



## THE SEVENTH CIRCUIT AFFIRMS A DEFENDANT'S FIREARM CONVICTION EVEN THOUGH LAW ENFORCEMENT OFFICIALS DID NOT OBTAIN A WARRANT BEFORE PERFORMING A SEARCH OF HIS RESIDENCE



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In *United States v. Jones*, 2017 WL 2791081 (7th Cir. June 30, 2017), the United States Court of Appeals for the Seventh Circuit was asked to consider whether the District Court erred in denying Defendant Vincent Jones' motion to suppress the guns found at Jones' residence—something Jones should not have possessed given his status as a felon. The relevant facts are as follows.

Jones lived with his girlfriend, Jennifer Kelley, and her three children in a mobile home located in Westville, Indiana. On June 5, 2013, Kelley's daughter ("MK") went to a neighbor's residence to call the police to report that Jones sexually assaulted her. Officers James Gunning and Jason Yagelski of the Westville Police Department were dispatched to the scene. Kelley told the officers that she was afraid of Jones, and so, the officers transported Kelley and MK to the police department for further inquiry.

At the police department, MK told the officers that she had been sexually assaulted by Jones for several years. Kelley told the officers that Jones was a convicted felon who had tendencies of being violent and aggressive, that he had guns in a safe in their shared bedroom, and that she feared for her life and the lives of her children. The officers ran a criminal history check on Jones, and the search confirmed that Jones was a convicted felon.

Sometime thereafter, the Kelleys and the officers returned to the residence with three additional officers: James Jackson, Brian Piergalski, and Corey Chavez. The officers were greeted at the door of residence by Jones. Once inside, Officer Gunning observed knives on a counter and told Jones that he needed to vacate the premises but allowed him first to retrieve his personal belongings. Jones followed the officers' instructions to step outside of the home. An officer then immediately handcuffed Jones and escorted him to a picnic table located ten to twenty feet from the entrance of the residence.

While Jones was detained outside by two officers, other officers presented Kelley with a consent to search form. Kelly signed the form and agreed to a warrantless search of her "residence and all rooms including enclosed boxes, safes etc. to clear the home of possible weapons and/or drugs." Officer Piergalski searched Kelley and Jones' shared bedroom. In the bedroom, Officer Piergalski saw two gun safes (a smaller safe on top of a larger one), boxes of ammunition, and empty gun

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holsters. Officer Piergalski also viewed several guns in the smaller safe that was partially open, and so, Officer Piergalski opened the safe's door further to better see the guns. Officer Jackson also observed that the smaller safe's door was open a couple of inches.

After seeing the contents of the open safe and in consultation with a state prosecutor, the officers ceased the search and sought a search warrant. A state court judge issued a search warrant to search the home and the contents of the safe for evidence of sexual assault and firearms. The officers conducted a full search of the home and seized twelve firearms, over a thousand rounds of ammunition, seventeen clips, and several firearm scopes. Jones was then arrested and charged with one count of possession of a firearm by a felon in violation of 18 U.S.C. § 922(g)(1).

Thereafter, Jones moved to suppress the products of the officers' search. The District Court referred the case to a United States Magistrate Judge who conducted an evidentiary hearing on Jones' motion to suppress. At the hearing, Jones, relying upon *Georgia v. Randolph*, 547 U.S. 103 (2006), argued that Kelley's consent to search was invalid because the officers did not ask him for consent, and he did not consent. Jones contended that the first search was illegal, and the search pursuant to the warrant was tainted by the warrantless search. The Magistrate Judge rejected these arguments and concluded that *Randolph* was not applicable because Jones had failed to object to the search when it occurred. The Magistrate Judge also found that, because the initial search was conducted with Kelley's consent and because the guns were observed in plain view, there was nothing to taint the subsequent search warrant. Accordingly, the Magistrate Judge recommended that the motion to suppress be denied.

The District Court adopted the Magistrate Judge's report and denied the motion. In denying the motion, the District Court rejected two newly asserted claims raised in the objections to the Magistrate Judge's report. Relying upon *Randolph*, Jones argued that the officers removed him to preventing him from objecting to the search, and therefore, Kelley's consent was invalid. The District Court found that Jones did not object to the search and that the officers did not unlawfully detain or remove him. Instead, the District Court found that he voluntarily exited the residence.

Second, Jones again challenged the search of the gun safe, arguing that the safes were closed, and therefore, the guns were not observed in plain view. As support, Jones relied upon Officer Piergalski's post-search report that indicated that he pulled open the door to see the guns. The District Court rejected this argument, credited the officers' testimony that the safe was open, and concluded that the guns were observed in plain view. Lastly, the District Court (alternatively) concluded that either the inevitable discovery rule or the independent source doctrine would prevent exclusion of the evidence of the guns found inside of Jones' residence.

After the denial of his first suppression motion, Jones moved to reconsider. The District Court granted Jones' motion to reopen the evidentiary hearing to allow Jones to testify. Jones testified that he objected to the search, and therefore, Kelley's consent was invalid. According to Jones, two officers stepped inside of the residence as he retrieved his keys and wallet. Jones testified that he told the officers that he did not "need any help finding my keys or wallet, and I didn't invite you in." Jones also testified that he noticed one officer "poking around through boxes and whatnot," and he asked the officer, "Don't you need a warrant?"

Thereafter, the District Court denied Jones' motion to reconsider and found that Jones' testimony was not credible. The District Court concluded that Jones' purported statements to the officers would not amount to an express refusal of consent as required under *Randolph*. Additionally, the District Court found that, even if Jones was correct that the officers had unlawfully opened the safe prior to securing the search warrant, the evidence would have been admitted under either the inevitable discovery or the independent source exceptions to the exclusionary rule.

Jones, then, filed a second motion to reconsider. The District Court denied the motion and rejected both Jones' new and previously raised arguments. The District Court found that, after Jones voluntarily exited the residence and was subsequently handcuffed by the officers, his detention was lawful, both for the officers' safety and because the officers had probable cause to arrest him. The District Court declined to reconsider its alternative holding that the inevitable discovery doctrine applied.

At trial, Officer Piergalski made inconsistent statements as to whether the gun safe's door was initially open. After that testimony, Jones orally renewed his motion to suppress, but the District Court denied the motion. Ultimately, a jury convicted Jones on one count of possession of a firearm by a felon, and the District Court sentenced Jones to 97 months of imprisonment.

On appeal, Jones argued that the District Court erred in denying his motion to suppress the evidence of the guns found in his home. First, Jones argued that the District Court erred in considering various issues arising under *Randolph*. Second, Jones asserted that the District Court was wrong in concluding that the guns would have been inevitably discovered.

The Seventh Circuit began its analysis of Jones' argument by noting that the Fourth Amendment prohibits unreasonable searches and seizures and provides that a warrant may not be issued without probable cause. A warrantless search conducted inside a person's home is presumptively unreasonable and a violation of the Fourth Amendment unless an established exception applies. One established exception is a search of a home that is conducted pursuant to an occupant's voluntary consent.

The Seventh Circuit explained that, except for Jones' gun safes, there was no dispute that Kelley had the authority to consent to the search of the home. In *Randolph*, however, the United States Supreme Court carved out a narrow exception to the consent exception, holding that "a physically present inhabitant's express refusal of consent to a police search [of his home] is dispositive as to him, regardless of the consent of a fellow occupant." *Randolph*, 547 U.S. at 122-23. In dicta, the Supreme Court also noted that consent by a resident might not be sufficient if there is "evidence that the police have removed the potentially objecting tenant from the entrance [of their home] for the sake of avoiding a possible objection . . ." *Id.* at 121. However, the Supreme Court noted that its holding in *Randolph* "does not apply where the objector is not present 'and object[ing].'" *Id.* at 126.

The Supreme Court refined its holding in *Randolph* in *Fernandez* where it emphasized that *Randolph*'s "holding was limited to situations in which the objecting occupant is present." *Fernandez*, 134 S.Ct. at 1133. The Supreme Court held "that an occupant who is absent due to a lawful detention or arrest stands in the same shoes as an occupant who is absent for any other reason." *Id.* at 1134.

Upon consideration, the Seventh Circuit rejected Jones' argument that his situation was akin to the one in Randolph. The Seventh Circuit found that, prior to the officers conducting the search, Kelley told them that Jones was a convicted felon who had several guns and tendencies of violence and aggression. She also told them that she feared for her life and the lives of her children, one of whom had just reported to those same officers that Jones sexually assaulted her. The officers ran a criminal history check and confirmed Jones' status as a convicted felon. Upon arriving at the scene, Officer Gunning observed knives on a counter near where he initially encountered Jones who then voluntarily exited the residence. Under these circumstances, the Seventh Circuit determined that it was objectively reasonable for the officers to remove him—not only for their safety—but also because they had probable cause to arrest him. Moreover, the Seventh Circuit opined that, even though Jones was neither under arrest nor read his Miranda rights, his removal was objectively reasonable as a lawful detention, and therefore, Kelley's consent was effective to permit the warrantless search of the home.

As for Jones' argument regarding the District Court's determination that the evidence of the guns would not be excluded based upon the inevitable discovery rule, the Seventh Circuit explained that the doctrine of inevitable discovery provides that illegally obtained evidence will not be excluded if the government can prove, by a preponderance of the evidence, that the officers "ultimately or inevitably" would have discovered the challenged evidence by lawful means. *Nix v. Williams*, 467 U.S. 431, 444 (1984). To meet this burden, "the government must show (1) that it had, or would have obtained, an independent, legal justification for conducting a search that would have led to the discovery of the evidence; and (2) that it would have conducted a lawful search absent the challenged conduct." *United States v. Pelletier*, 700 F.3d 1109, 1116 (7th Cir. 2012).

The Seventh Circuit held that the Government had satisfied both requirements. As to the first requirement, the Government had legal justification for a warrant because, even prior to the entry of the home, Kelley informed the officers that Jones had guns in a gun safe located in their shared bedroom. Kelly also informed the officers that Jones was a convicted felon, which was confirmed by the officers after they ran a criminal history check. In addition, Jones conceded that the officers had probable cause for a search warrant even prior to entering the home.

The Seventh Circuit further held that the Government had also satisfied the second requirement, showing that they would have conducted a lawful search absent the challenged conduct. Not only did the officers have sufficient information that Jones was a convicted felon in possession of guns prior to entering the home, but, again, Officer Piergalski saw the two gun safes, boxes of ammunition, and empty gun holsters upon legally entering the shared bedroom. As such, the Seventh Circuit was "confident" that the guns would have inevitably been discovered by lawful means, and the Seventh Circuit affirmed the District Court's denial of Jones' motion to suppress.

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**Note:** *Court holdings can vary significantly between jurisdictions. As such, it is advisable to seek the advice of a local prosecutor or legal adviser regarding questions on specific cases. This article is not intended to constitute legal advice on a specific case.*