

U.S. v. Maxi

(11th Cir. 2018) __ F.3d __ [2018 WL 1630322]

Issues

(1) Did officers illegally enter the property surrounding the defendant's home to conduct a "knock and talk?" (2) Did the defendant open the door voluntarily when an officer knocked? (3) Was the officers' warrantless entry into the home justified by exigent circumstances?

Facts

Narcotics officers with the Miami-Dade Police Department obtained information from an untested informant that the occupants of a certain duplex were selling drugs. While conducting surveillance of the property, officers saw two men exit the duplex and drive off. Some of the officers stopped the car about a quarter of a mile away, but the two occupants were not arrested. As the men drove away, however, the driver immediately turned and headed back toward the duplex. Because of the possibility that the men planned to alert any other occupants of the duplex that some police action might be imminent, the officers followed them back.

While four or five of them covered "strategic positions surrounding the duplex," the others "ran" to the front door which was situated behind a metal security gate. One of those officers was able to reach through the bars on the gate and knock on the door. He did not announce that he was a police officer. Maxi opened the door and informed the officer that "he didn't live at the duplex and didn't know who did."¹ While speaking with Maxi, the officer saw crack cocaine packaged for sale in plain view behind Maxi.

The officer asked Maxi to step outside, but he claimed that he could not do so because he did not have a key to the security gate. So the officers forced the gate open and detained him. They then conducted a protective sweep of the premises and saw rock cocaine, trafficking paraphernalia, weapons, and a "stack of money." They secured the duplex while they obtained a warrant to search it. The affidavit was based entirely on information the officers obtained *before* they conducted the sweep.

Maxi and seven others were indicted on a variety of conspiracy charges related to the drug operation. Maxi's motion to suppress the evidence was denied, and he was convicted of virtually all of the charged crimes.

Discussion

On appeal, Maxi argued that the evidence should have been suppressed because the officers had unlawfully entered his property, that he did not voluntarily open the door to the officers, and that their forced entry was unlawful. The court rejected all of these arguments.

ENTRY ONTO THE PROPERTY: As a general rule, an entry by officers onto the property immediately surrounding a home to speak with a suspect (a "knock-and-talk") constitutes a "search" if their purpose was to obtain evidence or incriminating information.² Such a

¹ **NOTE:** Because of this statement, prosecutors argued that Maxi did not have standing to challenge the ensuing search. The court, however, ruled that he had standing because there had been testimony at the suppression hearing that he was "effectively a subtenant."

² See *Collins v. Virginia* (2018) __ U.S. __ [2018 WL 2402551] ["When a law enforcement officer physically intrudes on the curtilage to gather evidence, a search has occurred." Edited.]; *Florida v.*

search is, however, lawful if (1) officers entered only those areas to which visitors had been given express or implied authorization to enter, and (2) their conduct on the property was not substantially different from that which would be expected of ordinary visitors. In other words, a search will not normally result if the officers' conduct demonstrated an intent to conduct an informational interview. But neither of these requirements were satisfied in *Maxi*.

For one thing, the officers did not restrict their presence to areas in which visitors are given implied consent to enter. This is because some of them took up strategic positions "around the perimeter" of the duplex, and this is not something that visitors are impliedly permitted to do. In addition, the officers' conduct after they arrived was inconsistent with the conduct expected of visitors. As noted, there were about ten of them and that's a lot more than the number of people who ordinarily pay unannounced visits. As the court pointed out, people "do not invite an armed battalion into the yard to launch a raid."³ Accordingly, the court ruled that the officers' entry onto the property constituted an illegal search.

The court also ruled, however, that evidence discovered as the result of their entry on the property need not be suppressed. This was because the Supreme Court has ruled that suppression is not mandated when the officers' illegal search did not directly or indirectly result in the discovery of the evidence.⁴ And here, it was apparent that the crack cocaine in Maxi's entryway would have been observed by the officers regardless of the manner in which they entered the property. This is because (as discussed later) Maxi was unaware that the officers had entered his property until he opened the door.

OPENING OF THE DOOR: Because people do not expect visitors to demand entry or otherwise assert authority to enter, an occupant's decision to open the door in response to such will render the entry involuntary. As the court pointed out, "When a person opens their door in response to a show of official authority, that act cannot be seen as consensual." Thus, any evidence that an officer saw as the result will be suppressed.

If the officer at the door had demanded entry, it would have been clear that Maxi's act of opening it was involuntary and that any evidence that the officer observed as the result would be suppressed. But the court determined that Maxi was unaware of anything that happened outside, and the officer did not demand entry. He just knocked. Consequently, the court ruled that Maxi's decision to open the door was unaffected by anything that occurred earlier and, therefore, Maxi was unaware of any coercive circumstances that might have caused him to open the door.

THE WARRANTLESS ENTRY: Although the officer at the door had probable cause to arrest Maxi when he saw the cocaine, a warrantless entry would have been unlawful unless Maxi had consented (which he didn't) or there were exigent circumstances. One

Jardines (2013) 569 U.S. 1, 11 ["That the officers learned what they learned only by physically intruding on Jardines' property to gather evidence is enough to establish that a search occurred."]; *U.S. v. Perea-Rey* (9th Cir. 2012) 680 F.3d 1179, 1184; *U.S. v. Lundin* (9th Cir. 2016) 817 F.3d 1151, 1160 ["the scope of the license to approach a home and knock is limited not only to a particular area but also to a specific purpose"].

³ See *People v. Michael* (1955) 45 Cal.2d 751, 754 ["[T]he appearance of four officers at the door may be a disturbing experience."]; *U.S. v. Washington* (9th Cir. 2004) 387 F.3d 1060, 1068 ["Washington was confronted by six officers"]; *Orhorhaghe v. INS* (9th Cir. 1994) 38 F.3d 488, 494 ["Orhorhaghe was faced with the threatening presence of several officers."].

⁴ See *Hudson v. Michigan* (2006) 547 U.S. 586.

such exigent circumstance is known as “destruction of evidence,” meaning that a warrantless entry will ordinarily be lawful if the officers reasonably believed that evidence on the premises would be destroyed if they waiting for a warrant. Taking note of this rule, the court concluded that officer’s entry was lawful because he had seen “a substantial quantity of drugs” in the front room, and he reasonably believed that they would be disposed of if the officers delayed the search until a warrant had been issued.

THE PROTECTIVE SWEEP: Finally, Maxi argued that the officers’ protective sweep of the duplex was unlawful because they apparently had no reason to believe that any other person with a motive to destroy the evidence was on the premises. Even if that were true, it didn’t matter because, pursuant to the “independent source” rule, evidence that was obtained illegally will nevertheless be admissible if the illegal search did not contribute to its discovery.⁵

As noted, all of the evidence seized from Maxi’s house was obtained during the execution of a search warrant. Now, if the warrant had been based solely on the officers’ observations of drugs and paraphernalia that occurred during the sweep, and if the sweep was ruled unlawful, the independent source rule would not apply and the evidence obtained during the search would have been suppressed. But that didn’t happen here. Instead, it was apparent that the officers would have sought and obtained that warrant based solely on the discovery of the packaged crack cocaine that was observed when Maxi opened the door. This was enough for the court to conclude that the officers’ decision to apply for a warrant, and the judge’s decision to issue it, both constituted an act that was independent of anything the officers when they entered.

For these reasons, the court ruled that Maxi’s motion to suppress was properly denied. POV

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⁵ See *Murray v. United States* (1988) 487 U.S. 533, 542 [“The ultimate question is whether the search pursuant to warrant was in fact a genuinely independent source of the information and tangible evidence at issue here.”]. **NOTE:** The court referred to the “independent source rule” as the “inevitable discovery rule.” But these are entirely different rules even though they are based on a similar rationale. It is apparent that the facts in *Maxi* triggered the “independent source rule”—not the “inevitable discovered rule.” The court’s mistake is a common one, and the two terms have frequently been conflated by judges and attorneys.