U.S. v. Artis

(N.D. Cal. 2018) __ F.Supp.3d __ [2018 WL 3241400]

Issues

Can California Superior Court judges authorize federal agents to execute search warrants without assistance from California law enforcement officers? If not, does this mean that California judges are prohibited from issuing search warrants to any federal agents?

Facts

In the course of a joint federal-state investigation into credit card fraud, an FBI agent obtained a warrant from an Alameda County judge to search a cell phone that had been dropped by Donnell Artis during a foot pursuit in Oakland. Two days later, the agent obtained a warrant from another Alameda County judge authorizing federal agents to obtain additional information via a cell-site simulator. At the request of the agent, both warrants specified that federal agents could execute them without assistance from local law enforcement officers.

After Artis was arrested and charged in federal court he filed a motion to suppress the evidence that was obtained as the result of the two searches. The motion was heard by a federal district court judge in San Francisco who granted it.

Discussion

The judge's reasons for granting the suppression motion were set forth in two written opinions, one of which he ordered published. In the judge's unpublished opinion, he ordered that the evidence be suppressed mainly because the supporting affidavits failed to establish probable cause. Since the opinion was not published, and since it contained nothing of general interest, we will not discuss it.

In his published opinion, however, the judge, Vince Chhabria, announced two new rules that need discussing. First, he ruled that California judges cannot issue search warrants to federal agents if, as here, the warrant authorized the agents to execute the warrants without assistance from local law enforcement. He said this was because a California statute states that search warrants must be directed to "any peace officer" in the county in which the search will be conducted,[1] and another statute says that federal agents are not "peace officers" in California.[2] Because the judge provided some legal reasoning and authority for this ruling, we will assume that, for purposes of this report, his analysis was correct.[3]

More important, he also ruled that California judges are prohibited from issuing search warrants to *any* federal agents. Although this was not a legal issue in the case, the judge made it one by saying "California law does not allow California state judges to issue search warrants to federal law enforcement officers." He went even further and said that people at the FBI were negligent in failing to inform its agents in California of this rule.

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[1] Pen. Code § 1523.

[2] Pen. Code § 830.8.

[3] **NOTE**: Even if the ruling was technically correct, it won't matter much because it addresses a factual situation that seldom arises. Moreover, federal agents can comply with the ruling by not requesting such authorization.

Specifically, he said that the FBI agent "should have received training from his employers, the Federal Bureau of Investigation and the United States Marshals Service, about the limits of his authority under state law."

Although the rulings of federal district court judges are not binding on other judges,[4] they may be persuasive if based on solid analysis. It is therefore necessary to determine whether this ruling was sound.

It was not. Instead, it was based on nothing more than the following blatantly false inference: Because California judges cannot authorize federal agents to execute search warrants without assistance from local law enforcement, it follows that California judges are prohibited from issuing search warrants to *any* federal agents.

Moreover, the judge's ruling is contrary to California law which states that anyone—even FBI agents—can apply for search warrants from California judges. Specifically, when this issue was raised in the case of *People v. Bell*,[5] the court responded: "Appellants contend these references to peace officers [in the Penal Code] evidence an intent not only that [state] officers must execute warrants, but that only they may seek them. We have found no case suggesting such an intent." Neither did Judge Chhabria but it didn't seem to matter.

It gets worse. The judge also took the unusual step of ordering that his opinion be published so that judges, attorneys, and law enforcement officers throughout the United States will have the benefit of his analysis. Said the judge, "this is an important issue about which many people in the California criminal justice community may still be unaware," and that, by publishing his opinion, he will "put the relevant actors in the criminal justice system on notice that California law prevents state judges from issuing search warrants to federal law enforcement officers." Among those who need to be re-educated, according to the judge, are "the Federal Bureau of Investigation, the relevant local supervisors in the United States Marshals Service, the Alameda County District Attorney, the Oakland City Attorney (who represents the Oakland Police Department), the presiding judge of the Alameda County Superior Court, the United States Attorneys for the other districts in California, and the California Judicial Counsel." It's hard to believe that such an impressive group of criminal justice experts have failed—for so many decades—to comprehend something that was so obvious to Judge Chhabria.

It is also troubling that the judge claimed the FBI agent in this case (who, for some reason, he identified) was "neither well-trained nor particularly concerned with complying with the law in conducting his enforcement activities." While such an allegation *might* have been appropriate (albeit harsh) if it was based on facts contained in the judge's published opinion (which is the only opinion the public will see), this opinion contains no such information and was therefore conclusory (and, we think, tacky).

Finally, the judge claimed that "evidence obtained from these searches will be suppressed." This is also incorrect. Evidence cannot ordinarily be suppressed in California unless it was obtained in violation of the United States Constitution."[6] And yet, the judge failed to identify a single constitutionally-based law or principle that would justify suppression. This omission also caught the attention of University of Southern California law professor and Fourth Amendment expert Orin Kerr who recently wrote the following

[4] See *Camreta v. Greene* (2011) 563 U.S. 692, 709 fn.7.
[5] (1996) 45 Cal.App.4th 1030, 1055.
[6] See *United States v. Calandra* (1974) 414 U.S. 338, 347; *People v. Brannon* (1973) 32 Cal.App.3d 971, 975; *U.S. v. Ani* (9th Cir. 1998) 138 F.3d 390, 392.

in the Harvard Law Review: "But Chhabria's opinion is odd to me, as it jumps from the idea that the execution violates state statutory law immediately to suppression. It doesn't separately ask if the statutory violation means that the search violates the [Fourth Amendment]."[7]

The Justice Department has filed an appeal with the Ninth Circuit. POV

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[7] 132 Harv. L. Rev.