Recent Case Report

Date posted: November, 7, 2008

People v. Sweig

(2008) __ Cal.App.4th __ [2008 WL 4696493]

Issues

(1) After taking the defendant into custody on a 5150 hold, did officers have sufficient grounds to enter his home to seize a rifle? (2) Can officers obtain a warrant to search a residence for firearms based on a 5150 hold?

Facts

Shasta County sheriff's deputies were dispatched to a 911 hangup call from a residential trailer occupied by Sweig. The deputies had encountered Sweig before, and they knew that he was mentally unstable. In fact, his mother had reported earlier that he believed law enforcement officers had "done him wrong," and that if he was "pulled over by the cops" he was going to "take them out."

When they arrived at the trailer, the deputies found him standing on the porch holding a rifle. They ordered him to drop it, but instead he entered the trailer, stayed inside for a short time, then walked back outside—without the rifle.

After detaining him, the deputies quickly determined that he was deranged. Among other things, he said he had called 911 because people were harassing him by "banging" on the side of his trailer and shooting him with "laser lights" which emitted radiation. He also said he had fired his rifle to "make the people leave," but one of them was still on the premises. "There is one now with the flashlight," he said as he pointed to nothing.

Having concluded that Sweig presented a danger to himself or others and thus qualified for a commitment under section 5150 of the Welfare and Institutions Code, the deputies convinced him to voluntary accompany them to the hospital. But first, they decided to confiscate his rifle. So they entered the trailer, seized it in the kitchen, and looked around for other firearms. There were several, including an illegal semi-automatic assault rifle under the bed.

Sweig was subsequently charged with possession of the assault rifle, but the charge was dismissed when the court granted his motion to suppress it on grounds that the deputies' warrantless entry into his trailer was unlawful.

Discussion

The People contended that the deputies' entry was lawful under the "community caretaking" exception to the warrant requirement. The court disagreed.

COMMUNITY CARETAKING: The term "community caretaking" is used to describe a type of exigent circumstance that, while not a true emergency, requires an immediate response, oftentimes an entry into a residence. Examples include welfare checks, insecure

premises, unattended children on the premises, and water leaks.[1] As might be expected, there is no simple test for determining whether a situation justifies an entry or search under the community caretaking rationale. Instead, the courts seem to permit them if the following circumstances existed:

(1) **Legitimate need**: There must have been a legitimate "caretaking" need for entering.

(2) **Not a pretext**: The officers' motivation for entering or searching must have been to defuse the situation, not to obtain evidence of a crime.[2]

(3) **Measured response**: The officers must have limited their actions to those that were reasonably necessary.

In *Sweig*, the first requirement presented a problem. "As we understand the community caretaking exception," said the court, "there must be some *necessity* for a warrantless entry into a residence to fulfill a purpose of the exception." But here there was none because Sweig no longer had access to any weapons. As the court observed:

> [Sweig] was detained outside the residence and placed in a patrol car for transportation to a mental health facility where he would be held in custody for a minimum of 72 hours. Nothing suggested to the officers that it was necessary for them to make a warrantless entry into the residence to confiscate the rifle and additional firearms or other deadly weapons, rather than seek a warrant to do so.

Consequently, the court ruled the deputies' warrantless entry into Sweig's trailer was unlawful, and that the assault rifle was properly suppressed.[3]

A 5150 SEARCH WARRANT? Under California law, the deputies were required to seize all of Sweig's firearms. Specifically, section 8102(a) of the Welfare and Institutions Code says that if officers detain a person under section 5150, and if the person "is found to own, have in his or her possession or under his or her control, any firearm whatsoever, or any other deadly weapon," the officers must confiscate it. But section 8102 does not authorize judges to issue search warrants to seize such weapons. And while the Penal Code authorizes judges to issue warrants to search for things such as stolen property and

---

[1] See *Cady* v. *Dombrowski* (1973) 413 U.S. 433, 441 [officers must "engage in what, for want of a better term, may be described as community caretaking functions, totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute."]; *Indianapolis* v. *Edmond* (2000) 531 U.S. 32, 37 ["[W]e have upheld certain regimes of suspicionless searches where the program was designed to serve 'special needs,' beyond the normal need for law enforcement."]; *Illinois* v. *McArthur* (2001) 531 US 326, 330 ["When faced with special law enforcement needs . . . the Court has found that certain general, or individual circumstances may render warrantless search or seizure reasonable."]; *Henderson* v. *Simi Valley* (9th Cir. 2002) 305 F.3d 1052, 1057 ["special needs" searches serve an interest "beyond the normal need for law enforcement."].

[2] See *Brigham City* v. *Utah* (2996) 547 US 398, 405 ["[W]e have held in the context of programmic searches conducted without individualized suspicion—such as checkpoints to combat drunk driving or drug trafficking—that an inquiry into *programmic* purpose is sometimes appropriate."].

[3] **NOTE**: It appears that Sweig had authorized the deputies to go into his trailer and bring him a "video bag." Consequently, the deputies' entry into the trailer was probably lawful. But because this issue was not raised by prosecutors in the trial court, it could not be raised on appeal. In any event, it would probably not have changed the result unless the video bag was under the bed with the assault rifle.

evidence that a certain person committed a felony,[4] it says nothing about warrants to confiscate firearms owned by 5150 detainees. Thus, the deputies were caught in a classic Catch-22 situation.

Calling this state of affairs an "obvious oversight," the court urged the legislature to fix it. "The flaw in the statutes," explained the court, "is that the legislative scheme does not provide a constitutionally permissible way for law enforcement to confiscate a firearm or other deadly weapon when it is in the residence of the mentally disordered person who is detained outside the residence and there is no exigent circumstance or other basis for a warrantless entry into the residence."[5] We hope the legislature accepts the court's invitation. POV

[4] See Pen. Code § 1524(a).

[5] **NOTE**: It is arguable that a judge may issue a warrant to search for evidence that does not fall into one of the categories listed in Penal Code § 1524(a). See *United States* v. *Ramirez* (1998) 523 U.S. 65, 72 [in discussing the federal knock-notice statute (which excuses compliance under certain circumstances), the Court noted that the statute "prohibits nothing. It merely authorizes officers to damage property in certain instances." Likewise, Penal Code § 1524(a) "prohibits nothing" but merely authorizes warrants to search for certain kinds of evidence. The Court, however, observed that such language might be interpreted as implicitly forbidding what it does not expressly authorize].