Recent Case Report

U.S. v. Diaz

(9th Cir. 2007) __ F.3d __

ISSUE

Did officers have sufficient reason to believe that a suspect was inside his home when they forcibly entered to execute an arrest warrant?

FACTS

One weekday afternoon, federal agents went to Diaz's home in Idaho to arrest him on a warrant for being a felon in possession of a firearm. The agents had had dealings with Diaz in the past, and they were familiar with his daily routine.

Specifically, they knew that Diaz was a self-employed auto mechanic who worked on cars outside his home, and that he drove a black sport utility vehicle which was usually, but not always, parked out front when he was at home. In addition, Diaz had previously told agents that they could usually find him at his house during the day. And they had reason to believe this was true because they had made four or five visits to his home during the previous 18 months, and he was absent only once.

Before they made their presence known, the agents attempted to make sure that Diaz was at home. But because he had guard dogs and security cameras around the property, they could only do a quick drive-by. Although they did not see him or his SUV, they saw two other people outside.

When the agents arrived at the front door, they tried to look inside through a window but they couldn't because Diaz had covered the windows with blankets. So they knocked, made the appropriate announcement and, when no one responded, they forced the door open. It turned out that no one was inside, but something else caught their attention: a plastic baggie containing methamphetamine. So, after obtaining a warrant to search the premises, they seized it.

DISCUSSION

Diaz contended that the methamphetamine should have been suppressed because the agents had insufficient reason to believe that he was inside his house when they broke in. The court disagreed.

In *Payton* v. *New York*, the United States Supreme Court ruled that officers may forcibly enter a suspect's home to arrest him if, (1) they have a warrant, and (2) they have "reason to believe" he is presently inside.[1] In *Diaz*, the court had to address two issues pertaining to this rule: (1) Does "reason to believe" mean probable cause? (2) If so, did the agents have it?

[1] (1980) 445 U.S. 573, 603 ["[A]n arrest warrant founded on probable cause implicitly carries with it the limited authority to enter a dwelling in which the suspect lives when there is reason to believe the suspect is within."].

When the United States Supreme Court announced its "reason to believe" standard it, unfortunately, did not explain what it meant. As the court in *Diaz* pointed out, "The question of what constitutes an adequate 'reason to believe' has given difficulty to many courts, including the district court in the present case. The Supreme Court did not elaborate on the meaning of 'reason to believe' in *Payton* and has not done so since then."

Over the years, however, most of the federal courts that had occasion to address the issue ruled that only reasonable suspicion was required.[2] As frequently happens, however, the Ninth Circuit was the exception, ruling that "reason to believe" meant probable cause.[3] Although the California Supreme Court has not yet ruled on the issue, it has observed that "reason to believe" probably means "something more" than a "reasonably well informed suspicion" that the arrestee is at home.[4] In any event, the court in *Diaz* continued to follow Ninth Circuit precedent, ruling that probable cause is required.

Diaz argued that the agents who entered his home did not have probable cause because they had not actually seen him inside, and they had no other direct evidence that he was there. The court responded by pointing out two things about probable cause. First, in determining whether it exists, the courts must apply common sense, and base their rulings on "the factual and practical considerations of everyday life on which reasonable prudent men, not legal technicians, act."[5] Said the court, "In this inquiry, common sense is key."

Second, probable cause to believe that an arrestee is presently inside his home may be based entirely on circumstantial evidence. As the court pointed out, "If juries can find someone guilty beyond a reasonable doubt without direct evidence, and magistrates can issue search warrants without direct evidence, police surely can reasonably believe someone is home without direct evidence."

Consequently, the court ruled that the agents who entered Diaz's home did, in fact, have probable cause to believe he was inside. Among other things, it noted that "Diaz himself had told government agents that he was usually home during the day. Agents also knew that Diaz worked at home as a mechanic. Agents had visited Diaz's home

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[2] See, for example, *U.S.* v. *Barrera* (5th Cir. 2006) 464 F.3d 496, 501-2; *U.S.* v. *Route* (5th Cir. 1997) 104 F.3d 59, 62 ["All but one of the other circuits [the 9th] that have considered the question are in accord, relying upon the 'reasonable belief' standard as opposed to a probable cause standard. . . . [W]e adopt today the 'reasonable belief' standard of the Second, Third, Eighth, and Eleventh Circuits." Citations omitted]; *Valdez* v. *McPheters* (10th Cir. 1999) 172 F.3d 1220, 1224 ["Only one circuit [the 9th] has suggested a higher knowledge standard on the part of law enforcement. . . . [But] [t]he court provided no rationale for adopting this standard, merely citing its prior decision [on the issue]."].

[3] See *Motley* v. *Parks* (9th Cir. en banc 2005) 432 F.3d 1072; *U.S.* v. *Gorman* (9th Cir. 2002) 314 F.3d 1105, 1111 ["[T]he 'reason to believe,' or reasonable belief, standard . . . embodies the same standard of reasonableness inherent in probable cause."]. NOTE: Because the United States Supreme Court has stated that the correct standard is "reason to believe," and because the Court is quite familiar with the term "probable cause," it would seem that by choosing not to utilize that term, the Court likely envisioned the lesser standard of reasonable suspicion. See *U.S.* v. *Magluta* (11th Cir. 1995) 44 F.3d 1530, 1534 ["The strongest support for a lesser burden than probable cause remains the text of *Payton,* and what we must assume was a conscious effort on the part of the Supreme Court in choosing the verbal formulation of 'reason to believe' over that of 'probable cause.'"].

[4] *People* v. *Jacobs* (1987) 43 Cal.3d 472, 479, fn.4.

[5] Quoting from *Brinegar* v. *United States* (1949) 338 U.S. 160, 175.

several times before, and he was absent only one of those times. All of this information suggests that Diaz, on an ordinary day, would be home during daylight hours, which is when the agents came to arrest him." One other thing: Although Diaz's SUV was not outside when the agents arrived, the court noted that they "had previously encountered Diaz at the house without seeing his car, so its absence did not mean Diaz was not at home."

In conclusion, the court said, "The officers had reliable information that Diaz was usually at home during the day. Nothing the agents observed made this belief unreasonable." POV