

People v. Gallegos
(February 28, 2002) __ Cal.App.4th __

ISSUE

During the execution of a search warrant, did officers unlawfully seize items that were not listed in the warrant?

FACTS

Following a lengthy investigation into the activities of the Mongols motorcycle gang, ATF agents in Los Angeles obtained warrants to search the homes of several gang members, one of whom was Gallegos. Because Gallegos was secretary-treasurer of the gang's El Sereno chapter, the warrant for his home authorized a search for a variety of documents pertaining to gang activities, including financial records and membership rosters.

During the search, officers seized, among other things, several illegal weapons, \$1,400 in cash, brass knuckles, bags of marijuana, scales, a bulletproof vest, and an oxygen tank engraved "State of California, Department of Recreation."

Gallegos was charged with possession of marijuana for sale, receiving stolen property, and a various of firearm violations. The trial judge, however, ordered the evidence suppressed on grounds the seized items were not listed in the warrant and were not sufficiently connected to the items listed in the warrant.

DISCUSSION

Officers who are executing a search warrant may, of course, seize property listed on the warrant. But they may also seize property not listed on the warrant if two requirements are met.

(1) **Lawful discovery:** The property must have been discovered while officers were conducting a lawful search for listed evidence.¹ For example, if officers are authorized to seize a handgun, any property discovered in a container large enough to contain a handgun would have been lawfully discovered. On the other hand, evidence located in a matchbox would not. In any event, the Court of Appeal ruled this requirement was satisfied because the seized evidence was found in places where documents might be found.

(2) **Probable cause:** At the time officers seized the item, they must have had probable cause to believe it was evidence or would aid in the apprehension of a criminal.² There are actually two requirements here: (1) there must be probable

¹ See *People v. Miller* (1987) 196 Cal.App.3d 846, 852; *Horton v. California* (1990) 496 US 128, 136; *People v. Williams* (1988) 198 Cal.App.3d 873, 887; *Skelton v. Superior Court* (1969) 1 Cal.3d 144, 158; *People v. McGraw* (1981) 119 Cal.App.3d 582, 603; *People v. Superior Court (Meyers)* (1979) 25 Cal.3d 67, 74, 77; *People v. Sanchez* (1972) 24 Cal.App.3d 664, 679.

² See *Arizona v. Hicks* (1987) 480 US 321, 326; *Andresen v. Maryland* (1976) 427 US 463, 483; *Texas v. Brown* (1983) 460 US 730, 741-2; *People v. Rios* (1988) 205 Cal.App.3d 833, 839-41; *People v. Superior Court (Meyers)* (1979) 25 Cal.3d 67, 73-4; *People v. Stokes* (1990) 224 Cal.App.3d 715, 719; *People v. Holt* (1989) 212 Cal.App.3d 1200, 1204; *People v. Guillebeau* (1980) 107 Cal.App.3d 531; *People v. Nicolaus* (1991) 54 Cal.3d 551; *People v. Atkins* (1982) 128 Cal.App.3d 564; *People v. Ramos* (1982) 30 Cal.3d 553; *People v. Duncan* (1981) 115 Cal.App.3d

cause, and (2) the probable cause must have existed at the time officers searched or seized the item; e.g., at the time they picked it up. For example, illegal drugs could be seized if officers, based on their training and experience, recognized them as illegal drugs before they seized them. On the other hand, officers who suspected a piece of expensive stereo equipment was stolen, could not lawfully lift it up to check its serial number under it unless, at the time they lifted it up, they had probable cause to believe it was stolen.³

As noted, the trial judge interpreted this requirement to mean that officers may not seize an unlisted item unless it was sufficiently connected to a listed item. This was wrong, said the Court of Appeal, because there is simply no requirement that the seized evidence must somehow be connected to the crime for which the search warrant was issued. Instead, as noted, all that is required is probable cause to believe it is, in fact, evidence of a crime or would aid in the apprehension of a criminal.⁴

The court then ruled that such probable cause existed when the officers first spotted the illegal weapons, marijuana, and brass knuckles because these items are, by their very nature, illegal to possess. The oxygen tank was also properly seized as stolen property because it plainly belonged to the State of California and there was nothing to suggest Gallegos had a legal right to possess the tank.

Although some of the items seized were not illegal to possess—such as some of the firearms, the bulletproof vest, and scales—the surrounding circumstances provided the officers with probable cause to believe they were used in connection with drug dealing. Said the court, “[T]he officers had probable cause to believe that Gallegos was engaged in a drug sale operation, and that the firearms, scale, and bulletproof vest were evidence of that operation. It is common knowledge that drug dealers typically use firearms and ammunition in the course of their drug sale operations. . . . Likewise, it is readily apparent that a scale, found two feet from marijuana packaged as if for sale, is likely a tool used in the drug operation.”

Finally, Gallegos contended the search was illegal because it lasted seven hours and because his bedroom was searched three times. Although a search may be invalidated because it was a general exploratory search, the court pointed out the search was not unduly prolonged or unnecessarily intensive. Said the court, “It goes without saying that the review of even a box of documents can take substantial time; here, the ATF agents reviewed ‘piles’ of papers. Moreover, the garage was cluttered, making a search more time consuming.” As for searching Gallegos’ bedroom three times, the court noted it was actually searched once, but “in three different segments.”

Consequently, the court ruled the evidence was seized lawfully and was, therefore, admissible.

418; *People v. Miller* (1976) 60 Cal.App.3d 849, 854-5. **COMPARE:** *Nunes v. Superior Court* (1980) 100 Cal.App.3d 915, 932; *People v. Murray* (1978) 77 Cal.App.3d 305, 311.

³ See *Arizona v. Hicks* (1987) 480 US 321.

⁴ Specifically, the court said: “[W]e conclude the trial court erred by suppressing the items seized on the ground there was no nexus between them and the items mentioned in the search warrant. Such a nexus is not required. Instead, the required ‘nexus’ is that between the item discovered and a criminal activity, though not necessarily the criminal activity denominated in the warrant.”