



RESOURCES · SEARCH & SEIZURE

Burglar Has No Expectation of Privacy

By **DLG Learning Center**

April 13, 2020

DAIGLE LAW GROUP

This publication is produced to provide general information on the topic presented. It is distributed with the understanding that the publisher is not engaged in rendering legal or other professional services. Always consult qualified counsel for advice specific to your situation.

dlglearningcenter.com

Burglar Has No Expectation of Privacy

By DLG Learning Center · April 13, 2020

Today we will look at a case out of the 7th Circuit Court of Appeals, covering those jurisdictions in Illinois, Indiana, and Wisconsin. Today's case, *United States vs Sawyer*^[1], looks at the question of whether a suspect has a legitimate expectation of privacy in his backpack found at the scene of an active burglary. For some of you that may have been around the block for a while you may recall that at one time the court would look at this as a question of "standing". In other words, does the suspect have standing to make the claim that his backpack should not have been searched. In fact, the trial court determined that the suspect did not have standing to dispute the search of his bag found at the scene of the house he had burglarized.

However, as the 7th Circuit correctly pointed out, the new test established by the Supreme Court is not a question of standing, but rather did the suspect have a legitimate expectation of privacy in the bag. Let's take a look at the facts of the case and what the 7th Circuit had to say.

FACTS

Chicago police were called to the scene of a possible active burglary. When they arrived at the scene, they checked the house for signs of forced entry and were met by "M.G." who claimed to be the owner of the rental property and that no one should be in the house. Upon further inspection officers found a partially opened window and could see someone inside. Officers yelled for the suspects to come out and Devontay Sawyer exited the home with three others.

M.G. asked the officers to check the house so the officers entered the house, conducted a search and found a backpack in the basement containing four guns and a cell phone. The searching officers notified the officers securing the four suspects and they were all taken into custody. Officers provided Miranda warnings to the four suspects and then asked which suspect owned the phone. Sawyer responded that the phone and the bag were his.

Sawyer was indicted and moved to suppress the backpack, guns, phone and his statements. The defendant argued that the police lacked probable cause or consent to search the bag. The trial court denied his motion finding that Sawyer lacked 'standing' to contest the search because he was unlawfully in the house. Sawyer then pled guilty and this appeal followed.

7th Circuit Findings

While the 7th Circuit affirmed the trial court's ruling denying the motion to suppress, the court corrected the court's legal review. Citing the Supreme Court's ruling in *Rakas v Illinois*^[2], the court determined that the proper review should be whether the suspect had a reasonable expectation of privacy in the bag. This determination is made in two parts – (1) does the suspect have an actual expectation of privacy and (2) is that expectation one that society is prepared to recognize.

Under the facts presented, the backpack was located within a home that Sawyer was burglarizing and, therefore, it would be unreasonable to expect that Sawyer would have an expectation of privacy in the bag. As the court noted, "because Sawyer has not shown a legitimate privacy interest in the home where the backpack was found, he also cannot contest the search of his effects that he left within the home".

WRAP UP

This case may seem like a "no brainer" but it is important to be mindful of a suspect's reasonable expectation of privacy when seizing property or conducting a search. Note that the officers were careful to Mirandize the suspects before questioning them about the backpack, phone or weapons. It also would have been helpful to have an officer stand by the backpack where it was located and have evidentiary services personnel photograph and document the bag and contents before moving them.

1. *United States v Sawyer*, 2019 U.S. App LEXIS (7th Cir IL 2019) [↑](#)
2. *Rakas v Illinois*, 439 US 128 (1978), [↑](#)