Recent Case Report

People v. Superior Court (Walker)

(2006) 143 Cal.App.4th 1183

ISSUES

(1) Did police officers reasonably believe that a university safety officer had the authority to permit them to enter the defendant's dorm room? (2) If not, was the evidence in the room admissible under the inevitable discovery rule?

FACTS

At about 6:30 P.M., a "safety service" officer at the University of Santa Clara saw Walker smoking marijuana outside a classroom building. Walker claimed it was medical marijuana, and he told the officer he had more of it in his dormitory room. He then invited the officer to go there with him to see the marijuana and inspect his cannabis club card. The officer accepted the invitation

In the room, Walker opened a drawer in his closet and retrieved a "sandwich size" plastic baggie containing marijuana. The officer, having noticed a small electronic scale nearby (and probably thinking that Walker might be more than a user), opened the drawer and saw a "large quantity" of marijuana, plus sales paraphernalia and $1,800 in cash. He notified Santa Clara police.

The two officers who were dispatched to the call were met outside by another safety officer. As that officer opened the door to Walker's room, the police officers saw the marijuana and paraphernalia in plain view. But before entering, one of them asked the safety officer if Walker had consented to the search. He said, yes, adding that he did not need consent because, pursuant to the terms of Walker's housing contract, University officials have the right to enter dorm rooms if they reasonably believe that a crime is occurring inside. So the officers entered and seized the evidence.

Walker was subsequently charged with possession for sale, but the case was dismissed when a Superior Court judge granted his motion to suppress the evidence.

DISCUSSION

At the outset, it should be noted that the issue on appeal was not whether the safety officer engaged in an unlawful search when he opened the drawer. This was because the University of Santa Clara is a private institution and, therefore, the court viewed its safety officers as private citizens, not law enforcement officers.[1] Thus, the legality of the seizure depended solely on whether the entry by the police officers was lawful. The People contended it was, based on the safety officer's consent.

[1] See *Skinner* v. *Railway Labor Exec. Assn.* (1989) 489 U.S. 602, 614; *United States* v. *Jacobsen* (1984) 466 U.S. 109, 113 ["This Court has consistently construed [the laws governing search and seizure] as proscribing only governmental action; it is wholly inapplicable to a search or seizure, even an unreasonable one, effected by a private individual not acting as an agent of the Government or with the participation or knowledge of any governmental official."].

Third-party consent

Police officers may enter and search a suspect's residence based on the consent of someone other than the suspect if the consenting person had "common authority" over the premises; i.e., a right to "joint access or control."[2] The People argued that the safety officers had such authority based on the housing contract which gave University officials a right to enter in situations such as this one. But the court rejected the argument, pointing out that the contract did not—and probably *could* not—give University officials the authority to permit *police* officers or anyone else to enter or search. Said the court, "These terms of occupancy, while constituting consent to the *University's* entry into defendant's dorm room under certain circumstances, cannot be reasonably construed as defendant having given such consent to *others*."

The People responded that even if the safety officer lacked actual authority to permit the police officers to enter, the United States Supreme Court has ruled that actual authority is not required—apparent authority is sufficient. As the Supreme Court explained, "[W]hat is generally demanded of the many factual determinations that must regularly be made by agents of the government . . . is not that they always be correct, but that they always be reasonable."[3] In other words, an entry based on third-party consent is valid if, although it turned out the consenting person did not have a right to joint access or control, the officers reasonably believed he did.

The question, then, was whether the police officers could have reasonably believed that the safety officers had authority to consent. Both parties had good arguments. Walker argued that the University was tantamount to a landlord. And it is settled that, while a landlord may enter leased property for various reasons, he cannot normally consent to an entry by officers or others.[4]

The People also had a strong argument: In Walker's presence, the safety officer told the police officers that Walker's consent was not necessary because of the "waiver" in his housing contract. And because Walker did not dispute this statement, the police officers might have reasonably believed this was true.

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[2] See *Illinois* v. *Rodriguez* (1990) 497 U.S. 177; *United States* v. *Matlock* (1974) 415 U.S. 164, 170 ["[T]he consent of one who possesses common authority over premises or effects is valid as against the absent, nonconsenting person with whom that authority is shared."].

[3] *Illinois* v. *Rodriguez* (1990) 497 U.S. 177, 185. ALSO SEE *People* v. *MacKenzie* (1995) 34 Cal.App.4th 1256, 1273 ["[W]e ask whether the facts available to the officer at the moment would warrant in a person of reasonable caution a belief that the consenting party had authority over the premises."]; *People* v. *Oldham* (2000) 81 Cal.App.4th 1, 10 ["[E]ven if the consenting cotenant, in fact, lacks authority, officers may rely on his or her apparent authority."].

[4] See *Stoner* v. *California* (1964) 376 U.S. 483, 488; *Chapman* v. *United States* (1961) 365 U.S. 610, 617; *People* v. *Joubert* (1981) 118 Cal.App.3d 637, 648 ["Although a hotel guest should reasonably expect that maids, janitors and repairmen might enter his room in the performance of their duties, he would not reasonably anticipate that the police would enter to search."]; *People* v. *Roman* (1991) 227 Cal.App.3d 674, 680 ["The officer's assumption that [the landlord] had the right to have law enforcement inspect his property was not reasonable."]; *People* v. *Superior Court (York)* (1970) 3 Cal.App.3d 648, 657 ["[R]eliance on a landlord's consent to enter and search premises *known by the officer to be in the possession of the tenant* is not reasonable."]. **NOTE**: The court also ruled that neither the housing contract nor the University's responsibility toward its students undermined the students' Fourth Amendment right to be protected from unreasonable searches and seizures. Said the court, "[W]e conclude that defendant enjoyed the same Fourth Amendment protection from unreasonable searches and seizures in his dormitory room as would any other citizen in a private home."

The court did not, however, rule on this issue because it concluded that, even if the safety officers lacked apparent authority, the evidence was admissible under the doctrine of inevitable discovery.

Inevitable discovery

Under the inevitable discovery rule, evidence that was obtained unlawfully will, nevertheless, be admissible in court if, (1) the investigation that resulted in the discovery of the evidence began *before* the police misconduct, and (2) there was a "reasonably strong probability" that it would have been discovered lawfully in the course of the investigation.[5] As the United States Supreme Court explained:

> [I]f the government can prove that the evidence would have been obtained inevitably and, therefore, would have been admitted regardless of any overreaching by the police, there is no rational basis to keep that evidence from the jury.[6]

Applying this principle, the court ruled there was, in fact, a reasonably strong possibility that the safety officers would have given the evidence to the police officers. As the court pointed out, when the safety officer opened the door for them, "the large quantity of marijuana and cash were easily visible to the police." That being the case, said the court, "It defies logic (and common sense) to conclude that the University safety officers—having contacted the police, gathered the contraband (apparently for inspection by the police), and displayed the contraband to the police—thereafter would have withheld the contraband from the police to pursue their own internal investigation."

Thus, the court ruled that the evidence should not have been suppressed. POV

[5] See *Murray* v. *United States* (1988) 487 U.S. 533, 539 ["The inevitable discovery doctrine is in reality an extrapolation from the independent source doctrine: Since the tainted evidence would be admissible if in fact discovered through an independent source, it should be admissible if it inevitably would have been discovered."]; *People* v. *Rosales* (1987) 192 Cal.App.3d 759, 769 ["The inevitability of the lawful discovery removes the taint of illegality that otherwise would attach to the evidence, and leaves no exclusionary rule barrier to its admission."]; *People* v. *Tye* (1984) 160 Cal.App.3d 796, 800 ["The inevitable discovery exception allows admission of evidence where the court finds that challenged evidence would have been eventually secured through legal means regardless of improper official conduct."]; *People* v. *Superior Court (Tunch)* (1978) 80 Cal.App.3d 665, 673.

[6] *Nix* v. *Williams* (1984) 467 U.S. 431, 444, 447.