

Recent Case Report

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Kentucky v. King

(2011) __ U.S. __ [2011 WL 1832821]

Issue

If officers make a warrantless entry into a home to prevent the destruction of evidence, under what circumstances will the entry be deemed unlawful on grounds that it was the officers, themselves, who created the threat?

Facts

In the course of a controlled buy operation outside an apartment complex in Lexington, Kentucky, an undercover officer purchased crack cocaine from a man who immediately started “moving quickly” toward the breezeway in one of the buildings in the complex. When officers arrived in the breezeway, they saw there were two apartments into which the man might have entered. Having smelled a “very strong” odor of marijuana coming from one of the apartments, the officers decided it would be a good place to start so they “banged” on the door and loudly announced “This is the police” or “Police, police, police.” Immediately afterwards, they heard the sounds of “people inside moving” and other indications that the occupants were about to destroy the drugs. So, after announcing they were going to enter, they kicked in the door.

Upon entering, the officers detained three people in the front room, then conducted a protective sweep of the apartment. During the sweep, they found marijuana and cocaine which resulted in criminal charges against one of the occupants, Hollis King.¹ The Kentucky Supreme Court, however, ordered the evidence suppressed under the doctrine known as “police-manufactured” (or “do-it-yourself”) exigent circumstances. Specifically, the court ruled that, even if officers reasonably believed that the occupants of a residence were about to destroy evidence, a warrantless entry violates the Fourth Amendment if the threat to the evidence was produced by the actions of the officers themselves; i.e., the officers knew, or should have known, that their actions would have motivated the occupants to immediately destroy the evidence.

The court then concluded that the exigency here was “police-manufactured” because the officers should have known that drug traffickers would try to destroy their drugs upon hearing officers banging on the door. Accordingly, it ruled the entry was unlawful. The State of Kentucky appealed to the United States Supreme Court.

Discussion

Under the doctrine of exigent circumstances, officers may forcibly enter a residence if they reasonably believed that the occupants were about to destroy evidence of a crime. Over the years, however, courts throughout the country—including California—have generally refused to apply this rule if the threat to the evidence was largely due to the

¹ **NOTE:** It turned out that the man who sold drugs to the undercover officer had entered the other apartment; he was arrested later.

actions of the officers; i.e., the threat was “police-manufactured.”² In most cases, the courts ruled that threats were manufactured when (1) the officers had probable cause to believe there was evidence on the premises; (2) they announced their presence without having an overriding reason for doing so; and (3) they knew, or should have known, that their announcement would provide the occupants with a motive to immediately destroy the evidence. As noted earlier, the Kentucky Supreme Court essentially applied this test and ruled that the threat to the evidence had, in fact, been manufactured by the officers because it was reasonably foreseeable that their act of “banging” on the door and loudly announcing “This is the police” or “Police, police, police” provided the occupants with sufficient motivation to destroy the drugs.

Although the United States Supreme Court agreed that a manufactured threat to evidence cannot justify a warrantless entry, it disagreed with the Kentucky Supreme Court that a threat will be deemed “manufactured” whenever the officers’ words or actions were reasonably likely to cause the occupants to destroy the evidence. Instead, it essentially ruled that a threat is “manufactured” by officers only if (1) they announced or implied that they were about to enter the premises, and (2) such an entry would have been unlawful under the Fourth Amendment. Said the Court:

[T]he exigent circumstances rule justifies a warrantless search when the conduct of the police preceding the exigency is reasonable [within the meaning of the Fourth Amendment]. Where, as here, the police did not create the exigency by engaging or threatening to engage in conduct that violates the Fourth Amendment, warrantless entry to prevent the destruction of evidence is reasonable and thus allowed.

The Court added that it was rejecting Kentucky’s “reasonable foreseeability” test because, among other things, “whenever law enforcement officers knock on the door of premises occupied by a person who may be involved in the drug trade, there is *some* possibility that the occupants may possess drugs and may seek to destroy them.”

The question, then, was whether the officers’ banging” on the door and loudly announcing their presence constituted a threat to make an unlawful entry. The Court ruled it did not, saying “we see no evidence that the officers either violated the Fourth Amendment or threatened to do so prior to the point when they entered the apartment.” Of particular importance, the Court pointed out that “[t]here is no evidence of a ‘demand’ of any sort, much less a demand that amounts to a threat to violate the Fourth Amendment.” The Court did, however, remand the case to Kentucky for a determination of whether, based on the sounds emanating from the apartment when they knocked, the officers reasonably believed that the occupants were about to destroy drugs. POV

² See, for example, *People v. Bellizzi* (1995) 34 Cal.App.4th 1849, 1852 [“The officers resorted to a ruse with a hotel employee in order to get the door open, then observed appellant go into a panic at the sight of an armed stranger in plain clothes”]; *U.S. v. Richard* (5th Cir. 1993) 994 F.2d 244, 248 [“In considering claims of manufactured exigency, we distinguish between cases where exigent circumstances arise naturally.”]; *U.S. v. Chambers* (6th Cir. 2005) 395 F.3d 563, 566 [“[L]aw enforcement officers must be responding to an unanticipated exigency rather than simply creating the exigency themselves.”]; *U.S. v. Atchley* (6th Cir. 2007) 474 F.3d 840, 850-51 [“Exigent circumstances must be unanticipated, meaning that an officer cannot manipulate a situation so as to create the exigency.”].