People v. Hoag
(2000) 83 Cal.App.4th 1198

ISSUES

(1) Can a defendant challenge an alleged knock-notice violation if he was not at home when the entry was made? (2) Did officers substantially comply with the knock-notice requirements?

FACTS

Placer County sheriff's deputies obtained a warrant to search Hoag's home, apparently for drugs. Three people lived in the house: Hoag, Elizabeth Cunnagin, and their five-year old daughter. Shortly before deputies arrived to execute the warrant, Hoag left the house to take his daughter to the babysitter. So the only occupant at the time they entered was Cunnagin, a nursing student who was in the process of studying for finals.

The deputies arrived shortly after 7 p.m. Upon arrival, they knocked on the door and announced, "Sheriff's Department, search warrant, we demand entry." There was no response. A second announcement was made; still no response. A deputy tried the door handle and found the door was unlocked, so he opened it. The search team then entered.

The time lapse between the first announcement and the entry was estimated at 15 to 20 seconds. When the deputies entered, they found Cunnagin "sitting on or getting up from a couch in the living room." Cunnagin was detained while officers conducted the search, which netted a sufficiently large quantity of marijuana in the garage to charge Hoag with possession for sale.

DISCUSSION

Hoag contended the deputies violated the knock-notice rule when they made their entry and, therefore, the marijuana should be suppressed. The People responded by arguing that even if there had been a knock-notice violation, Hoag did not have standing to challenge the deputies' entry.

Standing

As a general rule, a defendant has standing to challenge a search only if he was personally affected by it.[1] Although Hoag certainly had standing to challenge the search of his home, the People argued he did not have standing to challenge the method by which the deputies entered because he was not present when entry was made and was, therefore, unaffected by it. The court disagreed,

The court noted the knock-notice rule serves essentially three purposes: (1) the protection of the privacy interests of the suspect and any innocent people who may be on the premises; (2) the prevention of violent confrontations resulting from an occupant's unawareness that the people who are entering have a legal right to do so; and (3) the prevention of unnecessary damage to the premises resulting from a forced entry.[2]

With these purposes in mind, the court ruled that although Hoag was not home when deputies entered, he nevertheless had a sufficient interest in the manner in which they entered his home to enable him to challenge the legality of the entry. Said the court, "[D]efendant had a legitimate expectation of privacy grounded in his right to exclude others, to be free of illegal police invasion of his privacy in his residence and to expect not only privacy for himself, but for his family and invitees. [Furthermore], defendant had a sufficient personal interest in the safety of the mother of his child, who was present when the officers entered his residence, to allow him to challenge the mode of entry."[3]

Knock-notice violation?

Having determined that Hoag had standing to challenge the entry, the question was whether the deputies did, in fact, violate the knock-notice rule. It is settled that officers must comply with the knock-notice requirements before making a non-consensual entry into a residence to execute a search warrant unless there was good cause for noncompliance.[4]

To fully comply with the knock-notice rule officers must do the following:

(1) Knock: Knock or take other action to get the attention of occupants.[5]

(2) Authority: Announce their authority; e.g., "Hayward police!"[6]

(3) Purpose: Announce their purpose; e.g., "Search warrant! Open the door!"[7]

(4) Wait for refusal: Do not enter until the occupants have expressly refused to admit them or until a sufficient amount of time has passed so that a refusal may be reasonably inferred.[8]

Hoag contended the deputies violated the "wait for refusal" requirement because they entered after waiting only 15 to 20 seconds. not enough time to constitute an implied refusal.

The court did not, however, rule on this issue. Instead, it noted that even if the deputies had not waited long enough, there would be no reason to suppress evidence resulting from the knock-notice violation if the deputies had complied "substantially" with the requirements.

Although there are no clear-cut rules for determining when "substantial" compliance occurs, the court noted the basic issue is whether officers took steps to eliminate or reduce the risks to persons and property that are inherent when a non-consensual entry is made. If so, the essential purpose of the knock-notice rule has been served and there is no justification for suppressing evidence.

With this in mind, the court ruled the deputies had, in fact, complied substantially with the knock-notice requirements because, (1) they had knocked twice and announced their authority and purpose, (2) their entry was made with restraint , and (3) they did not cause damage to the house. Said the court, "The officers approached the front door of the residence and knocked and announced their presence and purpose twice. They waited 15 to 20 seconds before proceeding further. They turned the handle on the unlocked door and opened it slightly before opening it all the way and entering. The officers did not rush the occupant or destroy property. There is nothing in the record to suggest either the occupant or the officers were ever at risk."

Furthermore, the court pointed out the 15 to 20 second wait was at least arguably on the borderline between reasonable and unreasonable under the circumstances; which were, (1) the house was relatively small (the larger the house, the longer officers may be required to wait because it may take occupants longer to respond to a knock), (2) it was early evening so the deputies could reasonably believe the occupants were awake and would respond fairly quickly, and (3) no one inside the house said or did anything to acknowledge the deputies' presence.

Accordingly, Hoag's conviction was affirmed.

PROSECUTOR'S NOTE

If a defendant seeks the suppression of evidence based on an alleged knock-notice violation, consider raising the issue of inevitable discovery. For information on this issue, see the concurring opinion of Justice Morrison in Hoag.

[1] See Rakas v. Illinois (1978) 439 US 128, 148; Rawlings v. Kentucky (1980) 448 US 98, 104; United States v. Payner (1980) 447 US 727, 73; Vernonia School Dist. v. Acton (1995) 515 US 646, 654; Minnesota v. Carter (1998) 525 US __ [142 L.Ed.2d 373, 379]; People v. Jenkins (2000) 22 Cal.4th 900, 972; People v. Roybal (1998) 19 Cal. 4th 481, 707; In re Baraka H. (1992) 6 Cal.App.4th 1039, 1044.

[2] See Wilson v. Arkansas (1995) 514 US 927, 931; People v. Peterson (1973) 9 Cal.3d 717, 723; People v. Aguilar (1996) 48 Cal.App.4th 632, 637.

[3] Quoting from Mazepink v. State (1999) 987 S.W.2d 648, 652. NOTE: Although there is some authority to the contrary (see People v. Pompa (1989) 212 Cal.App.3d 1308, 1311; People v. Medina (1968) 265 Cal.App.2d 709, 708; People v. Sanchez (1969) 2 Cal.App.3d 467, 473-4), the court's reasoning in Hoag seems most persuasive.

[4] See Wilson v. Arkansas (1995) 514 US 927; Penal Code § 1531; People v. Zabelle (1996) 50 Cal.App.4th 1282, 1285-7; People v. Hall (1971) 3 Cal.3d 992, 997; People v. Hoxter (1999) 75 Cal.App.4th 406, 410-11 [re what constitutes "breaking"]. NOTE: Technically, the knock-notice rule applies only if officers "break" into the a "house" for the purpose of executing a search warrant. The term "break," however, includes any non-consensual entry, even an entry through an open door. See People v. Baldwin (1976) 62 Cal.App.3d 727, 739. ALSO SEE Sabbath v. United States (1968) 391 US 585, 590; People v. Jacobs (1987) 43 Cal.3d 472, 480; People v. Rosales (1968) 68 Cal.2d 299, 303 [knock-notice required when officers enter after opening an unlocked closed door]; People v. Peterson (1973) 9 Cal.3d 717, 722 ["The officers were required to comply with (Penal Code § 1531) although the doorway was barred only by an unlocked, transparent screen door."]; People v. Bennetto (1974) 10 Cal.3d 695, 699 ["A nonconsensual entry by means of a passkey is a . breaking . . . "]. NOTE: The term "house" generally applies to any structure in which a lawful occupant had a reasonable expectation of privacy, such as a garage. See People v. Franco (1986) 183 Cal.App.3d 1089, 1093; People v. Bruce (1975) 49 Cal.App.3d 580, 587; People v. Gallo (1981) 127 Cal.App.3d 828, 839; People v. Bigham (1975) 49 Cal.App.3d 73, 81; People v. Superior Court (Arketa) (1970) 10 Cal.App.3d 122. However, a store or other business which is open to the public is not a "house." See People v. Lovett (1978) 82

Cal.App.3d 527, 532; People v. James (1971) 17 Cal.App.3d 463, 467; People v. Pompa (1989) 212 Cal.App.3d 1308, 1312; People v. Lee (1986) 186 Cal.App.3d 743, 747.

[5] See People v. Ramsey (1988) 203 Cal.App.3d 671, 680; Duke v. Superior Court (1969) 1 Cal.3d 314, 319; People v. Franco (1986) 183 Cal.App.3d 1089; People v. Maita (1984) 157 Cal.App.3d 309, 321.

[6] See Duke v. Superior Court (1969) 1 Cal.3d 314, 319; People v. Ramos (1988) 203 Cal.App.3d 671, 680; People v. Alaniz (1986) 182 Cal.App.3d 903, 906; Jeter v. Superior Court (1983) 138 Cal.App.3d 934, 936.

[7] See People v. Alaniz (1986) 182 Cal.App.3d 903; People v. Neer (1986) 177 Cal.App.3d 991, 994.

[8] See Jeter v. Superior Court (1983) 138 Cal.App.3d 934, 936; People v. Neer (1986) 177 Cal.App.3d 991, 996; People v. Montenegro (1985) 173 Cal.App.3d 983, 989.