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LAW ENFORCEMENT OFFICER TRAINING CASE OF THE MONTH

By Don Hays

Month of March – 2023

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United States v. Jeremy Banks, No. 22-1312, 2023 WL 1956605, February 13, 2023.

CASE: The police discovered that while grilling on his porch, Banks, a convicted felon, possessed a firearm. Rather than obtain a warrant, the Officer entered onto the porch, confronted Banks, and seized the firearm. Was this a legal entry and seizure?

FACTS: Jeremy Banks, a convicted felon, decided to use his grill on the porch of his home. In celebration of this event, he posted the video of his act of grilling. Unfortunately, at least for Banks, the video he posted also revealed a handgun within arm's reach of Banks. A police officer saw the post, recognized Banks's voice, and knew him to be a convicted felon. The Officer gathered fellow Officers and, within minutes of seeing the video, headed to Banks's home. Upon arriving, the Officers saw Banks exactly where they expected to—on his porch, next to the grill. A few officers went around the back side of the house and, to avoid detection, approached the porch by walking through the backyard. The plan worked and resulted in the officers catching Banks by surprise, struggling with him, and eventually arresting him in the front room of his home. A pat down turned up a loaded 9mm semi-automatic pistol in Banks's pocket. The officers also saw a box of 9mm rounds in the same room. The police did not have a warrant to enter Banks's porch or to search his home. Federal criminal charges followed for the unlawful firearm possession. Banks responded by moving to suppress the police's recovery of the gun and ammunition found in his home, arguing that the officers needed a warrant to enter his porch and arrest him.

At an evidentiary hearing before a magistrate judge, Officers testified that they went to Banks's home to arrest him. One Officer also stated that he did not believe he needed a search warrant to enter the porch because the police had reasonable suspicion that Banks, as a convicted felon, was committing a crime by possessing a firearm. Nor did the Officer believe he had enough time to contact a judge to obtain a search warrant.

After the hearing, the magistrate judge issued a report recommending that the district court deny Banks's motion. The magistrate examined the case through the lens of *Terry v. Ohio*, which held that an officer who has reasonable suspicion to believe that dangerous criminal activity is afoot can briefly detain and frisk a person. Pointing to the Officers' reasonable suspicion that Banks possessed a firearm and relying on a 7th Circuit Court prior decision in *United States v. Richmond*, 924 F.3d 404 (7th Cir. 2019), the magistrate concluded that the officers had ample suspicion to step onto Banks's front porch. On these facts, the magistrate saw no Fourth Amendment violation. The district court agreed, adopted the magistrate's recommendation, and denied Banks's motion to suppress. Banks then entered a conditional guilty plea and received a sentence of time served and three years' supervised release. He then appealed the district court's suppression ruling.

ARGUMENT: Did the lower federal courts properly deny Banks' motion to suppress?

THE LAW: By its terms, the Fourth Amendment protects a suspect's right "to be secure" in his "hous[e]" from "unreasonable searches and seizures." At the "very core" of that protection, the Supreme Court has emphasized, stands "the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion." Indeed, when measuring the strength of the Fourth Amendment, "the home is first among equals." By 1984 the Supreme Court made plain that the Fourth Amendment provides equal protection to a home's curtilage, the area immediately surrounding the home itself. "[P]rivacy expectations are most heightened" in the curtilage, because that area is "intimately linked to the home, both physically and psychologically." And the right to retreat into the home "would be of little practical value if the State's agents could stand in a home's porch or side garden and trawl for evidence with impunity." Put even more directly, the curtilage is "part of the home itself for Fourth Amendment purposes."

The parallel and equivalency between a home and its curtilage means that law enforcement officers must have a warrant to enter either, unless one of a few limited exceptions applies. The exceptions allow warrantless entry when, for example, exigent circumstances exist, the resident consents to entry, or the officers conduct a knock-and-talk. These exceptions reflect and reinforce that the Fourth Amendment's "ultimate touchstone" remains "reasonableness."

ISSUE #1: Legality of the Warrantless Entry: Did the Officers reasonably enter onto the porch of Banks's home, based upon their reasonable suspicion that Banks illegally possessed a firearm?

FINDINGS: Initially, the Court of Appeals held that, by its terms, the Fourth Amendment protected Jeremy Banks's right “to be secure” in his “hous[e]” from “unreasonable searches and seizures.” The Court noted that the police reacted to Banks's Snapchat post by immediately heading to his home to arrest him for unlawful gun possession. Significantly, the Court also noted that the Officers never paused to request a warrant. That omission, according to the Court, mattered because the Fourth Amendment very much concerns itself with place, and the location of the planned arrest—Banks's front porch—was not one the police could enter without consent or exigent circumstances. According to the Court, neither exception existed before the police walked onto the porch, as Banks presented no imminent threat or flight risk in the circumstances. Nor did the police even attempt to conduct their encounter with Banks as a consensual knock-and-talk scenario. The Court concluded that the officers needed a warrant to enter Banks's porch, and their failure to obtain one resulted in a clear Fourth Amendment violation.

Further, the Court held that the unlawful entry onto the curtilage tainted the evidence the Officers discovered. Through their “unlicensed physical intrusion” onto Banks's porch, the officers, themselves, created any exigent circumstances that might have developed during their ensuing struggle with Banks. The officers, in short, were unable to rely on those exigent circumstances to authorize the entry onto Banks's porch.

KEY CASE: Relying on this Court’s prior decision in United States v. Richmond, 924 F.3d 404 (7th Cir. 2019), the officers argued that they had ample suspicion to step onto Banks's front porch. Officers in that case spotted Richmond on a sidewalk, acting suspiciously, and carrying what appeared to be a gun in his shirt pocket. After following Richmond back to his duplex, the officers watched Richmond hide something on the front porch. The officers stepped onto the porch, confirmed Richmond was a convicted felon, and found that he had stashed a gun behind a screen door. On appeal, Richmond conceded that he consented to the officers stepping onto his porch. Because the officers also had reasonable suspicion that Richmond was engaged in criminal activity, we held that they could perform a protective search under Terry once they were “lawfully within the curtilage of a home.” The Officers highlighted one line in Richmond where the Court stated that reasonable suspicion “justified [the officers'] entry onto the porch.” From there the Officer read Richmond as authorizing warrantless entry onto the curtilage based on reasonable suspicion, which the officers had in this case after viewing Banks's Snapchat video.

The Court rejected this argument. It held that consent was a well-accepted exception to the warrant requirement, but reasonable suspicion was not. In Richmond, the Court noted that both parties agreed that the Officers had consent to enter the curtilage of Richmond’s home. This Court concluded that Richmond’s consent, not the fact that the Officers possessed reasonable suspicion to believe that Richmond was illegally armed, controlled the Richmond decision. Further, the Court held that the government's reading of Richmond (allowing mere reasonable suspicion to justify entry into the curtilage of a suspect’s home) would impermissibly expand the exceptions to the warrant requirement. The government did not argue that reasonable suspicion authorized a warrantless entry into Banks’s home. In fact, the Court held that the Fourth Amendment expressly references the home and provides that “no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.” And, according to the Court, the home's curtilage has “protection as part of the home itself.” The Court concluded that if reasonable suspicion does not allow an Officer to enter the home, then it also does not constitute one of the “few permissible invasions” of the curtilage of that home.

ISSUE #2: Good Faith. Alternatively, the Officers argued that even if their entry onto the porch of Banks’s home was illegal, the “good faith” doctrine should justify the Court’s decision not to suppress the evidence.

FINDINGS: In response, the Court noted that the Good Faith exception provides that “[e]vidence obtained during a search conducted in reasonable reliance on binding precedent is not subject to the exclusionary rule.” The Officers argued that they relied in good faith in Richmond. According to the Court, Richmond rooted itself in consent, a well-established exception to the warrant requirement. The decision did not authorize what the officers did here—intrude onto a front porch without a warrant based solely on reasonable suspicion. Because the officers did not obtain evidence in “reasonable reliance on binding precedent,” the Court ruled that the good-faith exception to the exclusionary rule did not apply in this case.

CONCLUSION: The Court declared that “the ‘big picture takeaway’ from this decision deserved underscoring.” According to the Court, the police could have avoided this outcome by simply by taking a small but necessary step. The suppression testimony confirmed that the County in which this case occurred had a judge on call 24 hours a day, 365 days a year to consider and issue search warrants. The Court concluded that the officers here had more than enough time to pick up the telephone, call the on-duty judge, and get the authorization the Fourth Amendment required before stepping onto Banks's porch. The Officers’ failure to do so resulted in the suppression of the evidence seized by the Officer in this case.

QUIZ QUESTIONS FOR THE MONTH OF MARCH – 2023

United States v. Jeremy Banks, No. 22-1312, 2023 WL 1956605, February 13, 2023.

1. The area immediately surrounding a home is called the home's curtilage. Does the Fourth Amendment protect the curtilage of a home from a warrantless intrusion by law enforcement Officers?
 - a. Yes.
 - b. No.

2. In this case, the Court of Appeals noted three exceptions to the warrant requirement in cases such as this. Which of the following **was not** one of the exceptions noted by the Court?
 - a. The Officers had exigent circumstances.
 - b. The Officers possessed a reasonable suspicion of ongoing criminal activity.
 - c. The Officers received consent to entry by residents of the home.
 - d. The Officers were conducting a "knock and talk."

3. Did the Court of Appeals find that exigent circumstances justified the warrantless police entry onto Banks' porch?
 - a. Yes.
 - b. No.

4. The Officers argued that they acted in good faith reliance upon prior law and, therefore, the evidence they collected should not be suppressed. The appellate court agreed with this argument.
 - a. True.
 - b. False.

QUIZ ANSWERS AND DISCUSSION FOR THE MONTH OF MARCH – 2023

United States v. Jeremy Banks, No. 22-1312, 2023 WL 1956605, February 13, 2023.

1. The area immediately surrounding a home is called the home's curtilage. Does the Fourth Amendment protect the curtilage of a home from a warrantless intrusion by law enforcement Officers?
 - a. Yes.** As the Court held: "By 1984 the Supreme Court made plain that the Fourth Amendment provides equal protection to a home's curtilage, the area immediately surrounding the home itself. See Oliver v. United States, 466 U.S. 170, (1984)."
2. In this case, the Court of Appeals noted three exceptions to the warrant requirement in cases such as this. Which of the following **was not** one of the exceptions noted by the Court?
 - b. The Officers possessed a reasonable suspicion of ongoing criminal activity.**
3. Did the Court of Appeals find that exigent circumstances justified the warrantless police entry onto Banks' porch?
 - b. No.** The Court held that exigent circumstance in this case did not justify the Officer's warrantless entry because "Banks presented no imminent threat or flight risk in the circumstances."
4. The Officers argued that they acted in good faith reliance upon prior law and, therefore, the evidence they collected should not be suppressed. The appellate court agreed with this argument.
 - b. False.** The Court declared that "(b)ecause the officers did not obtain the evidence in this case in "reasonable reliance on binding precedent" (i.e., the Court held that the case cited by the Officers did not support their argument), the good-faith exception to the exclusionary rule did not apply.