U.S. v. Nora

(9th Cir. 2014) 765 F.3d 1049

Issue

Did exigent circumstances justify a warrantless entry into a home to apprehend a feeing suspect who was armed?

Facts

Two uniformed LAPD officers were patrolling a neighborhood in South Central L.A. when they saw three men standing on the sidewalk in front of a house. The officers decided to contact the men but, as they approached, two of them—Johnny Nora and Andre Davis—stepped onto the front porch of the house. While standing on the sidewalk, the officers attempted to engage Nora and Davis in a "casual conversation," but Nora suddenly "spun toward the front door" and "rushed" into the house, ignoring the officers' command to stop. As Nora spun around, the officers could see that he was holding blue-steel semiautomatic handgun in his right hand. Additional officers soon arrived, the house was surrounded, and everyone in the house was ordered to exit.

Nora complied and was arrested for possessing a loaded firearm in a public place.[1] Officers then ran his criminal history and learned that he was a convicted felon. They also learned that he lived in the house, so they sought a warrant to search the premises based their observations outside the house, statements made by Nora after he exited, and the discovery of marijuana and cash in Nora's possession when he was searched incident to the arrest. A judge issued the warrant and, in the course of the search, officers found heroin, methamphetamine, cocaine, four semiautomatic handguns, and over $9,000 in cash. Nora's motion to suppress the evidence was denied and he pled guilty to possessing cocaine base with intent to distribute. He was sentenced to 122 months in prison.

Discussion

On appeal to the Ninth Circuit, Nora argued that the evidence discovered in his house should have been suppressed for the following reasons.

PROBABLE CAUSE TO ARREST: Nora's first argument was that the officers lacked probable cause to arrest him for possession of a "loaded" handgun in a "public" place because he was on his private property when he was arrested and the officers had no way of knowing the gun was loaded. As for being on private property, the court pointed out that the officers first saw Nora standing on a public sidewalk then, moments later, they saw him standing on the porch holding a gun. Said the court, "Given the short interval during which the officers lost sight of Nora, they had reasonable grounds to believe that the firearm they saw him holding on the porch had been in his hand just moments earlier on the sidewalk as well." The court also ruled the officers had probable cause to believe the handgun was loaded because semi-automatic handguns are "principally used for self-defense and protection" and these objectives can usually be served only if the gun was loaded.

ARREST INSIDE THE HOUSE: Nora next argued that the officers, by ordering him to exit the house, had effectively arrested him *inside* the house; and it was therefore an illegal arrest because the United States Supreme Court ruled in *New York v. Payton* that an entry

[1] Pen. Code § 25850(a).

into a suspect's home for the purpose of arresting him requires exigent circumstances.[2] The government argued that there were exigent circumstance: *Nora was holding a deadly weapon*. But the court summarily rejected the argument, saying that possession of a loaded firearm in a public place does not "present the kind of immediate threat to the safety of officers or others necessary to justify a disregard of the warrant requirement."

THE SEARCH WARRANT: As noted, the officers did not physically enter Nora's house until they had obtained a search warrant. So Nora argued that, because the court had ruled the arrest inside his house was unlawful, the warrant was invalid because it was based on evidence that was seized as the result of the unlawful arrest. The court agreed and ruled that "the entire warrant was invalid and all evidence seized pursuant to it must be suppressed."

Comment

There are four glaring problems with the Ninth Circuit's rulings. First, it is incomprehensible that a court would rule that a suspect who is fleeing from the police does not present an immediate threat to the safety of officers and others when, holding a semi-automatic handgun, he runs into a house and shuts the door—thereby providing himself with a clear shot at anyone who opens the door and virtually everyone on the street. The court's failure to appreciate the dangerousness of the situation was demonstrated by its inane conclusion that the officers could not have felt threatened by Nora because he did not point his gun at them and, moreover, he had not actually threatened to kill them. Said the court, "True, the officers saw Nora in possession of a handgun. But Nora never aimed the weapon at the officers or anyone else, and the officers had no evidence that he had used or threatened to use it." We are fairly certain that these words will make most people cringe.

Second the Ninth Circuit ignored the fact that the officer's entry into the house was justified by a second exigent circumstance: "hot pursuit." Specifically, the Supreme Court ruled that a warrantless entry into a home is permitted if the following circumstances existed: (1) the officers had probable cause to arrest the suspect, (2) the arrest was "set in motion" in a public place or other place outside the doorway of his home,[3] and (3) the suspect responded by running inside. As the Supreme Court summarized the rule in *U.S. v. Santana*. "[A] suspect may not defeat an arrest which has been set in motion in a public place by the expedient of escaping to a private place."[4]

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[2] See *Payton v. New York* (1980) 445 U.S. 573; *People v. Ramey* (1976) 16 Cal.3d 263.

[3] **NOTE**: The front porch of the arrestee's home is a "public place" for purposes of enforcing *Payton*." See *United States v. Santana* (1976) 427 U.S. 38, 42 [an arrestee at her doorway "was not in an area where she had any expectation of privacy"]; *Illinois v. McArthur* (2001) 531 U.S. 326, 335 ["This Court has held that a person standing in the doorway of a house is 'in a public place,' and hence subject to arrest without a warrant permitting entry of the home."]; *U.S. v. Whitten* (9th Cir. 1983) 706 F.2d 1000, 1015 ["A doorway, unlike the interior of a hotel room, is a public place."].

[4] (1976) 427 U.S. 38, 43. Edited. Also see *People v. Superior Court (Quinn)* (1978) 83 Cal.3d 609, 615-16 ["Because Lee disregarded Gamberg's order to halt, Gamberg had no reasonable choice but to pursue him wherever he went to effect the arrest."]; *People v. Mendoza* (1986) 176 Cal.App.3d 1127, 1130-31; *People v. Abes* (1985) 174 Cal.App.3d 796, 807 ["Sergeant McCormick had probable cause to arrest her and when he started up the stairs, an arrest was set in motion."]; *People v. Spain* (1984) 154 Cal.App.3d 845, 849 ["The officers properly followed her in 'hot pursuit,' even if the pursuit was brief."].

The court in *Nora* attempted to distinguish *Santana* by pointing out that Nora was wanted for merely a misdemeanor. But this makes no sense because the Supreme Court in *Stanton v. Sims* flatly rejected the argument that "the seriousness of the crime is equally important in cases of hot pursuit."[5] In fact, the Court quoted the following from the California Court of Appeal: "Where the pursuit into the home was based on an arrest set in motion in a public place, the fact that the offenses justifying the initial detention or arrest were misdemeanors is of no significance in determining the validity of the entry without a warrant."[6] Tellingly, the court in *Nora* did not even cite *Stanton*.

Third, the court in *Nora* spent a great deal of time trying to avoid the United States Supreme Court's ruling in *New York v. Harris* that the only remedy for a violation of *Payton* is the suppression of evidence that was found *inside* the house—not evidence obtained from the arrestee after he had been removed from the premises. As the Court explained in *Harris*, "[W]here the police have probable cause to arrest a suspect, the exclusionary rule does not bar the State's use of a statement made by the defendant outside of his home, even though the statement is taken after an arrest made in the home in violation of *Payton*."[7] The Court in *Harris* could not have been clearer on this issue, which explains why the court in *Nora* tried so hard—and so unsuccessfully—to undermine it.

Fourth, the court completely ran off the tracks when it said that a suspect who is arrested in his home has a right to "collect himself" (whatever that means) before he can be taken into custody. Here are the court's words: "When the police unreasonably intrude upon [the privacy of a home] by ordering a suspect to exit his home at gunpoint, the suspect's opportunity to collect himself before venturing out in public is certainly diminished, if not eliminated altogether." The court might think this is a wonderful idea that should be incorporated into the Bill of Rights, but that does not change the fact that, as things stand now, it is nothing but empty rhetoric.

For these reasons, we expect that the decision in *Nora* will be relegated to the file marked "Unserious and Untethered" interpretations of the law. POV

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[5] (2013) __ US __ [134 S.Ct. 3, 6].

[6] *People v. Lloyd* (1989) 216 Cal.App.3d 1425, 1430.

[7] (1990) 495 U.S. 14, 21. Also see *People v. Marquez* (1992) 1 Cal.4th 553, 569 ["[T]he lack of an arrest warrant does not invalidate defendant's arrest or require suppression of statements he made at the police station."]; *People v. Watkins* (1994) 26 Cal.App.4th 19, 29 ["Where there is probable cause to arrest, the fact that police illegally enter a home to make a warrantless arrest neither invalidates the arrest itself nor requires suppression of any postarrest statements the defendant makes at the police station."]; *People v. Ford* (1979) 97 Cal.App.3d 744, 748 ["[I]t is the unlawful *intrusion* into the dwelling which offends constitutional safeguards and which is therefore at the heart of the matter, rather than the arrest itself."]; *U.S. v. Crawford* (9th Cir. 2004) 372 F.3d 1048, 1056 ["[T]he presence of probable cause to arrest has proved dispositive when deciding whether the exclusionary rule applies to evidence or statements obtained after the defendant is placed in custody."].