

People v. Rubio

(2020) __ Cal.App.5th __ [2020 WL 6797405]

Issue

Under what circumstances will a “ShotSpotter” alert that shots had been fired “outside a residence,” constitute grounds to enter the home and search for possible victims?

Facts

At about 11 P.M., the East Palo Alto police received two “ShotSpotter” alerts, about one minute apart. The first indicated that five rounds had been fired in front of 2400 Gonzaga Street near “the edge of the garage driveway.” The second alert indicated that six rounds had been fired from the same area but closer to the sidewalk. When officers arrived, they spoke with witnesses who said they had heard gunfire and had seen “flashes” near a boat that was parked in the driveway. The officers checked the area and found one spent .45 caliber shell casing on the ground at the top of the driveway and two more behind an open gate that led to the back yard.

A sergeant at the scene testified that his immediate objective was to find out “whether or not we had a victim or a shooter who was hiding out” in the house. But when officers “pounded loudly” on a door leading to the garage, no one answered. So they knocked on the front door which was opened by the father of the defendant Adan Rubio. Mr. Rubio said he didn’t think anyone in the house had been shot. He also said that his son was currently inside a part of the garage that had been converted into an apartment. Just then, Rubio “emerged from the garage” but immediately closed the door as he existed.

After Rubio was detained, officers determined that the door had locked automatically when Adan shut it, so they kicked it open and entered. Inside, in plain view, they saw “an explosive device” and a .45 automatic. The officers then secured the house, obtained a warrant to search it and found twenty .40 caliber bullets, 87 live .357 caliber bullets, a body armor vest, six spent .357 shell casings, and some methamphetamine. They also found a surveillance camera that showed Rubio firing six shots in the air.

Rubio was arrested and later charged with, among other things, discharge of a firearm with gross negligence, possession of a controlled substance while armed with a firearm, and possession of a weapon by a felon. When his motion to suppress the evidence was denied, he plead no contest and was sentenced to nine months in jail and three years of supervised probation.

Discussion

On appeal, Rubio argued that the officers’ warrantless entry into the garage was unlawful because there were no exigent circumstances. Prosecutors responded that, when the officers kicked in the door, they had probable cause to believe that the shooter or a victim of the shooting would be found inside. The court disagreed.

One of the most important rules pertaining to the exigent circumstances exception to the warrant requirement is that officers must be able to articulate specific facts that established probable cause to believe the entry was necessary.¹ Although this belief may be based on direct or circumstantial evidence, the court in *Rubio* ruled that the facts

¹ See *People v. Oviedo* (2019) 7 Cal.5th 1034, 1043 [“specific and articulable facts” are required].

known to the officers did not add up to probable cause. “Missing in this case,” said the court, “are specific and articulable facts that would lead a reasonable person to conclude shots fired *outside* defendant’s garage apartment required breaking down the door to rescue someone *inside* his home.” Among other things, the court noted there were “no bullet holes in windows or siding to suggest that any of the shots fired outside the home had penetrated into the garage.” Nor were there “drops of blood on the ground to suggest anybody in range of the gunshots had been hit.”

Accordingly, the court ruled that the evidence discovered in the garage should have been suppressed. As the court explained, “With nothing more than an unparticularized suspicion that emergency aid might be necessary, the police may not breach the firm line the Fourth Amendment draws at the entrance to defendant’s home.”²

Comment

Three things about this case should be noted. First, before the officers entered the garage, they had heard what sounded like someone trying to barricade the door. This was a significant fact, but the court dismissed it by saying that “any American has the right to retreat into his own home and there be free from unreasonable governmental intrusion.” We think this explanation was inapposite. Second, although the evidence from the garage was ultimately seized pursuant to a warrant, the evidence was suppressed because the warrant was based mainly on facts that the officers obtained while inside the residence unlawfully. Third, Rubio might still be charged with possession of a firearm by a felon because the officers had obtained a surveillance video in the neighborhood that showed him shooting a firearm. POV

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² **NOTE:** Much of the court’s opinion consisted of a discussion about how the old “emergency aid” exception to the warrant had been incorporated into the doctrine of exigent circumstances. For a discussion of this issue, see the article “Exigent Circumstances” in the Winter 2018 edition of *Point of View*.