

Recent Case Report

People v. Balint

(2006) __ Cal.App.4th __ [2006 WL 802489]

ISSUE

If officers discover a computer while executing a warrant to search for stolen property or other contraband, may they seize it on grounds that it probably contained indicia?

FACTS

Anaheim police officers obtained a warrant to search Balint's home for certain items of stolen property. The warrant included a standard indicia clause; i.e., authorization to seize documents and other items "tending to show dominion and control of the location." The clause also contained a listing of the types of items that might qualify as indicia, such as utility bills and rent receipts—but not computers.¹

While conducting the search, the officers seized a Compaq laptop computer that was "opened up and sitting on the sofa in the family room." Later, they obtained a warrant to search the hard drive and, as the result, were able to locate the owner who confirmed it had been stolen.

As a result, Balint was charged with possession of stolen property. She was convicted after her motion to suppress the computer was denied.

DISCUSSION

Because a computer was not listed among the stolen items on the warrant, Balint contended the laptop was seized unlawfully and should have been suppressed. The People countered that the seizure was lawful because the information stored on the computer's hard drive qualified as indicia. The court agreed.

In reaching its conclusion, the court made three observations about indicia. First, authorization to search for and seize indicia is "a standard feature in search warrant practice." This is because houses and cars "ordinarily contain evidence identifying those individuals occupying or controlling them," and such information "tends to aid in conviction of the guilty party." Second, computers usually qualify as indicia because they

¹ **NOTE:** The clause read: "Any items tending to show dominion and control of the location, including delivered mail, whether inside the location or in the mail box, utility bills, phone bills, rent receipts, safe deposit box keys and receipts, keys and receipts for rental storage space, keys and receipts for post office box or mail drop rentals, ignition keys, car door and truck keys, recordation of voice transmissions on telephone answering machines, audio tapes and phone message receipts books, and written phone messages, and photographs tending to show occupation of residence and connection between co-conspirators, whether identified or unidentified. And any examples of handwriting including letters, address books, business records, cancelled checks, notes and/or lists."

contain electronic impulses that are “the functional equivalent of written or printed material.”²

Third, officers will seldom know what kinds of indicia they will find on the premises. As one court put it, officers “could not be expected to divine in advance of their entry the precise nature of such evidence—whether mail, bills, checks, invoices, other documents, or keys.”³ For this reason, the courts permit boilerplate indicia clauses, such as the one in *Balint*, that contain a description of the *types* of indicia that are ordinarily found.⁴

For these reasons, the court ruled the seizure of the computer was lawful because, (1) the warrant authorized a search for indicia, and (2) the officers reasonably believed they would find indicia stored on the computer’s hard drive. Said the court, “[T]he open laptop computer at issue here “amounts to an electronic container capable of storing data similar in kind to the documents stored in an ordinary filing cabinet, and thus potentially within the scope of the warrant.”

COMMENT

As noted, the officers did not search the laptop on the premises but, instead, searched it at the police department. The court pointed out that this has become an accepted practice for two reasons. First, the only alternative is to conduct the search on the premises which may take hours or even days. Second, a computer search “typically requires a degree of expertise beyond that of the executing officers, not only to find the documents but to avoid destruction or oversearching.”⁵

Finally, although this issue was not raised, it seems apparent that *Balint* lacked standing to contest the search. This is because people who steal things or possess stolen property cannot reasonably expect that the contents of the contraband will remain private.⁶ POV

² Quoting *People v. Gall* (2001) 30 P.3d 145, 153.

³ *People v. Rogers* (1986) 187 Cal.App.3d 1001, 1009. ALSO SEE *U.S. v. Gomez-Soto* (9th Cir. 1984) 723 F.2d 649, 655 [warrant need not anticipate the precise container holding the evidence]; *People v. Gall* (2001) 30 P.3d 145, 148, fn.4 [“[A] warrant cannot be expected to anticipate every form an item or repository of information may take, and therefore courts have affirmed the seizure of things that are similar to, or the ‘functional equivalent’ of, items enumerated in the warrant, as well as containers in which they are reasonably likely to be found.”].

⁴ **NOTE:** Boilerplate” is essentially a list of items taken verbatim from other warrants based, not on probable cause to believe these precise items will be found, but on knowledge that such items are commonly found. See *People v. Frank* (1985) 38 Cal.3d 711, 728; *U.S. v. Ribeiro* (1st Cir. 2005) 397 F.3d 43, 51 [“Boilerplate” is “stereotyped or formulaic writing.”].

⁵ Quoting *People v. Gall* (2001) 30 P.3d 145, 153.

⁶ See *U.S. v. Caymen* (9th Cir. 2005) 404 F.3d 1196, 1199 [“Because Caymen obtained the laptop computer by fraud, he had no legitimate expectation of privacy in the contents of the hard drive.”]; *U.S. v. Lyons* (10th Cir. 1993) 992 F.2d 1029, 1031-2 [“[N]o attempt was made to show that Mr. Lyons had any rightful claim to the hard disks that were seized pursuant to the warrant.”]; *People v. Carter* (2005) 36 Cal.4th 1114, 1141 [“To accept defendant’s assertion that he had a legitimate expectation of privacy while driving a stolen vehicle would be to overlook the word ‘unreasonable’ in the Fourth Amendment’s proscription against ‘unreasonable searches and seizures.’”].