Recent Case Report

People v. Sandoval

(2008) 163 Cal.App.4th 205

ISSUE

Did an officer have sufficient grounds to pat search the defendant?

FACTS

While conducting surveillance of a house in Redding, officers detained some visitors and determined that "several" of them were carrying drugs and drug paraphernalia. The officers knew that the resident, Shawn Funchess, was on probation with a search condition, so they decided to conduct a probation search. During pre-search briefing, officers developed a "safety plan" which included a discussion of Funchess's "known associates." One of those associates was Sandoval who resided with Funchess. The officers also knew that Sandoval had been arrested "several times" in the past two years for possession of methamphetamine.

When the search team arrived at the house at about 9:30 A.M., they saw Sandoval sitting on the front porch, smoking a cigarette and wearing a heavy jacket. After detaining him and securing the residence, they pat searched him for weapons. During the search, an officer discovered a stun gun and methamphetamine. When Sandoval's motion to suppress the drugs was denied, he pled guilty to possession.

DISCUSSION

Sandoval contended that the evidence should have been suppressed because the officers did not have sufficient grounds to pat search him. The court agreed.

It is settled the officers may pat search a suspect if they reasonably believe he is armed or dangerous.[1] But the court ruled that, because the officer who conducted the search "did not testify he thought defendant was armed and dangerous," the pat search was unlawful.

COMMENT

One of the most basic legal principles pertaining to pat searches is that the courts must disregard the officers' subjective beliefs as to whether the suspect was armed or dangerous. Instead, what counts is whether the objective circumstances would have caused a reasonable officer to believe so. The United States Supreme Court made this quite clear when it said:

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[1] See *Terry* v. *Ohio* (1968) 392 US 1, 27-8. **NOTE**: Although the courts sometimes say that officers must reasonably believe the detainee was armed *and* dangerous, either is sufficient. This is because it is apparent that a suspect who is armed with a weapon is necessarily "dangerous" to any officer who is detaining him, even if he was cooperative and exhibited no hostility. Similarly, a pat search is justified when officers reasonably believe that a detainee constituted an immediate threat, even if there was no reason to believe he was armed. See *Michigan* v. *Long* (1983) 463 U.S. 1032, 1049 ["Our past cases indicate that the protection of police and others can justify protective searches when police have a reasonable belief that the suspect poses a danger"].

> [I]t is imperative that the facts be judged against an objective standard: would the facts available to the officer at the moment of the seizure or search warrant a man of reasonable caution in the belief that the action taken was appropriate?[2]

This is not a new rule. It has been consistently applied by the courts throughout the country for over 40 years. As the Supreme Court observed in 2006:

> Our cases have repeatedly rejected this [subjective] approach. An action is "reasonable" under the Fourth Amendment, regardless of the individual officer's state of mind, as long as the circumstances, viewed *objectively,* justify the action.[3]

It is, therefore, beyond comprehension how the court in *Sandoval* could have disregarded this principle and based its decision solely on what it perceived as the officer's subjective beliefs.[4] It is especially troubling because, if it had applied the objective test, it would undoubtedly have ruled the pat search was justified. This is because one of the most important objective circumstances in making this determination is the nature of the crime under investigation. As the Ninth Circuit observed, "[I]ndeed, some crimes are so frequently associated with weapons that the mere suspicion that an individual has committed them justifies a pat down search."[5] And, in this day and age, one crime that falls squarely into this category is drug trafficking. As the Court of Appeal has pointed out:

- "Rare is the day which passes without fresh reports of drug related homicides, open street warfare between armed gangs over disputed 'drug turf,' and police seizures of illicit drug and weapon caches in warranted searches of private residences and other locales."[6]
- "It should come as no great surprise that those who would profit by the illicit manufacture and sale of drugs which so often destroy their customers' very lives, are not above adopting lethal means to protect their products from seizure and themselves from apprehension."[7]

It is also apparent that there was an objective basis for the officers' belief that Funchess was selling drugs from the house. As noted, they had been conducting surveillance of the residence (presumably they did so because they already had reason to believe it was a drug house) and they had determined that "several" of the visitors possessed drugs and paraphernalia. It therefore appears that it was reasonable for the officers to believe that the occupants of the premises were selling drugs from the house.

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[2] *Terry* v. *Ohio* (1968) 392 U.S. 1, 21-2. ALSO SEE *Maryland v. Macon* (1985) 472 U.S. 463, 470-1.
[3] *Brigham City* v. *Stuart* (2006) 547 U.S. 398, 404.
[4] **NOTE**: Although the court in *Sandoval* disregarded it, the officer who pat searched Sandoval testified that he was fully aware of this danger when he arrived. As he explained, "The concern is always when you're dealing with a narcotics search at a residence is that someone may have a weapon to try to harm the entry team . . . . [A]nd there's the concern that people that are in the vicinity of the residence such as the front yard of back yard may be a threat to the team making entry into the residence to perform the search."
[5] *U.S.* v. *Flatter* (9th Cir. 2006) 456 F.3d 1154, 1158. ALSO SEE *U.S.* v. *$109,179* (9th Cir. 2000) 228 F.3d 1080 ["We have noted that even in *Terry* the Court determined that it was reasonable to assume, from the nature of the offense contemplated, that Terry was armed and dangerous even though the officer had not observed a weapon or any physical indication of a weapon."].
[6] *People* v. *Thurman* (1989) 209 Cal.App.3d 817, 822.
[7] *People* v. *Osuna* (1986) 187 Cal.App.3d 845, 856.

Furthermore, the officers knew that Sandoval resided in this drug house and that he had been arrested “several times” in the past two years for possession.

But there’s more. The search could also have been upheld under the settled rule that officers who are lawfully searching a residence for drugs may pat search all of the occupants on the premises, regardless of whether there is reason to believe they are armed or dangerous.[8] As the California Supreme Court observed:

> The police interest in protecting against violence during the search of a home for narcotics has been widely recognized. In the narcotics business, 'firearms are as much ”tools of the trade“ as are most commonly recognized articles of narcotics paraphernalia. The danger is potentially at its greatest when, as here, the premises to be searched are a private home, rather than a [public place].[9]

One other thing. The reason our discussion of the court’s analysis was so brief was that there was nothing to discuss. Instead of providing a reasoned decision, the court cut-and-pasted large blocks of quoted material from a published summary of a case that was not germane. Reading it, one was reminded of the familiar experience of countless high school and college students who, having neglected to study, fill their answer books with lots of extraneous material, trying to give the impression that they know something. While such chicanery might be amusing when the perpetrator was a clueless student, it is unworthy of a justice of the Court of Appeal. POV

[8] See *People* v. *Thurman* (1989) 209 Cal.App3d 817, 822 [“We hold that where police officers are called upon to execute a warranted search for narcotics within a private residence they have the lawful right to conduct a limited *Terry* patdown search for weapons upon the occupants present while the search is in progress.”]; *People* v. *Roach* (1971) 15 Cal.App.3d 628, 632 [“Defendants’ self-induced presence at an apartment where dangerous drugs were sold provided rational support for [the officer’s belief that they were dangerous].”]. ALSO SEE *Michigan* v. *Summers* (1981) 452 U.S. 692, 702 [“[T]he execution of a warrant to search for narcotics is the kind of transaction that may give rise to sudden violence”].

[9] *People* v. *Glaser* (1995) 11 Cal.4th 354, 367-8.