U.S. v. Bohannon

(2nd Cir. 2016) __ F.3d __ [2016 WL 3067993]

Issues

(1) If officers entered the home of third party for the purpose of serving an arrest warrant on a visitor, whose Fourth Amendment rights were violated if they did not have a search warrant? The arrestee's? The third party's? Both? (2) Did officers have sufficient reason to believe that the arrestee was inside the home they entered?

Facts

Following a two year investigation into the drug and firearms activities of a criminal gang in Bridgeport, Connecticut, FBI agents obtained warrants to arrest more than a dozen of its members. The warrants were executed simultaneously at 6 A.M. One of the arrestees was Jonathan Bohannon, and the agents intended to arrest him at his home located on Crestview Drive, but shortly before 6 A.M. they developed reason to believe that he was currently in the apartment of his girlfriend, Shonsai Dickson. This belief was based on the following:

(1) Bohannon's car was not parked anywhere in the vicinity of Crestview Drive, but it *was* parked in front of Dixon's apartment.

(2) When Bohannon's cell phone was last used—at 2:38 A.M.—it was located in a cell phone sector that did not include Crestview Drive.[1] It was, however, located in a sector that included Dickson's apartment.

(3) In the course of the investigation, the agents determined that the gang sold drugs out of Dixon's apartment which was the only residence in that cell sector that had been linked to Bohannon.

Based on this new information, the agents were redirected to Dixon's apartment which they entered pursuant to the arrest warrant and took Bohannon into custody. They also conducted a protective sweep during which they found bags of crack cocaine in plain view, plus a scale, firearms and ammunition. Bohannon was subsequently charged with federal drug and weapons crimes. Before trial, however, he filed a motion to suppress the evidence, and the motion was granted for reasons we will explain in the Discussion. The government appealed to the Second Circuit.

Discussion

Bohannon argued that his motion to suppress was properly granted for two reasons: (1) the agents violated the so-called *Steagald* rule when they entered Dixon's apartment without a search warrant, and (2) they lacked sufficient reason to believe that Bohannon was in the apartment when they entered.

THE STEAGALD RULE: In 1980, the Supreme Court in *Payton v. New York*[2] ruled that the issuance of an arrest warrant gives officers the authority to enter the arrestee's home without a warrant for the purpose of arresting him. One year later, the Court ruled in *Steagald v. United States*[3] that if officers want to make the arrest inside the home of a third party, such as the arrestee's friends or relatives, they must have a search warrant.

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[1] NOTE: The agents had a warrant authorizing them to monitor Bohannon's cell phone activities.
[2] (1980) 445 U.S. 573.
[3] (1981) 451 U.S. 204.

Applying these rules to the facts of the case, the trial court ruled that the absence of a search warrant rendered the agents' entry illegal as to Bohannon, and thus it ordered the suppression of the evidence found inside.

On appeal to the Second Circuit, the court acknowledged that Bohannon was a third party and that the agents did not have a search warrant, and that this constituted a violation of *Steagald*. But the court pointed out that the only people whose Fourth Amendment rights are implicated as the result of a *Steagald* violation are the people who lived in the home that officers entered without a search warrant. And because Bohannon was merely an overnight guest, the agents' failure to obtain a search warrant did not violate *his* Fourth Amendment rights. (It should be noted that if the agents had arrested Dixon for possessing the cocaine, the evidence would not have been admissible against her because the entry would have violated *her* Fourth Amendment rights.[4])

REASON TO BELIEVE BOHANNON WAS INSIDE: Although the entry into Dixon's apartment did not violate Bohannon's *Steagald* rights, the agents were still obligated to comply with one requirement that is imposed per *Payton*. Specifically, whenever officers make a nonconsensual and non-exigent entry into any home to execute an arrest warrant they must have been have had direct or circumstantial evidence that the arrestee was currently inside home. There is, however, some uncertainty around the country as to whether the "reason to believe" standard of proof is the equivalent of probable cause or whether it is a lower standard, like reasonable suspicion. In California, the Court of Appeal has ruled that it means reasonable suspicion,[5] and that was essentially the standard employed by the court in *Bohannon.* It then ruled that the facts listed above pertaining to the location of Bohannon's car and the timing of his cell phone use satisfied this standard and, accordingly, it vacated the trial court's suppression order. POV

Date posted: July 21, 2016

[4] See *Steagald v. US* (1981) 451 US 204, 219; *P v. Dyke* (1990) 224 CA3 648, 658 ["[A] homeowner's Fourth Amendment rights are violated when officers enter his home to arrest a guest pursuant to an arrest warrant."].

[5] *P v. Downey* (2011) 198 CA4 652. 662 ["Applying the standard adopted by our Supreme Court and the majority of the circuit courts, we expressly hold that an officer executing an arrest warrant or conducting a probation or parole search may enter a dwelling if he or she has only a 'reasonable belief,' falling short of probable cause to believe, the suspect lives there and is present at the time. Employing this standard, the entry into defendant's apartment was lawful."].