

Recent Case Report

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U.S. v. Bolivar

(9th Cir. 2012) 670 F.3d 1091

Issue

While conducting a probation search of a home, did officers have sufficient reason to believe that a backpack was searchable?

Facts

Police officers in Idaho were conducting a probation search of Philine Black's one-bedroom apartment when they spotted a backpack in the bedroom closet. They opened the backpack and found a sawed-off shotgun. Before opening the backpack, the officers had noticed that the closet contained women's and men's clothing, with men's clothing on the right side and women's clothing on the left. The backpack was hanging in the center.

Ms. Black said the gun belonged to Bolivar and, as the result, he was charged with being a felon in possession of a firearm. When his motion to suppress the shotgun was denied, he pled guilty but later appealed the denial of his suppression motion.

Discussion

Bolivar argued that officers who conduct probation searches of a residence are prohibited from searching personal property unless they have probable cause to believe the item belongs to the probationer. He also contended that the officers lacked probable cause to believe the backpack belonged to Black.

It is settled that officers may search a home pursuant to the terms of a resident's probation or parole only if they have probable cause to believe he lives there. As the Ninth Circuit explained, "Law enforcement officers are allowed to search a parolee's residence, but they must have probable cause to believe that they are *at* the parolee's residence."¹

This does not mean, as Bolivar argued, that officers who are conducting a search are prohibited from opening containers unless they have probable cause to believe it belongs to the probationer or parolee. Instead, only reasonable suspicion is required. As the court in *Bolivar* explained, "Once police officers properly enter a residence pursuant to a probation search, they need only a reasonable suspicion to conclude that the probationer owns, controls, or possesses a particular item within the probationer's residence in order to search that item."

Accordingly, the court ruled that, because the officers who were searching Black's apartment had reasonable suspicion to believe the backpack belonged to her, the search of the backpack was lawful.

Comment

In determining whether there is reasonable suspicion to believe that a closed container belongs to a probationer or parolee, the courts often note whether such a container is normally possessed by men or women. And if, for example, the parolee was a

¹ See *Motley v. Parks* (9th Cir. 2005) 432 F.3d 1072, 1080.

man, and the item was something that only women commonly possess, the officers would probably not have reasonable suspicion.² This was not an issue in *Bolivar* because the backpack was gender-neutral.³ POV

² See *People v. Baker* (2008) 164 Cal.App.4th 1152, 1160.

³ See *People v. Boyd* (1990) 224 Cal.App.3d 736, 745.