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TRAINING BULLETIN

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Searches by Non-Law Enforcement

by Charles Gillingham

A man walks into the police department with a laptop computer. He tells the officer who contacts him that he burglarized a home and took the laptop and when he turned it on he found significant amounts of child pornography. He tells officers the location of the home. The residents of that home reported a burglary and that a laptop was among items that were stolen. What do you do? Arrest the confessed burglar? Have to get a warrant before examining the laptop? Arrest both the burglar and the suspected child pornographer? Become excited about the societal two-fer; one burglar and one chester off the streets? Are we worried about suppression?

Officers do not risk suppression of evidence seized, even illegally, by private citizens. The general rule is that contained in *United States v. Jacobsen* (1984) 466 U.S. 109, 113, "the Fourth Amendment is wholly inapplicable to a search or seizure, even an unreasonable one, effected by a private individual not acting as an agent of the Government or with the participation or knowledge of any governmental official." The reason is clear, the suppression remedy was put in place to deter law enforcement from violating the Fourth Amendment by suppressing any evidence found by way of a bad search.

The general rule changes, however, if the citizen is acting at the behest of law enforcement by becoming a governmental agent. Courts do not look at the job of the citizen, how much the citizen was intending on helping the government but rather courts examine the extent to which the officer was involved in the search. A civilian becomes an agent of law enforcement based on whether officers instigated the search, participated in its planning or execution, or if they gave the citizen an incentive to search. Be careful as well with situations where you are told that a citizen is going to perform a search that you know is illegal. The failure to stop a citizen from doing something illegal in order to obtain evidence will lead to evidence suppression.

Civilian job duties similarly do not transform individuals into agents of law enforcement. Security guards, private investigators and others who fulfill some sort of law enforcement functions have been found to not be agents of law enforcement absent evidence that that person was acting with police. Security officers and employees of hotels, motels, apartments, condominiums or employers at businesses who are acting on their own initiative and without police supervision are deemed civilians when taking action to protect people and property on the premises.

If the civilian is acting on their own accord, without the assistance, encouragement or knowledge of law enforcement, even if their actions are illegal, will not lead to suppression of the evidence.