



## **LGIT'S ROLL CALL REPORTER AUGUST 2008**

### **DETERMINING THE REASONABLENESS OF EFFORTS TO SECURE PREMISES DURING SEARCH WARRANT EXECUTION**

**QUESTION:** When are efforts to secure premises during execution of a search warrant unreasonable under the Fourth Amendment?

**ANSWER:** Efforts to secure the premises may be deemed unreasonable if the use of force against the occupants is unnecessarily painful, degrading, or prolonged, or if it involves an undue invasion of privacy.

**CASE:** *Los Angeles County v. Rettele*, U.S. Supreme Court, Decided May 21, 2007

In *Los Angeles County v. Rettele*, the United States Supreme Court again considered the legality of officers' conduct during the execution of a search warrant. The facts in the case established that from September to December 2001, Los Angeles County Deputy Sheriff Dennis Watters investigated a fraud and identity-theft crime ring involving four African-American suspects. One suspect had registered a 9-millimeter Glock handgun. On December 11, 2001, Deputy Watters obtained a search warrant for two houses where he believed the suspects would be found. The warrant authorized him to search the homes and three of the suspects for documents and computer files. In support of the search warrant, an affidavit cited various sources showing the suspects resided at two different houses. What Deputy Watters did not know was that one of the houses (the first to be searched) had been sold in September 2001 to Max Rettele. He had purchased the home and moved into it three months earlier with his girlfriend, Judy Sadler, and her 17 year-old son, Chase Hall. Rettele, his girlfriend and her son are Caucasians.

On the morning of December 19, 2001, Deputy Watters briefed six other deputies in preparation for the search of the houses. He informed them they would be searching for three African-American suspects, one of whom owned a registered handgun. The possibility a suspect would be armed caused the deputies concern for their safety. Around 7:15 a.m., Deputy Watters and the other deputies knocked on the door of the first residence and announced their presence. Hall answered. The deputies entered the house after ordering Hall to lie face down on the ground. The deputies' announcement awoke Rettele and Sadler. The deputies entered their bedroom with guns drawn and ordered them to get out of their bed and to show their hands. They protested that they were not wearing clothes. Rettele stood up and attempted to put on a pair of sweatpants, but deputies told him not to move. Sadler also stood up and attempted, without success, to cover herself with a sheet. Rettele and Sadler were held at gunpoint for one to two minutes before Rettele was allowed to retrieve a robe for Sadler. He was then permitted to dress. Rettele and Sadler left the bedroom within three to four minutes to sit on the couch in the living room. By that time, the deputies realized their mistake, apologized to Rettele and Sadler, and left within five minutes. They proceeded to

the other house where they found three suspects. Those suspects were arrested and convicted.

Rettele, Sadler, and Hall sued the deputies under 42 U.S.C. § 1983 for violations of their Fourth Amendment rights. They alleged that the warrant had been obtained in a reckless fashion and that the manner in which the search was executed, including their detention, violated their constitutional rights. The federal district court ruled in favor of the deputies. A divided panel of the United States Court of Appeals for the Ninth Circuit reversed, and the Supreme Court then agreed to review the case.

The Supreme Court ruled that the deputies had not violated the plaintiffs' constitutional rights. In doing so, the Court reiterated that, in executing a search warrant, officers may take reasonable action to secure the premises and to ensure their own safety and the effectiveness of the search. This includes the ability to detain the occupants of the premises while a proper search is conducted. The actions taken, however, must be reasonable. The test of reasonableness under the Fourth Amendment is an objective one; it is not limited to the subjective perspective of the officers on the scene. Unreasonable actions during warrant execution may include the use of excessive force or restraints that cause unnecessary pain or are imposed for a prolonged or unnecessary period of time. The Court found that the orders to Hall, Rettele, and Sadler, in the context of a lawful search, were permissible, and perhaps necessary to protect the safety of the deputies. The Court also rejected the contention that the deputies should have realized their mistake immediately after seeing that the occupants were Caucasian. The Court explained that when the deputies ordered Rettele and Sadler from their bed, they had no way of knowing whether the African-American suspects were elsewhere in the house. The presence of some Caucasians did not eliminate the possibility that the suspects lived there as well. The deputies, who were searching a house where they believed a suspect might be armed, possessed authority to secure the premises before deciding whether to continue the search. Finally, the Court observed that, since blankets and bedding can conceal a weapon, the deputies were not required to turn their backs while the occupants retrieved clothing or covered themselves with sheets. For all of these reasons, the deputies' actions were reasonable under the Fourth Amendment.

**NOTE:** Officers who secure premises through means that are unnecessarily painful, degrading, or prolonged, or involve an undue invasion of privacy, act at their own peril. The unnecessary use of guns and handcuffs may also result in liability. A "reasonable" search can quickly be rendered "unreasonable" by such conduct. The result in this case might have been different if the deputies had forced the occupants to remain motionless and standing for longer than was necessary or had prevented them from dressing for an unreasonable amount of time. Instead, the evidence established that the deputies prevented Rettele and Sadler from dressing for no more than one to two minutes and left the home less than 15 minutes after arriving.

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