

Law Enforcement Drone Use

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TO: Keith Kauffman, Chief of Police
FROM: Chris Warren, Detective, Special Investigations Unit
DATE: June 14, 2019
SUBJECT: Law Enforcement Drone Use

Introduction:

A Crime Stoppers tip was received that alleges vehicles arrive and depart from a home in the city between 2:00 am - 4:00 am, and the anonymous informant said that this is uncommon for the neighborhood. Also suspicious is the fact that the resident installed an 8-foot-tall PVC fence on the property; which in this part of the city is zoned for up to two acres. The informant believes that the location may be a marijuana grow operation. A drone is available to surveil the property that includes a camera capable of high-quality video and zoom. Furthermore, the drone can be flown over the house from over one mile away at a height that would not be visible to persons on the property. However, the drone is privately owned and not department sanctioned (University of San Diego, 2019).

Legal Analysis:

In the case of *California v. Ciraolo* [476 U.S. 207 (1986)], the Supreme Court decided that a warrantless aerial observation of a fenced backyard within the curtilage of the home was reasonable. No warrant was required even though the owner had a privacy fence (Begovich, LEPS 530 Public Safety Law: Module 4 Presentation 1, 2019). A similar judgment was found in *Dow Chemical v. United States* [476 U.S. 227 (1986)] which held no warrant was needed to photograph openly visible areas from the air (Begovich, LEPS 530 Public Safety Law: Module 4 Presentation 1, 2019). Nonetheless, in *Grady v. North Carolina* [575 U.S. _ (2015)], the court held that a search is only reasonable if it falls within a specific exception to the warrant requirement. In the Grady

ruling the court also cited *Riley V. California* [134 S. Ct. 2473 (2014)] which states warrantless searches are illegal (Begovich, LEPS 530 Public Safety Law: Module 4 Presentation 2, 2019). Likewise, privacy concerns were addressed by the Supreme Court in *Katz v. United States* [389 US 347 (1967)] and held in this wiretapping case that the defendant was entitled to Fourth Amendment protection (FindLaw, 2019). The court has been clear; if there are no exigent circumstances get a warrant.

Recommendations:

In this situation, there are no circumstances which conform to the exigency exception which are: search incident to arrest, plain view, consent, stop and frisk, automobile exception, and emergency/hot pursuit (FindLaw, 2019). Conceivably the plain view exception may apply, but the question will be if the drone can be lawfully deployed to observe the back yard. The U.S. Constitution and Supreme Court agree that privacy is an inherent right of all citizens. Search warrants are based upon probable cause, and the information in this case, would most likely not be substantive enough for the issuance of a warrant.

Consequently, if there is not enough information to obtain a search warrant and no exigent circumstances present; there is undoubtedly not enough legal justification to deploy the drone in response to the threadbare facts of this case. Further investigation and corroboration of criminal activity would be required. The ethical decision is not to employ the drone and wait until further information is developed.

References

Begovich, M. (2019). *LEPS 530 Public Safety Law: Module 4, Presentation 1*. Retrieved from University of San Diego: https://ole.sandiego.edu/ultra/courses/_58332_1/cl/outline

Begovich, M. (2019). *LEPS 530 Public Safety Law: Module 4, Presentation 2*. Retrieved from University of San Diego: https://ole.sandiego.edu/ultra/courses/_58332_1/cl/outline

FindLaw. (2019). *Fourth Amendment - U.S. Constitution*. Retrieved June 12, 2019, from FindLaw: <https://constitution.findlaw.com/amendment4.html>

LexisNexis. (2018). *State v. Grady*. Retrieved December 20, 2018, from LexisNexis: https://ole.sandiego.edu/ultra/courses/_58332_1/cl/outline

University of San Diego. (2019). *Assignment: Law Enforcement Drone Use Memorandum*. Retrieved from University of San Diego: https://ole.sandiego.edu/ultra/courses/_58332_1/cl/outline