



Blue to Gold

Instructor Manual

Advanced
Search & Seizure



Blue to Gold
POLICE

sample

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Who did the Search or seizure?

Private searches are not government searches.

Blue to Gold Law Enforcement Training
Advanced Search & Seizure

When does a private search become a government search?

The diagram consists of three main elements arranged horizontally. On the left is an icon of a police officer in uniform, enclosed in a square frame with corner brackets. Below this icon is the text: "Police direct, participate, or encourage the activity". In the center is a large plus sign (+), also enclosed in a square frame with corner brackets. Below this plus sign is the word "Plus". On the right is an icon of a person wearing glasses and a collared shirt, enclosed in a square frame with corner brackets. Below this icon is the text: "Person is acting on behalf of police".

- United States v. Gregory, 497 F. Supp. 3d 243 (2020) -

Case: United States v. Gregory, 497 F. Supp. 3d 243, 255 (E.D. Ky. 2020)

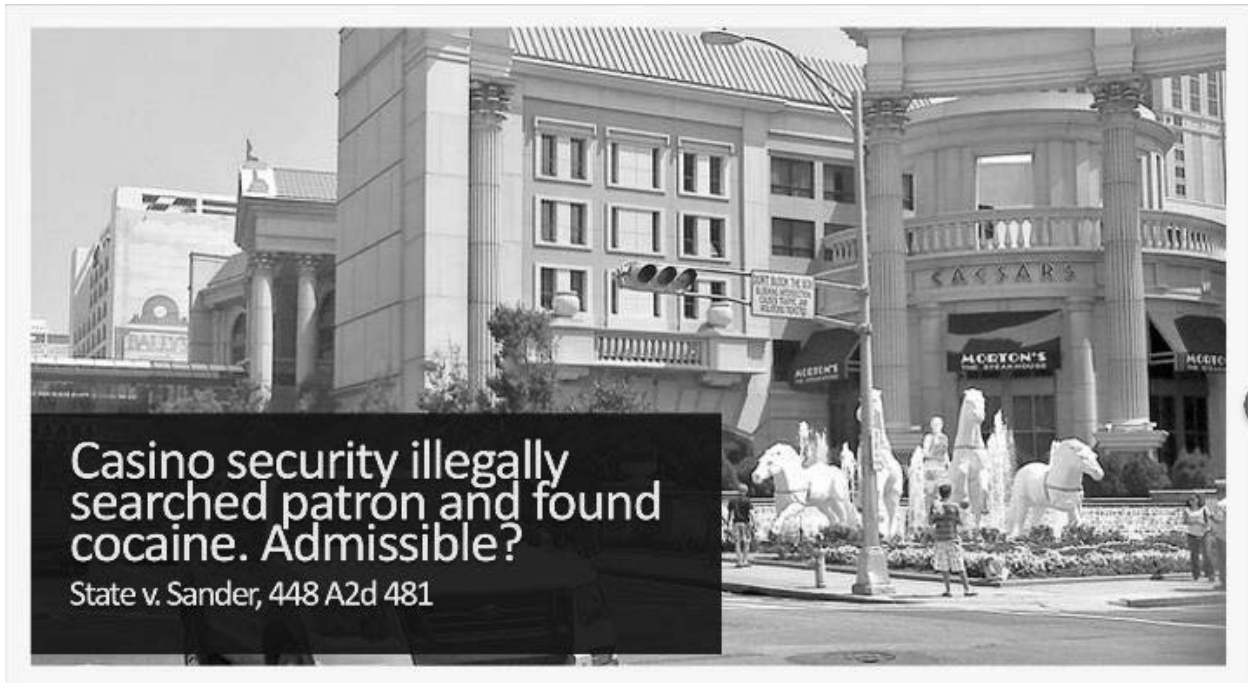
Issue: Whether trash collector was acting as an agent of the police officer?

Training Point:

Private trash collector was acting as agent of police officer when he collected trash bags from defendant's property and, thus, was state actor for purposes of Fourth Amendment; officer actively sought out assistance of private trash collector, directing collection of defendant's trash under circumstances outside collector's typical routine, officer accompanied collector during trash pull, and collector's actions were taken for specific purpose of assisting law enforcement.

Notes:

On November 28, 2018, Deputy Cody Neal and Danny Flynn collected trash from Joshua Gregory's property, even though it had "No Trespassing" signs. Deputy Neal recorded the operation on his cell phone as part of a drug-related investigation against Gregory. The collected trash revealed items with drug residue, prompting a search warrant for Gregory's residence. This warrant led to the discovery of additional evidence related to drug trafficking at Gregory's home, ultimately connecting him to illegal drug activities.



Case: State v. Sanders, 185 N.J. Super. 258, 448 A.2d 481 (1982)

Issue: Is cocaine admissible when it was discovered during an illegal search by casino security?

Training Point:

Requirements of Casino Control Act that casino establish detailed security procedure did not establish “state action” such as rendered illegal search of defendant and seizure from him of cocaine, even though defendant, who was suspected by casino personnel of being card counter, was unlawfully ejected from casino premises after being unlawfully taken to casino holding room and searched.

Notes:

The defendant was playing blackjack at Caesars casino when security personnel were instructed to eject him for suspected card counting. The defendant complied with their request to cash in his chips but was then taken to a holding room for questioning about his identity. During a pat down search, security personnel found a pair of dice with a spoon on it and a small glass bottle, which they believed contained cocaine. The search was conducted to check if the defendant was armed, and until the discovery of the substance, no public employee was involved with the defendant.



Case: U.S. v. Highbull, 894 F.3d 988 (8th Cir. 2018)

Issue: Did an affirmative action to the officer asked question 'do you have the phone' constitute assisting a law enforcement officer?

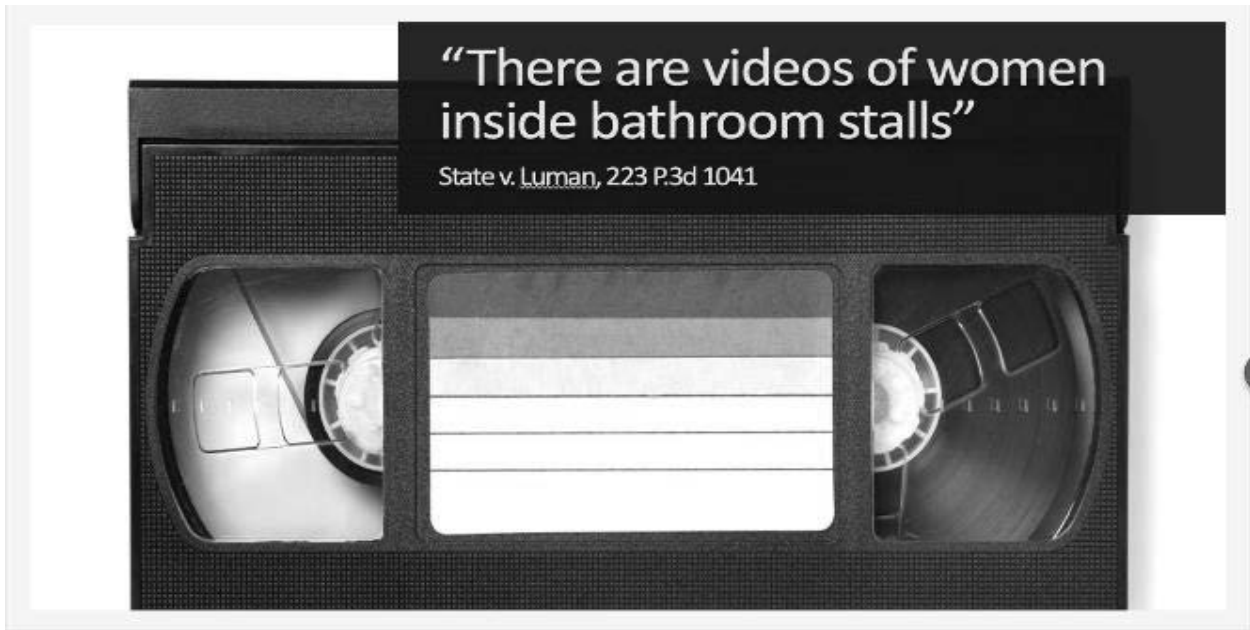
Training Point:

Fourth Amendment does not apply to a search or seizure, even an arbitrary one, effected by a private party on his own initiative but it does protect against private party intrusions if the private party acted as an instrument or agent of government.

In deciding whether a private citizen effecting a search or seizure functioned as agent of government in Fourth Amendment context, court focuses on three relevant factors: (1) whether the government had knowledge of, and acquiesced in, the intrusive conduct; (2) whether the citizen intended to assist law enforcement or instead acted to further his own purposes; and (3) whether the citizen acted at government's request.

Notes:

A 911 call was made to report that a man was harassing a woman, and Officer Mattson arrived on the scene. The woman reported that the man had naked pictures of her 13-year-old daughter on his phone, and Officer Mattson asked if she had the phone. The woman retrieved the phone from the man's car and handed it over, but no pictures were found at the time. Later, a search warrant uncovered the images. The court found that the woman was not acting as a government agent when she retrieved the phone and handed it over, so the search was not considered a violation of the Fourth Amendment.



Case: State v. Luman, 347 Or. 487, 223 P.3d 1041 (2009)

Issue: Can police replicate private search?

Training Point:

Sheriff's office's possession of defendant's videotape, after private parties viewed it and, on their own initiative, brought it to the sheriff's office, did not violate constitutional provisions governing search and seizure, even if the private parties acted unlawfully in conducting the search and seizure that ultimately led to police possession of the evidence.

If the police do not invade a protected privacy interest by examining a piece of evidence, a "search" does not occur, for purposes of state constitutional search and seizure provision, and no warrant is necessary.

Notes:

The defendant in this case had videotapes of partially nude individuals in the women's restroom of his restaurant. The tapes were discovered by employees who then turned them over to the police. The defendant argued that the police violated his privacy rights by viewing the tapes without a warrant. However, the court found that because the tapes were voluntarily given to the police by private parties, the defendant no longer had a protected possessory or privacy interest in the tapes. Therefore, a search did not occur, and a warrant was not required for the police to view the tapes.



Case: U.S. v. Jacobsen, 466 U.S. 109 (1984)

Issue: Is there a reasonable expectation of privacy when the package was shipped to a private mail carrier, and the employees of that agency initially revealed the contents of the package?

Training Points:

Fourth Amendment's protection against unreasonable searches and seizures proscribes only governmental action; it is wholly inapplicable to a search or seizure, even an unreasonable one, effected by private individual not acting as an agent of the Government or with participation or knowledge of any governmental official.

Initial invasions of defendants' package by agents of a private carrier, who independently opened the package and made an examination, did not violate Fourth Amendment because of their private character.

Notes:

The "cat out of the bag" search

A private freight company's employee found a damaged package containing a suspicious substance and reported it to the DEA, who confirmed it was cocaine. The Supreme Court determined that the initial examination by the private employee did not violate the Fourth Amendment. The DEA's actions in removing the tube and conducting a chemical test were also found to be reasonable and did not violate any privacy interests because the package was unsealed, and the substance was already made available for inspection by the private party.



Case: State v. Shaw, 237 N.J. 588, 207 A.3d 229 (2019)

Issue: Does third party intervention apply to police officers' warrantless search of a motel room?

Training Points:

Third-party intervention doctrine did not apply to allow police officers' warrantless search of motel room after motel owner entered room and then reported to officers the presence of suspected narcotics in room; mere entry into room by motel owner did not entirely deprive motel guests of privacy interests in the room.

Under the third-party intervention doctrine, a person's reasonable expectation of privacy is not violated by the actions or search of a private, rather than government, actor; in such a situation, an initial search by the private actor does not trigger Fourth Amendment protections, which apply only to governmental action, and a subsequent search by law enforcement, so long as it does not exceed scope of private search, may not require a warrant if it does not infringe any constitutionally protected privacy interest that had not already been frustrated as result of the private conduct.

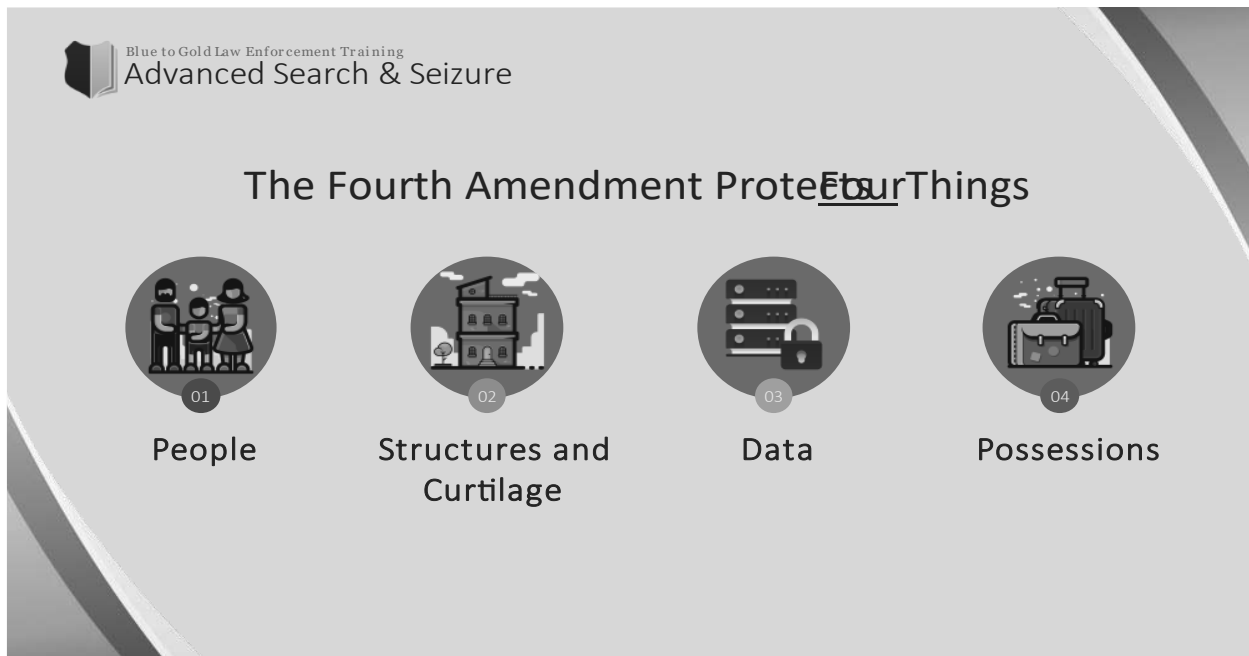
Where a motel owner or employee finds contraband in a guest's room, the police can use that information to obtain a search warrant and then conduct a search.

Notes:

A cat out of the bag search requires lawful access.

Hanson complained about bed bugs at a motel, and the owner searched the room in her absence. The owner found a plastic bag filled with suspected narcotics and called the police. Officer Rademacher arrived and saw the drugs along with other drug-related items in the room.

Was it a protected area?



- A person's body and their clothes is highly protected and police must use caution before going "hand's on." Illegal persons, in general, receive the same protections, especially during typical police confrontations.

Person's include their bodies and clothes.

- Houses includes apartments, hotel rooms, garages, business offices, and warehouses.

Almost every physical structure, unless abandoned, is protected by the Fourth. Activity that is "private, "intimate," or "familial" is more protected than commercial areas.

- Effects include automobiles, cell phones, luggage and so forth. It includes most personal property but not every piece of real property. For example not all real estate is covered by the Fourth or property that is disclosed "to the world."

The Fourth covers effects, but usually only those where the person has a reasonable expectation of privacy.

Curtilage



Case: Florida v. Jardines, 569 U.S. 1 (2013)

Issue: Is searching the porch of someone's home a violation of one's privacy?

Training Points:

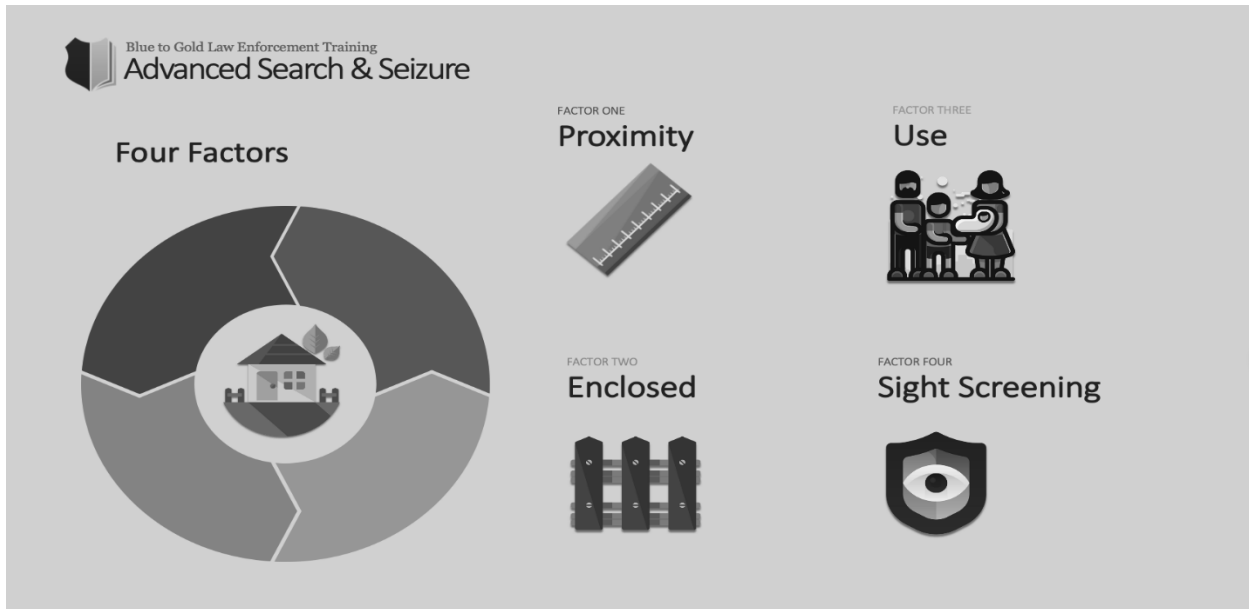
The "curtilage" of a home, which is the area immediately surrounding and associated with the home, is part of the home itself for Fourth Amendment purposes.

The curtilage of a home is intimately linked to the home, both physically and psychologically, and is where privacy expectations are most heightened, for Fourth Amendment purposes.

Front porch of home, which was location at which law enforcement officials used a drug-sniffing dog to investigate an unverified tip that marijuana was being grown in the home, was part of the curtilage of the home and therefore was a constitutionally protected area, for Fourth Amendment purposes.

Notes:

Detective Pedraja of the Miami-Dade PD received a tip that marijuana was being grown in Joelis Jardines' home. A month later, the DEA sent a surveillance team to Jardines' house. After watching the house, Detective Pedraja, Detective Bartlet, and his K9 approached the house. The K9 searched the front porch and stopped at Jardines' front door, indicating the presence of drugs. However, the court found that the area searched was constitutionally protected and that the officers had entered it. The front porch is an area adjacent to the home and considered part of the curtilage, to which the activity of home life extends.



Case: U.S. v. Dunn, 480 U.S. 294 (1987)

Issue: How is curtilage defined?

Training Points:

Curtilage questions in search and seizure context should be resolved with particular reference to proximity of area claimed to be curtilage to the home, whether area is included within enclosure surrounding home, nature of uses to which area is put, and steps taken by resident to protect area from observation by people who are passing by; primary focus is whether area in question harbors those intimate activities associated with domestic life and privacies of the home.

Notes:

The DEA obtained a warrant to track suspected drug manufacturing equipment and found it on the defendants' ranch, which was heavily fenced and secluded. DEA agents and Houston PD later entered the ranch without a warrant, crossed several fences, and smelled chemicals. They then looked into a smaller barn before going to a larger barn, where they saw a potential drug lab through the windows. The Supreme Court later found that the barn and surrounding area were not within the curtilage of the house based on four factors, including the barn's distance from the house, lack of enclosure, and absence of domestic activity.



Case: State v. Kender, 60 Haw. 301, 588 P.2d 447 (1978)

Issue: Whether Officer Segundo's use of a telescope from a vantage point in Okazaki's yard to view marijuana plants in Kender's backyard constituted a lawful search?

Training Points:

Defendant, by allowing a thick brush of California grass to grow which effectively prevented observation into that part of his backyard where marijuana plants were located, exhibited a reasonable expectation of privacy against observations by person positioned in his neighbor's property.

Notes:

On October 8, 1975, Officer Segundo of the Maui Police Department received a tip about marijuana plants growing in Kender's backyard and obtained permission from Kender's neighbor, Okazaki, to enter his property. Kender's backyard was not visible from the main road due to natural barriers and the house. Marijuana plants were located in front of a lean-to approximately fifty-three feet from the house. Segundo, positioned in Okazaki's yard, could see only the lean-to, not the ground beneath it due to tall California grass. To observe further, he climbed a fence and used a telescope, through which he saw five one-gallon tin cans with six-inch tall marijuana plants in front of the lean-to, prompting further action in the investigation.



Case: State v. Mitchell, 8 Kan. App. 2d 265, 655 P.2d 140

Issue: Whether a spent .22 caliber shell casing found in defendant's enclosed yard, the scene of an alleged murder, was properly suppressed by order of the court as having been obtained in the course of an unreasonable search and seizure?

Training Points:

Plain view of spent rifle shell did not justify its warrantless seizure from defendant's enclosed yard, absent exigent circumstances.

Where defendant's residence was located one-eighth mile from the public road, along a private drive, and house and yard were enclosed in part by a stone wall with a wire gate, the yard area was protected from unreasonable searches and seizures and warrantless seizure of spent rifle shell from the yard the day after defendant's husband was shot in the yard was unreasonable; seriousness of the homicide investigation did not create exigent circumstances.


Notes:

Floyd Mitchell was shot and died from a gunshot wound. The Sheriff met the ambulance at the medical facility, where Mitchell was pronounced dead, and directed a deputy to go to the residence and pick up a rifle found near the body. The deputy went to the house and took the rifle, a hat, and a belt buckle. The next day, the sheriff and others went to the residence to take pictures of where the body was found, and the sheriff noticed an empty shell casing on a ledge near the north door of the house, which was seized. The court found that the defendant had a reasonable expectation of privacy for the area enclosed by a stone wall and wire gate, and that the warrantless search and seizure was unconstitutional.

Curtilage Color Codes

Blue to Gold Law Enforcement Training
Advanced Search & Seizure

Curtilage Color Codes



01 Need exigency, emergency, urgency

02 Knock and talks and routine calls for service

03 Open Fields



Viewing from red may be a search

State v. Waldschmidt, 12 Kan.App.2d 284, 740 P.2d 617, *rev. denied* 242 Kan. 905 (1987), the Kansas Court of Appeals held that a fenced back yard was within the curtilage. In that case, the court noted the yard was behind and immediately adjacent to the residence and was surrounded by a six-foot high wooden privacy fence which obstructed the view of the yard. The court found the fence was of the type used for intimate family activities and by erecting it, the defendant exhibited a subjective expectation of privacy that society will protect as reasonable. Thus, when a law enforcement officer scaled the fence, placed his arm and flashlight over the fence, and observed marijuana plants, the court suppressed the plants as the product of an unconstitutional warrantless search. 12 Kan.App.2d at 286, 290.

Where defendant's residence was located one-eighth mile from the public road, along

a private drive, and house and yard were enclosed in part by a stone wall with a wire gate, the yard area was protected from unreasonable searches and seizures and warrantless seizure of spent rifle shell from the yard the day after defendant's husband was shot in the yard was unreasonable; seriousness of the homicide investigation did not create exigent circumstances.

State v. Mitchell, 8 Kan. App. 2d 265, 655 P.2d 140 (1982)



Red can become yellow with the proper justification, like a party in the back or an implied invitation.



What can you do on Curtilage?

Knock & Talk



“Complying with the terms of traditional knock and talk do “not require fine-grained legal knowledge; it is generally managed without incident by the Nation's Girl Scouts and trick-or-treaters.”

Florida v. Jardines, 569 U.S. 1 (2013)



Case: Florida v. Jardines, 569 U.S. 1 (2013)

Issue: Is the front porch of a home part of the curtilage for Fourth Amendment purposes?

Training Points:

The “curtilage” of a home, which is the area immediately surrounding and associated with the home, is part of the home itself for Fourth Amendment purposes.

The curtilage of a home is intimately linked to the home, both physically and psychologically, and is where privacy expectations are most heightened, for Fourth Amendment purposes.

Front porch of home, which was location at which law enforcement officials used a drug-sniffing dog to investigate an unverified tip that marijuana was being grown in the home, was part of the curtilage of the home and therefore was a constitutionally protected area, for Fourth Amendment purposes.

Notes:

Detective Pedraja of the Miami-Dade PD received a tip that marijuana was being grown in Joelis Jardines' home. A month later, the DEA sent a surveillance team to Jardines' house. After watching the house, Detective Pedraja, Detective Bartlet, and his K9 approached the house. The K9 searched the front porch and stopped at Jardines' front door, indicating the presence of drugs. However, the court found that the area searched was constitutionally protected and that the officers had entered it. The front porch is an area adjacent to the home and considered part of the curtilage, to which the activity of home life extends.



Case: United States v. Rohrig, 98 F.3d 1506 (6th Cir. 1996)

Issue: Did police violate the Fourth Amendment by entering a private home without a warrant in the early hours of the morning in response to a complaint about loud music emanating from that home?

Training Points:

Police officers' conduct in entering defendant's house in middle of night without warrant, in order to turn down loud music that was disturbing neighbors, was subject to Fourth Amendment standards, regardless of whether that conduct was primarily directed at abating loud noise rather than enforcing the law.

Police officers' warrantless entry into defendant's home in middle of night to turn down loud music that was disturbing neighbors, after unsuccessful attempts to contact occupant, was justified by exigent circumstances, given that time was of the essence due to continuing noise, that officers entered home to vindicate compelling governmental interest in restoring neighbors' peaceful enjoyment of their homes and neighborhood, and that defendant undermined his right to be left alone by projecting loud noises into neighborhood.

Notes:

Police responded to a noise complaint at the defendant's residence and found the noise was very loud and neighbors were gathered outside. They attempted to contact the residents by banging on doors and windows, but no one answered. The officers entered through an unlocked back door, announced their presence, and searched the house. They found marijuana plants and the defendant, who became combative and was placed in handcuffs.



Instructor Manual

Advanced Search & Seizure

Blue to Gold Law Enforcement Training was developed around the concept that expensive legal mistakes can be avoided by offering relevant, high-energy training that is relatable to every street officer. Our legal instructors have law enforcement experience and the ability to translate vital doctrines into ways that are easy to understand and cops “just get it.” As a result, officers become more confident in their legal decisions and don’t return to the business-as-usual method.

Please be advised that the materials contained herein are confidential and intended only for Blue to Gold instructors.

If you have received or found these materials, please notify Blue to Gold LLC immediately. We will arrange for a postage-paid return envelope to be sent to you. Your cooperation in maintaining the confidentiality of these materials is greatly appreciated.

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