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### Search Warrant or Consent to Search?

Not long after I promoted to sergeant, I was training in a patrol division. I was riding with another sergeant when we received a call from two patrol officers. They were at an apartment complex and had chased a male into an apartment. They requested a supervisor go by with them. So, as part of my training, we went.

Once we arrived, we saw the two patrol officers and two women standing in front of the apartment where the suspect allegedly ran. One of the women was holding a small child, under a year old. As per protocol, we spoke to the officers first. They both said that they observed a young male engage in what they believed was a “hand to hand” transaction with another male. The officers, both in full uniform, and in broad daylight, approached the two men and both took off running. The officers pursued one of the men, allowing the second male to get away. They chased the male around the corner of a building and suddenly lost sight of him. As they immediately rounded the same building, a woman came out of a downstairs apartment. The officers inquired if she had seen anyone running by. She claimed she did not.

Seconds later, a second female exited the same apartment carrying a small child. She indicated that a male had run into the apartment and was hiding from police. The officers asked for permission to enter the apartment to look for the suspect, while at the same time calling for a sergeant, as per policy. One female said the officers could go into the apartment, while the second woman declined to allow entry. So, the officers waited until our arrival.

As it turns out, the two women were sisters. The first female that exited the apartment was uncooperative and very loud. The second female was more concerned about her child and was much more cooperative. She kept trying to get her sister to agree to allow the officers to search the apartment. I will address some of the related legal arguments shortly.

I decided to talk to the uncooperative woman. First, I established that both she and her sister were on the lease. She expressed that she did not feel the police had any right intruding on her private property. She also stated that no one was in the apartment other than her sister and her sister’s baby (and she was adamant about that). All three of these facts are very important. Although she was upset, she was still answering my questions.

I then told the woman that based on the information I had obtained, I believed that I had enough “probable cause” to obtain a search warrant. While I was talking to the woman, one of the officers was talking to the other sister obtaining information on the suspect they had chased. I told her that by her preventing us from searching her apartment for a wanted suspect she was violating the law and that once I obtained a

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search warrant, she would not be afforded any other opportunity to avoid jail. Texas has a legal statute specifically regarding hindering apprehension of a suspect. This was a perfect scenario for such a charge. I then told the woman that neither she nor her sister would be allowed back inside the apartment until we had completed our search. At that point, I reached for my phone to call the district attorney in an effort to have a search warrant drawn up. I guess the woman thought I was bluffing because she suddenly had a few more questions. I explained to her that she could avoid all of the drama if she simply signed a “consent to search” form allowing us to go inside the apartment and apprehend the subject the officers pursuing. Once again, she insisted no one was in her apartment. Finally, she agreed to sign the consent form.

Once inside the apartment, the officers performed their search and I stood at the doorway and looked inside. I noticed right away something looked odd about the couch, but I couldn’t put my finger on it. But something just didn’t look right. The officers cleared the rest of the apartment and were surprised they didn’t find the suspect. Suddenly, I saw the couch move. It was an odd movement, under the fabric along the back of the couch. I pointed out the movement to one of the officers. We then pulled the cushions off and flipped the couch over on it’s back. Now, one would think that the whole couch would have just flipped over. Nope. Not this one. Instead, it just slowly rolled over on its back. Then, we saw our suspect. He had crawled inside the couch! Obviously, someone helped him by placing the cushions over the top of him.

Needless to say, we arrested the male. We later learned he had an open felony warrant and still had some drugs in his possession. He was the only person we arrested that day.

Now, these circumstances bring up several legal questions. First, did we have enough information to provide us sufficient probable cause to obtain a search warrant? My answer is yes. Remember, the officers lost sight of the suspect for just a few seconds prior to finding the first woman outside her apartment. They did not see the suspect go inside, but they assumed so due to the circumstances and the time frame involved. Secondly, when questioned, the first woman said she had not seen anyone run by her. That was important because if she had been standing outside the apartment when the officers rounded the corner, she would have seen a male run by. Thirdly, when the sister exited the apartment a few minutes later, she was cooperative and told the officers the male they were chasing was inside. She gave permission to search the apartment. So now, the officers have conflicting information from two different women who claim they live in the apartment. Based on the totality of the circumstances, I believe that there was sufficient probable cause to obtain a search warrant.

Now, here is another legal issue regarding consent. Both women claimed to be on the lease for that apartment. Based on their own words, the officers may use that

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information to help gain entry to the apartment. The law states that either party may give consent to search the premises. However, a recent court decision has clarified who may withdraw consent. In this case, either sister can withdraw consent at any time, but the person withdrawing the consent must be present at the scene. So, changing the facts of this case just for demonstrative purposes, if we had arrested the uncooperative sister and taken her to jail and the cooperative sister signed the consent, the jailed sister would not be able to withdraw that consent. In this case, both sisters are present and neither is under arrest.

The consent to search itself is another legal hurdle. A defense attorney could argue that the uncooperative sister was coerced into giving her consent. That argument will always be disputed at an evidentiary hearing. The point here is, the officers could explain the legality of their actions and any applicable consequences to people involved in order to gain consent. The legal argument becomes whether the person giving consent were actually doing so because of a threat by law enforcement or by their own free will.

Finally, in this case, the officers were looking for a suspect. They are only allowed to search the areas in which a person's body could fit. So, going through drawers would not be permissible. In such a case, should evidence be found in those drawers, it could not be used as evidence in a case against anyone, because it was obtained outside the scope of the consent. Basically, if a judge determines that a search was deemed illegal, all evidence recovered from the point when the "illegal search" began would be suppressed.

The lessons learned here are numerous. First, as a supervisor, have faith in your officers. Now that doesn't mean go in blindly and allow them to do whatever they please. The facts in this case allowed me, as a supervisor, to assist the officers in their lawful search. Second, most people just want to understand their legal obligations when they become involved in incidents such as this one. Although the first sister was loud and uncooperative in the beginning, once she understood the legal ramifications, she immediately agreed to allow us to search. Could she argue coercion in a court of law? Yes she could, and most do. However, judges make these decisions long after the case has been filed. Officers should not be afraid of what might or might not happen to their case once it reaches the courtroom. They should concentrate on doing the job right from the beginning. This will allow them to provide the best possible service to the community they serve while also preparing solid criminal cases that will withstand legal scrutiny.

### **Legal Disclaimer**

My articles are designed as a training tool. Although I discuss numerous legal issues and possible resolutions, the reader should always consult with an attorney prior to making any legal decisions. I am not a lawyer. These articles are based on real events that I have personally experienced. I write in layman's terms to make it

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much easier for the reader to grasp the concepts and legal issues, not to offer legal advice. Please keep in mind that every state has varying laws regarding the legal issues mentioned in these articles. Always consult your local attorney for legal advice.