to challenge a search of business premises generally."

By way of background, it explained that a defendant will not be permitted to challenge a search unless he has standing, meaning he must have had a reasonable expectation of privacy in the place or thing that was searched. In most cases, people will have standing to challenge searches of places and things they owned, lawfully possessed, or lawfully controlled.[1] That's why the district court ruled that Kaplan and Brunk had standing; i.e., because they "had significant ownership interests in SDI, [and] exercised a high level of authority over the operations of the company including the authority to set and control policy regarding access to SDI's business records and computer systems."

[1] See *Rakas* v. *Illinois* (1978) 439 U.S. 128, 143, fn.12 ["[O]ne who owns or lawfully possesses or controls property will in all likelihood have a legitimate expectation of privacy by virtue of his right to exclude."].

But, as the Ninth Circuit pointed out, when the place searched was a corporate office or other commercial property, an employee's control of work-related documents and other things would not automatically result in standing.[2] Said the court, "[I]t does not suffice for Fourth Amendment standing merely to own a business, to work in a building, or to manage an office." Thus, while people can almost always reasonably expect privacy in every nook and cranny in their homes, the situation is much different in business offices because of the "great variety of work environments."

The court acknowledged, however, that there are two situations in which employees will almost always have standing. First, they can usually expect privacy in their personal property and in offices that have been "given over to [their] exclusive use."[3] Second, the privacy expectations of the people who own and control "small, family-run" businesses will often extend throughout the premises.[4]

In other situations, such as the case at hand, the court ruled it is necessary to analyze the specific circumstances of the search, especially the nature of the places that were searched and the property that was seized. Of particular importance are the following:

(1) **Personal property?** Was the evidence seized the personal property of the defendant or "otherwise kept in a private place separate from other work-related material."

(2) **Custody or control?** Did the defendant have custody or immediate control of the evidence when officers seized it?

(3) **Security precautions?** In addition to the security precautions taken by the company, did the defendant take precautions "on his own behalf to secure the place searched or things seized from any interference without his authorization?" [But even if the defendant took such precautions, he might not have standing if he "was on notice from his employer that searches of the type to which he was subjected might occur from time to time for work-related purposes."[5]]

Although the court noted that it appeared that none of the seized documents were the personal property Kaplan or Brunk, and it appeared that none of the items were in their custody, it remanded the case to the district court to make the determination on standing.

Even if the district court determined that Kaplan and Brunk did not have standing to challenge the search, it was clear that the corporation did. Consequently, it was necessary for the court to determine whether the warrant was overbroad.

At the outset, the court noted that the terms "overbroad" and "particularity" are sometimes confused, so it clarified the matter. It explained that a warrant is deemed "overbroad" if the affidavit does not establish probable cause to search for one or more of the listed items. In contrast, the term "particularity" refers to the requirement that "the warrant must clearly state what is sought." In discussing the misuse of these terms, the court acknowledged that "[t]he error is quite understandable, given that some of our own opinions have been unclear on the difference between particularity and overbreadth. However, we now insist that particularity and overbreadth remain two distinct parts of the evaluation of a warrant for Fourth Amendment purposes."

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[2] See *Minnesota* v. *Carter* (1998) 525 U.S. 83, 90 ["Property used for commercial purposes is treated differently for Fourth Amendment purposes from residential property."].

[3] See *Schowengerdt* v. *General Dynamics Corp.* (9th Cir. 1987) 823 F.2d 1328, 1335.

[4] See *U.S.* v. *Gonzalez* (9th Cir. 2005) 412 F.3d 1102, 1117.

[5] *Schowengerdt* v. *General Dynamics Corp.* (9th Cir. 1987) 823 F.2d 1328, 1335.

The court then ruled that while the warrant was sufficiently particular, it was overbroad because it authorized a search for several things that were not supported by probable cause. After noting that there was no reason to believe that the entire SDI operation was "a sham" or otherwise "permeated with fraud," the court pointed out that the warrant instructed officers to seize all documents relating to bank accounts, brokerage accounts trusts, and money market accounts. But, as it pointed out, this description was impermissibly broad because it authorized a search for all such documents, regardless of whether they pertained to the matters under investigation. Said the court, "[B]y failing to describe the crimes and individuals under investigation, the warrant provided the search team with discretion to seize records wholly unrelated to the finances of SDI or Kaplan."

The court also ruled, however, that the district court should not have ordered the suppression of *all* the evidence seized pursuant to the warrant. This was because, under the "severance doctrine," when some evidence is supported by probable cause and some is not, only the latter evidence should be suppressed unless the warrant was so overbroad that it effectively constituted an unrestricted general warrant. And that was not the case here because, as the court noted, "the violative categories concerned only a specific subset of items," and that "the lion's share of the categories did not violate the Fourth Amendment." POV