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TRAINING BULLETIN

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Consent To Search Granted And Then Taken Away

The recent case from the Seventh Circuit, *United States v. Jones*, raises important questions about Fourth Amendment rights and consent to search. The case involved an arrest warrant that led to a consensual search, ultimately revealing a hidden firearm. The issue at hand is whether a person who initially grants consent to a search retains the right to withdraw that consent during the search. While the law generally recognizes this right, there is ambiguity as to what constitutes a clear and unambiguous attempt to withdraw consent. Consequently, law enforcement officials may continue their search under the initial grant of consent if an attempt to withdraw is deemed vague or ambiguous.

FACTS

Officers Andrew Brenneke and Duane Romines received an arrest warrant for Whitney Gosnell for violating the terms of her probation. Gosnell was described as 5'3" tall, weighing 130 to 140 pounds. After receiving an anonymous tip that Gosnell was staying at a particular motel, the officers went to the motel around 8:45 p.m. The motel manager told the officers that Gosnell was staying in a room with Larry Jones and his son. The officers conducted a warrant check, which revealed that Jones had arrests dating back to the 1990s and was listed as a "known resister," "convicted felon," and "substance abuser."

The officers went to Jones's motel room, knocked on the door several times, and called out "Larry," but did not receive a response. Officer Brenneke knew Jones's street name, so he called out, "Hey, Crunch," and Jones responded, "What?" The officers replied, "It's police. We're not here for you," to which Jones said, "She's not here. She can't be here." At this point, the officers had not yet told Jones that they had an arrest warrant for Gosnell.

The officers asked Jones to open the door and Jones complied within one minute. The officers were in full uniform with their guns holstered and spoke to Jones in conversational tones during the encounter. The officers reiterated to Jones that they were not there for him, showed him the arrest warrant for Gosnell, and explained that they would like to verify that Gosnell was not there. The officers spent approximately

15 to 20 seconds explaining that they would like to search anyplace in the room where a person could hide. At some point, Officer Romines told Jones that they "would not open small drawers and things like that." Jones repeated that Gosnell was not there, but eventually said, "That's fine," and moved away from the door.

After entering the motel room, the officers looked in the kitchenette, bathroom, and shower. Officer Romines then lifted up one of two beds but found nothing underneath. There was a six-to-ten-inch gap between the beds and the floor. Before Officer Brenneke checked under the second bed, Jones stated, "Well, she couldn't be under there." Officer Romines responded, "She could be under there, just like she could have been under the first one." Officer Brenneke lifted the second bed and saw a firearm. The government eventually charged Jones with possession of a firearm by a convicted felon. Jones filed a motion to suppress the firearm, claiming that the officers committed several Fourth Amendment violations. The district court denied the motion and Jones appealed.

First, Jones argued that he was seized for Fourth Amendment purposes either: 1) when he opened the door to his room; or 2) when the officers showed him the arrest warrant for Gosnell. Jones claimed that his seizure, at either point, was unreasonable; therefore, it rendered any consent he gave to the officers to enter the room invalid.

SEVENTH CIRCUIT COURT OPINION

The Seventh Circuit Court of Appeals held that Jones was not seized when the officers knocked on his door. The time between when the officers first knocked and when Jones opened the door was, at most, a minute and a half. The officers spoke in a conversational, non-threatening tone and made it clear to Jones that they were not there for him. The court concluded that a reasonable person in Jones's position would have felt free to decline the officers' request to open the door.

The court further held that Jones was not seized when the officer showed him the arrest warrant for Gosnell. The officers sought entry to the room based on Jones's consent, not on the grounds that they were executing a warrant. In addition, there was no evidence that Jones relied on the warrant before saying, "That's fine," and stepping away from the door. Finally, Jones did not dispute that the officers told him that they were not there for him and that he told the officers, "She's not here," before he opened the door. The court found that this exchange indicated that Jones understood the difference between a search warrant and an arrest warrant, and that he felt free to decline the officers' requests.

Second, Jones claimed that his consent to search was not voluntary. Again, the court disagreed. When Jones opened the door, the officers explained that they were looking for Gosnell and would like to "verify" that she was not inside. Jones responded, "That's fine," and stepped away from the door. Based on these facts, the court held that Jones voluntarily consented. The court added that the presentation of the arrest warrant for Gosnell did not render Jones's consent involuntary. The officers simply informed Jones that they had an arrest warrant for Gosnell, but their request to search the room was still optional.

Source: Daigle Law Group

Third, Jones claimed that the officers exceeded the scope of his consent to search the room. When officers obtain consent, they may look in any area that could reasonably contain the item or person whom they are seeking. In this case, Jones clearly knew that the officers were looking for Gosnell and the officers told him that they would look only “where a person could be.” Consequently, the court held that a reasonable person in Jones’s position would likely believe that looking under the beds in Jones’s room was well within the scope of his consent.

Finally, Jones argued that he expressly limited the scope of his consent when he stated that Gosnell “couldn’t be under there” before Officer Brenneke lifted the second bed. In this case, the court found that a “reasonable observer” might have interpreted Jones’s comment as an attempt to limit his consent. However, the court added that an equally logical interpretation was that Jones was simply dismissing the possibility that the officers would find Gosnell under the bed. Consequently, the court held that Jones did not satisfy his burden of showing that the scope of his consent did not include looking under the bed.

TAKEAWAYS

The biggest takeaway here is that officers followed through with what they stated they were there to do. Jones was a known felon, and they still did not try to search anywhere else but where someone could be hiding, as they promised. Jones could have refused to allow them to search, and they would have needed to comply. Another note is that someone can withdraw their consent while you are searching, as we mentioned earlier. Lastly, officers were courteous and treated Jones with respect throughout their encounter, which is always an important part of the job. Sometimes that conversational tone being used throughout an encounter is all you need to protect yourself from liability in court.

Source: Daigle Law Group