Recent Case Report

U.S. v. Stafford

(9th Cir. 2005) __ F.3d __ [2005 WL 1813313]

ISSUE

Is it reasonable for officers to enter an apartment without a warrant based on a reliable report that there are large quantities of blood inside, plus an odor that smells like a decaying corpse?

FACTS

An employee of an apartment complex in Snohomish County, Washington was going from apartment to apartment, conducting an annual inspection of smoke detectors. As he was about to enter Stafford's apartment, he smelled a "strong odor" from inside, an odor he described as "like a dog, or organic." Nevertheless, he entered the apartment and, after checking the smoke detector in the living room, walked into the master bedroom. There he saw "large quantities of blood and feces—on the wall, on the floor, on a bunch of bloody rags." He said it looked as if "there had been a brawl."

As he started to enter the adjoining bathroom, he saw that the door "appeared to have been kicked in." He then "peeked" into the unlit bathroom and saw that it was in a "similar condition" (presumably more blood and feces) except the odor was "overpowering." Inside the bathroom, he also saw "hundreds of [hypodermic] needles."

The employee left the apartment and reported the situation to a maintenance worker, telling him he thought there might be a dead body in the bathroom. The maintenance worker also "peeked in" and agreed that "there could be a dead body inside. They notified sheriff's deputies.

Two deputies arrived and were briefed on what the employees had seen. They requested a sergeant who arrived within 30 minutes. All three deputies testified that their "primary concern" was that there was "a victim inside" the apartment. So they entered. As they looked for a victim, they saw, among other things, two assault rifles, a grenade launcher, and armor-piercing ammunition.

The deputies then entered the bathroom where they saw blood and feces "smeared on every surface," and a "trash bag full of bloody bandages and hypodermic needles." In addition, the counter and floor "were littered with needles and other drug paraphernalia." They did not, however, find a body.

Stafford was subsequently charged with unlawful possession of a firearm. When his motion to suppress the guns was denied, he pled guilty.

DISCUSSION

Stafford claimed the guns should have been suppressed because the deputies' warrantless entry into his apartment was unlawful. The court disagreed.

Under the so-called "emergency aid" component of exigent circumstances, officers may enter a residence without a warrant if, (1) they reasonably believed that someone

inside was in serious danger; (2) their primary motive for entering was to render assistance; and (3) they did only those things that were reasonably necessary to defuse the emergency.[1]

In applying these requirements to the facts, the court in *Stafford* ruled the entry and search were lawful because "the facts provided the officers with sufficient grounds to suspect that there was a dead body or that someone might be in need of assistance." The court also pointed out it was immaterial that the apartment employees had not actually seen a body. What counts is whether there was a factual basis for the deputies' belief that an immediate warrantless entry was reasonable.

As for the second requirement, the deputies testified their sole purpose for entering was to determine "whether there was a dead body or an injured person in need of assistance." Having found no evidence to the contrary, the court ruled this requirement was also met. Finally, the court determined the third requirement was satisfied because the deputies' search "was conducted in a manner and scope appropriately tailored to the basis for the emergency entry."

Consequently, the court ruled "the warrantless entry was reasonably justified by the emergency doctrine, and that the rifles and ammunition seized were properly admitted into evidence."

COMMENT

In a dazzling display of unbridled judicial second-guessing, dissenting judge William Canby concluded it was *not* reasonable for the deputies to believe that someone in the apartment needed help. How did he reach this remarkable conclusion? Let's look.

First, he noted that neither of the employees actually saw a dead or dying person. Here are the judge's words: "Neither in the living room, the bedroom or the bathroom did either of these men see a body."

That's true, but irrelevant. The existence of exigent circumstances is commonly based on circumstantial evidence.[2] And here there were plenty of circumstances indicating the apartment had been the scene of a bloody confrontation. In fact, this was the conclusion reached by both employees. The first testified the circumstances caused him to become "worried that there might be a dead body in the unit," and the other said he believed "there could be a dead body inside."

Second, Judge Canby claimed that the odor of a decaying body proved that no one needed help because people whose bodies smell like decaying flesh are beyond help. In

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[1] See *People* v. *Ray* (1999) 21 Cal.4th 464, 470 ["Under the emergency aid exception, police officers may enter a dwelling without a warrant to render aid and assistance to a person whom they reasonably believe to be in distress and in need of that assistance."]; *Mincey* v. *Arizona* (1978) 437 U.S. 385, 392 ["Numerous state and federal cases have recognized that the Fourth Amendment does not bar police officers from making warrantless entries and searches when they reasonably believe that a person within is in need of immediate aid."]; *Indianapolis* v. *Edmond* (2000) 531 U.S. 32, 45-6 ["*Whren* therefore reinforces the principle that, while subjective intentions play no role in ordinary probable-cause Fourth Amendment analysis, programmatic purposes may be relevant to the validity of Fourth Amendment intrusions undertaken pursuant to a general scheme without individualized suspicion."]; *People* v. *Gentry* (1992) 7 Cal.App.4th 1255, 1261, fn.2 ["The nature of the exigency defines the scope of the search"].

[2] See *U.S.* v. *Diaz-Juarez* (9th Cir. 2002) 299 F.3d 1183, 1141 ["Individual factors that may appear innocent in isolation may constitute suspicious behavior when aggregated together."].

his words, "[B]odies that are not quite dead do not smell like rotting meat." This is also true. But we imagine that, unlike Judge Canby, most people would like to make sure that everyone on the premises was "quite dead" before turning around and walking away.

Third, Judge Canby thought the presence of the feces merely indicated the toilet was malfunctioning. "In fact," said the judge, "the smell was more readily explained by the maintenance man's observation, communicated to the police, that the toilet in the bathroom was stopped and there were feces about." We must wonder about the judge's experience with clogged toilets.

When the average toilet becomes stopped up, the feces tend to remain in the vicinity of the bowl. So it is somewhat unusual for a toilet to hurl them up onto the walls. And when, as here, the feces seem to have been catapulted into an adjoining room, well, most people would probably start looking for a cause other than an eccentric toilet.

Fourth, although the presence of "large quantities of blood" spattered inside a residence would probably cause most people to suspect that something was amiss, Judge Canby is not one of them. As he analyzed the situation, while there was a lot of blood in the apartment, "it was dried and explainable by the presence of the syringes."

So let's try to view the situation through the eyes of Judge Canby: Quite obviously, the occupant of the apartment was a hemorrhaging—but otherwise healthy—intravenous drug user who was so busy shooting up and tending to his aberrant toilet that he didn't have time to clean up his feces-inundated apartment or take his accumulated blood-soaked rags and bandages out to the garbage.

We would like to think that Judge Canby was just kidding; that he has a terrific—if quirky—sense of humor. But, sadly, it appears he might have been serious.[3]

[3] **NOTES**: **Failure to consider the totality of circumstances**: Judge Canby's analysis also violated a basic principle of search and seizure law: instead of considering the totality of circumstances, he fractionalized the circumstances, isolating each one, belittling its importance or explaining it away, then concluding that because none of them were very suspicious, grounds to search did not exist. See *United States* v. *Arvizu* (2002) 534 U.S. 266, 276; *Massachusetts* v. *Upton* (1984) 466 U.S. 727, 732. **Re judicial second-guessing**: See *United States* v. *Sharpe* (1985) 470 U.S. 675, 686-7 ["A creative judge engaged in post hoc evaluation of police conduct can almost always imagine some alternative means by which the objectives of the police might have been accomplished."]; *Tamborino* v. *Superior Court* (1986) 41 Cal.3d 919, 924 ["People could well die in emergencies if the police tried to act with the calm deliberation associated with the judicial process."]; *People* v. *Osuna* (1986) 187 Cal.App.3d 845, 855 ["Of course, from the security of our lofty perspective, and despite our total lack of practical experience in the field, we might question whether or not those who physically confronted the danger in this instance, selected the 'best' course of action available"].