

**FILED**  
United States Court of Appeals  
Tenth Circuit

**UNITED STATES COURT OF APPEALS**

May 21, 2007

**TENTH CIRCUIT**

Elisabeth A. Shumaker  
Clerk of Court

DONNA M. AUGUSTE,

Plaintiff-Appellee,

v.

JAMES A. ALDERDEN, individually and in his official capacity as Sheriff of Larimer County; JAMES SULLIVAN, individually and in his official capacity as Investigator, Larimer County Sheriff's Office; JOHN NEWHOUSE, individually and in his official capacity as Investigator, Larimer County Sheriff's Office; ROGER BARTRAM individually and in his official capacity as Investigator, Larimer County Sheriff's Office; THOMAS WILSON, individually and in his official as capacity Investigator, Office of the District Attorney, Santa Clara County,

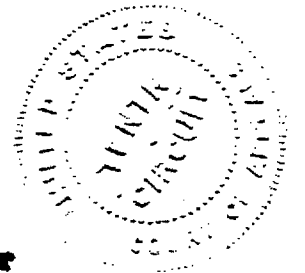
Defendants,

and

BENJAMIN FIELD, individually and in his official capacity as Deputy District Attorney for Santa Clara County,

Defendant-Appellant.

No. 05-1450  
(D.C. No. 03-cv-2256 WYD PAC)  
(D. Colorado)

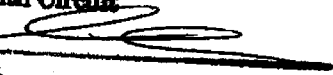


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Teste

Elisabeth A. Shumaker  
Clerk, U.S. Court of  
Appeals, Tenth Circuit

By

  
Deputy Clerk

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**ORDER AND JUDGMENT\***

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Before **LUCERO, SEYMOUR, and O'BRIEN**, Circuit Judges.

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Benjamin Field, a Deputy District Attorney in Santa Clara County California, appeals the district court's denial of his summary judgment motion seeking absolute immunity from a civil rights suit brought by Donna Auguste. We affirm.

In August of 1998, Damon Auguste was convicted in Santa Clara County, California and sentenced to 18 years and 8 months imprisonment. Benjamin Field prosecuted Mr. Auguste and later participated in the state's defense of a habeas action filed by Mr. Auguste. In the process of preparing the state's habeas defense, Mr. Field and Thomas Wilson, an investigator with the Santa Clara District Attorney's Office, executed five search warrants against Mr. Auguste's family members and potential witnesses and their families in California. During a search of Mr. Auguste's mother's home on July 17, 2003, Mr. Wilson seized a letter from Mr. Auguste addressed to Donna M. Auguste, Mr. Auguste's aunt, postmarked September 30, 1998. In the letter, Mr. Auguste expressed his interest

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\*This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with FED. R. APP. P. 32.1 and 10TH CIR. R. 32.1.

in persuading a juror from his original trial to allege misconduct and proposed a plan to bribe jurors if he were retried.

After finding the letter, Mr. Field sought assistance from the Larimer County, Colorado Sheriff's Office in executing a warrant authorizing a search of Donna Auguste's Colorado home. At Mr. Fields's behest, a Larimer County Sheriff's Office investigator submitted an affidavit to the Larimer County District Court in support of the issuance of a warrant. The affidavit recited information relayed by Mr. Wilson. The Colorado court authorized a search warrant which was executed at Ms. Auguste's home on July 24, 2003.

Prior to the execution of the Donna Auguste warrant, on July 18, 2003, the state trial judge presiding over Mr. Auguste's habeas proceedings was apprised of the government's use of search warrants as a means of discovery. In response, the state court "ordered Respondent go through this Court exclusively for any further search warrants." Rec., vol. II at 364. Mr. Field "replied that he would abide by this order," but, according to the court, "[d]espite [Mr. Field]'s promise to the Court, four days later, on July 22, 2003, [Mr. Field and Mr. Wilson] permitted a Colorado judge to execute a search warrant on" Ms. Auguste's residence. *Id.* The court noted that "the search of [Mr.] Auguste's aunt's residence . . . was made in violation of this Court's order to cease any further warrants without this Court's prior approval," *id.* at 366, and ordered all evidence obtained from all the searches be excluded from an evidentiary hearing in the

