

People v. Manderscheid
(June 14, 2002) ___ Cal.App.4th ___

ISSUE

Did exigent circumstances justify an officer's walking into the backyard of a home and knocking on the rear door?

FACTS

Glendale police were looking for a man named DiDonna, a parolee-at-large¹ who was considered armed and dangerous. Unidentified sources told officers that DiDonna was "just running around the Tujunga area," that he had no permanent address, and was "staying house to house."

One evening, a reliable informant told officers that DiDonna was staying at Manderscheid's house in Tujunga. Several officers immediately went there to conduct surveillance. It appears their plan was to wait until DiDonna left the house and arrest him outside.

After a short time, they saw a man leave the house, get into a car and drive off. Because the man was about the same height as DiDonna, they followed and detained him. When they determined the man was not DiDonna, they returned to the house. Knowing the man would probably alert DiDonna if given the opportunity, the officers knew they had to act quickly. So, while one officer stayed with the man, the others raced back to the house, arriving at about 11 P.M.

While most of the officers waited out front, one officer opened the gate leading into the back yard, walked to a rear door and knocked. When someone inside said, "Who is it?" the officer replied, "It's Todd." At that point, the officer heard the sounds of someone running inside the house, so he radioed the others that the occupants were "running."

All told, seven people came out the front door, one of them was Manderscheid, the owner of the house. He was detained and was asked if DiDonna was inside. He didn't reply. He was then asked if officers could search the house, and he said, "yes." Officers then entered and found DiDonna hiding in the bathroom. They also saw drugs in plain view in the living room.

After DiDonna was taken away, officers obtained Manderscheid's written consent to search the house. During the search, officers found drugs and sales paraphernalia. Manderscheid was convicted of maintaining a place for unlawfully selling or using controlled substances.

DISCUSSION

Manderscheid reasoned that the officer's act of opening the gate and walking into the back yard constituted an illegal search which led directly to his consent, which led directly to the seizure of his drugs and paraphernalia. Thus, he concluded the evidence must be suppressed. The court disagreed, ruling the officer's action were justified under the exigent circumstances exception to the warrant requirement.

When exigent circumstances exist, officers may, if reasonably necessary, make a warrantless, nonconsensual, and even forcible entry into a home, office, or any other structure for the purpose of abating the emergency.² To determine whether the officers'

¹ **NOTE:** "Parolee at large is a designation used by the State Department of Corrections which means that the parolee has absconded from parole supervision." *People v. Ford* (1975) 54 Cal.App.3d 149, 152, fn.1.

² See *Mincey v. Arizona* (1978) 437 US 385, 393-4 ["(W)arrants are generally required to search a person's home or his person unless the exigencies of the situation make the needs of law

conduct was warranted, the courts ask two questions: (1) Did the officers reasonably believe an emergency existed? (2) If so, did they do only those things that were reasonably necessary to defuse the emergency?

One of the exigent circumstances that will justify a warrantless entry is known as “fresh pursuit.” Unlike a “hot” pursuit (in which officers physically chase a fleeing suspect³), a “fresh pursuit” occurs when officers are diligently following leads as to the whereabouts of a felon who is trying to elude them. More specifically, a “fresh pursuit” results when the following circumstances exist:

- (1) **Serious felony:** Officers had probable cause to arrest the suspect for a serious felony, usually a serious and violent felony.⁴
- (2) **Diligence:** Officers were diligent in their investigation.⁵
- (3) **Suspect in house:** Officers reasonably believed the suspect was presently inside a certain house or other private place.⁶ If it’s the suspect’s residence, officers must have *reasonably believed* the suspect was inside; but if it is the home of a third person, such as a friend or relative of the suspect, officers must have had *probable cause* to believe the suspect was inside.⁷
- (4) **Circumstantial evidence of flight:** There were circumstances indicating the suspect was in active flight or soon would be.

In *Manderscheid*, all of these circumstances clearly existed. DiDonna was a violent parolee who had absconded. Officers were diligently following leads concerning his whereabouts and soon developed probable cause to believe he was presently inside Manderscheid’s home. Finally, the evidence unquestionably established that DiDonna was in active flight.

The second requirement for a warrantless entry based on exigent circumstances is that the officers must have done only those things that were reasonably necessary to abate the emergency. Here, the officer might have been justified in making a forcible entry into the house. Thus, his warrantless entry into the back yard was restrained and only minimally intrusive. As the court pointed out, “These facts which contain exigent circumstances including a legitimate law enforcement need to apprehend an absconding parolee who was considered armed and hiding in a home in a residential neighborhood strongly outweigh the marginal relevant impact of the trespass into defendant’s backyard.”

enforcement so compelling that the warrantless search is objectively reasonable under the Fourth Amendment.”].

³ See *United States v. Santana* (1976) 427 US 38; *People v. Superior Court (Quinn)* (1978) 83 Cal.App.3d 609, 616.

⁴ See *People v. Smith* (1966) 63 Cal.2d 779, 797; *People v. Amaya* (1979) 93 Cal.App.3d 424, 428 [“Thus, officers need not secure a warrant to enter a dwelling in fresh pursuit of a fleeing suspect believed to have committed a grave offense and who therefore may constitute a danger to others.”]; *In re Jessie L.* (1982) 131 Cal.App.3d 202, 214 [“Immediate flight was a reasonable possibility in light of the seriousness of the crime involved, murder.”]; *People v. Escudero* (1979) 23 Cal.3d 800, 811 [nighttime residential burglary]; *People v. Superior Court (Dai-re)* (1980) 104 Cal.App.3d 86, 90 [nighttime commercial burglary]; *People v. Lopez* (1979) 99 Cal.App.3d 754, 766 [Officers learned that a murder suspect was staying at a motel, and that money would soon be delivered to him so he could flee to Texas]; *Warden v. Hayden* (1967) 387 US 294, 298; *People v. Williams* (1989) 48 Cal.3d 1112; *People v. Gilbert* (1965) 63 Cal.2d 690.

⁵ See *People v. Williams* (1989) 48 Cal.3d 1112, 1139 [“There was no unjustified delay by the investigating officers during which time an arrest warrant for the homicide could have been obtained.”].

⁶ See *People v. White* (1986) 183 Cal.App.3d 1199, 1207-9.

⁷ See *Payton v. New York* (1980) 445 US 573, 603; *People v. White* (1986) 183 Cal.App.3d 1199, 1209.

Manderscheid's conviction was affirmed.