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SEARCH AND SEIZURE

United States v. Hill, 855 F.2d 664

Drug agents investigated the purchase of chemicals to make illegal drugs. A witness told the agents that the individuals they sought were on a houseboat. After observing activity that looked like drug manufacturing, the agents boarded the boat. They arrested Hill and Pemberton, conducted a cursory search, and found an amphetamine laboratory. The agents secured the boat and then obtained a search warrant. Hill and Pemberton claimed that their arrests were unlawful and that the evidence seized should be suppressed. The Tenth Circuit held that the agents had probable cause to arrest the two men. The court also held that the houseboat was not considered a home; therefore, the requirement that a warrant be obtained before making a nonconsensual entry into a suspect's home to make a routine felony arrest was not applicable. The court concluded that the boat was more like a vehicle than a house.

Specht v. Jensen, 837 F.2d 940

In an *en banc* rehearing, the court of appeals affirmed an earlier panel opinion. The rehearing was limited to the issue of whether an attorney could serve as an expert witness on the issue of illegal search and seizure. This testimony had been allowed at the district court level, and a jury verdict had been entered for the plaintiffs. A Tenth Circuit panel had reversed on the grounds that F.R.E. 702 would not permit an attorney called as an expert witness to state his views on the law governing a case, and then give his opinion as to whether the defendant's conduct violated that law. Affirmed.

The court of appeals agreed with the panel opinion that this expert testimony encroached upon the court's authority to instruct the jury and that it was prejudicial enough to warrant reversal.

United States v. Aquino, 836 F.2d 1268

Appellant Aquino appeals his conviction on illegal possession of a firearm. Affirmed.

Aquino's conviction was secured using evidence discovered in his home in the course of a warrantless search. The court of appeals held that the search was proper, since the facts indicated that the government had ample probable cause, and there was a high likelihood of evidence being destroyed if police action was delayed.

United States v. Santillanes, 848 F.2d 1103

Appeal of the trial court's denial of appellant's motion to suppress evidence seized and statements made when appellant was stopped at an airport by two police officers.

Two officers were at the airport following a tip they had received when one officer recognized appellant from a previous arrest. Believing appellant had violated the conditions of his pretrial release, the officer decided to stop and question appellant. When appellant's name was called out, appellant quickened his pace at which point the officers physically stopped and detained him and conducted a search.

Under New Mexico law, while the court could have had appellant arrested for violation of conditions of pretrial release, such a violation was not a crime and thus did not provide a basis, for stopping defendant. At most, the officer should have reported seeing the appellant at the airport.

The Tenth Circuit found that the pat-down search for weapons was not supported by reasonable suspicion that defendant was armed and presently dangerous inasmuch as he had just passed airport security detectors to gain entry to the gate area. Additionally, the actions of the officer exceeded the scope of a permissible frisk for weapons under the *Terry* exception, where an officer went beyond patting defendant's outer clothing and reached into his pockets. This conduct cannot be considered minimally intrusive.

The Tenth Circuit remanded with directions to grant appellant's motion to suppress.

Goichman v. City of Aspen, 859 F.2d 1466

While the appellant was in Aspen as a tourist, his car was towed and impounded for a parking violation. Appellant paid the fine and the towing fee but filed suit against the city. He alleged that he had been deprived of personal property without a judicial hearing, prior to the payment of the fines, to determine the legal justification for the seizure and impoundment of his car. The district court granted the city's motion for summary judgment.

The Tenth Circuit affirmed, holding that the reasonable availability of a hearing to adjudicate the underlying parking violation satisfied due process. Consequently, no additional hearing, judicial or otherwise, was necessary to determine the validity of Aspen's impoundment and towing procedures.

Floyd v. United States, 860 F.2d 999

Jim Floyd allowed private security agents at the Denver airport to search his duffel bag. When the agents found large amounts of money, they alerted the police who escorted petitioner to an airport security office. The bag was searched again, this time without petitioner's consent, and a trained dog was summoned to test the bag for drugs. Floyd denied ownership of the bag and left the airport. When the dog reacted to the presence of drugs in the bag, the money was turned over to federal agents. Floyd filed a motion for return of the money under Federal Rule of Criminal Procedure 41(e). The government moved to dismiss the

Rule 41(e) motion, but the government motion was denied. The government initiated forfeiture proceedings under 21 U.S.C. § 881. The lower court, however, found that the money had been illegally seized and ordered it returned. The government appealed.

The Tenth Circuit reversed and remanded the case, holding that in order for Floyd to prevail on a Rule 41(e) motion, he must show that he has no adequate remedy at law and that irreparable injury would result to him if he were denied the motion. Even though the evidence supported the lower court's finding that Floyd had no adequate remedy at law, there was reversible error by the lower court in that it did not also require a showing by Floyd that irreparable harm would result from dismissal of his motion.

