

People v. Garcia
(August 26, 2003) ___ Cal.App.4th ___

ISSUE

Did officers have probable cause to search a bar for drugs based on drug sales made there by a customer?

FACTS

A Los Angeles County sheriff's narcotics officer received a tip from a confidential reliable informant that Paula Conner was regularly selling methamphetamine at both the La Puente bar and at Conner's home. A controlled buy was then arranged in which the informant bought methamphetamine from Conner at her home. Surveillance of the bar confirmed that Conner was a patron, but nothing else.

Based on this information, the officer obtained warrants to search the bar and Conner's home. Although Conner was not an owner or employee of the bar, the affiant stated he believed she was using the premises "to assist her in the distribution of methamphetamine to prospective customers." He also said, "[I]t is common for persons who traffic in narcotics to utilize bars/taverns as places to sell controlled substances."

During the execution of the warrant, officers found methamphetamine in the possession of the bartender, Garcia.

DISCUSSION

Garcia contended the warrant was defective because the affidavit failed to demonstrate a link between Conner's drug sales and him or the bar. The court agreed.

A search warrant may be issued if there is probable cause to believe that certain evidence is presently located in the place to be searched.¹ To prove that evidence is located at a certain place, officers may rely on reasonable inference. For example, when an undercover officer buys drugs inside a suspect's house it is usually reasonable to infer that additional drugs will be found somewhere on the premises.² As the court in *Garcia* observed, "A sufficient nexus is established for the search of a residence when a target sells controlled substances from the residence." Thus, the warrant to search Conner's house was plainly supported by probable cause.

For the same reason, if it reasonably appeared that the owner of the La Puente bar or Garcia were selling drugs on the premises, the warrant would have been upheld. Said the court, "The right of access to the business leads to a reasonable inference that the seller of controlled substances will store the controlled substances at the business."

Finally, even though Conner was merely a customer of the bar, probable cause to search the premises would have existed if there was proof she was storing her drugs there. This occurred in *Chavez-Quintanilla v. U.S.*³ where a warrant to search a

¹ See *Illinois v. Gates* (1983) 462 US 213, 238 243, fn.13; *Illinois v. Rodriguez* (1990) 497 US 177, 184; *People v. Kraft* (2000) 23 Cal.4th 978, 1040-1; *U.S. v. Chavez-Miranda* (9th Cir. 2002) 306 F.3d 973, 978 ["When a magistrate judge issues a search warrant for a residence, he must find a reasonable nexus between the contraband sought and the residence. In making this determination, a magistrate judge need only find that it would be reasonable to seek the evidence there."].

² See *People v. Watson* (1979) 89 Cal.App.3d 376, 384-5 [reasonable to believe drugs were being kept inside a home or business in which a "controlled buy" or "controlled delivery" was made]. ALSO SEE *In re Joseph G.* (1995) 32 Cal.App.4th 1735, 1741-2 ["A student who carries a gun to school will generally keep the gun in one of three places: (1) a locker, (2) a backpack or purse or (3) on his person."]; *U.S. v. Chavez-Miranda* (9th Cir. 2002) 306 F.3d 973, 978 ["(W)e have recognized that in narcotics cases evidence is likely to be found where the dealers live."].

³ (D.C. 2002) 788 A.2d 564, 568.

convenience store was upheld because a street seller of cocaine would, after arranging a sale, walk into the store and return with the drugs.

The problem in *Garcia* was that there was nothing in the affidavit that linked Garcia or any areas of the bar to Conner's drug operation. As the court explained:

An affidavit that supports a conclusion only that a nonemployee and nonowner target was selling controlled substances from a business establishment open to the public, such as a bar or restaurant, does not establish a logical nexus between the sale of controlled substances and the business establishment. There is no reason to suspect that controlled substances will remain in the business establishment after the target leaves.

Consequently, the court ruled the search of Garcia was unlawful. The court also ruled, however, that because there was no direct California authority on this issue until now, the evidence was admissible under the good faith rule. As the court explained, "[T]he issue of the nexus between criminal activity of a patron of a business establishment and the presence of contraband in the business establishment is apparently one of first impression in this state. That is why we have decided to publish this case."