

## People v. Lujano

(2014) 229 Cal.App.4th 175

### Issue

Did officers have sufficient reason to believe that a home was being burglarized so as to justify a warrantless entry?

### Facts

One afternoon, two Riverside police officers were driving by a house and saw a man in the driveway stripping copper wire from an air conditioner. The officers contacted the man, Albert Vargas who said he was stripping the wire because the air conditioner was broken. Vargas also said he did not live in the house, and that the owner was “Rick” but he did not know Rick’s last name.

Having observed that a side door to the house was ajar and having heard Vargas’s somewhat suspicious story, the officers thought that the house was being burglarized. So one of them went to the door, “leaned inside,” identified himself as a police officer, and ordered everyone inside to exit. The defendant, Ricardo “Rick” Lujano responded and was ordered to walk outside backwards. As he did so, the officer “put hands on him” which apparently meant he pulled Lujano’s hands behind his back and ordered him to keep them there. Lujano consented to a search of his person and the officer found a bag of methamphetamine. The officer then obtained Lujano’s consent to search the house and, while searching a bedroom, he found a handgun and several other things that had been used nine days earlier in the armed robbery of a liquor store in Riverside. At some point, it was determined that Lujano was, in fact, living in the house (which belonged to his mother) and that the bedroom was his.

Lujano was charged with armed robbery, possession of a firearm by a felon, and possession of methamphetamine. Before trial, he filed a motion to suppress the evidence, but the motion was denied. He was subsequently convicted of the robbery and both of the possession crimes.

### Discussion

On appeal, Lujano argued that all of the evidence found inside the house should have been suppressed for two reasons: (1) the officers illegally entered his home when they walked onto the driveway, and (2) he was detained the moment the officer ordered him to exit and the officer lacked grounds to detain him. The court agreed with one of the arguments but rejected the other.

**THE ENTRY ONTO THE DRIVEWAY:** As noted, Lujano contended that the officers’ act of approaching Vargas in the driveway constituted an unlawful search of Lujano’s house. The Supreme Court has, in fact, ruled that the driveway of a home is within the curtilage of the house, and therefore a nonconsensual entry onto a driveway is technically a search. But it also ruled that officers are impliedly authorized to walk onto a driveway if a reasonable visitor might have done so to reach the front door.<sup>1</sup> Accordingly, the court in

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<sup>1</sup> *Florida v. Jardines* (2013) \_\_ US \_\_ [133 S.Ct. 1409, 1415 [“This implicit license typically permits the visitor to approach the home by the front path, knock promptly, wait briefly to be received, and then (absent invitation to linger longer) leave. Complying with the terms of that traditional invitation does not require fine-grained legal knowledge; it is generally managed without incident by the Nation’s Girl Scouts and trick-or-treaters.”]..

*Lujano* ruled that the officers' initial intrusion onto Lujano's driveway to speak with Vargas was lawful because they "exercised no more than the same license to intrude as a reasonably respectful citizen—any door-to-door salesman would reasonably have taken the same approach to the house."

**THE DETENTION OF LUJANO:** After hearing Vargas's story, the officers suspected he had stolen the air conditioner while burglarizing the house and also (probably because air conditioners are heavy and bulky) he had an accomplice who was still inside. So one of the officers yelled inside and ordered everyone to exit, and this led to the detention of Lujano which, in turn, led to the discovery of the evidence linking him to the holdup. The court acknowledged that the officers might have had grounds to detain Lujano if the detention had occurred outside the house. But it ruled that the detention had actually occurred inside because, said the court, it is "the location of the arrested person, and not the arresting agents" that determines whether an occupant had been seized. The question, then, was whether the detention was legal

The court ruled that, unlike detentions on the street, the detention of an occupant of a home by officers who are outside the home requires more than reasonable suspicion—it requires probable cause to arrest or search and probable cause to believe there are exigent circumstances that necessitate an immediate entry. In the words of the court, "[T]o fall within the exigent circumstances exception to the warrant requirement, an arrest or detention within a home or dwelling must be supported by both probable cause and the existence of exigent circumstances.<sup>2</sup>

The court then ruled that the officers had neither probable cause nor exigent circumstances. Specifically, the court ruled that, while the officers might have reasonably believed that Vargas was "engaged in some sort of illegal activity," they had "no specific, articulable facts particular to defendant suggesting that he might be involved in criminal activity." As the court pointed out, the officer who detained Lujano "never observed defendant anything suspicious, say, rifling through drawers. There is no evidence defendant acted aggressively or menacingly toward [the officer], or tried to flee. Rather, defendant made his presence known when commanded to do so, and obeyed all police instructions after that point."

For these reasons, the court ordered the suppression of all evidence in the house that linked Lujano to the robbery. POV

## Comment

The question arises: What should the officer have done? Although some officers will probably disagree, the court said he should have requested—not ordered—Lujano to exit, then question him to determine if Vargas was telling the truth. Said the court, "Nothing

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<sup>2</sup> Also see *Murdock v. Stout* (9th Cir.1995) 54 F.3d 1437, 1441 ["Although exigent circumstances relieve the police officer of the obligation of obtaining a warrant, they do not relieve an officer of the need to have probable cause to enter the house."]; *U.S. v. Alaimalo* (9th Cir. 2002) 313 F.3d 1188, 1193 ["Even when exigent circumstances exist, police officers must have probable cause to support a warrantless entry into a home."]; *U.S. v. Socey* (D.C. Cir. 1988) 846 F.2d 1439, 1444, fn.5 ["Exigent circumstances justify a warrantless entry into a home only where there is also probable cause to enter the residence."]; *U.S. v. Brown* (6th Cir. 2006) 449 F.3d 741, 745 ["To justify a warrantless entry based on exigent circumstances, there must also be probable cause to enter the residence."]; *Kleinholz v. U.S.* (8th Cir. 2003) 339 F.3d 674, 676 ["probable cause must be present before either a warrant or exigency will allow a search"].

in the record suggests that it was reasonably necessary for [the officer] to do what he did—immediately detain everyone on the premises, and sort things out later—rather than engaging in even the most minimal inquiry as to defendant’s identity, or verifying Vargas’s story before intruding into the house and detaining defendant.”

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