

Arrest Law Bulletin

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Interrogation

Officers interrogate extortion victim who then makes incriminating statements

Citation: *United States v. Ludwikowski*, 944 F.3d 123 (3d Cir. 2019)

The Third U.S. Circuit has jurisdiction over Delaware, New Jersey, and Pennsylvania.

Ludwikowski was a pharmacist who owned two independent pharmacies in Medford, New Jersey. Ludwikowski told two of his customers, Lawson and Jones, that he could no longer fill their oxycodone prescriptions. Ludwikowski then received a series of threatening text messages saying things like: “THINK ABOUT IT, [YOU’RE] IN TOO DEEP . . . LOYALTY IS THE KEY, [THERE’S] NO I IN TEAM PLEASE CONSIDER MY WISHES OR [I’M] FORCED TO TAKE OTHER ROUTES IT MAY BE VERY DETRIMENTAL”; and “I GUESS WE’RE PLAYING HARDBALL I REALLY THINK [YOU] SHOULD SIT AND THINK GOT [A LOT OF] DIRT ON YOU MIKE AND BOY YOU GOT [A LOT] GOING ON. . .” Ludwikowski also received a letter hand-delivered at his pharmacy that said, “No one is safe unless you meet our [list] of demands, not your kids, family, you or [your employee] Dave.” The letter demanded thousands of oxycodone and Adderall pills (listing dosages and types) and \$20,000 in cash.

Ludwikowski contacted his uncle, a New York FBI agent, who in turn called the FBI’s Trenton office. Agent William Hyland, who picked up the case, spoke to Ludwikowski by phone. Ludwikowski told Agent Hyland that “shady people . . . [came] to his pharmacy to pay cash to fill prescriptions for oxycodone,” and said his erstwhile customers Lawson and Jones might be the extorters. Agent Hyland also learned, from Detective Knecht, that there was an open investigation into possible criminal activity at Ludwikowski’s pharmacy. Agent Hyland and Ludwikowski arranged that Ludwikowski would go to the Medford police station for an interview.

As planned, Ludwikowski drove to the police department. He was interviewed beginning around 10:15 a.m. and remained at the station until about 5:30 p.m.

Detective Knecht and FBI Special Agent Montgomery interviewed Ludwikowski in a small eight-by-eight-foot room that contained a round table and three chairs. It had the atmosphere of a bare-bones conference room, with carpet on the floor and typical office furniture. Ludwikowski

sat closest to the door and was not physically restrained. He was given water, which he drank, and offered pizza, which he refused. He went to the restroom, unaccompanied, at least three times. However, he asked permission before he went. Out of the seven hours, Ludwikowski was at the station, he was interviewed for about four. The interview took place in three phases, punctuated by breaks. During the interview, Ludwikowski made several incriminating statements.

Ludwikowski was charged and convicted with drug crimes.

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Ludwikowski appealed, arguing that the statements he made to the officers were involuntary.

DECISION: Affirmed.

The interrogation was lawful.

The government had the burden to prove that Ludwikowski's statements were voluntary—that was, the product of an essentially free and unconstrained choice. There could be no involuntary confession absent coercive police activity.

Here, under the circumstances, a reasonable person would have understood he or she could leave. Moreover, Ludwikowski's calm demeanor and calculated answers showed that he did not feel his freedom was constrained. The officers' conduct was not physically threatening, the door to the conference room was not locked, Ludwikowski was not deprived of food, and he had his cell phone.

Ludwikowski next contended that he was particularly vulnerable, as a victim of extortion, and that his questioners exploited those vulnerabilities in a coercive fashion. While Ludwikowski was genuinely fearful for his family's safety, and hence emotionally vulnerable, his questioners did not use the situation coercively. Rather, they attempted to solve the extortion in the face of Ludwikowski's "hesitant" and "inconsistent" answers.

Finally, Ludwikowski argued his statements were involuntary because he did not know he was the focus of a criminal investigation. However, the officers did not mislead Ludwikowski regarding the nature of their investigation.

Ludwikowski was mature and educated, a sophisticated business owner who was in sound mental and physical health at the time of the questioning. Ultimately, Ludwikowski's statements at the police station were voluntary.

See also: *Halsey v. Pfeiffer*, 750 F.3d 273 (3d Cir. 2014).

See also: *U.S. v. Jamison*, 509 F.3d 623 (4th Cir. 2007).

Editor's Note:

In determining whether a suspect's statements were voluntary, courts considered the officers' tactics, including the length of detention; the repeated and prolonged nature of questioning; and the use of physical punishment such as the deprivation of food or sleep.

Photo Array

Suspect is only person in photo array wearing plaid shirt

Citation: *United States v. Carter*, 2019 WL 6455212 (E.D. Pa. 2019)

Two men robbed a Boost Mobile store in North Philadelphia. A police bulletin described one of the robbers as a black man in his 20s who was approximately five feet nine inches tall. Five days after the Boost Mobile robbery, a man robbed a second cell phone store, a MetroPCS store, on the same block as the Boost Mobile store. N.K., the manager of the MetroPCS store, witnessed this robbery. N.K. described the robber as a black man who weighed approximately 150 pounds wearing “[a] blue Adidas jacket, blue pants, [and a] dark bandana on [his] face.”

While MetroPCS did not have security footage of the robbery, the police collected security videos from three nearby buildings: a gas station, a grocery store, and a housing complex. The police believed videos from these three locations showed the robber both going to the MetroPCS store and leaving from the MetroPCS store.

Three days later, Officer Bellon saw Carter less than a mile away, or about a 15-minute walk, from where the robberies occurred. When Officer Bellon saw Carter, he was wearing a navy Adidas jacket, black Adidas pants with white stripes, black sneakers, and glasses.

When he spotted Carter, Officer Bellon and his partner Officer Rosa followed Carter into a small convenience store. The officers handcuffed Carter almost immediately. Soon after the officers approached Carter, he asked them why they were singling him out, but the officers told him they would explain later. While the officers were patting him down, he asked “[are] you all looking for somebody or something? Do I fit a description or something?” Carter gave the officers a fake name, and the officers could not find him in their arrest records.

The officers decided to bring Carter to the police station. The officers took Carter to the station, which was about a five-minute drive from the store where they found Carter. On the ride to the station, Carter told the officers he had lied about his name and he had an outstanding warrant. When they were at the station, the police discovered Carter’s real name and found his outstanding warrant. They then transferred him to the Kintock Center, a detention facility.

After finding Carter, the police continued to investigate the robberies. They got a warrant to search Ca-

ter’s room at the Kintock Center. During their search of his room, they recovered the clothing he was wearing when he was arrested. They also searched his last known address, which was a house owned by his ex-girlfriend, B.W. While that search did not turn up any evidence, B.W. later came to the police station with some of Carter’s belongings. Those belongings included a package for a BB gun designed to look like a handgun. The package was addressed to Carter and it was sent about a month before the robberies.

The police also used Carter’s picture in a photo array that they showed one witness at each of the two robberies. While the Boost Mobile witness could not identify anyone in the photo lineup, N.K., the MetroPCS witness, identified Carter. Detective Dinezza, who was not involved in the investigation and did not know who the suspect was, administered the photo array shown to N.K. Detective Dinezza showed N.K. each of the pictures in the photo array one by one. He then showed N.K. each picture a second time and asked if N.K. recognized each picture. N.K. said he recognized Carter’s picture and he was 75% sure Carter was the robber. He later told police he “definitely chose the right guy . . . but that the picture was a little bit older.”

Carter was charged with the robberies. At trial, he argued that the photo array was unlawful because it was unduly suggestive.

PHOTO ARRAY: Lawful.

The photo array was not unduly suggestive.

A suspect’s due process rights were violated when an identification procedure was so suggestive that it undermined the reliability of the resulting identification. A photo array was unduly suggestive when police attempted to emphasize the photograph of a given suspect, or when the circumstances surrounding the array unduly suggested who an identifying witness should select. The suspect bore the burden of showing that the array was unduly suggestive.

Here, the police took at least three steps to ensure the photo array would be impartial. First, they used a double-blind procedure in which the detective who administered the photo array did not know the identity of the suspect. Second, they showed the witnesses one picture at a time. Third, they chose six people for the photo array who looked like one another.

Carter argued that he stood out in the photo array because he was wearing a distinctive shirt. While it was possible that a person could stand out in a photo array if his or her photo was distinctive, shirt color was not typically an indication of an unduly suggestive photo array. Each of the photos in the array at issue here contained a man in a unique shirt. While Carter’s shirt was the only one with a plaid pattern, not

all of the other shirts were one solid color. Also, the shirts were barely visible in each of the photos because the photos were taken from the neck up. In addition, the witnesses never had a chance to compare the photos side-by-side, so they would be less likely to notice any difference in Carter's shirt pattern.

Consequently, the photo array was lawful.

See also: *U.S. v. Caraballo*, 643 Fed. Appx. 163 (3d Cir. 2016).

See also: *U.S. v. Burnett*, 773 F.3d 122 (3d Cir. 2014).

Editor's Note:

In another case, the court rejected the suspect's argument that the photo array was unduly suggestive because he was the only person wearing a red shirt. See U.S. v. Dowling, 855 F.2d 114, 26 Fed. R. Evid. Serv. 1054 (3d Cir. 1988), judgment aff'd, 493 U.S. 342, 110 S. Ct. 668, 107 L. Ed. 2d 708, 29 Fed. R. Evid. Serv. 1 (1990).

In Brief

Georgia

Statements

Yvonne James was a sex worker. Ancil Neil advertised James' services on social media sites and acted as her agent. On December 31, Ricardo Harris, who is deaf, sent text messages to Neil, and the two negotiated a price for sex acts. Harris was questioned in the death of James, first as a witness then as a suspect.

Officers responding to the scene found James' body on the floor with wounds on her face and body. The officers noted damage to the hotel room, including holes in the walls. Having been advised that a 911 caller (Harris) was waiting at the gas station across the street, an officer drove there and brought Harris to the hotel. After learning Harris was deaf, Officer Figueroa communicated with him in writing on a notepad. Finding this inefficient, they moved to a laptop Figueroa grabbed from his patrol car. Figueroa testified that, at this point, he believed Harris was a witness; therefore, he did not advise him of his rights.

After giving a typed account of events in which Harris indicated he found James dead upon arrival at the hotel room, Harris went with an officer to police headquarters to give a more formal statement.

Detective Mark Erion enlisted the services of sign language interpreter Barbara Bell. At the police station, with Bell's assistance, Erion informed Harris of his *Miranda* rights. Erion testified that, although he read Harris his rights, Harris was not under arrest and

was being treated as a witness. Harris also read and signed a waiver-of-rights form. Through the interpreter, Erion told Harris that he was following up on Harris' 911 call and wanted to know what he had seen. Harris repeated what he had told Figueroa and reduced his statement to writing.

During a break in the interview, Erion had a chance to review the hotel surveillance video-recording. He noticed that the time-stamps on the recording did not match Harris' account of events. When he confronted Harris with that information, Harris seemed surprised and confused. At that point, Erion stopped the interview and arrested Harris for concealing the death of another.

When Harris was arrested, he was wearing a beaded necklace. Officers found a bead on the hotel room floor similar to Harris' beaded jewelry. James wore no beaded jewelry. A search of Harris' residence yielded several necklaces with beads. The officers also recovered a cell phone image from Harris' phone that had been taken the night before the murder. It showed him wearing a beaded bracelet.

According to the medical examiner, James had injuries consistent with having been struck with a blunt object or fist. She had been struck so hard that a small bead with a wrinkled, cracked finish similar to Harris' beaded necklace had become embedded in her face. The medical examiner opined that the injuries to the victim's body were akin to her being shoved into or through a wall. He determined that the cause of death was a homicide due to blunt force head trauma associated with probable strangulation and drowning.

On January 14, 2013, in the presence of his retained attorney, Harris informed Erion through interpreter Bell that he wanted to make a revised statement. Harris gave Erion a hand-written statement concerning James' death. Erion did not question Harris about the revised statement; until the following day. On January 15, Harris, in the presence of his attorney and with the assistance of his chosen interpreter, continued the interview. After giving Harris *Miranda* warnings, Erion questioned Harris.

Harris claimed that James had been alive when he arrived at the hotel room, but that she had apparently suffered a head injury and was upset. He stayed with James for a while and watched television while she slept. When she woke, she was dizzy. She went to the bathroom, where she fell into the tub. The fall rendered James unconscious, so Harris put a pillow under her head and went to the hotel lobby to get help. When he returned to the room, he met Neil, who followed him in and pulled a gun on him. Neil dragged James out of the tub, checked on her, and then took her cell phone. Neil threatened to kill Harris if he told anybody what he had seen. After Neil left, Harris went to the gas station to call the police.

Harris was ultimately convicted of murder and concealing the death of another. He appealed, contending that the trial court erred by allowing into evidence three of his four pre-trial statements, since the statements were not freely and voluntarily made and that the State failed to comply with the statutory requirements of OCGA § 24-6-653, concerning the procedure for interviewing people who are hearing impaired.

STATEMENTS: Lawfully admitted.

Harris challenged the court's ruling with respect to the admission of three of his four pre-trial statements: (1) the written statement given at the scene of the crime on January 1, 2013; (2) the statement made at the police station with the assistance of interpreter Bell, also on January 1; and (3) the hand-written custodial statement made on January 14, with the assistance of interpreter Bell and Harris' retained counsel.

Harris contended that the written statement given to Officer Figueroa at the crime scene should have been suppressed on the ground that it was not freely and voluntarily made because Harris was in custody at the time and he was not given the benefit of *Miranda* warnings. Harris also argued that, because the officer was required by OCGA § 24-6-653 to question him through a qualified interpreter, which he failed to do, the trial court was required to suppress the statement.

The trial court determined that Harris was not in custody during his interview with Figueroa and that, therefore, *Miranda* warnings were not required. Because the record did not contain any evidence that would support a finding that Harris had been arrested or that a reasonable person in Harris' position would have perceived that he was in custody during his interaction with Figueroa, the trial court did not err in determining that *Miranda* warnings were not required.

Further, OCGA § 24-6-653 did not require the trial court to suppress Harris' statement under these circumstances. A law enforcement agency is not *required* to provide a hearing-impaired person with a qualified interpreter until the hearing-impaired person "is arrested." The record showed that Harris had not been formally arrested when he communicated with Figueroa; consequently, at that moment, there was no "arresting law enforcement agency" that was required to provide Harris with a "qualified interpreter." And assuming that the rule applied to Harris, though he had neither been formally arrested nor found by the trial court to be in custody, the record also showed that Figueroa complied with it by reasonably accommodating Harris' disability by communicating with him in writing, as it was undisputed that Harris can read and write the English language. The record sup-

ported the trial court's finding that Harris' statement to Officer Figueroa was freely and voluntarily made. Consequently, Harris has shown no error, much less plain error, in the admission of this statement.

When Harris made his January 1 statement at police headquarters, he had not yet been formally arrested. Prior to giving his statement, Harris read and signed a waiver-of-rights form. Detective Erion, through interpreter Bell, also read Harris his *Miranda* warnings. Harris contended that he could not have knowingly and intelligently waived his rights under these circumstances because Bell was not a qualified sign-language interpreter and that she essentially "spoke a different language."

Again, because Harris had not been formally arrested when he gave this statement, the law enforcement agency was not required to provide him with a qualified interpreter. The record showed that Detective Erion nevertheless complied with the rule by reasonably accommodating Harris' disability by providing him with Bell's sign-language assistance and by having Harris read his waiver-of-rights form and write down his statement.

When Harris and his defense counsel met with Detective Erion on January 14, Harris had been arrested and was in custody. Harris contended that Bell was not qualified to participate in this meeting and that her efforts to facilitate communications between him, his attorney, and Detective Erion violated OCGA § 24-6-653 (b) (1) and § 24-6-656, rendering his written statement involuntary and inadmissible.

The video-recording of this interview showed that Harris initiated the interview through, and in the presence of, his defense counsel. Defense counsel informed Detective Erion that Harris wanted to explain why he had not been completely truthful with law enforcement previously. Harris was again advised of his *Miranda* rights through interpreter Bell, and Harris read and signed a waiver-of-rights form as his attorney watched. Harris even verbalized the word "yes" when Erion asked him if he wanted to talk to the police. Before receiving Harris' account through Bell, Erion inquired in writing whether Harris could understand Bell, to which Harris responded in writing "[s]omewhat[,] yes[,] mostly I don't use spelling words since my language is different from . . . National Deaf Institute." Erion then asked Harris: "If you have any trouble, let me know?" Harris responded: "Will do."

Defense counsel, after conferring with Harris through the interpreter, told Erion that his client had agreed to "take a stab at it," meaning giving his statement through Bell, and that if Harris had any trouble being understood, then counsel would intervene. Counsel indicated that he knew what Harris wanted

to say. Thereafter, Harris began giving his account of events in sign language, and Bell translated the signs into spoken English. Erion, however, had a hard time following Harris because, as Bell translated Harris' signs into words, Harris also attempted to speak, which resulted in unintelligible cross-talk. After the detective complained that he was "not getting this," Harris' counsel intervened. Counsel pushed a pad of paper and a pen across the table and gestured for Harris to write down what he wanted the detective to know. Erion did not ask Harris any questions about the crime. For almost 30 minutes, Harris wrote out his statement. While Harris wrote, defense counsel made a call on his cell phone to arrange for Harris' interpreter to accompany him to the police station the following day and to help Harris answer any questions that Erion might have about the written statement.

Under these circumstances, Bell's involvement in the January 14 interview was harmless. First, it appeared that Harris waived the requirements imposed by OCGA § 24-6-653 and § 24-6-656 when he and his counsel requested this follow-up meeting and elected to "take a stab" at the interview with Bell interpreting. Further, the written statement that Harris ultimately gave was not translated by Bell. It was clear from the video-recording that Harris, in consultation with his attorney, had already made the decision to give the police a revised statement before the interview began. Harris read and signed a waiver-of-rights form in the presence of his attorney. Both Harris and his attorney clearly stated that Harris wanted to give the statement that he gave, and it is plain from the video-recording that the statement was freely and voluntarily made.

Citation: *Harris v. State*, 837 S.E.2d 777 (Ga. 2020)

Miranda

A 911 call reported a car hijacking and attempted armed robbery. The caller told police that he had left his car running to warm up in the winter weather before returning to the car, at which time he saw a young man standing at the top of the stairwell in the breezeway. As the victim approached his car, the young man, who was wearing a black hoodie with white spots on the right rear shoulder and dark jeans and carrying a gun, came up behind the victim and demanded his car keys and wallet. The victim threw his wallet onto the ground and ran away, with the young man in pursuit. The victim later returned to the apartment parking lot, retrieved his wallet, and ran to the entrance of the complex, where he called 911. Two deputies arrived on scene and accompanied the victim back to his car, which was parked within view of Richardson's apartment. The car's engine was still running, but its windshield was shattered, and a fire

extinguisher was underneath its front. One deputy saw blinds moving in the front window of Richardson's apartment. When the officers knocked on the door, Richardson's mother answered. The officers asked her whether Richardson was there and if they could "talk to him for just a second." The mother agreed, and shortly thereafter, with the second deputy's gun drawn, Richardson walked out of the apartment with his hands in the air, saying, "I ain't got nothing on me." He was wearing a black hoodie with white markings on the right rear shoulder. The first deputy placed Richardson in handcuffs, instructing him to "put your hands up until I can figure out what is going on." The officers questioned Richardson, and he admitted chasing the victim with a BB gun. The victim then identified Richardson and the officers placed him under arrest. At trial, Richardson argued that any statement he made was taken in violation of his *Miranda* rights.

INTERROGATION: Lawful.

Here, the officers placed Richardson in handcuffs for their own safety and for purposes of conducting a second-tier investigatory stop lasting approximately three minutes. Where an accused was neither in custody nor so restrained as to equate to a formal arrest, any statements made to an investigating officer were made under noncustodial circumstances and *Miranda* warnings were not required. In this case, *Miranda* warnings were not necessary during the brief period Richardson was in handcuffs, which ended when the victim identified Richardson as his assailant and Richardson was taken to the patrol car. Even assuming that Richardson should have been *Mirandized* immediately after being placed in handcuffs, the Supreme Court of Georgia has held that a failure to give the prescribed *Miranda* warnings and obtain a waiver of rights before custodial questioning generally required exclusion of any statements obtained. However, such a failure did not mean that the statements received were actually coerced, but only that courts presumed the privilege against compulsory self-incrimination was not intelligently exercised. Consequently, even when a defendant was in custody for some hours, a statement taken without *Miranda* warnings was not involuntary in the absence of any evidence of extreme tactics identified as the hallmarks of coercive police activity, such as lengthy interrogation, physical deprivation, brutality, or deception. Here, Richardson's first conversation with police, which almost immediately raised the necessity of locating the gun used in the hijacking, was a matter of a few minutes in a noncustodial setting with no evidence of coercion.

Citation: *State v. Richardson*, 837 S.E.2d 524 (Ga. Ct. App. 2020)

Idaho

Detention

On November 18, 2016, Officer Kuebler and Officer Johnson from the Idaho Department of Correction performed a routine residence check on parolee Terry Wilson. Upon their arrival, the officers knocked on the apartment door and Wilson answered. As the officers entered, they noticed Kari Phipps exit from a back bedroom. The officers recognized Phipps from previous visits. The officers asked Phipps and Wilson to take a seat in the living room while they “cleared the bedrooms for other persons.” Officer Johnson testified that, although Phipps never asked to leave at that time, she was not “cleared to leave. . . . [b]ecause of procedure.”

After ensuring there was no one else in the apartment, Officer Kuebler advised Phipps and Wilson that a drug dog would be brought in to aid in the search of the residence and asked whether there was anything in the apartment that they should know about. Phipps confessed to having a methamphetamine pipe in her backpack, which was on her person. Officer Kuebler proceeded to conduct a full search of the residence and found two safes containing drugs underneath a bed in a back bedroom. The officers called backup law enforcement to handle the drugs. At some point prior to the arrival of backup, the officers ascertained that Phipps had no outstanding warrants.

Approximately 15 minutes later, Officer Hutchison from the Coeur d’Alene Police Department arrived. Officer Hutchison talked with Phipps separately in a back bedroom after he read Phipps her *Miranda* rights. When asked whether she had a methamphetamine pipe in her backpack, Phipps confirmed she did. Officer Hutchison searched Phipps’ backpack and found the methamphetamine pipe. Consequently, Officer Hutchison issued Phipps a citation for possession of drug paraphernalia.

Phipps was charged with possession of drug paraphernalia. She moved to suppress the methamphetamine pipe and her statements regarding the pipe. At the suppression hearing, Officer Kuebler was asked why he detained Phipps, to which he explained, “[w]hen we enter a residence, we require that everybody stays in the living room until we clear the residence for officer-safety reasons.” Officer Kuebler further explained,

[W]e’re entering a residence where people are on felony probation, and the people that necessarily hang out there, a lot of times we find felony warrants or other drugs so we—we don’t want to have individuals leaving, coming back—knowing where we’re at in the residence, coming back with intentions to harm an officer.

Officer Johnson similarly testified that the deten-

tion was “[d]epartment procedure to ensure officer safety.”

When asked whether there was any suspicion of wrongdoing prior to the search of the residence, Officer Kuebler testified that they did not believe the parolee violated any terms or conditions of his parole; that they did not suspect he had any drugs in his apartment; and that they did not suspect he was illegally possessing a firearm. As for Phipps, Officer Johnson testified that he did not believe she was violating any law at the time. The magistrate court found this to be the case as well: “She didn’t appear to be armed or dangerous. They didn’t see anything about her person that would justify a *Terry* stop or search of her person.” Therefore, the court found that, prior to Phipps’ statement to the parole officers regarding the methamphetamine pipe, “there [was] no individual probable cause to hold or detain Ms. Phipps.” Rather, “Ms. Phipps was simply a person merely present during a p[arole search] . . . to check a residence.”

After the suppression hearing, the court concluded that there is no legal difference between a search pursuant to a search warrant and a search pursuant to a parole waiver; in either case, law enforcement may detain all individuals found on the premises. Therefore, the court held that when parole officers are conducting a lawful parole search, they may detain and question all persons present, regardless of whether they have reasonable suspicion or probable cause, which is what the officers did in this case. Accordingly, the magistrate court denied Phipps’ motion to suppress. Phipps appealed.

On appeal, the district court reversed the magistrate court’s denial of Phipps’ motion to suppress. The court held that parole officers may not detain non-residents found on the premises during a lawful parole search unless the officers have probable cause or reasonable suspicion. The court explained that “[i]n the case of a valid search warrant, . . . the probable cause determination provides a nexus between an individual’s presence at the location and the suspected criminal activity, rendering detention of individuals present reasonable.” However, that same nexus “does not exist when law enforcement arrives at a parolee’s residence to perform a routine search pursuant to standard conditions of parole” and the individuals “are not parolees nor residents of the home but are merely present at a parolee’s residence when law enforcement arrives.” Accordingly, the district court held that Phipps was unlawfully seized and suppressed the evidence of the methamphetamine pipe and the statement regarding the pipe under the exclusionary rule. The State then appealed to the Supreme Court of Idaho.

DETENTION: Lawful.

The State contended that it is reasonable for officers

conducting a parole search of a parolee's residence to detain third parties on the premises because the government's interest in conducting the parole search outweighs the burden caused to any third parties during the limited detention. Phipps contended that the government's interests do not outweigh the detention when the detainee is a non-resident.

In assessing the validity of Phipps' detention, the court noted three undisputed facts essential to defining the scope of its analysis. First, there was no dispute concerning the officers' authority to enter and search the apartment. The parolee consented to suspicionless searches of his person and residence as a condition of his parole. Second, Phipps' initial detention qualified as a seizure for purposes of the Fourth Amendment. The State did not contend otherwise and the record showed that Phipps was not free to leave the residence. Third, the officers conceded that they did not have reasonable suspicion or probable cause to initially detain Phipps. Once again, the State did not contend otherwise and the record showed that neither officer believed Phipps to be armed or dangerous or involved in any wrongdoing. Therefore, the dispute involved only the constitutionality of a suspicionless detention of a third party during a routine parole search.

Generally, in order to be reasonable under the Fourth Amendment, an official seizure of the person must be supported by probable cause, even if no formal arrest is made. However, some seizures significantly less intrusive than an arrest have withstood scrutiny under the reasonableness standard embodied in the Fourth Amendment. In these cases the intrusion on the citizen's privacy was so much less severe than that involved in a traditional arrest that the opposing interest in crime prevention and detection and in police officer safety could support the seizure as reasonable.

There are three overarching law enforcement interests whenever officers legally search a residence: (1) preventing flight; (2) minimizing the risk of harm to the officers; and (3) the orderly completion of the search. The law should always be concerned to prevent the flight of criminals, ensure officer safety, and facilitate orderly completions of valid searches—warrant or no warrant. The reasons for this are obvious. First, there is always the possibility that an occupant will take flight in order to avoid any implication of

wrongdoing. If police officers are concerned about flight, and have to keep close supervision of occupants who are not restrained, they might rush the search, causing unnecessary damage to the property or compromising its careful execution. Therefore, allowing officers to secure the scene by detaining those present prevents the search from being impeded by occupants leaving with the evidence being sought or the means to find it. Second, officers visiting a parolee's home run a substantial risk of harm from unknown individuals leaving and reentering the home. Finally, if occupants are permitted to wander around the residence, there is the possibility that they may interfere with the execution of the parole search by hiding or destroying evidence, seeking to distract the officers, or simply getting in the way. These risks are present in all residence searches, warrant or no warrant, and the government's interests in preventing these risks outweigh the slight intrusion associated with the detention. Accordingly, the court here found no meaningful difference between the detention of occupants present during the execution of a search warrant and the detention of occupants present during a routine parole or probation search.

The record established that the officers in this case were conducting a routine parole search of a parolee's residence when they detained Phipps as she was exiting a bedroom. The officers made Phipps and the parolee sit in the living room as they conducted a search of the residence. Phipps' detention was therefore permissible because she was present during a lawful parole search of a parolee's residence. Moreover, the officer's questioning did not constitute an independent Fourth Amendment violation. Prior to the full search of the residence, an officer posed a single question to both Phipps and the parolee, asking whether there was anything in the apartment that they should know about before they searched. Phipps immediately responded that she had a methamphetamine pipe in her backpack. There was nothing in the record to suggest that the officer impermissibly prolonged the search by asking this single question prior to commencing the full search. Therefore, the limited detention of Phipps was reasonable under the Fourth Amendment.

Citation: *State v. Phipps*, 166 Idaho 1, 454 P.3d 1084 (2019)