



NON-GOVERNMENT ACTORS AND THE FOURTH AMENDMENT

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On December 14, 2017, the Eleventh Circuit Court of Appeals decided the *United States v. Coffell*, in which the court examined whether police violated the Fourth Amendment by obtaining and executing a search warrant at the mobile home he rented. The relevant facts of *Coffell*, taken directly from the case, are as follows:

Coffell lived in a trailer that he rented from BlueKey Property Management Company ("BlueKey"). On February 2, 2016, BlueKey's maintenance man entered Coffell's trailer while he was away, using a master key, in order to replace his broken oven. Once inside, the maintenance man used a screwdriver to open a locked door so that he could access the circuit-breaker box and shut off power to the oven before replacing it. Inside the locked room, he observed what appeared to be marijuana plants under grow lights that had been connected to the circuit-breaker box. He took pictures of the marijuana plants with his phone and contacted law enforcement.

Based on the information provided by the maintenance man, law enforcement obtained a search warrant for the trailer. Before the warrant was executed, law enforcement also learned that Coffell had previously been convicted of a felony. During a subsequent search of the trailer, officers found marijuana plants, growing materials, and containers of harvested marijuana. In addition, officers seized four firearms, nearly 1,500 rounds of ammunition, and a silencer.ⁱⁱ

Coffell was ultimately indicted under federal law for possession of a firearm and ammunition by a convicted felon and possession of an unregistered silencer. He filed a motion to suppress the evidence found from the execution of the search warrant, and the district court denied the motion. Coffell was subsequently convicted at a jury trial. He then appealed the denial of the motion to suppress and whether the government sufficiently proved all of the elements of the crime related to the silencer. This article will only examine the Fourth Amendment issues related to the motion to suppress.

The first issue related to the Fourth Amendment was whether the maintenance man violated Coffell's reasonable expectation of privacy when he entered his locked bedroom. The court stated

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[T]he protection of the Fourth Amendment "extends to governmental action only." *Sparks*, 806 F.3d at 1334. **"A search by a private person does not implicate the Fourth Amendment unless he acts as an instrument or agent of the government."** *United States v. Steiger*, 318 F.3d 1039, 1045 (11th Cir. 2003). **And the Fourth Amendment does not prohibit the government's use of information discovered by a private party who is not acting as a government agent.** *Sparks*, 806 F.3d at 1334.ⁱⁱⁱ [emphasis added]

Here, the maintenance man was clearly *not* acting as an agent of the government. The police did not have any knowledge that he was entering the apartment to replace the oven nor did they instruct him to enter the apartment for the purpose of looking for evidence of a crime. Rather, the maintenance man entered the apartment only to replace the oven, with no knowledge of the police, and he observed marijuana; he *then* contacted the police with photographs of the marijuana. As such, the government's use of the information the maintenance man provided did not violate the Fourth Amendment.

The second issue raised by Coffell on appeal was whether the police exceeded the scope of the search warrant when they seized his firearms, ammunition and silencer.

The court first noted that narcotics sales and guns are so commonly linked together that that are implicitly authorized to be seized when executing a search warrant related to a drug dealer. The court stated

We have "routinely recognized that firearms can be so connected to the sale of narcotics that their seizure is implicitly authorized by a warrant to search for narcotics." *United States v. Folk*, 754 F.3d 905, 910 (11th Cir. 2014). Indeed, we have stated that "[i]t is uniformly recognized that weapons are often as much 'tools of the trade' as the most commonly recognized narcotics paraphernalia." *United States v. Terzado-Madruga*, 897 F.2d 1099, 1120 (11th Cir. 1990).^{iv}

However, the court also noted that in Coffell's case, the police, at the time of the search warrant, did not have or offer evidence that Coffell was involved in the sale of marijuana.

However, the district court also relied upon the "plain view doctrine" in upholding the search under the Fourth Amendment. The court discussed the "plain view doctrine" and stated

The plain-view doctrine permits the warrantless seizure of an item where (1) "the officer is lawfully located in the place from which the seized object could be plainly viewed"; (2) the officer has "a lawful right of access to the object itself"; and (3) "the incriminating character of the item is immediately apparent." *Id.* (quotation marks omitted).^v

The court noted, first, that the search warrant was valid so that lawfully put the officers in the place that they seized the guns, ammunition and silencer. Second, the officers found the guns, ammunition and silencer in places that narcotics could be found; therefore, they had a right to access the evidence. Third, since the officers knew that Coffell was a convicted felon and could not legally possess weapons and ammunition, the incriminating nature of those objections was immediately apparent. Therefore,

the court affirmed the finding of the district court that the guns, ammunition and silencer were properly seized according to the plain view doctrine.

The third, and final, issue related to the Fourth Amendment was whether the officers omitted pertinent information in the search warrant affidavit when they failed to disclose that Coffell was a convicted felon. Coffell argued that if his status as a convicted felon was the basis for seizing the weapons, it should have been presented to the magistrate.

The court first examined the rule regarding when omitted information can result in the suppression of evidence and stated

Suppression may be warranted when misrepresentations or omissions in a warrant affidavit materially affect the probable cause determination. See *Franks v. Delaware*, 438 U.S. 154, 164-65, 171-72 (1978). **But if including the alleged omission or removing the alleged misrepresentation would not defeat a finding of probable cause, suppression is not warranted.** *United States v. Kapordelis*, 569 F.3d 1291, 1309 (11th Cir. 2009).^{vi} [emphasis added]

The court then noted that the omission of Coffell's status as a convicted felon would not have negated the probable cause for the issuance of the search warrant based on the information provided by the maintenance man. Since probable cause still exists, even with Coffell's status omitted, and since the guns, ammunition and silencer were seized under the plain view doctrine, there was no Fourth Amendment violation; therefore, suppression was not warranted.

Thus, the court of appeals affirmed the denial of the motion to suppress on all issues.

ⁱ No. 16-17427 (11th Cir. Decided December 14, 2017 Unpublished)

ⁱⁱ Id. at 2-3

ⁱⁱⁱ Id. at 5

^{iv} Id. at 6

^v Id. at 7

^{vi} Id. at 9