

Thursday, May 29, 2008

### **When convicted felons are nearby guns and drugs.**

Â Bill of RightsÂ (From public domain.)Â When convicted felons are around guns and unlawful drugs, they risk exposure to substantial incarceration time. Lewis D. McCarson learned that when federal marshals came to his girlfriend's home with an arrest warrant for him. U.S. v. McCarson, 2008 U.S. App. LEXIS 11234 (D.C. Cir. May 27, 2008). Other than the arrest warrant, all went well for McCarson until he told the marshals that he wanted to wearÂ his black pants, coat, and shoes on his way out the door. The marshals went to the bedroom for those articles of clothing, and claim they then saw a bag of marijuana and a handgun in plain view and cocaine by the time they further opened the drawer to retrieve the handgun. Â One lesson learned here: McCarson's apparel request to the marshals boomeranged back with the rank smell of feces. Because the marshals had an arrest warrant but no search warrant, one is left to wonder whether they would have bothered doing anything to find the gun and drugs had McCarson just agreed to leave the home in his underwear. Had this been Mr. McCarson's home, clearly a search beyond his lunge and grasp would have been impermissible where the police only had an arrest warrant but no search warrant. Chimel v. Cal., 395 U.S. 752 (1969).Â Lesson two learned in U.S. v. McCarson: An arrest warrant allows the cops to enter a home other than the suspect's when the police have reason to believe that the suspect will be found there. Although contraband found pursuant to the execution of the arrest warrant may be inadmissibleÂ against the homeowner if the home is not the suspect's (but will the homeowner obtain such suppression if the contraband is in plain view near where the suspect is found, as opposed to being found pursuant toÂ a searchÂ in the area within theÂ suspect's lunge and grasp?), that is the homeowner's right. Furthermore,Â if the Court finds the suspect has no standing to contest the search, that ends the suppression analysis. Â Lesson three learned from this case: Prior convictions open a Pandora's box to enable courts to permit jurors to know about those convictions to counter potential defense arguments of ignorance of any crime when prior convictions show activity in consonance with the currently-charged crime.Â As an aside, the appellate panel that decided Mr. McCarson's case heard my First Amendment appeal two business days after it heard Mr. McCarson's appeal on May 9. My appeal is still pending. Jon Katz. Â ADDENDUM: Thanks to a fellow listserv member for posting on Mr. McCarson's case.

Posted by Jon Katz in Criminal Defense at 00:00

The assumptions by law enforcement can be helpful to them in uncovering evidence for their cases, but ignoring the Constitution in order to do so is abhorant. Criminals, ex-convicts or the accused have rights, and even if this hampers police efforts, the rights of the accused are sacred and should be guarded.

Anonymous on May 30 2008, 11:34