Sims v. Stanton

(9th Cir. 2013) 706 F.3d 954

Issues

(1) Did an officer conduct a "search" of a home when he kicked open a gate and entered the front yard? (2) If so, was the search lawful on grounds of exigent circumstances?

Facts

At about 1 A.M., La Mesa police officer Mike Stanton and his partner were dispatched to a report of an "unknown disturbance" on a street in an area known for gang violence. When they arrived, the only people they saw were three men who were walking in the street. When the men saw the patrol car, two of them "turned into a nearby apartment complex" and the third "walked quickly" across the street. Stanton yelled "police" and ordered the third man to stop. He refused.

Instead, he opened a gate outside a nearby home and entered the front yard which was completely enclosed by a fence "that is more than six feet tall," thus rendering the front yard "completely secluded." When the gate closed behind the third man, Stanton kicked it open. The homeowner, Drendolyn Sims, happened to be standing behind the gate talking with friends. When it flew open, it hit Ms. Sims and caused "serious injuries."

Ms. Sims sued the officer in federal court, alleging that his entry into her front yard constituted a "search" under the Fourth Amendment, and that the search was not justified by exigent circumstances. The district court judge ruled that the officer was entitled to qualified immunity and Ms. Sims appealed to the Ninth Circuit.

Discussion

Because this was a civil case, the main issues on appeal were whether it is "clearly established" law that (1) an officer's entry into someone's front yard constituted a "search" and, (2) such a search was illegal if its only justification was to arrest a person for a misdemeanor.

A "SEARCH": The Ninth Circuit summarily ruled that a "search" results whenever officers enter the "curtilage" of a home. What's the "curtilage"? It is essentially the land immediately outside the home, and it ordinarily consists of the front, back and side yards, plus the driveway.[1] Moreover, the court ruled that, as far as the Fourth Amendment is concerned, there is no difference between the curtilage and the inside of the home. Consequently, it ruled that Officer Stanton conducted a "search" of the home when he kicked open the gate and entered Ms. Sims' front yard.

EXIGENT CIRCUMSTANCES: Officer Stanton testified that he entered the front yard because he was in hot pursuit of the third man. It is settled that, in the context of exigent circumstances, a "hot" pursuit occurs when an officer attempts to arrest a suspect in a public place, but the suspect responds by running into a home or other private place. Although the officer did not have probable cause to arrest the third man for any crime relating to the disturbance, he apparently had grounds to detain him and, thus, the man's act of fleeing constituted a violation of Penal Code § 148.

[1] See *Oliver v. United States* (1984) 466 U.S. 170, 182, fn.12 [the curtilage is "the area around the home to which the activity of home life extends"].

When officers are in hot pursuit, they may ordinarily chase the suspect into a home or other private place.[2] But the Ninth Circuit ruled that, except only in "the rarest cases," the "hot pursuit" exception does not apply if the fleeing suspect was wanted for only a misdemeanor. Accordingly, because the third man was wanted only for a misdemeanor, the court ruled the "hot pursuit" exception did not apply, and therefore the district court erred in granting the officer qualified immunity.

Comment

When we initially commented on this case in early March, we were highly critical of the court's ruling that any entry by officers onto the curtilage of a home constitutes a "search." That was because this ruling was inconsistent with the general rule is that an entry onto the curtilage does not constitute a Fourth Amendment search unless the residents had a reasonable expectation of privacy in the area.[3] So you can imagine our surprise when, on March 26, 2013, the U.S. Supreme Court ruled in *Florida v. Jardines*[4] that any entry by officers onto the front yard of a home, or any other area within the "curtilage," constitutes a "search" if their objective was to obtain information. (See the report on *Jardines* above.) Thus, assuming that a "search" also results if an officer entered for the purpose of making an arrest, the Ninth Circuit may have been correct that the officer's act of kicking open the gate was a search. Nevertheless, we still question the court's conclusion that this rule was "clearly established" when the officer entered Ms. Sims' yard in 2009.

There is, however, a more basic problem with *Sims*—a problem that was not affected by *Jardines*. As noted, it ruled that the "hot pursuit" exception to the warrant requirement does not apply if officers were chasing a person who was suspected of having committed only a misdemeanor. Said the panel, "The possible escape of a fleeing misdemeanant is not generally a serious enough consequence to justify a warrantless entry."

In *United States v. Santana*, however, the Supreme Court ruled that "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."[5] Although the panel cited this precise quotation, it felt that the Supreme Court didn't really mean what it said. Instead, it ruled that, although the Supreme Court's ruling in *Santana* was not restricted to felonies, that must have been what the Court intended because, after all, Ms. Santana had been wanted for a felony!

This was not the first time that the writer of this opinion, Judge Stephen Reinhardt, has tried to avoid a bothersome Supreme Court ruling on grounds that there was some extraneous factual difference between it and the case at hand. In fact, in overturning his

[2] See *United States v. Santana* (1976) 427 U.S. 38, 43.
[3] See *U.S. v. Arboleda* (2nd Cir. 1980) 633 F.2d 985, 992 ["Terming a particular area curtilage expresses a conclusion: it does not advance Fourth Amendment analysis. The relevant question is whether the defendant has a legitimate expectation of privacy in the area." Edited.]; *People v. Smith* (1986) 180 Cal.App.3d 72, 84 ["the conclusion that an individual automatically has a reasonable expectation of privacy by virtue of a claim that a certain area is within the curtilage, is not supported by the law"].
[4] (2013) __ U.S. __ [2013 WL 1196577].
[5] (1976) 427 U.S. 38, 43.

decision in *U.S. v. Knights,* the Supreme Court used the polite phrase "dubious logic" to describe just such a shabby tactic.[6]

In addition to being contrary to the law, the panel's restriction on foot pursuits would create a significant danger to the public. That is because officers who are chasing a fleeing suspect into residential property usually do not know for sure *why* he was running, his criminal history, or whether he lives in the residence. And they *never* know his state or mind or the level of his desperation. Consequently, there is usually a reasonable possibility that the suspect had just entered the property of an innocent family that would be in extreme danger if suddenly confronted by a frantic fugitive. And this danger would exist, of course, even if the officers had been trying to arrest him for a misdemeanor. Which is why California courts have rejected such an unsound restriction. As the court observed in *People v. Lloyd,* "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."[7] Thus*, in In re Lavoyne M.* the court ruled that the hot pursuit exception applied when, as far as the officer knew, the suspect who ran from him was wanted only for a traffic violation. Said the court, "Several California cases hold that the minor nature of an offense does not preclude a finding of exigent circumstances in a situation such as the present one."[8] POV

Date posted: March 26, 2013.

[6] (2001) 534 U.S. 112, 117. **NOTE**: Strangely, the panel also attempted to distinguish *Santana* by citing the Supreme Court's opinion in *Welsh v. Wisconsin*(1984) 466 U.S. 740 in which the Court ruled that a warrantless entry under the "fresh" pursuit rule[6] (i.e., no physical chase, officers are diligently following leads) was unlawful if the suspect was wanted for a crime for which the suspect could not have been jailed. But by definition, a misdemeanor is a crime for which the suspect *can* be jailed. See Pen. Code § 19.

[7] (1989) 216 Cal.App.3d 1425, 1430.

[8] (1990) 221 Cal.App.3d 154, 159.