Recent Case Report

Motley v. Parks

(9th Cir. en banc 2005) 432 F.3d 1072

ISSUE

Before conducting a parole search of a home, what level of proof must officers have that the parolee lives there?

FACTS

Because of a sudden increase in gang-related violence in the Newton Street area of Los Angeles, members of the state-federal Newton Street Task Force implemented a plan to search the homes of certain parolees with "gang connections." One of them was Janae Jamerson. During a pre-search briefing, the officers were notified that, according to some recent information, Jamerson lived in an apartment that was rented by his girlfriend Darla Motley.

When officers arrived to conduct the search, Motley told them that Jamerson did not live there and, in any event, he was presently in jail. The officers nevertheless searched the apartment, but apparently found nothing of interest. (After the search, officers confirmed that Jamerson was in jail.)

Motley subsequently filed a civil rights lawsuit against the officers, claiming the search violated her Fourth Amendment rights because they did not have probable cause to believe that Jamerson lived there.

DISCUSSION

The main issue was whether officers who conduct a parole (or probation[1]) search of a residence must have probable cause to believe the parolee lives there, or whether some lesser standard is sufficient. As the court summarized the issue, "[H]ow certain did [the officers] have to be that they were at the right residence?"

PROBABLE CAUSE IS REQUIRED: Most courts, including California's and the Ninth Circuit, have ruled that the standard is "reasonable belief."[2] But, strangely, they have not agreed on what this means. Is it tantamount to probable cause or reasonable suspicion? Or is it some hybrid level of proof?

Although the court found no cases on point, it found some guidance in cases discussing the level of proof required to enter a home to execute an arrest warrant. This

[1] **NOTE**: The court in *Motley* explained, "We have consistently recognized that there is no constitutional difference between probation and parole searches for purpose of the fourth amendment."

[2] See *U.S.* v. *Dally* (9th Cir. 1979) 606 F.2d 861, 862.

standard is also "reasonable belief" but the Ninth Circuit had previously determined that, in this context, it means probable cause.[3]

Finding no reason to impose a lesser standard when the purpose of the entry is to conduct a parole search, the court ruled that officers "must have probable cause to believe that they are *at* the parolee's residence."

THE OFFICERS HAD PROBABLE CAUSE: The court also ruled, however, that the officers who entered Motley's apartment had probable cause to believe that Jamerson lived there. Among other things, it noted that within one month prior to the search, an officer had obtained "uncontradicted evidence" that Jamerson lived there, and that another officer had contacted him there "on previous occasions" during which Jamerson had "confirmed" it was his residence.

Implementing her back-up plan, Motley claimed the officers could not have had probable cause because she explicitly informed them Jamerson did not live there. The court responded that such a statement, coming from a "less-than-disinterested source," does not "undermine the information the officers previously had received from their advance briefing." As the court pointed out, "It is not an unheard-of phenomenon that one resident will tell police that another resident is not at home, when the other resident actually is hiding under a bed when the police come to call."

Consequently, the court ruled that because the officers had probable cause to believe that Jamerson lived with Motley in the apartment, "they acted lawfully in searching the residence, even though it turned out that only Motley was there at the time."

COMMENT

Most courts disagree with the Ninth Circuit that officers must have probable cause (as opposed to reasonable suspicion) that the subject of an arrest warrant lives in the house that they entered.[4] Thus, most courts would probably disagree that officers must have probable cause to believe a parolee lives in the house to be searched.

This does not mean, however, that *Motley* can be ignored. On the contrary, regardless of the technical standard of proof the courts use, they are not apt to uphold a warrantless entry to arrest a suspect or conduct a parole search unless the officers had pretty good reason to believe it was, in fact, the home of the arrestee or parolee.

For this reason, *Motley* is a helpful case because it serves as a reminder to officers that they need to exercise care and good judgment in deciding whether a particular home is searchable.

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[3] See *Watts* v. *County of Sacramento* (9th Cir. 2001) 256 F.3d 886; *U.S.* v. *Gorman* (9th Cir. 2002) 314 F.3d 1105, 1111-15.

[4] *See U.S.* v. *Magluta* (11th Cir. 1995) 44 F.3d 1530, 1534 ["[The Supreme] Court did not and has not, ever held that probable cause is *required* to execute an arrest warrant for the resident"; and, although there was no direct authority that only reasonable suspicion was required, the court said it must assume that *Payton's* use of the term "reason to believe" "was a conscious effort on the part of the Supreme Court "in choosing the verbal formulation of 'reason to believe' over that of 'probable cause.'"]; *Valdez* v. *McPheters* (10th Cir. 1999) 172 F.3d 1220, 1224 ["Only one circuit [the 9th] has suggested a higher knowledge standard on the part of law enforcement. . . . [But] [t]he court provided no rationale for adopting this standard, merely citing its prior decision [on the issue]; *U.S.* v. *Lauter* (2nd Cir. 1995) 57 F.3d 212, 215 ["reasonable belief," not probable cause, is required].