Recent Case Report

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People v. Downey

(2011) __ Cal.App.4th __ [2011 WL 3621856]

Issue

To conduct a probation search of a home, must officers have probable cause to believe that the probationer lives there? Or will reasonable suspicion suffice?

Facts

Having decided to conduct a probation search on the home of George Roussell, Riverside police detective Kevin Townsend started trying to determine where Roussell lived. As Det. Townsend later testified, it was a "very difficult" process because various agencies and sources reported different addresses. For example, the probation department showed that he lived in Moreno Valley, the court computer system showed he lived in Corona, and his listed address at DMV was on Gould Street in Riverside. But the sources of the most recent information were the records of the local utilities and phone company which showed that he lived at 8123 Magnolia Ave. Apt. 85 in Riverside. Det. Townsend decided that the Magnolia apartment was most likely Roussell's current address because, while many probationers and parolees "give false addresses" to avoid warrantless searches, many of them "do not know that police have access to utility bills; therefore, it is a very good source in finding out where someone lives."

After searching the apartment and finding a handgun, officers learned from the current resident, Kima Downey, that Roussell had moved out about three months earlier. But they also learned that Downey was a convicted felon, so they arrested him for possessing the gun. When his motion to suppress the weapon was denied, he pled guilty.

Discussion

In *Payton* v. *New York,*[1] the United States Supreme Court ruled that officers who have a warrant to arrest a person may enter a home for the purpose of arresting him if they have "reason to believe" he actually lives there. This same "reason to believe" standard has also been applied by the courts in determining whether officers may enter a home for the purpose of conducting a parole or probation search; i.e. officers must have "reason to believe" that the parolee or probationer lives there.

Over the years, however, the federal courts have been split on the issue of whether "reason to believe" means probable cause or merely reasonable suspicion, and the California courts have not resolved the matter.[2] Until now.

In *Downey*, the Court of Appeal ruled that reasonable suspicion will suffice, reasoning that, because the U.S. Supreme Court is quite familiar with the term "probable cause," its decision not to employ the term in *Payton* indicates it had decided to require a lesser level

[1] (1980) 445 U.S. 573, 602-3.

[2] See *People* v. *Jacobs* (1987) 43 Cal.3d 472, 479, fn.4 ["Whatever the quantum of probable cause required by the Fourth Amendment, the officers in this case did not have it."].

of proof; i.e., reasonable suspicion. Quoting from the District of Columbia Circuit, the *Downey* court said, "We think it more likely that the Supreme Court in *Payton* used a phrase other than 'probable cause' because it meant something other than probable cause.'"[3]

The court then ruled that the officers who searched Roussell's house had reasonable suspicion to believe that Roussell did, in fact, live there "[b]ased on the utility bills and telephone record." Accordingly, it concluded that Downey's motion to suppress was properly denied. POV

[3] See *U.S.* v. *Thomas* (D.C. Cir. 2005) 429 F.3d 282, 286.