

Leaking Pipes Lead To Infrequently Discussed Fourth Amendment Exception – The “Third-Party Intervention” Exception

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On July 25, 2013, my mentor (and former boss), Judge Sabatino decided *State v. Wright*, a Fourth Amendment search and seizure case with the “third-party intervention” doctrine.

Under the “third-party intervention” doctrine, the police may inspect or search an individual’s property [without a warrant](#), so long as the police do not exceed the scope of the private actor’s (the third party, for example in the case below, a landlord’s) intrusion that led to the police’s involvement. Essentially, if the third-party is lawfully present and uncovers criminal activity, the police, relying on the third-party, may “search” and “seize” evidence of a crime.

These are the salient facts in *State v. Wright*: Mr. Wright’s landlord had entered Mr. Wright’s apartment at the request of Wright’s girlfriend, who discovered a leak. While the landlord was there,

the landlord observed drugs on a night stand and, in fear, he called the police. The police responded to the scene, were let into the apartment by the landlord, and confirmed his observation of the drugs and other contraband in open view. The girlfriend then arrived and the police secured her consent to a search of the apartment, through which they found a gun and other evidence of criminal conduct.

On appeal, Judge Sabatino held that the search and seizure of evidence was proper. He reasoned that the “landlord entered the apartment at the tenant’s invitation to address ongoing water damage and a potential health and safety hazard.” He further concluded that the landlord acted “justifiably in letting the police into the apartment after observing illegal drugs within the premises in open view.”

Accordingly, the seizure of evidence was upheld on appeal.

But, that does not end the discussion. Judge Sabatino also added: “We also find it significant that the police did not go beyond the physical scope of the landlord’s entry into the premises until they first obtained the tenant’s valid consent to a full search of the premises.”

So, what does this mean moving forward? Utilizing Judge Sabatino’s reasoning, perhaps the outcome of the case would have been different if, for example, Mr. Wright’s girlfriend claimed that the dishwasher was broken and the landlord took it upon himself to search the entire apartment. Under those circumstances, one could argue, persuasively, that the landlord exceeded the scope of his invited entry into the apartment – thus, when the landlord invites the police under those circumstances, they, too, have acted improperly.

As I have mentioned in previous posts, these are the types of legal issues that turn on the facts – and the best way to make the facts work for you is to hire a knowledgeable attorney.