Recent Case Report

U.S. v. Arellano-Ochoa

(9th Cir. 2006) 461 F.3d 1142

ISSUES

(1) Did an officer "search" the defendant's residence when he opened the screen door and looked inside? (2) Did exigent circumstances justify the officer's subsequent entry?

FACTS

In the course of a car stop in Wyoming, officers arrested the driver after learning he was an illegal alien. For several reasons, they also suspected he was involved in drug trafficking. Not only did they find $15,000 in cash in the car, he told them he had been instructed to meet with a woman in Arizona, that the woman was going to "do something" with the car, after which he was to drive it to the defendant's home in Billings, Montana. The officers notified the Border Patrol in Montana.

Because the circumstances fit the "typical profile of a courier-type run," a Border Patrol agent and two Montana narcotics investigators went to the defendant's house to conduct a "knock and talk." As they arrived, they saw a woman sitting on the steps watching her children playing. When the agent identified himself and asked if anyone else was inside the house, she yelled inside for the defendant.

At that point, the agent noticed that the screen door to the residence was closed, but that the door behind it was "wide open." As he looked through the screen, he saw Arellano-Ochoa inside. Arellano-Ochoa also saw the agent, and his reaction was, to say the least, suspicious: he immediately swung the door "almost shut," "dodged quickly out of sight" behind the door, then closed the blinds on the front window.

Concerned for the safety of everyone in the front yard, the agent opened the screen door and pushed open the solid door. As he did so, he saw a .45 semi-automatic handgun on the floor. He also saw that Arellano-Ochoa was moving toward the gun. All three officers rushed in and, following a brief scuffle, arrested him.

While conducting a protective sweep of the home, they found "evidence of drug dealing." So they secured the premises and obtained a search warrant. During the search, they found cocaine, methamphetamine, a sawed-off rifle, and $1,000 in small bills.

DISCUSSION

Arellano-Ochoa contended that the evidence should have been suppressed because it was discovered only after the agent opened the screen door which, he claimed, constituted an illegal warrantless "search."

OPENING THE DOOR: An officer's act of opening a screen door would constitute a "search" if it enabled him to see things that the occupants reasonably believed would be

private.[1] The court pointed out that opening a screen door would not constitute a search if the interior door was closed. But the situation would be different if the screen door was open because "the screen door [would be] what protects the privacy of the people inside." Consequently, the court ruled the agent "searched" the house when he opened the screen door and looked inside. As the court explained, "Where the solid door is open so that the screen door is all that protects the privacy of the residents, opening the screen door infringed upon a reasonable and legitimate expectation of privacy."

EXIGENT CIRCUMSTANCES: Although the agent's act of opening the screen door constituted a warrantless search, prosecutors argued it was a lawful search because there were exigent circumstances. Specifically, they argued that the agent reasonably believed that an immediate entry was necessary to protect himself and the others.[2]

At the outset, the court observed that the presence of the gun could not be considered in determining whether exigent circumstances existed because the agent saw it only after he had opened the door.

Nevertheless, it ruled there were other circumstances that created an exigency. In addition to the information that the house was being used as a drug depot, the court noted that the defendant's "quick dodge" behind the door and his closing the blinds "made it reasonable for the officers to conclude that there was a likelihood of danger to themselves, the woman, and the children." As the court pointed out:

> Arellano-Ochoa did not say "I prefer not to talk with you" or "You may not come in." He acted rather than talking. And he acted in a way that would suggest, even before they saw the gun, that the officers faced a risk of bullets flying where officers, a woman, and her toddlers were all within range.

Consequently, the court ruled the agent's entry was lawful. POV

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[1] See *Kyllo* v. *United States* (2001) 533 U.S. 27, 33 ["[A] Fourth Amendment search does not occur—even when the explicitly protected location of a house is concerned—unless the individual manifested a subjective expectation of privacy in the object of the challenged search, and society is willing to recognize that expectation as reasonable."]; *Maryland* v. *Macon* (1985) 472 U.S. 463, 469 ["A search occurs when an expectation of privacy that society is prepared to consider reasonable is infringed."]; *Katz* v. *United States* (1967) 389 U.S. 347, 351 ["What a person knowingly exposes to the public, even in his own *home* or office, is not a subject of Fourth Amendment protection."]; *People* v. *Mayberry* (1982) 31 Cal.3d 335, 341 ["It is commonly accepted that a 'search' is a governmental intrusion upon, or invasion of, a citizen's personal security in an area in which he has a reasonable expectation of privacy."];

[2] See *Brigham City* v. *Stuart* (2006) __ U.S. __ [2006 WL 1374566] ["One exigency obviating the requirement of a warrant is the need to assist persons who are seriously injured or threatened with such injury."]; *People* v. *Riddle* (1978) 83 Cal.App.3d 563, 572 ["The most pressing emergency of all is rescue of human life when time is of the essence."]; *People* v. *Ramey* (1976) 16 Cal.3d 263, 275 ["Where genuine exigencies exist, broad constitutional mandates often give way to the necessity for immediate action."]; *Tamborino* v. *Superior Court* (1986) 41 Cal.3d 919, 924 ["The California courts are in full accord with the foregoing emergency exception to the warrant requirement."].