



This Is No Ordinary Case



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According to the United States Court of Appeals for the Eleventh Circuit, *United States v. Cooks*, ___ F.3d ___, 2019 WL 1462062 (11th Cir. Apr. 3, 2019), was “no ordinary case.” As the Eleventh Circuit explained, in the ordinary case, an arrest warrant does not automatically authorize the police to search an arrestee’s residence; rather, the home search requires its own warrant. In this case, the question was whether the police violated the Fourth Amendment when they conducted a warrantless search of the crawlspace in Defendant Willie Lee Cooks’ home following a four-hour standoff that the responding officers deemed a hostage situation and that culminated in Cooks’ arrest.

The events underlying this case began when a team of officers from the U.S. Marshals Service’s Fugitive Task Force and Counter Gang Unit sought to arrest Cooks at his home. Cooks, a member of the “Bloods” street gang, was wanted for second-degree assault by the Birmingham Police Department. The officers initially knocked on his door, but when no one answered, they entered the house by force. They left after a brief survey of the residence revealed that it was empty.

The team returned around 10:30 a.m. the next day. While surveilling Cooks’ home, the officers saw a car leave the residence twice, and when it returned the second time at about 12:30 p.m., they ordered the driver—Precious Clemens—to stop. Instead of stopping, Clemens ran inside the house and locked the door. Although attempts to communicate with Clemens through the door were unsuccessful, two of the home’s other occupants—Pamela Price and Everstein Johnson—were more cooperative. When Officer Crendal Deramus asked Price and Johnson to open the door, they told him that they couldn’t because the door had been barricaded and locked from the inside using a deadbolt for which they didn’t have a key.

Around that same time, officers started hearing what they would later describe as “sounds similar to a power drill” coming from inside the house. As best they could tell, the sounds came from the immediate area of the front door. The officers could not see inside, though, because the residence had tinted windows throughout. Shortly thereafter, Price was able to exit the house briefly, and before going back inside, she told the officers that Cooks was armed. Concluding that they were facing a potential hostage situation, the officers decided to call the Jefferson County SWAT team. When the SWAT team arrived, a hostage negotiator made contact with Price and another unknown occupant, both of whom reiterated that they wanted to leave but couldn’t, and one of whom stated—without further explanation—that Cooks was “doing something in a hole in the floor” of the house. When the negotiations to open the barricaded front door failed, the SWAT team deployed tear gas.

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At 4:30 p.m.—roughly an hour later, and four hours after the initial contact with Clemens—the standoff came to an end. The SWAT team broke a window and extracted Price and Johnson from the house, at which point Price reiterated that Cooks was “doing something in the floor.” This time, though, she elaborated that Cooks had put multiple guns in a hole in the floor. The barricade sealing the front door was removed, and the SWAT team swarmed the house and took Cooks and Clemens into custody.

After arresting Cooks, the officers performed an initial 30-second sweep, followed by a three- to five-minute secondary sweep. In the process, they found a four-by-four-foot hole covered by plywood that, they later explained, had been hastily nailed down with screws. According to Deramus, they hadn’t seen the hole during the prior day’s entry. The officers used a crow bar to remove the plywood covering and found that it led to the home’s crawlspace. SWAT Deputy Douglas Lawson—described as “one of the smaller members of the SWAT team who was often called upon to go into small spaces”—entered the hole. As he put his hand down to brace himself, he felt a plastic tarp move and, under it, saw the butt of a gun in plain view. When Lawson shined his flashlight around the crawlspace, he saw more guns sticking out from underneath the plastic.

Thirty minutes to an hour after the initial sweep—and still without a search warrant—the officers called Special Agent Steve Owens with the Alabama Law Enforcement Agency to the scene to inventory the guns that they had discovered in the crawlspace. Owens found several pistols and long guns underneath and protruding from the tarp, along with several pieces of unopened luggage that officers later determined contained additional firearms. At this point, the officers decided to seek and, thereafter, obtained a search warrant for Cooks’ home. In all, the officers seized nine pistols and 22 long guns from the crawlspace.

Subsequently, the Government charged Cooks with two counts of unlawful possession of a firearm. Because the officers initially searched the crawlspace without a warrant, Cooks moved to suppress the guns, contending that even if the officers could lawfully sweep part of the house, “pulling up floor boards and crawling under the house . . . was overbroad for a protective sweep.” The Government responded to Cooks’ protective-sweep arguments and further countered that the search was justified under the exigent-circumstances doctrine because the officers didn’t know “if anyone else was inside the residence or inside the hole in the floor.” In the officers’ minds, the Government explained, the crawlspace could have contained individuals “injured from the effects of the tear gas . . . [or] by actions of the defendant himself.”

The Government’s exigent-circumstances theory was largely predicated on the idea that the house could have contained other individuals besides the four known occupants—Cooks, Clemens, Johnson, and Price. The officers candidly acknowledged that they weren’t quite sure who might have remained. Lawson, for instance, testified at the suppression hearing that they entered the hole in order “to secure it and make sure there wasn’t anybody hiding down there that could harm us.” Slightly differently, Deramus said that, although he personally believed that all of the house’s occupants had been accounted for, he couldn’t rule out the possibility that either additional “bad guy[s]” or “potential hostages” remained. For his part, SWAT Sergeant Billy Watts explained that the officers “had no idea how many were [in the house],” elaborating that while they “believed there to be four people in the house from the conversations” that they had with the occupants, they “were still not sure at that point.”

A United States Magistrate Judge considered Cooks’ suppression motion in the first instance and rejected the Government’s protective-sweep justification, concluding that although a limited sweep of the house was justified, it couldn’t lawfully extend to a search of the crawlspace. Specifically, he emphasized that there was “no evidence that any officer observed anything about the . . . hole that would indicate that a dangerous person was inside,” and that although the officers’ threat assessment was conceivable, “conceivability does not suffice for reasonableness.” The fact that the plywood was nailed down from the outside, the Magistrate Judge explained, undermined the case for opening it as part of a protective sweep because any hypothetical assailant “would have been effectively locked in.” Moreover, the Magistrate Judge questioned the extent of the intrusion,

as “the government offer[ed] neither authority nor argument for why prying up the nailed-down plywood covering the hole suffices for a cursory visual inspection,” as required of a protective sweep under *Maryland v. Buie*, 494 U.S. 325 (1990).

Nevertheless, the Magistrate Judge recommended that the District Court deny Cooks’ motion to suppress on the ground that the officers’ search was lawful under the exigent-circumstances doctrine. While (for protective-sweep purposes) it was “not reasonable for the officers to conclude the . . . hole contained a person ready and able to launch on attack,” the Magistrate Judge determined that “a reasonable officer could have believed a hostage could be underneath the plywood covering.” That was so, the Magistrate Judge reasoned, because the “officers already had a basis to conclude that people had been kept inside the house against their will.” Under the exigent-circumstances doctrine, the Magistrate Judge concluded, no warrant was necessary here because “a hostage should not have to wait for a warrant to be freed.”

The District Court adopted the Magistrate Judge’s Report and Recommendation in full. Thereafter, Cooks pleaded guilty to both counts but reserved the right to challenge the denial of his motion to suppress.

In affirming the District Court’s denial of Cooks’ motion to suppress, the Eleventh Circuit explained that Fourth Amendment cases have come to be governed by the principle that warrantless searches are presumptively unreasonable subject only to a few specifically established and well-delineated exceptions. Nowhere is this truer and more important than in the context of the search of a home. Given this privileged status, warrantless searches of homes bear heightened scrutiny.

According to the Eleventh Circuit, one of the “well-delineated exceptions” to the presumptive warrant requirement was undisputed here. Cooks did not deny that, once the officers were in the crawlspace, the firearms were in plain view and, therefore, were seizable so long as the officers were lawfully there. Cooks did deny, however, that the officers were lawfully in the crawlspace—arguing that they violated the Fourth Amendment by prying open the crawlspace’s plywood hatch. The Eleventh Circuit stated that, if he was right, the search of the crawlspace—and the ensuing seizure of the firearms—was invalid. Accordingly, whether the officers were justified in searching the crawlspace without a warrant was the sole and dispositive question in the appeal. Ultimately, the Eleventh Circuit stated that it need not reach any of the other arguments raised by the Government because it agreed with the District Court that the search was justified under the “emergency-aid” aspect of the exigent-circumstances doctrine.

The Eleventh Circuit explained that the exigency umbrella encompasses several common situations where resort to a magistrate for a search warrant is not feasible or advisable, including: danger of flight or escape, loss or destruction of evidence, risk of harm to the public or the police, mobility of a vehicle, and hot pursuit. The principal concern in this case was with the “risk of harm to the public”—sometimes called the “emergency-aid” aspect of the exigent-circumstances doctrine. In order to justify an exigent-circumstances search, the government bears the burden of demonstrating both exigency and probable cause. In the emergency-aid context, the probable cause element may be satisfied where officers reasonably believe a person is in danger. Separately, the government must also demonstrate that the resulting search was strictly circumscribed by the nature of the exigency that authorized it and limited to the areas where a person reasonably could be found.

The Eleventh Circuit determined that, in this case, it was clear that the hostage situation at Cooks’ residence—which was how the police perceived the situation—created an exigency of the sort that would justify a warrantless search. But, the real question was whether the exigency remained ongoing during the officers’ search of the crawlspace—in particular, that they could have reasonably believed that the hole could have contained someone who was in danger or was in need of immediate aid.

The Eleventh Circuit conceded that the evidence could be interpreted both ways. Ultimately, the Eleventh Circuit deferred to the officers. As the court noted, in assessing the reasonableness of officers' actions, it cannot indulge the 20/20 vision of hindsight but, instead, must adopt the perspective of a reasonable officer on the scene—which, here, entailed an armed standoff with a gang-member fugitive that had evolved into a hostage situation. The Eleventh Circuit noted that it could not get caught up in facts that the officers could not have known at the time—namely that, as it turned out, there weren't any additional captives in Cooks' hole or crawlspace. Rather, the Court had to remain mindful that the police must act quickly, based on hurried and incomplete information. Put simply, the Fourth Amendment's reasonableness requirement gave officers facing exigent circumstances ample breathing space to do the best they could with the information they had.

In short, the Eleventh Circuit opined that the ultimate question was whether the intrusion was strictly circumscribed and limited to the areas where a person reasonably could be found. The Eleventh Circuit held that it was. The hole and crawlspace were big enough to stash a person—a child or a small adult. The search took no longer than necessary to verify that the crawlspace was empty. Therefore, the Eleventh Circuit rejected Cooks' argument that the officers exceeded the scope of a lawful exigent-circumstances search by prying open the plywood door and affirmed the District Court's order denying Cooks' motion to suppress.