People v. Morton
(January 7, 2004) 114 Cal.App.4th 1039

ISSUE

Did sheriff's detectives have sufficient reason to enter the defendants' property under the so-called "community caretaking" rule?

FACTS

Sonoma County sheriff's deputies received a call from a man who said he suspected that marijuana was being grown in a commercial nursery located next to his home in Santa Rosa. The man also expressed concern for the welfare of the owners who lived on the property, Robert and Merideth Morton. Two detectives from the marijuana suppression team were sent to meet with the man at his home.

The man told them that "something must have happened over the nighttime hours," possibly a marijuana ripoff. His concern was based on the following:

- That morning he found two marijuana leaves near the top of the fence bordering the nursery and his home; he also saw marijuana debris on his driveway.
- Although the Mortons were usually "out and about" and "tending to the nursery," he had not seen them all day, and it was now after 2 P.M.

One of the detectives testified that she and her partner agreed that "obviously something happened during the nighttime hours" and that they "needed to go next door and find out what exactly happened, and to try to contact the people that live there."

There was a fence surrounding much of the Mortons' property. It was described as a chain-link fence with wooden slats running vertically. Although its height could not be determined from the record, one of the detectives testified it was "taller than I am."

It does not appear, however, that the fence represented a serious effort to keep people out. For one thing, the fence did not surround the property; in some places there were bushes instead of fence. Also, as the court noted, "the bottom of the fence appears to stand several inches above the dirt and gravel at ground level." Of particular significance, the gate at the entrance to the nursery was a "cattle gate" that was only about four feet tall.[1] The gate was closed by means of a chain that may or may not have been locked. There was a sign on the gate that said the nursery was closed on Monday and Tuesday. This explained the chain—it was Tuesday.

The detectives climbed over the gate, walked directly to the front door and knocked. In light of the court's ruling, there is no need to provide details of what happened next. It is sufficient to note that when Morton opened the door and stepped outside, the detectives had grounds to—and did—obtain a warrant to search the premises. As the result, the Mortons were charged with cultivation and possession of marijuana for sale.

DISCUSSION

The Mortons contended the detectives' warrantless entry onto their property was unlawful. Consequently, they argued that all observations and evidence resulting from the entry should have been suppressed. The trial court had ruled the entry was lawful under the so-called "community caretaking" rule, but the Court of Appeal disagreed. It concluded the detectives had no overriding need to check on the Mortons' welfare or, for any other reason, enter their property without a warrant. Said the court:

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[1] NOTE: The court's opinion contained no details concerning the gate's height or whether the fence surrounded the Mortons' property. Because, as we will explain, these facts were crucial to whether the officers conducted a "search" of the Mortons' property, our video producer, Art Garrett, drove to the Morton nursery and obtained this information. Although Morton now has a new cattle gate, he told Garrett the cattle gate the detectives climbed was about four feet high.

> The detectives' analysis evolved as follows: Two marijuana leaves were found on the neighbor's side of the fence and a small amount of debris was found on his driveway. The neighbor reported that the marijuana was not his. From these facts, the detectives concluded that the marijuana must have belonged to the defendants *and* that defendants must have been cultivating the drug. Based on a small depression under the fence, the detectives further concluded this marijuana crop must have been stolen during the night. Because drug thefts may involve violence, the detectives concluded that a warrantless entry was required to protect defendants' life or property. These conclusions fall under the weight of their own faulty reasoning.

The detectives' "faulty reasoning," said the court, was that the record was "bereft of a single articulable fact supporting their belief" that the marijuana belonged to the Mortons. Consequently, it ruled the detectives' entry onto the Mortons' property was unlawful and the evidence obtained as the result must be suppressed. The Mortons' convictions were reversed.

DA's COMMENT

There are some things about this opinion that should be discussed. First, as noted, the court's decision was based on its conclusion that the record was "bereft of a single articulable fact" supporting the detectives' conclusion that the Mortons were growing marijuana. This is plainly incorrect. The detectives' conclusion was based on several facts that, when considered together, constituted strong circumstantial evidence that the Mortons were growing marijuana. Consider the following:

- As the court acknowledged, it was reasonable for the detectives to believe the marijuana did not belong to the neighbor who called the sheriff's department.
- The marijuana leaves were found on the fence separating the neighbor's property from the Mortons' nursery.
- Because the leaves were left near the top, it appeared the marijuana was hauled over the fence from the Mortons' nursery, and was not in any sort of container. Thus, it was almost certainly a marijuana crop.
- From the description of the marijuana (leaves and debris), it was probably in raw (not dried) form, indicating it had been harvested recently.[2]
- Because it was unlikely that a marijuana grower was hauling his marijuana all over the neighborhood, it was logical to infer it came from the nearest residence—the Mortons'.
- The fact that the Mortons were not keeping to their regular schedule in the nursery that day was consistent with the conclusion they were involved in hauling the marijuana overnight.
- The Mortons grow *plants* for a living.

Regardless of whether these facts and inferences constituted probable cause, they provided a sound basis for the detectives' actions. Moreover, the U.S. Supreme Court has repeatedly said that in determining the reasonableness of an officer's actions, the courts must not fractionalize the facts by isolating each one, belittling its importance or

[2] See *People* v. *Thuss* (2003) 107 Cal.App.4th 221, 235 ["The discovery of recently cut marijuana stems and leaves in a trash can that has been shown to contain defendant's residential trash establishes a fair probability (i.e., probable cause to believe) that contraband may be found in the residence."].

explaining it away, then concluding that because none of the facts were very incriminating, the officers acted unlawfully.[3]

Second, even if the detectives had insufficient grounds for entering the Mortons' property, the question remains: *Did they do anything that can result in the suppression of evidence?*

As the result of Proposition 8, evidence may be suppressed in California only if it was obtained by means of a Constitutional violation. Because the *Morton* court suppressed the detectives' observations, it implicitly ruled their entry onto the Mortons' land constituted an illegal "search" under the Fourth Amendment. The detectives' act of entering the Mortons' property would constitute a "search" only if the Mortons could reasonably expect that people would not climb over their cattle gate and walk up to their front door.[4] Unfortunately, the issue of whether the detectives' actions constituted a "search" was not addressed by the court, possibly because it was not raised by the parties in the trial court or on appeal.

In any event, the courts have consistently ruled that a technical "trespass" of this sort does not constitute a "search."[5] As the Ninth Circuit observed:

> Absent express orders from the person in possession against any possible trespass, there is no rule of private or public conduct which makes it illegal per se, or a condemned invasion of the person's right of privacy, for anyone openly and peaceably, at high noon, to walk up the steps and knock on the front door of any man's 'castle' with the honest intent of asking questions of the occupant thereof—whether the questioner be a pollster, a salesman, or an officer of the law.[6]

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[3] See *Maryland* v. *Pringle* (2003) __ US __, __, fn.2 ["The Court of Appeals of Maryland dismissed the $763 seized from the glove compartment as a factor in the probable-cause determination, stating that '[m]oney, without more, is innocuous. The court's consideration of the money in isolation, rather than as a factor in the totality of the circumstances, is mistaken in light of our precedents."]; *Massachusetts* v. *Upton* (1984) 466 US 727, 732 ["[The trial court] insisted on judging bits and pieces of information in isolation . . . ."]; *U.S.* v. *Diaz-Juarez* (9th Cir. 2002) 299 F.3d 1183, 1141 ["Individual factors that may appear innocent in isolation may constitute suspicious behavior when aggregated together."].

[4] See *Maryland* v. *Macon* (1985) 472 US 463, 469 ["A search occurs when an expectation of privacy that society is prepared to consider reasonable is infringed."]; *U.S.* v. *Ventling* (8th Cir. 1982) 678 F.2d 63, 66 ["The standard for determining when the search of an area surrounding a residence violates Fourth Amendment guarantees no longer depends on outmoded property concepts, but whether the defendant has a legitimate expectation of privacy in the area."]; *U.S.* v. *Reed* (8th Cir. 1984) 733 F.2d 492, 501 ["Whether a police officer has commenced a 'search' turns [on] whether he has in fact invaded an area which the defendant harbors a reasonable expectation of privacy."].

[5] NOTE: The detectives' act of climbing the fence and walking to the Mortons' front door was not a criminal trespass. See Penal Code § 602.

[6] *Davis* v. *U.S.* (9th Cir. 1964) 327 F.2d 301, 304. ALSO SEE *United States* v. *Karo* (1984) 468 US 705, 712-3 ["The existence of a physical trespass is only marginally relevant to the question of whether the Fourth Amendment has been violated."]; *U.S.* v. *Reed* (8th Cir. 1984) 733 F.2d 492, 501 ["(N)o Fourth Amendment search occurs when police officers enter private property and restrict their movements to those areas generally made accessible to visitors"]; *People* v. *Superior Court (Stroud)* (1974) 37 Cal.App.3d 836, 840 ["It is common knowledge that a front yard is likely to be crossed at any time by door-to-door solicitors, delivery men and others unknown to the owner of the premises."]; *U.S.* v. *Reyes* (2nd Cir. 2002) 283 F.3d 446, 465 ["Since the route which any visitor to a residence would use is not private in the Fourth Amendment sense, when police take that route for the purpose of making a general inquiry or for some other legitimate reason, they are free to keep their eyes open."]; *Oliver* v. *United States* (1984) 466 US 170, 183, fn.15 ["(I)t does not follow that the right to exclude conferred by trespass law embodies a privacy interest also protected by the Fourth Amendment. To the contrary, the common law of trespass

Or, as the California Supreme Court put it, "[T]he presence or absence of physical trespass by police is constitutionally irrelevant to the question whether society is prepared to recognize an asserted privacy interest as reasonable."[7]

Furthermore, the sign on the gate saying the nursery was closed today could reasonably be interpreted to mean the premises were closed to customers—not visitors with personal business.

Third, even if the Mortons could reasonably expect that people would not climb over their cattle gate to get to the front door, it does not follow that the so-called community caretaking exception was inapplicable. In cases such as this, the courts are supposed to balance the extent of the police intrusion against its justification. As the U.S. Supreme Court recently observed, "[I]n judging reasonableness, we look to the gravity of the public concerns served by the seizure, the degree to which the seizure advances the public interest, and the severity of the interference with individual liberty."[8]

Even if the detectives' act of climbing over the gate was a Constitutionally-recognizable intrusion, it was surely *de minimis*. They entered no structure. They caused no damage. They detained no one. They gave no commands. They took no officer safety precautions. The property they entered was visible to the public. And they were on the property for only a few minutes before they developed probable cause. Finally, the detectives' conduct served the public interest, inasmuch as the public has an interest in curtailing the cultivation and distribution of marijuana.

For these reasons, it appears the ruling in this case was incorrect.[9]

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furthers a range of interests that have nothing to do with privacy"]; *People* v. *Arango* (1993) 12 Cal.App.4th 450, 455 ["But even if climbing over the fence was a simple trespass it would not invalidate [the officers'] subsequent observations."]; *Dean* v. *Superior Court* (1973) 35 Cal.App.3d 112, 118 ["The reach of the Fourth Amendment no longer turns upon a physical intrusion into any given enclosure; hence, that a trespass was later revealed is not controlling."]; *U.S.* v. *Hammett* (9th Cir. 2001) 236 F.3d 1054, 1059 ["Law enforcement officers may encroach upon the curtilage of a home for the purpose of asking questions of the occupants."].

[7] *People* v. *Camacho* (2000) 23 Cal.4th 824, 836 [quoting from *California* v. *Ciraolo* (1986) 476 US 207, 223 [dis.opn. of Powell, J.].

[8] *Illinois* v. *Lidster* (2004) 540 US __. ALSO SEE *Ingersoll* v. *Palmer* (1987) 43 Cal.3d 1321, 1329; *People* v. *Glaser* (1995) 11 Cal.4th 354, 363-4.

[9] NOTE: There are two other things about this opinion that should be noted. First, it appears the *Morton* court believed the "community caretaking" rule applies only if the detectives were motivated *solely* by the desire to check on the Mortons' welfare; e.g., "In extending the benefit of the community caretaking exception the [trial] court inferentially found that the detectives' belief in the need to enter defendants' property was *totally unrelated* to any criminal investigation . . . ." Emphasis added. Yet, it is settled that purity of motivation is not a requirement, even for searches based on something other than probable cause or reasonable suspicion. See *Colorado* v. *Bertine* (1987) 479 US 367, 372 ["(T)here was no showing that the police, who were following standardized procedures, acted in bad faith or for the *sole* purpose of investigation." Emphasis added.]; *Whren* v. *United States* (1996) 517 US 806, 812 [Court notes that in *U.S.* v. *Villamonte-Marquez* (1983) 462 US 579, 584, fn.3 it rejected the idea that "an ulterior motive might serve to strip the [Customs] agents of their legal justification" for conducting a warrantless boarding of a vessel."]; *Cady* v. *Dombrowski* (1973) 413 US 433, 443. Second, the *Morton* court indicated that the detectives' entry onto the property would have been lawful under the community caretaking exception only if it was the only reasonable alternative to checking on the Mortons' welfare; i.e., "The ultimate conclusion that a warrantless entry onto defendants' property was the *only reasonable alternative* is utterly without support . . . " Emphasis added. There is, however, no "least intrusive means" requirement. See *Atwater* v. *City of Lago Vista* (2001) 532 US 318, 350 [the "least-restrictive-alternative limitation" is "generally thought inappropriate in working out Fourth Amendment protection."]; *People* v. *Bell* (1996) 43 Cal.App.4th 754, 761, fn.1 ["The Supreme Court, however, has since repudiated any 'least intrusive means' test for commencing or

conducting an investigative stop. The question is not simply whether some other alternative was available, but whether the police acted unreasonably in failing to recognize or pursue it."].