Search and Seizure: County Officers May "Visit and Converse" With Animal Owners in Open Field Without Violating Fourth Amendment

***Hoffman v. Marion County,* No. 13-41199 (5th Cir. Nov. 17, 2014).**

Meeting with county residents on open fields outside their trailer home to discuss possible animal cruelty does not require a warrant and is not an actionable violation of search and seizure rights, according to the Fifth Circuit.

A Marion County game warden received complaints that dangerous animals were being kept on the property of Barbara Hoffman and Fred Lulling. The warden, along with a deputy sheriff, visited the property to investigate. They entered the property and were met outside a trailer by the couple. The couple admitted to keeping large cats. They showed the officers animals in the trailer, which ultimately numbered more than one hundred exotic animals, including six tigers, several leopards, and a puma. The animals had visible injuries, were in small cages, and lacked adequate water and food. The officers asked for proper licenses and health certificates for the animals, which Hoffman said she had, but was unable to produce.

The officers returned the next day with a DA, investigators, an inspector, a Humane Society staff member, a veterinarian, and a search warrant. Many more violations were discovered. Hoffman and Lulling were charged with animal cruelty.

Hoffman and Lulling subsequently filed a § 1983 suit, alleging Marion County, as well as various individual defendants, violated their Fourth Amendment right to unlawful search and seizure. The District Court granted summary judgment in favor of the County. Hoffman and Lulling appealed.

HELD: The Fifth Circuit affirmed, holding that the officials properly entered the property initially and never entered the curtilage without a lawful warrant.

DISCUSSION: The Fifth Circuit began by explaining that officials generally have license to enter a property to "visit and converse" with the owner, just as any private citizen may. The court noted the two officials initially stopped to "investigate complaints" and stayed in the open fields of the property, where they were met by Hoffman and Lulling. From there Hoffman and Lulling showed them the cats voluntarily and without protest. No officials entered the property again until a proper warrant was obtained. This accords with *United States v. Dunn*, 480 U.S. 294 (1987), wherein the Supreme Court held officials may enter an "open field[] without a warrant . . . because an open field is neither a house nor an effect, and, therefore, the government's intrusion upon the open fields is not one of those unreasonable searches proscribed by the text of the Fourth Amendment." Finding the rule "squarely appli[ed] in this scenario, the Court held for the County.

Lulling, independent of Hoffman, additionally complained that the District Court should have been overturned because certain individuals discriminated against him under the ADA. Specifically, he said he is hearing- impaired and was not provided an interpreter. The Circuit Court rejected this claim because, though Lulling is hearing impaired, he failed to show that he was excluded as a result of the lack of an interpreter. The court noted the evidence showed he could effectively communicate with the officers and that, at times, he initiated the conversations with them. The Circuit thus upheld the dismissal of the claim by the District Court.

http://www.ca5.uscourts.gov/opinions/unpub/13/13-41199.0.pdf (last accessed Nov. 20, 2014)