

Recent Case Report

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U.S. v. Gonzalez

(7th Cir. 2009) __ F.3d __ [2009 WL 290776]

Issue

Was the issuance of a search warrant independent of an earlier illegal search?

Facts

After arresting Gonzalez for selling drugs, Milwaukee police officers learned that he lived at his mother's home, and that he was not paying rent. So they went there and obtained his mother's consent to search his bedroom. Standing at the door to the bedroom, they saw some crack cocaine, several packages of marijuana, and two scales. They also saw a closed shoe box next to the marijuana. After entering the room, one of the officers opened the box and found additional crack cocaine and marijuana.

At that point, the officers conferred for 15-20 minutes, trying to figure out if the mother's consent was effective. There was no consensus, so they decided to seek a warrant to be "safe." In his application for the warrant, the affiant included all of the above information except he omitted any reference to the search of the shoe box and its contents. The warrant was issued and, during the subsequent search, the officers seized the drugs and found four loaded firearms. When Gonzalez's motion to suppress the evidence was denied, he pled guilty to, among other things, possessing firearms in furtherance of drug-trafficking.

Discussion

Although Gonzalez's mother had the authority to open the door to the bedroom, Gonzalez argued that the evidence seized under the warrant should have been suppressed because, (1) the warrantless search of the shoe box was plainly illegal, and (2) the officers would not have sought the warrant if they hadn't conducted the illegal search of the shoebox. The court disagreed.

Under the Independent Source Rule, if officers obtain a warrant to search a place or thing based, in part, on information from an illegal search of some other place or thing, a court may deny a motion to suppress the evidence seized during the warranted search if, (1) the information discovered during the illegal search was unnecessary to establish grounds for the warrant, and (2) the decision to seek the warrant was not prompted by the illegal search.¹

It was apparent that Gonzalez's mother did not have the authority to consent to a search of the shoebox because she was plainly not a joint owner. Thus, the issue was whether the officers would have sought the warrant if they had been unaware that the box contained drugs. Although it was a close call, the court ruled they would because, (1) they had already seen drugs and a scale in the room; and (2) one of the officers testified that they decided to apply for the warrant because they were unsure whether Gonzalez's

¹ See *Murray v. United States* (1988) 487 U.S. 533, 5442 [the issue was whether "the agents would have sought a warrant if they had not earlier entered the warehouse"].

mother had the authority to permit them to enter and search the bedroom. Consequently, Gonzalez's conviction was affirmed. POV