

In re Elizabeth G.

(April 12, 2001) __ Cal.App.4th __

ISSUE

Did exigent circumstances justify the occupation and securing of a home pending issuance of a search warrant?

FACTS

At about 10:44 p.m., Salinas police responded to a report of a shooting. Upon arrival, officers found two shooting victims, both teenagers. One of them was dead. Officers also found shell casings from two different weapons. Two witnesses reported seeing a full-size, newer model Chevrolet pickup truck in the area at about the time of the shooting. One of the witnesses heard the shots and saw the truck “driving slowly with its headlights off.”

Just after 11 p.m., an officer spotted a truck matching that description about one mile from the crime scene. The officer stopped the truck and arrested the driver who was identified as Juan Manual G., a “certified” gang member. Officers searched the truck but did not find any guns. When Juan told the officer he had just left his home, and that he had dropped off someone named “George” near the house, other officers were dispatched there to secure the house pending issuance of a search warrant, presumably a warrant to search for the guns.

The officers arrived at about 12:15 a.m. They found four people in the house, one of whom was Elizabeth G., Juan’s sister. The officers ordered the four occupants into the living room and told them they would not be permitted to enter any other rooms in the house without a police escort until the search warrant was executed.

While waiting for the warrant to arrive, Elizabeth made several requests to do some laundry. The officers considered this a rather unusual request under the circumstances. When they refused her request, Elizabeth left the house.

She returned at about 5:30 a.m. and told officers she wanted to get some of her belongings. An officer then escorted her into her bedroom where she gathered some clothing and toiletries. At this point, she asked the officer if she could take her laundry basket with her “so that she could do her laundry.” The officer said okay but that he would have to inspect the laundry before giving it to her. She then “picked up two items of clothing and dropped them back into the basket, saying, ‘See, there’s nothing in here.’ [The officer] insisted on conducting a more thorough search. In response, [Elizabeth] again picked up two items and dropped them back into the basket.”

As the officer was looking at the laundry, he noticed a neatly-folded blue towel that “appeared to have something inside of it.” As he started to reach for the towel, Elizabeth, who was described as “nervous and agitated,” grabbed it. She and the officer then engaged in a “kind of tug-of-war” over the towel. Finally, Elizabeth said she would just leave the laundry basket there. When the search warrant arrived, officers searched the laundry basket and found the guns that were used in the shootings.

Based, at least in part, on the discovery of the guns and Elizabeth's suspicious conduct inside the house, a juvenile court judge sustained an allegation that she was an accessory after the fact in the murder and shooting.

DISCUSSION

Elizabeth claimed the officers' warrantless entry into her house and their act of securing the premises pending issuance of a search warrant was unlawful and, therefore, the guns and the officers' observations of her suspicious conduct should have been suppressed. The People contended the officers' actions were justified under the doctrine of exigent circumstances.

The term "exigent circumstances" means an emergency situation or, more specifically, a situation in which there is a "compelling need for official action and no time to secure a warrant."¹ When exigent circumstances exist, officers may, without obtaining a warrant, do those things that are reasonably necessary to abate the emergency.²

The exigent circumstances test

In determining whether officers' actions were justified under the exigent circumstances doctrine, the courts balance the potential danger the officers were confronting against the intrusiveness of their actions. If the reasonably-foreseeable danger outweighed the intrusiveness, a warrant is not required.

In *Illinois v. McArthur*³ the U.S. Supreme Court ruled this is also the test for determining whether securing a residence pending issuance of a search warrant is lawful. Specifically, the Court ruled that the lawfulness of such actions depends on balancing justification and intrusiveness.

Justification for securing: The extent to which officers are justified in securing a residence to prevent the destruction of evidence depends on three things:

(1) Probable cause: There must be probable cause to believe there was, in fact, evidence of a crime inside the home.⁴

(2) "Good reason": Officers must be aware of specific facts that constitute "good reason" to believe that the evidence would be destroyed if they failed to secure the premises while seeking a warrant.⁵

(3) Seriousness of the crime: The more serious the crime under investigation, the more weight will be given to the justification for securing the residence.

Intrusiveness: Against the officers' justification for securing the premises, courts will consider the manner in which they did it. There are essentially two ways of securing residence.

Securing from the outside: The least intrusive is to post officers at all the entrances and make sure no one enters until the search warrant arrives.⁶ It appears to be the rule that if officers merely secure the premises from the outside, the action will be lawful even if the crime under investigation is not particularly serious so long as there is probable cause and "good reason," as discussed above.⁷

Securing from the inside: The other way of securing the premises is to actually enter—forcibly, if necessary—round up everyone inside, and either order them out or, like the officers in *Elizabeth G.*, allow them to remain but require them to stay in one room so that officers can make sure they don't hide or destroy anything. Even though officers do not begin searching the premises until the warrant is issued, this is a fairly intrusive action which will probably require a greater justification; e.g., the crime under investigation was relatively serious.

Applying the test to *Elizabeth G.*

In applying these circumstances to the facts of the case, the court noted the following:

Justification for securing: The court ruled “the police had probable cause to believe that evidence of the murder would be found inside the minor’s home.” This was mainly because the shootings had occurred just minutes earlier; the main suspect in the shootings, Juan Manuel G., lived at the house and had gone there immediately after the shootings; the firearms used in the shootings had not yet been recovered; and because casings from two different weapons were found at the scene, it was reasonable to believe there were at least two shooters, meaning that one of them was probably still at large. “These factors,” said the court, “gave rise to probable cause to believe that firearms and other evidence, including Juan Manuel G.’s accomplice, would be found inside the minor’s home.”

Next, the court ruled there was “good reason” to believe that someone inside the house would, if given the opportunity, destroy any evidence or, at least, wipe any fingerprints off the guns. Said the court, “The police reasonably could have believed that Juan Manuel G. had entered the residence and instructed someone to destroy or hide evidence, or that Juan Manuel G.’s accomplice was inside the residence and that he or she would destroy or hide evidence in anticipation of a search.”

In addition to the seriousness of the crimes under investigation, the court noted that because the firearms used in the shootings had not been recovered, “there was a reasonable concern for officer safety.”

Intrusiveness: Against these significant justifications for securing the premises from the inside, the court weighed the intrusiveness of the officers’ actions. Although it is true the Salinas officers, unlike the officers in *McArthur*, forcibly entered the premises and remained there until the warrant arrived, the court ruled these circumstances were justified given the very strong need for such action. As the court noted, the officers only entered the premises—they did not conduct a search for evidence, and they did not arrest anyone. In addition, their seizure of the house lasted for a reasonable amount of time, about five hours. As the court noted, “There is no indication that the duration of the seizure was longer than reasonably necessary for the police, acting with diligence, to obtain the warrant.”

Consequently, the court ruled the officers’ actions were justified under the doctrine of exigent circumstances.

¹ See *Michigan v. Tyler* (1978) 436 US 499, 509; *People v. Ortiz* (1995) 32 Cal.App.4th 286, 291-2; *People v. Avalos* (1988) 203 Cal.App.3d 1517, 1521; *People v. Baird* (1985) 168 Cal.App.3d 237, 241; *People v. Dean* (1974) 39 Cal.App.3d 875, 885-6; *U.S. v. James* (7th Cir. 1994) 40 F.3d 850, 863 [“The police were not acting within a controlled environment but were facing circumstances that were that were rapidly progressing and, for the most part, out of their control.” Quoting from *U.S. v. Foxworth* (1993) 8 F.3d 540, 544]; *People v. Coddington* (2000) 23 Cal.4th 529, 579-81 [officers were acting diligently in uncertain situation].

² See *Illinois v. McArthur* (2001) __ US __.

³ (April 12, 2001) __ US __.

⁴ See *Illinois v. McArthur* (2001) __ US __.

⁵ See *Illinois v. McArthur* (2001) __ US __.

⁶ **NOTE:** Although officers do not forcibly enter the premises, they may enter if a resident requests permission to enter for a specific reason (such as obtaining a jacket), and agrees that officers may accompany him while he is inside. See *Illinois v. McArthur* (2001) __ US __.

⁷ See *Illinois v. McArthur* (2001) __ US __.