

# State v. patino criminological anlaysia



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## **Abstract**

The Fourth Amendment of the U. S. Constitution protects the citizens of the United States from unlawful searches and seizures. It ultimately provides us with the right to privacy, but there are exceptions. A search may not ensue unless there is a warrant or probable cause. A warrant is a legal document that allows law enforcement to make an arrest or search premises. Probable cause is the sufficient reasoning that a crime was, or will be, committed. In any case that there is no warrant probable cause must exist prior to making an arrest, conducting a search, or seizing property. There is no clear definition for probable cause, so there are many issues with how it may be interpreted. When there is a dispute regarding an unlawful search it is up to a judge to determine whether probable cause existed or not and if the search or seizure violated the suspect's constitutional rights. If either side doesn't agree with the judge's decision, the decision can be appealed. Once appealed an appellate judge will hear the case and will decide to overturn or uphold that decision.

### State v. Patino Criminological Anlaysis

In 2009, Marco Nieves was found unresponsive and not breathing shortly after five o'clock in the evening by his mother, Trisha Oliver. She called 911 immediately and emergency services were dispatched to the home. As Marco was being transported to the hospital police interviewed Trisha to gather more details about what had taken place. Sergeant Kite analyzed the apartment and noticed Marco's bedsheets were soiled and there was vomit in the toilet. He also noticed that Trisha's boyfriend, Michael Patino, and

another child was in the home during that time. Trisha was taken to the hospital, an adult picked up Trisha's other child, and Michael went to the police station with Sgt, Kite. While being questioned Sgt. Kite explained to Michael that they had evidence that he was responsible for what happened to Marco. Michael admitted to hitting Marco in the ribs and giving him a "body shot", because he was acting stupid. Shortly after, Marco died from the injuries he sustained and Michael was charged with first degree murder.

While researching the case of State v. Patino I found myself clinging to the fact that Patino disclosed he hit Nieves, because he was "acting stupid". This made me speculate about why he chose this course of action. After careful consideration, I believe the rational choice theory helps to explain why. James Chen stated, "Rational choice theory is an economic principle that assumes that individuals always make prudent and logical decisions that provide them with the highest amount of personal utility. These decisions provide people with the greatest benefit or satisfaction — given the choices available — and are also in their highest self-interest.". James Chen further explains, "The theory is based on the idea that all humans base their decisions on rational calculations, act with rationality when choosing, and aim to increase either pleasure or profit.". Patino hit Nieves, because he felt striking the child would silence him. I assume Patino was frustrated with Nieves' behavior and he chose to hit the child, rather than be patient with him. Taking his anger out on Nieves and shutting him up satisfied his frustrations.

During the time Oliver escorted Sgt. Kite through the apartment, after Nieves was taken to the hospital, Sgt. Kite scanned the home in search of anything

that could be connected to what happened to Nieves. As officers were questioning Patino, after Oliver went to the hospital, Sgt. Kite checked a cellphone's text message and it revealed evidence that a crime may have taken place. The text messages revealed that Patino admitted to Oliver that he beat Nieves as a form of discipline. Despite the incriminating texts and the confession from Patino, the Superior Court judge found that both were inadmissible. The defense attorney argued that the evidence found in the cellphone was obtained illegally and that tainted the confession that followed. It was determined that Sgt. Kite conducted an unlawful search and seizure. According to the Cornell Law School website, "An unreasonable search and seizure is a search and seizure by a law enforcement officer without a search warrant and without probable cause to believe that evidence of a crime is present." Sgt. Kite checked the phone thinking it was a concerned family member checking on Nieves' status, but soon found it was not. He did not suspect it would be linked to the crime, so probable cause did not exist. He also did not have a warrant. Patino had a right to privacy under the Fourth Amendment to the Constitution but it was violated.

The prosecuting attorney appealed the Superior Court's ruling to the Supreme Court. They argued that Patino's Fourth Amendment right was not violated, because the cellphone containing the text messages did not belong to him. It was determined that the cellphone belonged to Oliver and she had given police prior consent to search her apartment and cellphones. Warrants were obtained as well. If defendant gives law enforcement permission to search the premises and seize property, at any time, the encounter is consensual. Search and seizure laws do not apply to consensual encounters,

therefore Patino had no right to privacy regarding the text messages found in Oliver's cellphone.

Many times officers become caught in situations that cause them to straddle the fine lines between right and wrong when doing their job. Because they are heavily scrutinized and held to a higher standard, officers must be sure to follow the standards set forth in the Law Enforcement Code of Ethics. The Law Enforcement code of Ethics states, " As a law enforcement officer, my fundamental duty is to serve the community; to safeguard lives and property; to protect the innocent against deception, the weak against oppression or intimidation and the peaceful against violence or disorder; and to respect the constitutional rights of all to liberty, equality, and justice." .

During the investigation at Oliver's residence and the police station, Sgt. Kite conducted himself in an ethical manner. He was not disrespectful or belligerent towards Patino and he did not use vulgar language when speaking with him. Despite the initial question of whether the text messages were found illegally or not, Sgt. Kite performed his duties with integrity.

Initially Patino was charged with first-degree murder, but was acquitted of those charges and found guilty of second-degree murder. The Rhode Island State Statute defines first degree murder as, " the unlawful killing of a human being with malice aforethought is murder. Every murder perpetrated by poison, lying in wait, or any other kind of willful, deliberate, malicious, and premeditated killing, or committed in the perpetration of, or attempt to perpetrate, any arson or any violation of § 11-4-2, 11-4-3, or 11-4-4, rape, any degree of sexual assault or child molestation, burglary or breaking and entering, robbery, kidnapping, or committed during the course of the

perpetration, or attempted perpetration, of felony manufacture, sale, delivery, or other distribution of a controlled substance otherwise prohibited by the provisions of chapter 28 of title 21, or committed against any law enforcement officer in the performance of his or her duty or committed against an assistant attorney general or special assistant attorney general in the performance of his or her duty, or perpetrated from a premeditated design unlawfully and maliciously to effect the death of any human being other than him or her who is killed, is murder in the first degree.”. Patino did not maliciously or intentionally murder Nieves, but his negligence lead to Nieves’ death. This is why Patino was charged with a lesser offense.

## References

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