

Memorandum

Student's Name

Institutional Affiliation

Memorandum

To: Whomever It May Concern

From: Jerrod Martin

Date: June 18, 2019

Subject: Warrantless Search and Seizure

Within the confines of law enforcement efforts, search warrants are an important tool, especially in curtailing illegal drug trafficking. Interestingly, most law enforcers carry out searches without a search warrant and there are exemptions allowing that. For instance, if an individual allows a law enforcement officer to carry out the search, after an arrest, if the evidence is in plain view, or if obtaining a search warrant could lead to loss of evidence or personal injury. Consistently, considering the case of Officer Chong and Elliot Reynolds, we carefully look, analyze, and present the facts and issues regarding the stop, continued detention, pat down and/or searches or arrest of Mr. Reynolds supported by cases and principles to support the argument.

The Fourth Amendment Protection

The Fourth Amendment of the United States Constitution protects individuals against unreasonable search and seizure. The constitutional protection has traditionally been sustained through the exercise of the rule of the exclusionary rule. Since a Supreme Court ruling in *Weeks v. the United States* in 1914, evidence seized in violation has always been excluded in criminal prosecution during federal cases (Craig & Timothy, 1991). Consequently, the same exclusionary rule applies to states as the court argued that allowing states to include illegally seized evidence would encourage the violation of the fourth amendment. Over the years, appropriate application of the exclusionary rule and its rationale has been vigorously criticized. Consistently, considering the case of Officer Chong and Mr. Reynolds and drawing upon warrantless searches and

seizures, we highlight the following facts that will be explained based on the search and seizure law.

Searches and Seizures Background Facts

Ideally, when Officer Chong stopped Elliott Reynold, it was based on a “Silver Alert” call that he had heard about a missing elderly person who was said to have been taken away by her estranged son. Officer Chong spotted Elliott Reynold’s BMC sport utility vehicle, which he thought fit the description of the car in the “Silver Alert” call. Notably, Officer Chong would have let the driver go but he noticed that the car stuttered and stalled. Quickly, the officer concluded that the care must be having a mechanical problem or the driver was impaired, and he chose to perform a car stop. When Officer Chong pulled over the car, he asked for the driver's license and vehicle registration. During this period, he noticed that Mr. Reynolds did not reek of any alcohol but he was looking nervous. The driver replied he did not have his wallet with his license and vehicle registration forcing Officer Chong to look up the car license tag on his computer terminal. Up to this point, Mr. Reynolds was cooperative and even got out of his car willingly and allowed Officer Chong to search him. However, after Officer Chong found a marijuana pipe on him, he handcuffed him and put him in the backseat of the police car. It was at this point that Mr. Reynolds started protesting that Officer Chong did not have a right to search his car. Officer Chong found a clear-type cellophane bag containing what appeared to marijuana and informed Mr. Reynolds that he was under arrest.

Mr. Reynolds Stop

Ideally, as highlighted in the Fourth Amendment search and seizure, a warrantless search is allowed if an officer has a probable cause. In this case, the concept of probable cause is not entirely defined but left to the judicial construct (Congress.gov, 2017). An applicant is expected

to present sufficient facts to the magistrate to enable him/her make inferences about probable cause. When Officer Chong stopped and searched Mr. Reynolds, he was supposed to probable cause/ reasonable suspicion. The probable cause, in this case, was that he had heard through a "Silver Call" about an elderly woman who had been taken away by her estranged son in a sport utility vehicle. Officer Chong also stopped the vehicle after he noticed that it was stuttering and stalling. From a legal perspective, and drawing upon the Arizona v. Grant case Officer Chong stopped the vehicle because he had reasonable cause to believe that the driver was a suspect in the "Silver Call" he had heard. Ideally, as Kinports (2019) highlights, in the Arizona v. Grant case, the court extended the search warrant exceptions to the arrest of a vehicle occupants' if it was reasonable to believe that there was evidence related to the crime of arrest. Consequently, some lower courts have interpreted 'reasonable to believe' language to mean that it requires only reasonable suspicion. Consistently, it is mentioned that when Officer Chong asked for Mr. Reynolds license and vehicle registration, he noticed that he had no alcohol odor on him, which meant that he was not drunk. From this, the other probable cause that made Officer Chong stop Mr. Reynolds is probably because he thought he was drunk-driving after he attempted to re-start the car.

Mr. Reynolds Detention

The Fourth Amendment is clear about arrests, although the courts allow police officers to detain or arrest an individual if they have a probable cause to believe that the person has committed a felony or misdemeanor. Probable cause in detention requires the same standard to be met as with the case in the issuance in the warrant of arrest. Ideally, after Officer Chong detained Mr. Reynolds after he found a marijuana pipe on him. It is mentioned that after this, Officer Chong believed he had probable cause for an arrest, though he was not interested in

taking him time for a single piece of a drug. Nonetheless, the Officer retained Mr. Reynolds because he believed that Mr. Reynolds fit the description he had received from the "Silver Call." From this perspective, Officer Chong had a probable cause to detain Mr. Reynolds, as he wanted to check his car for the missing elderly woman. However, when Mr. Reynolds said his name was not Alesandr Minsk, probably the officer should not have detained him. Besides, Mr. Reynolds protested against the warrantless search conducted by Officer Chong on his car.

Pat Down and/ or Searches or Arrest of Mr. Reynolds

Under the Fourth Amendment of the United States Constitution, a law enforcement officer is allowed to pat-down, search, or arrest a person if he/she has reasonable cause. The law officer is allowed to pat-down search the outer clothing of a person when the officer articulates the individual is armed or dangerous. In the case of Mr. Reynolds, he stepped out of the car even though Officer Chong had not requested him and approached the police car. Officer Chong was surprised that Reynolds had gotten out and approached him prompting him to order the driver to put his hands on the hood of the police car as he held the grip of his holstered sidearm.

Consistently, according to the North Dakota Supreme Court Review (2019), if a pat-down suggests that the object might be a weapon, the searching officer is allowed to continue the search of the suspect to determine whether the object is a weapon. In this case, the officer does not have to be certain that the individual is armed but must do the search for his/her own safety and that of others. Thus, Officer Chong's pat-down on Mr. Reynolds and search for a weapon had a reasonable cause because he felt threatened after Reynolds approached him in the police car and after he felt an object that resembled a handgun.

When it comes to warrantless searches and seizures, consent-based searches are the most ubiquitous form of the search undertaken by law enforcers. According to Sommers and Bohns

(2019), a critical legal inquiry concerning these cases is whether consent was granted voluntarily. This means law enforcers are allowed to conduct warrantless searches of an individual if valid consent was given. Unfortunately, in the case of Mr. Reynolds, Officer Chong did not seek consent and even after Mr. Reynolds protested, he continued with the warrantless search. Evidently, Officer Chong violated the fourth amendment that protects Mr. Reynolds against warrantless searches and seizures. On the other hand, Officer Chong had probable cause to search Mr. Reynolds car after he found him in possession of marijuana. In such a case, for the evidence seized by Officer Chong to be admissible in a court of law and in the prosecution of Mr. Reynolds, he would need to present facts and evidence to prove to the magistrate that he had probable cause to search Mr. Reynolds car and make an arrest.

Yours Sincerely,

Sign _____

Jerrold Martin

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