

Recent Case Report

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People v. Torres

(2012) 205 Cal.App.4th 989

Issue

Did officers have sufficient grounds to make a warrantless entry into a hotel room to prevent the destruction of burning marijuana?

Facts

A guest at a hotel in Los Angeles notified security officers that her room had been burglarized and that several items had been stolen, including credit cards, a laptop, and a cell phone. It was quickly determined that a hotel engineer had unwittingly admitted two women into the victim's room, and that a security officer had admitted the same women into another room. The hotel called LAPD.

Having determined that the perpetrators were apparently staying in a certain room in the hotel, LAPD officers went there to speak with them. As they arrived outside the room, they noticed a "strong smell" of marijuana in the vicinity; and when a woman opened the door in response to their knocking, they noticed that the odor became stronger. The officers ordered the woman and the other occupant of the room—another woman—to step into the hallway. After they complied, one of the officers entered the room and conducted what he testified was a "protective sweep." While doing so, he saw the burglary victim's cell phone and a credit card in plain view. He then looked under the mattress and found the laptop.

The women filed a motion to suppress the evidence on grounds that the officer's warrantless entry was illegal. The motion was denied and the women pled no contest to burglary and grand theft. They then appealed the denial of their suppression motion.

Discussion

As noted, the officer who entered the room testified that his objective was to conduct a protective sweep. The term "protective sweep" designates an emergency procedure in which officers make a quick tour of a home or other structure, looking to see if there is someone on the premises who poses a threat to them or others. Such an intrusion is lawful, but only if officers had a "reasonable belief based on specific and articulable facts that the area to be swept harbors an individual posing a danger" to them or others.¹ It was therefore apparent—as the trial court and the Attorney General concluded—that the entry and search of the room could not qualify as a protective sweep because the officer had no information there was anyone else in the room, much less anyone who posed a threat to them.

As a backup argument, the prosecutors argued that the entry was lawful under the exigent circumstances exception to the warrant requirement. Specifically, they contended that (1) the officers reasonably believed that the odor of burning marijuana was coming from the suspects' room, and (2) an immediate entry was required to prevent the destruction—the continued burning—of the evidence.

¹ See *Maryland v. Buie* (1990) 494 U.S. 325, 337.

An exigent circumstance based on destruction of evidence will warrant an immediate entry into a home if all of the following circumstances existed:

- (1) **Evidence on premises:** Officers must have had probable cause to believe there is destructible evidence on the premises.²
- (2) **Impending destruction:** Officers must have been aware of some circumstances that reasonably indicated that the suspect or someone else was about to destroy the evidence.³
- (3) **Jailable crime:** While the evidence need not pertain to a crime that was “serious” or even a felony,⁴ the crime must at least potentially carry a penalty of jail time.⁵

Although the first and second requirements were probably met, the third was problematic because (1) the crime under investigation was possession of marijuana, and (2) there was no reason to believe that the amount of marijuana on the premises weighed 28.5 grams or more. Consequently, because possession of less than 28.5 grams of marijuana does not constitute a jailable offense in California,⁶ the court ruled that the officer’s entry was unlawful. Said the court, “Where, as here, police articulated no basis to believe a jailable offense was occurring, there were no exigent circumstances justifying a warrantless entry to prevent destruction of evidence that would prove the offense.” POV

² See *People v. Thompson* (2006) 38 Cal.4th 811, 820-22; *U.S. v. Alaimalo* (9th Cir. 2002) 313 F.3d 1188, 1193 [“Even when exigent circumstances exist, police officers must have probable cause to support a warrantless entry into a home.”].

³ See *Illinois v. McArthur* (2001) 531 U.S. 326, 332; *Richards v. Wisconsin* (1997) 520 U.S. 385, 391; *People v. Camilleri* (1990) 220 Cal.App.3d 1199, 1209 [“Where the emergency is the imminent destruction of evidence, the government agents must have an objectively reasonable basis for believing there is someone inside the residence who has reason to destroy the evidence.”].

⁴ See *Illinois v. McArthur* (2001) 531 U.S. 326, 331-32.

⁵ See *People v. Hua* (2008) 158 Cal.App.4th 1027, 1035-36 [entry unreasonable to prevent destruction of less than 28.5 grams of marijuana]; *People v. Thompson* (2006) 38 Cal.4th 811, 820-25 [DUI is sufficiently serious; *U.S. v. Johnson* (9th Cir. 2001) 256 F.3d 895, 908 [the fact the crime was a misdemeanor “does not definitely preclude a finding of exigent circumstances, [but] it weighs heavily against it.”].

⁶ See Health & Saf. Code § 11357(b).