People v. Nguyen

(2017) __ Cal.App.5th __ [2017 WL 2463471]

Issues

Did a search warrant impliedly authorize the search of two residences on the suspect's property?

Facts

In the course of a child pornography investigation, a San Jose police detective was able to determine the IP address of a computer that was being used to share child pornography. The ISP provided the detective with the name and address of the subscriber who was identified as Jennie Reynolds. The detective determined that, in addition to Reynolds' home, there was a structure located about 25 feet behind it, and it was a fairly large structure that spanned the width of the lot. Although the detective was unable to look inside the structure, he could see that it was fitted with a garage door which caused him to believe that it was a garage that was used by Reynolds. A car parked in the driveway leading to the garage door was registered to Kevin Nguyen.

The detective then obtained a warrant to search the residence in front and "any and all yards, garages, carports, outbuildings, storage areas and sheds assigned to the above described premises." When officers executed the warrant, they spoke with Reynolds who said that she lived in the front house and that Nguyen, her landlord, lived in the rear structure. After searching Reynolds' home, officers searched Nguyen's home and found a laptop that contained child pornography.

After Nguyen was arrested and charged, he filed a motion to suppress the evidence on grounds that (1) the rear house was not expressly listed in the warrant; and (2) it did not constitute a garage, carport, outbuilding, storage area, shed, or other searchable structure. The trial court agreed and the People appealed.

Discussion

When a warrant authorizes the search of a residence, a search of a separate structure on the property will ordinarily be deemed unlawful unless (1) the warrant authorized a search of the "premises"; i.e., not just the home (e.g., a warrant to search "the *premises* at 415 Hoodlum Drive"),[1] or (2) the structure reasonably appeared to be ancillary to the residence and the warrant authorized a search of ancillary structures; e.g., "all garages, sheds, ...").[2]

Although the warrant in *Nguyen* did not expressly authorize a search of the rear structure or its premises, it *did* authorize a search of all "garages, carports, outbuildings,

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[1] See *People v. Dumas* (1973) 9 Cal.3d 871, 881, fn.5 ["[A] warrant to search 'premises' located at a particular address is sufficient to support the search of outbuildings and appurtenances in addition to a main building when the various places searched are part of a single integral unit."]; *People v. Grossman* (1971) 19 Cal.App.3d 8, 12 [warrant to search "premises" authorized search of cabinet in adjacent carport]; *People v. McNabb* (1991) 228 Cal.App.3d 462, 469 ["The word 'premises' in a search warrant describing a house with a detached garage has been held to embrace both the house and the garage."].

[2] See *People v. Smith* (1994) 21 Cal.App.4th 942, 949-50; *People v. Barbarick* (1985) 168 Cal.App.3d 731, 740; *U.S. v. Cannon* (9th Cir. 2001) 264 F.3d 875, 880; *U.S. v. Gorman* (9th Cir. 1996) 104 F.3d 272, 274].

storage areas and sheds" on the property. Consequently, the main issue was whether the officers reasonably believed that the rear structure fell within any of these categories. The court ruled they did not.

It was not a garage, said the court, because the officers had been informed by Reynolds that Nguyen lived inside, and also because the trial judge had ruled that the structure was "plainly a separate residence." The court also ruled that the structure did not constitute a carport, outbuilding, storage area, or shed because "[t]he record holds no evidence Nguyen's residence was used in connection with the main house, or that it served as ... anything else besides a separate residence for Nguyen. Images of the residence show it is not a small building, but a sizable structure nearly as large as the front house. It was not an outbuilding. It was a separate residence."

So, what should the officers have done when they realized the rear structure was not included in the description of the places that could be searched? As we have discussed, "If the error was discovered before officers made their presence known, they will normally return to the judge who issued the warrant and seek a new warrant with a corrected description. If, however, the error was discovered after the occupants of the premises became aware of the impending search, officers must ordinarily secure the premises (to prevent any of the occupants from destroying the evidence), and promptly seek a warrant containing the correct information."[3]

Applying these principles, the court in *Nguyen* concluded that "the facts available to and known by the police *before* the seizure established that the rear structure was Nguyen's separate residence" and that the officers "should have ceased any attempt to search the rear structure as soon as they realized it was Nguyen's residence." Accordingly, the court ruled the search was unlawful and the evidence was properly suppressed.[4] POV

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[3] Quote from *California Criminal Investigation*, Chapter 28 Executing Search Warrants ("When a Second Warrant Is Necessary," "Wrong description." Also see *U.S. v. Garcia* (10th Cir. 2013) 707 F.3d 1190, 1197 ["Obtaining a corrected warrant may have been the better choice, particularly since there was ample time to do so."].

[4] **NOTE**: The court also ruled that, even if the warrant had expressly authorized a search of Nguyen's residence, the search would have been unlawful because the affidavit failed to establish probable cause to believe that any structure on the lot other than Reynolds' home was being used to store child pornography. For example, the court pointed out that "there was no evidence to establish prior to the search that Nguyen's residence shared Internet access with the front house."