

U.S. v. Henry

(1st Cir. 2016) __ F.3d __ [2016 WL 3361730]

Issues

(1) Did an officer have sufficient grounds to patdown a jacket near a suspected sex trafficker? (2) Did the officer have probable cause to reach inside the jacket? (3) Did officers have probable cause to seize the suspect's cell phones?

Facts

An agent with the Department of Homeland Security (DHS) notified police officers in Portland, Maine that a woman, about 19-years old, was being held against her will at an unknown motel in Portland. The DHS agent also said the woman (identified herein as A.H.) had previously been a victim of sex trafficking, and may have been transported from Michigan to New York for the purpose of prostitution. Checking the guest registries for Portland-area motels, an officer noticed that Paul Henry was currently registered at one that was linked to prostitution. This caught his attention for several reasons. First, Henry had been identified by the DEA and other federal agencies as a person involved in drug and sex trafficking in the Portland area. Second, Henry had an "extensive" criminal history in New York for drug trafficking, weapons crimes, and resisting arrest. Third, Portland officers had previously identified Henry as the man who had driven a 15-year old girl out of state for purposes of prostitution. So, three officers went to Henry's hotel to speak with him.

Immediately after knocking and announcing, the officers heard "the sounds of a flushing toilet, running water [and] people moving about quickly inside the motel room." About 90 seconds later, Henry opened the door and allowed the officers to enter. Shortly thereafter, an officer noticed that a light was on in the bathroom, and he heard the sounds of movement and running water inside. When asked who was in the bathroom, Henry responded, "My girl!" and he spontaneously said that she was from Michigan. The officers asked the woman to step outside and she complied. Based on a photo they had received from DHS, the officers recognized her as A.H. At this point, an officer asked her to step into the hallway so he could speak with her, which prompted Henry to yell at her that she didn't have to talk to the officers or answer any of their questions.

While the officer and A.H. were talking in the hallway, the officers inside noticed that Henry was becoming "increasingly excited," that he kept glancing at a jacket hanging on a clothes rack and there was a "visible bulge" under one of the jacket pockets. Thinking the bulge might have been a hidden weapon, an officer patted it down and felt what he immediately recognized as a "large amount of cash wrapped in plastic." He immediately removed it and found over \$12,000 in different denominations.

The officer also saw two cell phones in plain view. When asked about the phones, Henry said he used one of them to take pictures and that the other camera "really wasn't his." The officer was aware that people involved in sex trafficking often use cell phones to set up "dates," communicate with prostitutes, and take pictures of prostitutes to post on websites. So he checked with an assistant attorney general who told him to seize the phones and money, then apply for a search warrant. Meanwhile, A.H. was telling the officer in the hallway that she met Henry a couple of days earlier in New York, that she didn't know his name, that he treated her "okay" but that she did not want to stay with him or go back into the motel room.

Based on the above, an officer obtained warrants to search the motel room, plus Henry's car, and the cell phones. In one of the phones, officers saw several videos of Henry having sex with the 15-year old runaway. As the result, Henry was charged with sexual exploitation of children and arrested. When his motion to suppress the money and videos was denied, he pled guilty and was sentenced to 180 months in prison.

Discussion

On appeal to the First Circuit, Henry argued that the money should have been suppressed because the patdown of his jacket, and the seizure of the money and cell phones were illegal. The court disagreed with all of it.

PATting DOWN THE JACKET: Henry objected to the patdown of his jacket because he was not wearing it, and also because he was about eight feet away from it and, thus, a weapon inside it would not constitute an immediate threat. The court responded "that the fact Henry was eight feet from the jacket does not necessarily mean the jacket fell outside the vicinity within which [the officer] could perform a pat-down if he had reasonable suspicion that the jacket may contain a weapon." It then ruled that the officer did, in fact, have reasonable suspicion based on, among other things, evidence that Henry was involved in sex trafficking, his link to disappearance of the runaway, the sounds that the officers heard inside the motel room when they knocked and announced, and Henry's yelling at A.H. not to answer the officer's questions.

SEIZING THE MONEY: Pursuant to the "plain feel" rule, an officer who is conducting a patdown may reach inside and seize a felt object if he had probable cause to believe the object was contraband or other evidence of a crime.¹ Although Henry argued that the officer lacked probable cause, the court disagreed because there was a fair probability that Henry was involved in the sex trafficking of A.H., and the officer reasonably believed that large amounts of cash are frequently found in the possession of sex traffickers.

SEIZING THE CELL PHONES: Pursuant to the "plain view" rule, officers do not need a warrant to seize evidence they saw if (1) they had a legal right to be at the location from which they initially saw the item;² and (2), upon discovering it, but before they seized it, they had probable to believe it was evidence of a crime.³ Because Henry had consented to the officers' entry, the only issue was whether, at the time they seized the cell phones, the officers had probable cause to believe the phones constituted evidence of a crime. Like the others, this was a fairly easy call because, among other things, (1) there was a lot of evidence that Henry was involved in sex-trafficking; (2) Henry said he used the phones to take photos, and the officers reasonably believed this was significant in the context of a sex-trafficking investigation; (3) Henry was unable to provide much information about "My girl," A.H.; and (4) the officers knew that smart phones are frequently used by sex traffickers to take photographs of their victims and to "facilitate prostitution." This

¹ See *Minnesota v. Dickerson* (1993) 508 U.S. 366, 378 [removal unlawful because "the officer determined that the item was contraband only after conducting a further search, one not authorized [by the law]."]; *People v. Holt* (1989) 212 Cal.App.3d 1200, 1204 ["[A]n officer's entry into a person's pocket for narcotics can be justified only if the officer had probable cause to arrest the defendant for possession of narcotics *before* the entry into the pocket."].

² See *Horton v. California* (1990) 496 U.S. 128, 136 ["It is an essential predicate to any valid warrantless seizure of incriminating evidence that the officer did not violate the Fourth Amendment in arriving at the place from which the evidence could be plainly viewed."].

³ See *Arizona v. Hicks* (1987) 480 U.S. 321.

information, said the court, “was enough for [the officer] to have probable cause to believe that the phones likely had evidentiary value.”

For these reasons, the court ruled that Henry’s motion to suppress was properly denied. POV

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