Recent Case Report

Date posted: August 26, 2012

People v. Robinson

(2012) __ Cal.App.4th __ [2012 WL 3192095]

Issues

Did an officer's insertion of a key into the lock of a home constitute a search? If so, was the search lawful?

Facts

At about 10 A.M. Richmond police officer Amy Bublak was responding to a report of a burglary when she heard about 15 gunshots nearby. The shots seemed to be coming from the 300 block of Sanford Avenue so she headed there. Just as she arrived, she saw a Volkswagen on Sanford and it was traveling away from the 300 block. There were two men in the car, and her suspicions that they were involving in the gunfire were confirmed when, as the two cars met, the passenger leaned out the window and aimed an assault rifle at her. The driver of the Volkswagen then headed down Sanford Avenue with Bublak in pursuit. After traveling only about a block, the driver and passenger bailed out and fled on foot. As the passenger was running off, he stopped, pointed his rifle at Bublak again, then continued fleeing. Officers saturated the area but the men got away.

Officers found expended cartridges in front of several homes in the 300 block of Sanford, including 321 Sanford. Meanwhile, Officer Bublak recovered a set of keys from the Volkswagen's ignition. Thinking that one of the men in the Volkswagen might be connected to one of the houses on the block, Bublak started checking the homes to see if any of the keys unlocked the front door. As she inserted a key into the lock at 321 Sanford, the door opened and officers entered. Inside, they found heroin, drug packaging materials, and ammunition. They also found photographs of the passenger, later identified as Carlos Robinson.

Officers then secured the premises, obtained a search warrant and, during the search, seized the evidence they had seen earlier. Robinson was subsequently arrested and, after his motion to suppress the evidence was denied, he was found guilty of multiple felonies for which he was sentenced to 30 years in prison.

(As for the gunshots, officers learned that Robinson and some men had been arguing over a drug deal when Robinson ran into his house, returned with an assault rifle, and opened fire. When the men returned fire with handguns, Robinson and the driver fled in the Volkswagen.)

Discussion

It was apparent that once Officer Bublak learned that a key from the Volkswagen unlocked the door at 321 Sanford, she had probable cause to believe that one or both of the occupants of the vehicle were living or staying there. Consequently, if the insertion of the key into the lock was not a search, or if it was a lawful search, the warrantless entry into the house would likely have been permitted under an exigent circumstances theory; i.e., the officers would have had probable cause to believe they would find evidence in the house that would lead to the capture of an armed and dangerous felon who was in

active flight. And if the entry was lawful, the evidence that the officers saw inside the house would have been properly considered by the magistrate in determining the existence of probable cause for a warrant.

Robinson argued, however, that Officer Bublak had not obtained this information lawfully. Specifically, he contended that the act of inserting the key into the lock of his home constituted an illegal search and, thus, all of the information and evidence that was obtained as a result should have been suppressed. The court disagreed.

Was it a "search?"

The first issue before the court was whether an officer's act of inserting a key into the lock of a home, vehicle, or other thing constitutes a "search" of the lock. It might seem strange to think of such conduct as a search but, as the Seventh Circuit observed, "A keyhole contains information—information about who has access to the space beyond."[1] In any event, until recently, most courts would rule it was not a search or that it was such a minimal intrusion as to constitute a reasonable search if there was some justification for it.[2]

Earlier this year, however, the United States Supreme Court upended the law of search and seizure when it ruled in *U.S. v. Jones*[3] that a "search" occurred when officers attached a GPS tracking device to the undercarriage of a vehicle. To justify its ruling, the Court expanded the definition of the term "search" to include any trespass upon personal or real property for the purpose of obtaining information. As the result, the court in *Robinson* observed that it is now possible that inserting a key into a lock constitutes a search because, like attaching a tracker under a vehicle, the insertion of a key is technically a trespass and its purpose is to obtain information. The court did not, however, need to resolve the matter because it ruled that, even if it was a search, it was a legal one.

Why the search was legal:
"Minimally intrusive" searches

In a ruling that breaks new legal ground in California, the court concluded that neither a warrant nor probable cause is necessary to conduct a search if all of the following circumstances existed: (1) the search was "minimally intrusive," (2) it was supported by reasonable suspicion, and (3) it was justified by a compelling public interest.

Although no California court has addressed the issue of "minimally intrusive" searches, there is supporting federal precedent, including a decision by the Supreme Court. Specifically, in *Illinois v. McArthur* the Court said, "When faced with special law enforcement needs, diminished expectations of privacy, minimal intrusions, or the like, the Court has found that certain general, or individual, circumstances may render a warrantless search or seizure reasonable."[4] In addition, in *U.S. v. Flores-Lopez* the Seventh Circuit recently ruled that an officer's act of turning on a suspect's cell phone to determine its assigned number was a reasonable search (even though there were no exigent circumstances) because "that bit of information might be so trivial that its seizure

[1] *U.S. v. Concepcion* (7th Cir. 1991) 942 F.2d 1170, 1172.
[2] See, for example, *U.S. v. Salgado* (6th Cir. 2001) 250 F.3d 438, 456; *U.S. v. Hawkins* (1st Cir. 1998) 139 F.3d 29, 33, fn.1; *U.S. v. Concepcion* (7th Cir. 1991) 942 F.2d 1170, 1172-73.
[3] (2012) __US __ [132 S.Ct. 945].
[4] (2001) 531 U.S. 326, 330.

would not infringe the Fourth Amendment."[5] There is also a pre-*Jones* case, *U.S. v. Concepcion*,[6] that was factually identical to *Robinson*. In *Concepcion*, the court ruled that DEA agents did not need a warrant or probable cause to insert a key into the lock of the defendant's apartment because "the privacy interest is so small."

After examining these and other rulings, the court in *Robinson* pointed out the following:

> Although the United States Supreme Court has not clearly articulated the parameters of the [minimal intrusion] exception, federal authorities provide sufficient support for concluding that, in appropriate circumstances, the minimal intrusion exception to the warrant requirement may be applied to uphold warrantless searches based on less than probable cause.

The court then examined the facts in *Robinson* to determine whether all three requirements were met, and it reached the following conclusions:

> **A MINIMAL INTRUSION**: Inserting the key into the lock was a minimal intrusion because the only information it provided was that Robinson had access to the house, and this information was readily available to anyone in the neighborhood. As the court observed, "Generally speaking, an individual does not have a reasonable expectation of privacy in the location of his or her residence, because that is a fact open to public view."[7]
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> **REASONABLE SUSPICION**: Based on a shell casings outside the house, the officers had reasonable suspicion to believe the residence "was connected" to the shooting.
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> **OVERRIDING PUBLIC INTEREST**: There was an overriding public interest in conducting an immediate search because the insertion "served the discrete investigative purpose of confirming that the shooter had access to 321 Sanford" and that it "strongly promoted the legitimate governmental interest in quickly identifying the still-armed individual who shortly before had used an assault rifle in a firefight, in the daytime, in a residential neighborhood and then used it to commit an assault on a police officer."

Accordingly, the court ruled that insertion of the key was a lawful search, and it affirmed Robinson's conviction.

Comment

The court's decision in *Robinson* may have helped pave the way for a rational conclusion to the Supreme Court's decision in *Jones*. As we discussed in our report on *Jones*, the Court ruled only that attaching a tracker under a vehicle constituted a "search." Thus, the lower courts will now be called upon to determine whether such a search requires a warrant, or whether it probable cause or even reasonable suspicion would suffice. To this end, the *Robinson* court's balanced and logical analysis of the issue may prove helpful. POV

[5] (7th Cir. 2012) 670 F.3d 803, 806-807. ALSO SEE U.S. v. $109,179 (9th Cir. 2000) 228 F.3d 1080, 1088 ["At most Maggio had a minimal expectation of privacy in the lock of his car door."].
[6] (7th Cir. 1991) 942 F.2d 1170, 1173.
[7] At fn. 24.