



Court Denies Qualified Immunity for Warrantless Searches

Administrative & Municipal Practice Group

Foster Swift Municipal Law News

July 2008

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On July 3, 2008 the United States Court of Appeals for the Sixth Circuit held that ordinance enforcement officers conducting warrantless searches may face personal liability under the Civil Rights Act for violating the Fourth Amendment. In *Jacob v Township of West Bloomfield*, No. 07-1534 (CA 6 July 3, 2008), Michael Killian, an ordinance enforcement officer, notified township resident William Jacobs that broken-down, old cars and other accumulated junk on his property violated the zoning ordinance. Jacobs failed to bring his yard into compliance with the ordinance, and the Township filed criminal charges against him.

Jacobs pled guilty and entered into an arrangement with the Township giving him fourteen days to clean up his property. Failing to bring his property into compliance within the time frame would result in a thirty-day sentence in the county jail; Jacobs failed to bring the property into compliance and went to jail. During Jacobs' incarceration, Killian continued to enter his property without a warrant, again citing Jacobs for failing to comply with the ordinance. After Jacobs was released from jail, Killian continued to unexpectedly show up on Jacobs' property citing Jacobs for violating the ordinance. Jacobs eventually sued the township and Killian in his individual capacity under § 1983 of the Civil Rights Act,¹ claiming Killian violated Jacobs' Fourth Amendment rights by continually entering Jacobs' property without a warrant and conducting a criminal investigation. Killian sought to dismiss Jacobs' claim on the grounds that Killian was entitled to qualified immunity. The United States District Court for the Eastern District of Michigan disagreed, holding that Killian was not entitled to qualified immunity.

On appeal, the Sixth Circuit Court of Appeals upheld the decision of the lower court allowing Jacobs to move forward with his Civil Rights claim against Killian. The Court of Appeals employed a two-part analysis: (1) whether the facts, if taken as true, resulted in a violation of a constitutional right, and (2) whether the right was clearly established at the time of the violation.



The Court of Appeals held that Killian's warrantless searches of Jacobs' property was unreasonable and distinguished the facts of this case from a warrantless search for purely administrative functions. In this case, Jacobs had already gone to jail once and any subsequent search carried with it the very real threat of further incarceration. In addition, Killian conducted some of the investigations at the directive of a criminal prosecutor and by surprise. Killian's unexpected visits to the property amounted to criminal evidentiary investigations and intruded upon Jacobs' reasonable expectation of privacy without a warrant. Absent exigent circumstances, government officials may not conduct a criminal investigation within the curtilage² of a person's home without a warrant.

The next step required the Court of Appeals to examine whether the constitutional right was clearly established at the time of the violation. "It is clearly established," the Court held, "that a governmental official does not have to carry a badge and a gun to be subject to the restrictions of the Fourth Amendment." A warrant is necessary when *any* government official conducts an investigation that may ultimately lead to criminal sanctions. Because Killian violated Jacobs' clearly established right, Killian had no valid claim of qualified immunity and could be held personally liable.

This case highlights the difference between purely administrative searches and those intended for criminal prosecutions. While officials may indeed be authorized to intrude on property to assess and enforce civil ordinances, they are not authorized, absent a warrant or exigent circumstances, to conduct disguised criminal investigations. Doing so violates the Fourth Amendment and subjects the offending party to personal liability under the Civil Rights Act. In light of this decision, it is best to ensure that any official conducting a regulatory investigation is aware of conduct that may violate clearly established constitutional rights. When in doubt, seek a warrant. Staying informed will help avoid costly errors associated with litigating a Civil Rights claim. If you have a question or concern about the potential implications of this case or any other question, our Municipal Practice Group looks forward to assisting you.

¹The Civil Rights Act, § 1983, permits any person in the United States to bring a civil suit against a government officer when the officer deprives the person of a Constitutional right, while he or she purports to be conducting himself or herself in the course of official duties.

²The U.S. Supreme Court has defined the word "curtilage" as the area immediately surrounding a residence that harbors the intimate activity associated with the sanctity of a man's home and the privacies of life. U.S. v Dunn, 480 U.S. 294 (1987).