

INFORMANT

The Law Enforcement and Public Entity newsletter of Phelps Dunbar

Mark Fijman, Editor-in-Chief

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SUPREME COURT HOLDS MISTAKE IN EXECUTING SEARCH WARRANT NOT A CONSTITUTIONAL VIOLATION

In an acknowledgment of the importance of officer safety, the United States Supreme Court ruled that a mistake in executing a search warrant is not in itself enough to constitute a violation of the Fourth Amendment's prohibition against "unreasonable searches and seizures." *Los Angeles County v. Rettele*. The Court also noted that search warrants are based on probable cause and not "absolute certainty" and that sometimes it results in the "frustration, embarrassment, and humiliation" of the innocent.

The case began back in December 2001, when Los Angeles County Deputies were looking for four black suspects in an identity-theft scheme. One of them was known to have a gun. The officers obtained search warrants for two houses where it was believed the suspects might be found. Unknown to the officers at the time, the suspects had moved out of one of the houses three months earlier, and the house had been purchased by Max Rettele, who lived there with his girlfriend Judy Sadler and her 17 year old son.

When officers entered the house pursuant to the search warrant, they found Rettele and Sadler in bed and told both to get up and show their hands. Rettele and Sadler, who are white, protested they were naked, but the officers insisted they stand unclothed next to the bed for approximately two minutes before officers realized a mistake had been made. The officers allowed the two to dress and apologized for the mistake. The execution of the second warrant a short time later resulted in the capture, arrest and conviction of the four sought after suspects.

Rettele and Sadler filed a lawsuit over the alleged unreasonable invasion of privacy, which was initially dismissed by a federal district court. The United States Court of Appeals for the Ninth Circuit, however, reinstated the lawsuit and said a jury should decide whether the officers violated the couple's constitutional rights. The Ninth Circuit noted that as soon as the officers saw that Rettele and Sadler were white, and not the black suspects sought, the search should have ended immediately. On appeal, however, the United States Supreme Court reversed that decision and dismissed the case.

While acknowledging the embarrassment caused to Rettele and Sadler, the Supreme Court held there was no Fourth Amendment violation and that the search was reasonable. Because the Deputies had reason to believe a suspect was armed, they were entitled to "take reasonable action to secure the premises and to ensure their own safety and the efficacy of the search" while executing the warrant. The Court's opinion noted the common practice of suspects to keep loaded weapons in bed with them.

The fact that Rettele and Sadler are white and the suspects black did not alter the reasonableness of the search and brief detention. The Court noted that the Deputies did not know initially if the actual suspects were also in the house, or if Rettele and Sadler might be accomplices. In determining the reasonableness of the search, the Court noted the officer's quick response in allowing Rettele and Sadler to get dressed once the area was secured.

A MESSAGE TO ALL INFORMANT SUBSCRIBERS

Phelps Dunbar will hold its 30th Annual Employment Law Seminar on August 23-24, 2007 at the Pearl River Resort in Philadelphia, Mississippi. In light of the interest shown by our government and law enforcement clients and *Informant* subscribers, we will again feature a workshop on Law Enforcement Developments and Litigation Strategies. We will also offer a Public Employer's workshop to address special employment law issues faced by every Sheriff, Police Chief, Court Clerk, City Clerk and County Administrator. In addition, we will cover employment law issues affecting all employers, such as overtime issues under the Fair Labor Standards Act, the Family and Medical Leave Act, and employee benefits updates. Please be on the lookout for your invitation and be sure to register early. We look forward to seeing you there!

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