



The Wife's Consent was Voluntary



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In *United States v. Guidry*, 2018 WL 6725372 (E.D. La. December 21, 2018), the United States District Court for the Eastern District of Louisiana was asked to decide whether Defendant Phillip Guidry's wife's consent to a search of their home that led to the discovery of unlawful firearms was voluntarily made and whether the evidence of those firearms should be suppressed as being obtained in violation of Guidry's Fourth Amendment rights. The relevant facts are as follows.

On March 2, 2018, Louisiana state and local police arrested Guidry pursuant to an out-of-state arrest warrant for a felony firearms violation. Homeland Security Agent Thomas Smith testified at an evidentiary hearing on Guidry's motion to suppress that, prior to the arrest, he had investigated Guidry for being a self-professed "sovereign citizen." In Agent Smith's twenty-four years of law enforcement experience, he knew that sovereign citizens, or "preppers," typically stockpile weapons to prepare for doomsday survival. Agent Smith testified that members of the community had made comments that Guidry's home was fitted with sniper holes and that Guidry had bragged about having guns. Agent Smith also testified that he had conducted surveillance of the home and observed that it was fortified with industrial fences, dogs, and metal fortifications. Although the law enforcement officers lacked a search warrant for Guidry's home, Agent Smith testified that he had probable cause to support a warrant to search the home for firearms.

Shortly after Guidry's arrest, Agent Smith and Task Force Officer Victor Marler of Homeland Security approached Guidry's wife, also a convicted felon, at her place of employment to obtain consent to search the home. As evidenced in the eight-minute recording of the encounter, Ms. Guidry admitted that she was "kind of" expecting the officers upon their entry. After informing Ms. Guidry that her husband was "under arrest for some weapons charges," Officer Marler said that they needed to get into the home and did not "want to harm no dogs." Ms. Guidry immediately explained that she had two Malinois dogs that were "kind of aggressive," one husky, and eight Malinois puppies. Before Ms. Guidry began to describe the location of her son's gun, Marler reminded Ms. Guidry that she was "a convicted felon as well" but that the officers were "not interested in y'all." Then, Marler told Ms. Guidry: "We talked to him already and he would know what's in there. We just need the verification. . . . [W]e talked to him and he told us. Prepping, he told us everything. You know, um, and we told him we don't want to involve you because you still got work. . . . And you have a child to take care of." Following his arrest, Guidry had not told police anything about firearms at his home. To the extent that Marler's words can be understood otherwise, Agent Smith admitted at the hearing that it would have been a lie. Eventually, Ms. Guidry tearfully admitted that she had been separated from Guidry, sleeping in a separate bedroom in the house, and shortly thereafter described two more guns in the home.

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Marler then asked if Ms. Guidry would give her consent to search the home and accompany them to do so. Again, tearfully, Ms. Guidry responded, “Okay. Are y’all going to take me in? If you are – I need to make arrangements for my daughter.” Marler said that he “can’t promise you anything, but with your cooperation, we know the DAs, we know everybody.” Smith responded that they would not “take her in” or trick her into doing something that would give them reason to arrest her, but that her cooperation was the “smoothest way to do it,” avoiding “cut[ting] up your fence to get in,” “us[ing] a battering ram and bash[ing] in your door to get inside,” or “potentially shoot[ing] or hurt[ing] a dog on the way in.”

Ms. Guidry then permitted the officers to use the restroom, called her boss to let him know she would not be returning to work, and gave her contact information to her coworker. Ms. Guidry had initially agreed to ride with the police, but because she could work from home, she drove herself in her own car, and the police followed. The police officers had requested that Ms. Guidry put her purse in the trunk of her car for the ride over to her home, and she had complied without objection.

At the evidentiary hearing, there was conflicting testimony as to when Ms. Guidry signed the consent-to-search and statement-of-rights forms. Officer Jeffrey Holley testified that, upon Ms. Guidry’s arrival and in the driveway, he read her a consent form, which she and he signed at “1112 hrs” (11:12 a.m.), as denoted on the form. Holley testified that Ms. Guidry was cordial and helpful, seemed to have her wits about her, and was less nervous than others in similar circumstances. Holley also testified that Ms. Guidry then opened the gate, secured the dogs, entered the home, and directed the officers to the bedroom and the mattress under which an automatic weapon was hidden. The statement-of-rights form was completed later, also signed by Holley and Ms. Guidry, and showed the time it was completed as “1133 hrs” (11:33 a.m.). A handwritten note in the file stated, “Search begins 1120 hrs” (11:20 a.m.). Thus, as Holley remembers it, Ms. Guidry showed the officers the gun in the bedroom shortly after signing the consent-to-search form but before executing the statement-of-rights form. Ms. Guidry testified that she did not remember signing anything until after showing the officers a gun in her husband’s bedroom.

The officers seized six firearms on March 2, 2018. On March 6, 2018, law enforcement again contacted Ms. Guidry to obtain consent to search the Guidry home. On March 7, 2018, Ms. Guidry permitted the second search, during which the Bureau of Alcohol, Tobacco, and Firearms seized ammunition and a surveillance DVR system. No charges followed the second search. Ultimately, a Grand Jury charged Guidry in a one-count indictment for being a convicted felon in possession of a firearm in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2).

Thereafter, Guidry moved to suppress the evidence seized on March 2, 2018, and any statements subsequently made by him or his wife on the ground that the warrantless search violated the Fourth Amendment. Guidry argued that the officers, lacking probable cause, coerced Ms. Guidry into showing the officers the firearms in the home by making misrepresentations and threats. Guidry said that the officers concocted Guidry’s confession to possessing firearms when they informed Ms. Guidry that he had “told [them] everything,” because, at the time of his arrest and booking, Guidry had only made general remarks about his religious and political beliefs. Further, because Ms. Guidry was a convicted felon, Guidry suggested that she did not believe she could refuse consent, implying that her cooperation was forced by the threat of her own arrest. Guidry also asserted that the officers’ comments about shooting the dogs and Ms. Guidry’s need to care for her child constituted a “veiled threat” of arrest such that her will was overborne. Additionally, Guidry argued that the officers never informed Ms. Guidry of her right to refuse consent or terminate the police encounter, which contributed to her reasonable fear as “a woman, confronted by two male law enforcement officers who announced they had just arrested her husband.”

And finally, Guidry submitted that the officers had ample time to obtain a warrant while Guidry was arrested and Ms. Guidry was at work, and they should have done so. Alternatively, Guidry contended that consent was

never given prior to the search, suggesting that the time stated on the consent-to-search form was fabricated, and that Ms. Guidry only signed the consent-to-search form after the police seized the firearms. In either instance, Guidry maintained that the firearms and statements should be suppressed as fruits of the poisonous tree.

The District Court began its consideration of Guidry's motion to suppress by noting that warrantless searches are presumptively unreasonable under the Fourth and Fourteenth Amendments, absent an exception, such as when conducted pursuant to consent. The District Court further noted that Guidry did not dispute that Ms. Guidry had authority to give consent to the search. Instead, Guidry argued that his wife's consent was involuntary. Guidry contended that Ms. Guidry's will was overborne considering the totality of the circumstances, including the officers' alleged misrepresentations and threats.

However, the District Court disagreed and found that the totality of the circumstances did not show that Ms. Guidry's will was overborne, but instead, demonstrated that Ms. Guidry's consent was, in fact, freely and voluntarily given. The officers approached Ms. Guidry at her place of work, and merely being questioned by law enforcement in one's place of work does not transform the encounter into a seizure. Moreover, Ms. Guidry drove herself home (giving her ample time to reconsider her consent), and the fact that her purse was in the trunk of her car did not result in her being in custody when she gave consent to search the home.

In addition, the District Court held that the police's tactics were not so coercive so as to violate the Fourth Amendment or result in suppression of the evidence against Guidry. The District Court found that the police officers never threatened Ms. Guidry with arrest nor made false promises of leniency to secure her cooperation. The District Court further found credible the officers' testimony that they had no intention of arresting Ms. Guidry. This finding was supported by Marler's explicit statement that he "[could not] promise" she would not be arrested, the sincerity of Smith's tone in the audio recording in relating to Ms. Guidry that she was not the subject of their investigation, and his subsequent testimony to that effect at the hearing. At no point in the encounter did either the officers or Ms. Guidry raise their voices; instead, the exchanges were cordial and cooperative, indicating a lack of coercion. And, merely informing a person of the consequences of refusing consent is not a threat if such consequences are simply the legal ramifications of a person's actions.

In short, the District Court held that the totality of the circumstances did not establish that Ms. Guidry's will was overborne in consenting to the search of her home. While the officers may have misrepresented the nature of Guidry's confession, the rest of their statements were truthful. Importantly, the fact that Ms. Guidry departed work and drove in her own car for twenty minutes to her home demonstrated a high level of cooperation and evinces an act of free will because she had reasonable opportunity to change her mind. Once at the home, Officer Holley again asked Ms. Guidry for consent to search before any officers entered the home, and Ms. Guidry freely provided written consent. Ms. Guidry cooperated further by identifying the location of certain guns in the home.

Furthermore, although tangential to the consent on March 2, 2018, Ms. Guidry's second, unchallenged consent to search the home on March 7, 2018, tends to confirm that her initial consent was freely given. Therefore, the District Court determined that the totality of the circumstances indicated that Ms. Guidry voluntarily consented to the search, and the District Court denied Guidry's motion to suppress.