

Legal Updates

Does state or citizen action result in search?

U.S. v. Ginglen, 467 E3d 1071

The defendant was a suspect in a number of bank robberies in central Illinois during late 2003 and mid 2004. The defendant's description and that of the getaway car were published in the newspaper where the defendant's son, a police officer, read about him. The son, and his two brothers, then went online and found surveillance pictures taken during the robberies that confirmed it was their father committing the crimes.

The three sons decided to confront their father and planned to persuade him to turn himself in to authorities. However, if the defendant refused, they were prepared to turn him over to police themselves. The boys went to their parents' home and searched for their father.

While looking for him they discovered clothing matching the description of those worn during the robbery. The son, who was employed as a police officer, wore his bullet proof vest, gun, and badge during the search. Since their father was not home the boys contacted the local police, who using the sons' observations, obtained a search warrant for the father's home.

In addition to the clothing, police found other evidence related to the robberies during their search. Later the father's computer was also seized and provided more incriminating information.

During testimony, the sons said they grew up in their parents' home and had permission to enter the residence whenever they wanted. The defendant was convicted and appealed claiming, in part, his son, a police officer, was acting as an agent of the government at the time of the search. To support this claim he pointed to his son's wearing of a bulletproof vest, gun and badge when entering the house.

Decision: Conviction affirmed

The court ruled against the defendant, reasoning that a search by a private citizen is not prohibited by the Fourth Amendment to the U.S. Constitution. The court decided since the sons did not notify authorities of their intentions to enter their father's home and were not acting at the instruction of the police their actions were those of a private citizen. The fact that one of the boys was a police officer, carrying his badge and weapon was something he did as a matter of course, and he wore them knowing his father could be armed. Finally, even if the search was unlawful the sons had already identified the father as the robber, along with his gun and car prior to ever going to the home. These identifications and the investigators' observations of a car matching the robbers in the defendant's drive would have provided probable cause without the observation of the clothing. The court also found the sons were acting to stop the defendant from continuing his pattern of robbery and protect the father and public from harm.

CFInsider Comment: This case, while relating to a search, rather than an interrogation, addresses issues brought up in the Letters from the Field section of the journal. The court looks at the relationship between the police and the private citizen, the timing of events, and circumstances surrounding the case when making its decision whether the citizen was acting as an agent for the police. Investigators should carefully consider the pros and cons of partnering with law enforcement, doing so when it best suits the needs of the investigation.