

Recent Case

People v. Gemmill

(2008) __ Cal.App.4th __ [2008 WL 1952038]

Issues

Did an officer conduct a “search” when he looked through the side window of the defendant’s home? If so, was the search justified?

Facts

At about 10:30 A.M., a Shasta County sheriff’s deputy was dispatched to a report of an unattended two-year old wandering around a residential area. He located the child and, based on information from a neighbor, determined that he lived in a nearby house. So he went there and knocked on the front door, but no one responded. At that point he did not think there was sufficient justification for a forcible entry, so he took the child to the sheriff’s station and notified Child Protective Services.

But as he thought about the matter, he realized he had a “gut feeling” that something “didn’t seem right,” and he began to worry that there might have been another unattended child in the house. Although he still didn’t think he had grounds for a forcible entry, he thought that he “should have checked the entire perimeter” of the house. So he returned.

At first, he “banged loudly on the front door,” and yelled “sheriff’s office” several times. Still no response. He then tried to look through the front window but couldn’t see inside because the blinds were shut. So he walked around to the side of the house where he saw a window. Although the blinds were closed, he could see inside through a five to six inch gap—and he saw a six-month old infant playing with a plastic bag near his face. He also saw a man who was “nonresponsive.”

Based on these observations, the deputy entered the home, tended to the infant and the adult, and looked for other unattended children. Although there

was no one else in the house, he saw in plain view over 550 grams of marijuana within the child’s reach. He also observed “the clutter, dirtiness, and general disarray of the home.”

As a result, the mother of the children, Dawn Gemmill, was convicted of child endangerment and possession of marijuana.

Discussion

Gemmill argued that the deputy’s act of looking through her side window constituted a search, and that it was an illegal search because the deputy had not obtained a warrant. The court disagreed.

Visitors to a home—including officers—can usually infer that they have permission to walk on any pathways or driveways in the front. As the California Supreme Court explained, “A sidewalk, pathway, common entrance or similar passageway offers an implied permission to the public to enter which necessary negates any reasonable expectation of privacy in regard to observations made there.”¹

Implied permission does not, however, usually extend to sides or back yards because these areas are seldom used to access the premises.² Thus, the court ruled that the deputy’s act of walking along the side of the house and looking through the window was a search. Said the court, “[N]o substantial evidence in the record supports the conclusion that the [side] of defendant’s home was impliedly accessible to the public.” The question, then, was whether the deputy’s actions were justified.

Under the “emergency aid” exception to the warrant requirement, officers may search a residence if both of the following circumstances existed:

- (1) **Objective basis:** They reasonably believed that someone inside needed emergency assistance.³
- (2) **Need outweighed intrusiveness:** They reasonably believed that the need for the assistance outweighed the intrusiveness of the search.⁴

¹ *Lorenzana v. Superior Court* (1973) 9 Cal.3d 626, 629. ALSO SEE *People v. Chavez* (2008) __ Cal.App.4th __ [2008 WL 802633].

² See *People v. Camacho* (2000) 23 Cal.4th 824, 836.

³ See *Brigham City v. Stuart* (2006) 547 U.S. 398, 406.

⁴ See *Illinois v. Lidster* (2004) 540 U.S. 419, 426; *Maryland v. Buie* (1990) 494 U.S. 325, 331.

Applying this test, the court noted that if the deputy had forced his way inside before looking through the window, the entry would probably have been unlawful because, at that point, he had no reason to believe there was another child in the house. But because he merely looked through the window, the court ruled the need for the search outweighed its intrusiveness and, therefore, the search was lawful. Said the court, “[T]he presence of the unattended child, combined with the lack of information regarding whether there were siblings or others in the house, was sufficient to justify [the deputy’s] less intrusive look through defendant’s side window to determine if an emergency existed inside.”

Finally, the court ruled that the deputy was justified in forcibly entering the house when he saw “a child inside threatened with suffocation next to a nonresponsive adult.”

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