People v. Robles
(July 17, 2000) __ Cal.4th __

ISSUE

If officers conduct a warrantless search of a residence, does an occupant of the premises have standing to challenge the search if, (1) the only legal justification for the search was that another occupant was subject to a probation search condition, and (2) officers were unaware of the search condition when they conducted the search?

FACTS

About ten days after someone stole Rolando Sanchez's car, Sanchez saw Robles driving the vehicle. Although Sanchez lost sight of the car, he soon found it parked in an alley and saw Robles standing nearby. Sanchez then left to notify police. When he returned with officers, Robles was still there but the car was gone.

After detaining Robles, officers went looking for the car. In the alley where it was last seen, there were several enclosed garages used by apartment residents. An officer noticed that one of the garage doors had a small opening in it. When he looked through the opening he saw Sanchez's car.

Officers then entered the garage, inspected the car, and found incriminating evidence. A forensic specialist arrived later, dusted the car for prints, and found a print of Robles' palm.

Several days later, officers learned that both Robles and his brother lived in the apartment, and that Robles' brother was on probation with a search condition in which he consented to warrantless searches of his residence.

DISCUSSION

Robles contended the warrantless search of the garage was unlawful and the evidence should have been suppressed. The People agreed there were no legal grounds for the search but claimed the evidence could not be suppressed because Robles' brother had consented to warrantless searches of his home as a condition of his probation. Thus, according to the People, it was unreasonable for Robles to expect his home would be free from warrantless searches.

The argument raised by the People was based on a rule in California that a person who has consented to warrantless searches of his person or vehicle as a condition of probation may not challenge a search that would have been authorized by the terms of his probation.[(1)] This is because probationers cannot ordinarily expect privacy as to places and things they had agreed could be searched without a warrant.

An ancillary rule states it is immaterial that the officers who conducted the search were unaware of the search condition.[(2)] This is based on the fact that the officer's state of mind-the officer's reason for conducting the search-cannot somehow create a reasonable expectation of privacy that had not existed beforehand.

In *Robles*, the People urged the court to extend this logic to residential searches-to rule that none of the occupants of a residence can reasonably expect to be free of warrantless searches in common areas if one of them was subject to a probation search condition that expressly authorized warrantless residential searches. And, again, because an officer's reason for conducting the search cannot create an expectation of privacy where none existed, this rule should apply even if the officers who conducted the search were unaware of the search condition.

The court, however, unanimously refused to adopt such a rule. Its reasoning was essentially as follows: homes are places in which expectations of privacy are justifiably very high; even when one of the occupants is subject to warrantless searches, the others should not have to endure searches that are patently illegal. Said the court:

[C]ohabitants need not anticipate that officers with no knowledge of the probationer's existence or search condition may freely invade their residence in the absence of a warrant or exigent circumstances. Thus, while cohabitants have no cause to complain of searches that are reasonably and objectively related to the purposes of probation-for example, when routine monitoring occurs or when the facts know to the police indicate a possible probation violation that would justify action pursuant to a known search clause-they may legitimately challenge those searches that are not.

Consequently, the court ruled that Robles did have standing to challenge the search; that the search was illegal and therefore the evidence must be suppressed.

DA's COMMENT

There is language in *Robles* that may be interpreted to mean that even a person who is on probation and who is subject to warrantless searches of his residence may challenge a warrantless search of his residence if, (1) the only legal justification for the search was his probation search clause; and (2) the officers who conducted the search were unaware of the probation search condition.

The language in question concerns the rule that a probationer may challenge a probation search on grounds it was conducted to harass or for some arbitrary purpose.[(3)] In *Robles* the court indicated the word "arbitrary" should be defined very broadly. Said the court, "[I]f officers lack knowledge of a probationer's advance consent when they search the residence, their actions are wholly arbitrary in the sense that they search without legal justification and without any perceived limits to their authority."

Consequently, *Robles* may be cited as authority for the proposition that a patently illegal residential search is necessarily "arbitrary," meaning evidence obtained as the result of the search is inadmissible against an occupant who happened to be on probation with a warrantless search clause, as well as all other occupants.

(1) See *People* v. *Brown* (1987) 191 Cal.App.3d 761, 766; *In re Marcellus L.* (1991) 229 Cal.App.3d 134, 145-6; *Russi* v. *Superior Court* (1973) 33 Cal.App.3d 160, 166; *People* v. *Bravo* (1987) 43 Cal.3d 600, 610; *In re Tyrell J.* (1994) 8 Cal.4th 68, 85.

(2) See *In re Tyrell J*. (1994) 8 Cal.4th 68; *In re Marcellus L.* (1991) 229 Cal.App.3d 134; *People* v. *Viers* (1991) 1 Cal.App.4th 990.

(3) See *In re Tyrell J*. (1994) 8 Cal.4th 68, 87; *In re Anthony S.* (1992) 4 Cal.App.4th 1000, 1004.