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By **Daigle Law Group**

February 13, 2024

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The Second Circuit Court of Appeals recently decided United States v. Lajeunesse, a case that deals with probationers and parolees rights.[1] This case is pivotal in understanding the interplay between the right to privacy under the Fourth Amendment and the supervisory needs of law enforcement and offers guidance on warrantless searches of electronic devices belonging to individuals on probation or parole.

Terry Lajeunesse, convicted through a guilty plea for possession and receipt of child pornography, challenged his conviction at the Second Circuit Court of Appeals. He argued that the warrantless search of his cell phone by a probation officer, which led to a broader investigation by the New York State Police, violated his Fourth Amendment rights. Lajeunesse contended that the probation officer did not have reasonable suspicion to believe he had breached his probation conditions or engaged in illegal activities.

Lajeunesse was subject to specific probation conditions, including prohibitions on unsupervised contact with minors, restrictions on social media use, and consent to unannounced searches of his electronic devices. The case escalated when Lajeunesse's ex-wife alerted his probation officer to suspected violations of these conditions. She suggested that Lajeunesse was romantically involved with an underage girl, citing Lajeunesse's frequent overnight stays at the girl's residence, excessive alcohol use, communication with her via Facebook, and potential contacts with other teenage girls abroad.

The probation officer, acting on these suspicions, verified the girl's Facebook profile and believed her to be underage. During further investigation, the officer discovered an undeclared Facebook account Lajeunesse used to communicate with the girl.

Weeks after the initial tip, during a scheduled visit to Lajeunesse's residence, the probation officer requested to see his cellphone. Lajeunesse complied, and upon inspection, the officer immediately recognized a photograph of the girl on the phone. Lajeunesse admitted to having a sexual relationship with the girl, claiming it began in 2018 and asserting she was 19 years old, nearing her 20th birthday. Despite Lajeunesse's assertions, the officer, doubting the legality of Lajeunesse's activities, proceeded to conduct a cursory search of the phone. This search unveiled disturbing content involving underage girls aged 13 and 14. Further investigation led to a media storage application on the phone, locked and inaccessible without a password. Lajeunesse refused to give up the password, prompting the officer to

seize the phone for a total forensic analysis.

Following his arrest, Lajeunesse, while incarcerated, wrote two letters to his minor son, attempting to persuade him to assume responsibility for the crimes. The district court dismissed Lajeunesse's motion to suppress the evidence obtained from his cell phones. On appeal, Lajeunesse maintained that the probation officer lacked reasonable suspicion for the search and argued that any search should have been narrowly focused on verifying compliance with social media use restrictions.

Terry Lajeunesse's appeal following his conviction for child pornography charges brought to light a current debate over the extent of privacy rights afforded to probationers. Challenging the search of his cell phone by a probation officer as a Fourth Amendment violation, Lajeunesse's case tested the boundaries of law enforcement's authority to conduct warrantless searches based on reasonable suspicion.

The Second Circuit affirmed the district court's denial of Lajeunesse's motion to suppress the evidence. The Court began its' analysis by considering whether the searches were valid in considering the totality of the circumstances under the two Supreme Court standards; United States v. Knights, and Griffin v. Wisconsin. First, the Court held that search was constitutional under the standard articulated by United States v. Knights. The Second Circuit emphasized that because Officer Murray reasonably suspected that Lajeunesse's phone would show violations of the terms of his probation and/or illegal activity, and because Lajeunesse's expectation of privacy was further diminished by the terms of his probation, the search of his phone was reasonable under the Fourth Amendment. Next, the Court held that the search was also constitutional under the "special needs" exception from Griffin v. Wisconsin.

Drawing upon the Griffin and Sampson v. California precedents, the Court highlighted a key point: probationers, like parolees, have a reduced expectation of privacy. The court maintained that reasonable suspicion, not probable cause, is the requisite standard for searches in these contexts. Moreover, it emphasized that while law enforcement officers must adhere to general search and seizure norms, they may act on directives from probation or parole agents.

In dismissing Lajeunesse's claims, the court noted his significantly diminished expectation of privacy, as per his probation terms, which expressly allowed for unannounced searches of his electronic devices. The officer's findings from the initial Facebook investigation provided reasonable suspicion of probation violations, ultimately legitimizing the phone search. The court also refuted Lajeunesse's reliance on Riley v. California, emphasizing that his situation differed substantially from a search incident to arrest.

Officers should be mindful that the application of these legal principles can vary significantly across different jurisdictions. Familiarity with local laws and regulations, in conjunction with effective collaboration with parole and probation agencies, is crucial for ensuring that searches are conducted legally and appropriately.

1. **United States v. Lajeunesse, No. 22-178 (2d Cir. 2023)** ↩
