



LEGAL UPDATE · RESOURCES

Utilizing the Search Incident to Arrest Exception

By **Daigle Law Group**

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Our case today arises from a decision by the Eighth Circuit Court of Appeals. The suspect today fell victim to a false advertisement published by an undercover agent, and was subsequently arrested for engaging in said ad. The suspect claims that the officers lacked probable cause in arresting him. Although the officers did not have a warrant for his arrest, the suspect's illegal intentions were established through a thread of text messages from the suspect. An officer may arrest a person without a warrant if the officer has probable cause to believe the person has committed a crime. Probable cause exists "when the facts and circumstances are sufficient to lead a reasonable person to believe that the defendant has committed or is committing an offense."

Another important factor to consider in this case is that the officers searched the suspect's car without first having a warrant under the *Search Incident to Arrest Exception*. Under this exception, officers may search a car incident to arrest and without a warrant if "it is reasonable to believe the vehicle contains evidence of the offense of arrest".

FACTS

South Dakota Division of Criminal Investigation Agent Toby Russell, acting undercover as a pimp during a local motorcycle rally, posted an advertisement titled "Who Wants to Be Naughty" on a classified advertising website in its dating section under the category "women seeking men." He attached three, non-pornographic, images of an adult law enforcement officer that were digitally altered to make her look younger. The ad's description stated: "If you feel like being naughty hit me up." The ad also specified that the "poster" was twenty years old and directed interested parties to text a phone number, which unbeknownst to readers was Agent Russell's phone number. Carlocito Slim texted the ad's phone number twice on August 9, 2017, asking whether the photographed woman was "available", and whether she offered massages. Agent Russell responded by texting Slim that the photographed woman was available and indicated her age as "15 but gonna be 16." Agent Russell also told Slim in a text message that it would cost \$150 for a half hour and \$200 for a full hour of sexual intercourse. Slim responded with: "OK would like to see her first bro[.]" Receiving no response by the next afternoon, Slim reinitiated the conversation by texting Russell again, asking whether the alleged minor was available that night and if she could "do one hour \$200." Slim and Agent Russell agreed to meet at 9:00 p.m. that night, at a location that was yet to be determined. A few hours later, the two men engaged in another text message exchange, in which Agent Russell outlined some rules that had Slim had to

follow. Agent Russell told Slim that he had to “rock a condom,” to which Slim replied, “Ok, sounds good.” Agent Russell also told Slim that he could not “scare” or “hurt” the alleged minor, to which Slim agreed. Agent Russell then told Slim to meet him at 9:00 p.m. at a gas station so he could be sure that Slim had the money and condoms. Afterward, Agent Russell told Slim that he could follow him to the room. Slim described the car he was driving and told Agent Russell that he would “be there in 20.” When Slim arrived at the gas station, he was arrested.

Officers searched Slim’s car and found condoms, \$200 cash, and two cell phones. The government charged Slim with sex trafficking-related offenses, in which Slim responded to by claiming that the officers lacked probable cause to arrest him; therefore, the evidence seized from his car should have been suppressed. The district court denied the motion. Slim appealed.

EIGHTH CIRCUIT COURT OPINION

I. Probable Cause

In this case, the Eighth Circuit Court of Appeals held that the officers sufficiently established probable cause to the belief that Slim committed or was committing a crime. First, Slim texted Agent Russell to ask whether the alleged minor on the sexually suggestive dating ad was available and subsequently reiterated his desire to see her even after Agent Russell told him the alleged minor was fifteen years old. Second, Slim agreed to bring condoms and cash to the gas station, to “rock a condom,” and to refrain from hurting the alleged minor. Finally, Slim drove to the gas station where he had agreed to meet Agent Russell and the alleged minor. The court concluded that the facts sufficiently established probable cause to justify the officers’ belief that Slim was attempting to commit sex trafficking crimes and to arrest him without a warrant.

II. Warrantless Search of Vehicle

Next, the court held that the warrantless search of Slim’s car was permitted under the *Search Incident to Arrest Exception*. The court held that the officers reasonably believed that the car contained evidence relating to the offense at issue; attempted commercial sex trafficking of a minor, and, attempted enticement of a minor for sexual activity. Specifically, Slim agreed to pay \$200, to bring a condom to the meeting, and utilized his phone to solidify the plan to meet with Agent Russell. Consequently, the court held that it was reasonable for officers to believe that the evidence above would be located inside of Slim’s vehicle.

TAKEAWAYS

Some key takeaways:

When utilizing the *Search Incident to Arrest Exception*, a great tactic is to prepare a list of detail-specific items to be searched. Here, during the course of his communications with the suspect, Agent Russell specifically listed two items that Slim needed to bring with him: condoms and two hundred dollars cash. This allowed officers to search his car for these very specific items. Secondly, in reading the text transcripts between Slim and Agent Russell, we can recognize that Russell did a great job of remaining informal and using slang terminology in his communications with the suspect. This was crucial in helping to establish trust with Slim, and further enhanced the “street cred” of his persona. Just some good old fashioned police work at play here.

United States v. Slim, 34 F.4th 641 (8th Cir. 2022)

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