Recent Case Report

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U.S. v. Hardin

(6th Cir. 2008) 539 F.3d 404

Issue

Was an apartment manager acting as a police agent when he entered an apartment in which the defendant had been staying?

Facts

Officers in Knoxville, Tennessee received information from an informant that Hardin, a parolee-at-large, "might be" staying with a woman in a certain apartment complex. The informant did not know the apartment number, but he described its approximate location in the complex. He also described a car that Hardin had been driving. When officers arrived, they found the vehicle in the parking area, and it was located in the area where Hardin was reportedly staying.

The officers then contacted the apartment manager and explained the situation. When the manager said he was "shocked and worried" that someone like Hardin might be staying in the complex, an officer told him, "We need to see if he's there." The officer then suggested that the manager go in the apartment "under a ruse" to check for a water leak and "see if he was there."

The manager agreed to help, and so he entered the room with a passkey and called out, "Maintenance." Hardin was alone in the room, and he permitted the manager to look around for a leak. After pretending to do so, the manger left the room and notified officers that a man matching Hardin's description was in the apartment. The officers then entered and, after arresting Hardin, they found a gun under a cushion of a sofa on which he had been seated. Hardin was subsequently convicted of, among other things, possession of a firearm by a felon.

Discussion

It is settled that officers who have an arrest warrant may enter a residence to make the arrest if they, (1) have probable cause to believe that the arrestee lives there (at least temporarily), and (2) probable cause to believe that he is now inside.[1] Thus, the ruse devised by the officers in *Hardin* was intended to satisfy both of these requirements.

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[1] See *Payton* v. *New York* (1980) 445 U.S. 573. ALSO SEE *People* v. *Ramey* (1976) 16 Cal.3d 263, 275. **NOTE**: In *Payton* the U.S. Supreme Court ruled that officers must have "reason to believe" that the arrestee lives in the residence and that he is presently inside. At p. 603. The Ninth Circuit subsequently interpreted the phrase "reason to believe" to mean "probable cause." See *Cuevas* v. *De Roco* (9th Cir. 2008) 531 F.3d 726, 736; *Motley* v. *Parks* (9C en banc 2005) 432 F3 1072. California courts have not resolved the matter. See *People* v. *Jacobs* (1987) 43 Cal.3d 472, 479, fn.4. The court in *Hardin* did not weigh in on the issue because it concluded that, even if only reasonable suspicion was required, the officers didn't have it.

Hardin argued that the apartment manager was acting as a police agent when he entered; and because he entered without a warrant or other legal justification, his entry was unlawful. If so, the information obtained from the manager could not be considered in determining the existence of probable cause to believe that Hardin lived in the apartment and was presently inside, which would mean the officers' entry was unlawful and the gun should have been suppressed.

An entry or search conducted by a civilian will be deemed a police action if officers requested, induced, instigated, or facilitated it. Summing up the rule in *Lustig* v. *United States,* the Supreme Court said, "[A] search is a search by a federal official if he had a hand in it."[2] Under this standard, it was apparent that the manager was a police agent because, as the court pointed out, "the officers testified that the ruse involving the apartment manager's entry to check for a non-existent water leak was 'without a doubt' the officers' idea."

The court acknowledged that the manager's entry would not have been attributed to the officers if he had a legitimate reason for entering that was "entirely independent" of the officers' interests.[3] But, as the court pointed out, he "had absolutely no intent to search Apartment 48. Far from being 'entirely independent' of the government's intent, the manager's intent to search Apartment 48 was wholly *dependent* on the government's interest."

Consequently, the court ruled that the officers' entry into the apartment was unlawful and that the gun should have been suppressed. POV

[2] (1949) 338 U.S. 74, 78.

[3] Citing *US* v. *Howard* (6th Cir. 1985) 752 F.2d 220, 228 ["[W]here, as here, the intent of the private party conducting the search is entirely independent of the government's intent to collect evidence for use in a criminal prosecution, we hold that the private party is not an agent of the government."].