

People v. Hammett

(2000) 9th Cir. January 10, 2001) __ F.3d __

ISSUES

(1) Did officers violate the Fourth Amendment when they walked onto the defendant's property and, thereafter, walked around his home? (2) Was a search warrant invalid as the result of a mistake made by the affiant?

FACTS

As part of a marijuana eradication project on the Island of Hawaii, two officers in a helicopter were looking for signs of marijuana plants. While flying at about 500 feet they crossed over Hammett's property which was located in a "wooded, secluded area." Access to the house from the street would have been made by driving down a dirt road that Hammett had marked with a no trespassing sign and an obstruction consisting of a chain strung between two steel poles. The house, itself, was constructed of overlapping sheets of corrugated metal with a "semitransparent" or "translucent" plastic roof."

As the officers were passing over, they happened to look through the semitransparent roof and noticed the inside the house, apparently the entire inside, was green in color; they described it as a "distinct green color." They also noticed some black, circular objects. Although they were not sure, they were thinking that the green objects might be marijuana plants, and the black objects could have been growing pots. So they decided to investigate further.

After landing on an adjacent lot about 150 yards from Hammett's home, the officers walked over to the house. In doing so, they did not encounter any fences or other obstructions. And because they did not approach the house from the dirt road, they did not see the no trespassing sign or the chain over the entrance to the road.

The officers knocked on the door and shouted "police," hoping to talk with the occupants, but no one responded. They then decided to walk around the house to see if there was a back entrance or any occupants in the back. After walking almost completely around the house, they noticed a crack, almost an inch wide, between two of the pieces of corrugated steel. Standing about five inches from the crack, the officers looked through it and saw a large number of marijuana plants.

The officers then relayed this information to a detective at their command post who used it to obtain a warrant to search the house. The search yielded 2430 marijuana plants and 3.6 pounds of marijuana.

It turned out, however, there was an error in the affidavit: the detective wrote that the officers were able to identify the marijuana plants from the air when, as noted, the officers only *suspected* there were marijuana plants inside the house. The affiant did, however, explain that the officers' walked around the house and saw marijuana through the gap.

Hammett was convicted of marijuana cultivation.

DISCUSSION

Hammett contended the marijuana should have been suppressed for two reasons: (1) the officers were trespassing on his property when they saw the marijuana through the gap in the wall, and (2) the erroneous information in the affidavit rendered the warrant invalid.

Trespassing

According to Hammett, there were actually two unlawful trespasses: (1) the officers' initial entry onto his land, and (2) their walking around his home.

Entry onto the land: As noted, the helicopter did not land on Hammett's property; it landed on an adjacent lot. Consequently, the landing could not be challenged by Hammett.

He did, however, argue that the officers' act of walking onto his property and up to his front door constituted an unlawful search. The court responded that officers, like everyone else, are free to walk upon a normal access route to the front door of a home for the purpose of speaking with the residents.¹ It is not clear whether the officers used a normal access route or whether a "normal" route even existed.² In any event, the issue was not raised and the court did not address it.

Hammett did, however, contend the officers' entry onto his property constituted an illegal trespass because he had posted no trespassing signs. The court noted there is some authority for the proposition that an officer cannot lawfully walk up to the front door of a home if he has been expressly ordered to stay off the property. But the posting of a sign does not constitute an express order.³ Furthermore, the court pointed out the officers did not see the sign, and it rejected, as "unsubstantiated," the argument that the officers intentionally avoided it.

WALKING AROUND THE HOUSE: Hammett also argued the officers violated the Fourth Amendment when they left the front door and walked around his house. It seems to be the law that officers who are on a normal pathway to a person's home may depart somewhat from the path provided the departure was neither substantial nor unreasonable.⁴

Although there is little law on the subject of what constitutes a substantial or unreasonable departure, the issue was recently discussed by the California Supreme Court. In *People v. Camacho*,⁵ the court indicated that if officers who are conducting a lawful investigation knocked on the door to a home but received no response, and if they still wanted to locate an occupant, they would probably be permitted to depart from the normal pathway for the purpose of doing so.

The court in *Hammett* came to a similar conclusion. Said the court, "[A]n officer may, in good faith, move away from the front door when seeking to contact the occupants of a residence."⁶ Thus, the court ruled "the officers' actions in the present case were entirely within the purview of the law."

Errors in affidavit

As noted, the detective who wrote the affidavit said the officers were able to identify the marijuana plants from the air when, in fact, they could not make a positive identification until they looked through the gap in the wall. Hammett contended this error invalidated the warrant.

A search warrant will not be invalidated merely because some information in the affidavit was incorrect.⁷ Instead, the affiant must have intentionally or recklessly, (1) included false information that was necessary to establish probable cause, or (2) omitted information that would have negated probable cause.⁸

In *Hammett*, the court ruled it appeared the error was the merely negligent and, in any event, probable cause remained after the erroneous information was removed from the affidavit, so Hammett was not prejudiced by the error.

Hammett's conviction was affirmed.

¹ Citing *Davis v. U.S.* (9th Cir. 1964) 327 F.2d 301. ALSO SEE *People v. Camacho* (2000) 23 Cal.4th 824, 836; *California v. Ciraolo* (1986) 475 US 207, 223 [dis.opn. of Powell, J.]; *Oliver v. United States* (1984) 466 US 170, 183, fn.15; *United States v. Karo* (1984) 468 US 705, 712-3.

² **NOTE:** At one point the court said there was “an unobstructed path from the landing site to the home.” It is not clear, however, whether a real “path” existed or whether it was simply a strip of land without obstructions.

³ **NOTE:** The posting of a no trespassing sign is relevant to determining whether a statutory trespass occurred in California only if the owner of the property also verbally requested the person to leave or the person removed or otherwise tampered with a lock on a gate. See Penal Code § 602(k).

⁴ See *People v. Thompson* (1990) 221 Cal.App.3d 923, 943-4.

⁵ (2000) 23 Cal.4th 824, 836 [“Indeed, had the officers on their arrival at defendant’s house heard a raucous party, confirming the anonymous complaint that brought them there in the first place, and had they then banged on the front door to no avail, their entry into the side yard in an attempt to seek the source of the noise would likely have been justified.”],

⁶ Citing *U.S. v. Daoust* (1st Cir. 1990) 916 F.2d 757, 758 [“(T)here is nothing unlawful or unreasonable about going to the back of the house to look for another door, all as part of a legitimate attempt to interview a person.”]; *U.S. v. Anderson* (8th Cir. 1977) 552 F.2d 1296, 1300.

⁷ See *Burke v. Superior Court* (1974) 39 Cal.App.3d 28, 35; *People v. Schmidt* (1978) 83 Cal.App.3d 968, 975; *People v. Barrett* (1969) 2 Cal.App.3d 142, 148.

⁸ See *Franks v. Delaware* (1978) 438 US 154; *People v. Rothen* (1988) 203 Cal.App.3d 684, 689-90; *People v. Wilson* (1986) 182 Cal.App.3d 742, 747-8; *People v. Aston* (1985) 39 Cal.3d 481, 497-8. **ALSO SEE** *Maryland v. Garrison* (1987) 480 US 79, 85 [“The validity of the warrant must be assessed on the basis of the information that the officers disclosed, or had a duty to discover and to disclose, to the issuing Magistrate.”].