

The Independent Source Exception to the Exclusionary Rule under the United States Constitution

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I discussed the inevitable discovery exception in my last [post](#). This post will discuss the independent source exception, particularly the United States Supreme Court cases of *Segura v. United States*, 468 U.S. 796 (1984), and *Murray v. United States*, 487 U.S. 533 (1988), and related North Carolina cases. It should be noted that the independent source exception was initially adopted in *Silverthorne Lumber Co. v. United States*, 251 U.S. 385 (1920), and can apply to investigations involving Fourth, Fifth, or Sixth Amendment violations.

The Court has justified the independent source exception as follows: Society's interest in deterring unlawful law enforcement conduct and the public interest in having juries receive all probative evidence of a crime are properly balanced by putting law enforcement in the same, not a worse, position that they would have been if no law enforcement error or misconduct had occurred. When the challenged evidence has been legally obtained through a source independent of unlawful law enforcement activity, exclusion of such evidence would put law enforcement in a worse position than they would have been in absent any error or violation. *Nix v. Williams*, 467 U.S. 431 (1984).

Segura v. United States. Drug agents entered an apartment without a warrant and secured it pending the issuance of a search warrant. The search warrant was issued the next day, and drugs and other evidence was seized.

The Court said that it was important to focus on the narrow and precise question before it. The lower courts in this case had ruled that the initial warrantless entry and limited security search were not justified by exigent circumstances and therefore were unconstitutional. Review of that aspect of the case was not sought by the government, and no issue concerning the items seen during the initial entry were before the Court. The only issue was whether drugs and other items, not seen during the initial entry and first discovered by the officers on the day after the entry with a valid search warrant, should be suppressed under the exclusionary rule.

Assuming without deciding that the drug agents illegally entered the apartment, the Court ruled that the evidence later seized pursuant to the search warrant was admissible. The evidence was not a fruit of the illegal entry because all of the information that supported the issuance of the search warrant was known before the officers illegally entered the apartment from their prior surveillance and an arrested accomplice's information. Thus, the justification for the search with the search warrant came from a source independent of the illegal entry.

Murray v. United States. After receiving information from informants and conducting surveillance of a warehouse, officers lawfully seized vehicles as they left the warehouse and discovered marijuana in them. The officers then unlawfully entered the warehouse without a search warrant, saw in plain view many burlap-wrapped bales, and left—without disturbing the bales—to obtain a search warrant. In applying for the search warrant, the officers did not mention their unlawful entry and did not rely on any observations made during the entry. After the search warrant was issued, the officers returned to the warehouse and seized 270 bales of marijuana and other evidence.

The Court ruled that the bales properly could be admitted at trial under the independent source exception to the Fourth Amendment exclusionary rule (although the Court remanded for additional fact-finding by the trial court). This exception permits the introduction of evidence that was initially discovered during or as a result of an unlawful search but was

later obtained independently by lawful conduct that was untainted by the initial illegality. The exception applies to both intangible evidence (in this case, knowledge of the bales of marijuana) and tangible evidence (in this case, the bales of marijuana) discovered during the initial unlawful search. If the later acquisition of evidence is not the result of the earlier entry, the independent source exception allows the admission of both tangible and intangible evidence. The Court remanded this case to the trial court so that it could determine (1) whether the officers' decision to obtain a search warrant was prompted by what they had seen during the initial unlawful entry; and (2) whether information obtained during the unlawful entry was presented to the magistrate or affected his decision to issue the warrant. If the answer to both inquiries was no, then the evidence found pursuant to the search warrant is admissible under the independent source exception. (Note: This was a four-Justice opinion, but it clearly states existing constitutional law.)

North Carolina Supreme Court cases. In *In re Stedman*, 305 N.C. 92 (1982), fingerprints were taken unlawfully from a juvenile because he had been indicted and arrested instead of first being tried in juvenile court (he was under 16 years old when the offense was committed). After juvenile petitions were later brought, a judge issued a nontestimonial identification order under G.S. 7A-598 (now, G.S. 7B-2105) to take the juvenile's fingerprints. The court ruled that the fingerprint evidence obtained under G.S. 7A-598 was admissible under the independent source exception, citing *Nardone v. United States*, 308 U.S. 338 (1939), because the order was issued based on information obtained independently of, and not tainted by, the evidence of the unlawful fingerprinting.

In *State v. Phifer*, 297 N.C. 216 (1979), the court ruled that a search of a vehicle's glove compartment could not be justified as a constitutionally valid inventory search. However, the court found that the search was valid because before the glove compartment was opened, officers had lawfully and independently obtained probable cause that the compartment contained contraband. Therefore, the fruit of the poisonous tree doctrine was inapplicable to this case, citing independent source exception cases such as *Nardone v. United States* and *Silverthorne Lumber Co. v. United States*, cited above.

Other supreme court cases include: *State v. Maness*, 321 N.C. 454 (1988) (testimony of three witnesses was not traceable to a prior unconstitutional seizure of evidence to bar their testimony as a fruit of the poisonous tree); *State v. Sanders*, 327 N.C. 319 (1990) (evidence that was lawfully obtained and independent of an invalid search provided probable cause to arrest); *State v. Knight*, 340 N.C. 531 (1995) (even if officers illegally entered a home and conducted an initial sweep of the residence for weapons while waiting for a search warrant to arrive, this illegal conduct did not require the exclusion of evidence seized with a valid search warrant, when the information set out in the search warrant's affidavit was not related to the entry); *State v. McKinney*, 361 N.C. 53 (2006) (remanding case to trial court for its determination whether probable cause existed to support a search warrant, after excising information in the search warrant's affidavit that was obtained by officers during an unconstitutional warrantless entry into residence).

North Carolina Court of Appeals cases. Below are brief summaries of the cases:

State v. Lemonds, 160 N.C. App. 172 (2003) (the court ruled that even without the unlawfully-obtained thermal imaging results, there was sufficient information in the search warrant's affidavit to support a finding of probable cause to search the residence, including police surveillance, an anonymous tip, and electric bills showing a dramatic increase in electricity usage).

State v. Robinson, 148 N.C. App. 422 (2002) (the independent source exception supported the seizure of the marijuana with a valid search warrant even if it was assumed that the officers had previously made an illegal warrantless entry of the house—no evidence from that entry was used in the search warrant).

State v. Treece, 129 N.C. App. 93 (1998) (the information supplying probable cause for the search warrant was obtained independently from any possible illegal entry, and thus the illegal drugs were properly seized).

State v. McLean, 120 N.C. App. 838 (1995) (there was sufficient probable cause--independent of the illegal entry by the officer and his observation of the marijuana--to support the search warrant; the finding of probable cause was

unconnected with the illegal entry).

State v. Waterfield, 117 N.C. App. 295 (1994) (the search pursuant to the search warrant was valid because the information used to obtain the search warrant was obtained entirely independent of the allegedly illegal initial entry to secure the residence).

State v. Wooding, 117 N.C. App. 109 (1994) (the defendant's consent to search an apartment after the defendant's unlawful arrest was not an independent source to search the apartment because the defendant's arrest was based entirely on the officer's unlawful search (entering the back porch and looking through apartment window)).

State v. Wallace, 111 N.C. App. 581 (1993) (the State could not justify the search of the residence under the independent source exception to the exclusionary rule because the search warrant was prompted by what the officers saw in their illegal entry, and the information obtained during the illegal entry was presented to the magistrate and affected the decision to issue the search warrant).