

Recent Case Report

People v. Thompson

(2006) 38 Cal.4th 811

ISSUE

Did exigent circumstances justify an entry by officers into the defendant's home to arrest him for DUI?

FACTS

At about 7 P.M., Madelene Orvos discovered that someone had parked a Ford Bronco in her apartment parking space. Inside the Bronco was a man later identified as Daniel Thompson. He had passed out—drunk. Ms. Orvos was acquainted with Thompson as she had seen him “in this condition” on “many prior occasions.” When another resident asked Thompson to leave, he tossed an empty vodka bottle to the ground and drove off.

Ms. Orvos followed him after notifying Santa Barbara police of the situation. She later testified that she saw Thompson weaving, speeding, and running stop signs. Just as Ms. Orvos lost sight of the Bronco she spotted the two Santa Barbara officers who had been dispatched to the call. After Ms. Orvos told them what she had seen, and had furnished them with a description of Thompson and his vehicle, the officers ran the Bronco's license number and learned that the registered owner lived in a house nearby.

When the officers arrived at the house, they saw the Bronco parked outside. The engine was warm. They knocked on the door and spoke with a woman named Kovarick who said the Bronco belonged to Thompson, and that he rented a room from her. She claimed Thompson was asleep but, just then, the officers saw a man in the backyard who matched the description of the driver. The man was Thompson.

At the officers' request, Thompson walked back inside the house. As they spoke with him, they could see that he was staggering, swaying, slurring his speech, and smelling of alcohol. When he started to walk away, they entered and arrested him.

After Ms. Orvos confirmed that Thompson was the driver of the Bronco, the officers took him to a hospital where a sample of his blood was drawn. When the trial court denied Thompson's motion to suppress the blood test results (.21%), he pled guilty to DUI and resisting arrest.

DISCUSSION

Pursuant to the *Ramey-Payton* rule, officers may not enter a suspect's house to arrest him merely because they have probable cause. They must also have an arrest warrant or consent, or there must have been exigent circumstances.¹ Because the officers in *Thompson* had neither a warrant nor consent, the issue was whether there were exigent circumstances.²

¹ See *People v. Ramey* (1976) 16 Cal.3d 263; *Payton v. New York* (1980) 445 U.S. 573.

² See *People v. Bacigalupo* (1991) 1 Cal.4th 103, 122 [“The [arrest] warrant requirement is excused when exigent circumstances require prompt action by the police to prevent imminent danger to life or to forestall the imminent escape of a suspect or destruction of evidence.”]; *People v. Celis* (2004) 33 Cal.4th 667, 676.

The People argued that there was; specifically, the continuing destruction of blood-alcohol evidence caused by alcohol burn-off. Consequently, the issues before the court were: (1) Did the officers have probable cause to arrest Thompson for DUI? (2) If so, did alcohol burn-off constitute an exigent circumstance so as to justify a warrantless entry to make an arrest?

Probable cause

Probable cause to arrest a person for DUI exists if there is a fair probability that he drove a vehicle while under the influence of alcohol or drugs.³ Thompson conceded that he was under the influence. Consequently, the only issue was whether the officers reasonably believed he was the person who had driven the Bronco. The court ruled they did, pointing out the following: Ms. Orvos told them that she had seen Thompson driving the Bronco and that she knew him casually. She also described him. A few minutes later, the officers found the Bronco (engine warm) parked outside Thompson's house.

Furthermore, the officers saw Thompson in the back yard of the house where, from all appearances, he had fled after his landlady told him the police wanted to talk to him. And, as the court noted, "his appearance and [drunken] demeanor matched the description of the driver provided by Orvos."

Consequently, the court ruled the officers had probable cause to arrest Thompson when they entered the house.

Exigent circumstances

Because the officers had probable cause to believe that Thompson had recently driven while under the influence of alcohol, they necessarily had probable cause to believe that the results of a blood-alcohol test would constitute evidence of a crime. And they also knew that a delay in arresting Thompson would result in a delay in conducting a blood-alcohol test incident to the arrest. This, in turn, would have made it difficult or impossible to determine Thompson's blood-alcohol level at the time he was driving.

Thompson disputed this. He claimed that burn-off does not actually "destroy" evidence because there are "experts" who could have calculated his blood-alcohol content based on a sample obtained hours after his arrest.

The court responded by noting two things. First, the experts' calculations would have been "speculative." Second, Thompson and any other drunk driver would be able to sabotage any subsequent blood-alcohol test results—including any "expert's" calculations—by simply *consuming* alcohol while the officers were back at the station applying for a warrant.²⁴

Accordingly, the court ruled, "[E]xigent circumstances justified the warrantless entry to effect the DUI arrest here."⁴

³ See Vehicle Code § 23152; CALJIC 12.66; *Cantrell v. Zolin* (1994) 23 Cal.App.4th 128, 133, fn.2.

⁴ **NOTE:** Even if there had been a *Ramey-Payton* violation, it appears the blood-alcohol evidence could not have been suppressed because the United States Supreme Court has ruled that the sole remedy for such a violation is the suppression of evidence obtained while officers were unlawfully *inside* the premises. See *New York v. Harris* (1990) 495 U.S. 14, 17 ["*[P]ayton* was designed to protect the physical integrity of the home; it was not intended to grant criminal suspects, like Harris, protection for statements made outside their premises where the police have probable cause to arrest the suspect for committing a crime."]. Consequently, because the sample of defendant's blood was obtained at a local hospital, there was no legal basis for the panel's

COMMENT

The court said it was *not* ruling that officers with probable cause to arrest an occupant for DUI will *always* be able to enter based on exigent circumstances. The question, then, is how can officers determine when they can and cannot enter? Based on the facts in *Thompson*, we think an entry should be upheld if both of the following circumstances existed:

- (1) **TIME LAPSE:** The time lapse between the suspect's driving and the officers' entry was not so great as to render the blood-alcohol results virtually irrelevant.
- (2) **MANNER OF ENTRY:** The officers did not enter in an unreasonably intrusive manner. In making this determination, the following circumstances would be relevant:
 - **FORCIBLE ENTRY:** Did the officers force their way into the house; e.g., break down the door?
 - **KNOCK-NOTICE:** If the officers made a forcible entry, did they comply with the knock-notice requirements?
 - **SEARCH:** Did the officers conduct a search of the premises, or did they simply enter, arrest the defendant, and leave? POV

suppression order. But because the *Thompson* court had ruled the entry was lawful, it decided not to address this issue.