

ISSUE

Did agents have probable cause to believe that drugs had been delivered to the defendant's house?

FACTS

Customs agents in Guam discovered over 200 grams of methamphetamine in an Express Mail package addressed to Thomas Sablan in care of a local post office box. U.S. and Guam customs agents decided to make a controlled delivery, so they removed most of the meth, replaced it with pseudometh, and delivered it to the post office, which they staked out.

Sablan arrived at the post office in a pickup truck with a passenger, later identified as Alaimalo. After Sablan obtained the package, he and Alaimalo drove to a "remote," dead-end street on which there were only three houses. On the way, they engaged in countersurveillance tactics but the agents were able to follow them.

Because the agents could not drive down the street without being spotted, they didn't know which of the three houses Sablan and Alaimalo entered; and they didn't know for sure that they took the package with them.

As they watched the street, the agents saw a man driving away in a truck. They stopped the truck and searched it, but found no drugs. The driver was released.

At this point, the agents were faced with two problems. First, they knew that if the driver was involved in Sablan's and Alaimalo's meth operation, he might use a cell phone to alert them. Second, they knew it is "common practice for drug traffickers to open packages of drugs within 10 minutes of reaching a place of apparent safety in order, among other things, to test the drugs or divide them up." They also knew that if Sablan and Alaimalo opened the package they would quickly learn "the contents were sham" which would result in an imminent risk of destruction of evidence. So the decision was made to try to determine which house the suspect's entered, and secure it pending issuance of a search warrant.

As the agents drove down the street, they spotted Sablan's truck parked in front of one of the houses. The front door to this house was open, while the front doors of the other two were closed. En route to the front door, the agents looked inside the pickup truck but did not see the package of drugs. When they knocked and announced, Sablan opened the door and was taken outside.

The agents then conducted a protective sweep of the house and found Alaimalo in a bedroom. In plain view in the bedroom were the remains of the package. Alaimalo was handcuffed, advised of his *Miranda* rights, and was told that the agents "were in the process of obtaining a search warrant." Alaimalo said he owned the house, and he consented to a search. The search turned up the meth and pseudometh from the package, plus more meth from a previous shipment.

Alaimalo was convicted of drug trafficking and sentenced to life.

DISCUSSION

Although he had consented to the search, Alaimalo argued his consent was invalid because the agents were inside his home illegally when he consented. As noted, the agents entered the house for the purpose of securing it pending issuance of a search warrant. The question was whether they had legal grounds for doing so.

As a general rule, officers may make a warrantless entry into a home to prevent the destruction of evidence if two requirements are met:

(1) **Evidence is present:** Officers had *probable cause* to believe that destructible evidence was on the premises.¹

(2) **Impending destruction:** Officers had “good reason” to believe the evidence would be destroyed during the time it would take to obtain a search warrant.²

In *Alaimalo*, the court was satisfied that there was good reason for the agents to believe that, if evidence was in fact inside, it would be destroyed if the agents waited for a warrant. The question, then was whether the agents had probable cause to believe the drugs were presently inside.

Although there was no direct evidence that the package had been taken inside the house (because the agents could not see the front of the house), the court ruled there was sufficient circumstantial evidence. The court noted, (1) the suspects’ countersurveillance driving indicated the suspects had the drugs inside their car; (2) the agents were aware that drug traffickers who receive packaged drugs will usually open the package to check on the drugs “after reaching a place of apparent safety,” which they had reached when they arrived at the house; (3) there were no drugs in the pickup truck; (4) it was apparent that Sablan and Alaimalo had entered Alaimalo’s house because it was the only house with an open door and signs of activity, and the pickup truck was parked in front of the house.

Alaimalo’s petition for a writ of habeas corpus was denied.

¹ See *Illinois v. McArthur* (2001) 531 US ___ [148 L.Ed.2d 838, 848]; *People v. Bennett* (1998) 17 Cal.4th 373, 384.

² See *Illinois v. McArthur* (2001) 531 US ___ [148 L.Ed.2d 838, 848]; *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.”]; *People v. Koch* (1989) 209 Cal.App.3d 770, 782 [“(W)hen the claimed emergency circumstances involve threatened destruction of evidence, the officers must reasonably and in good faith believe from the totality of the circumstances that the evidence or contraband will be destroyed imminently.”]; *People v. Williams* (1988) 45 Cal.3d 1268, 1298; *Richards v. Wisconsin* (1997) 520 US 385, 391 [Court notes felony drug investigations frequently involve efforts to destroy evidence]; *Ferdin v. Superior Court* (1974) 36 Cal.App.3d 774, 782 [“Of course, mere probable cause for officers to believe that contraband is within a home will not justify a warrantless search.”]. *People v. Gentry* (1992) 7 Cal.App.4th 1255, 1264; *U.S. v. Socey* (D.C. Cir. 1988) 846 F.2d 1439, 1445. **COMPARE** *Vale v. Louisiana* (1970) 399 US 30, 34 [“(B)y their own account the arresting officers satisfied themselves that no one else was in the house when they first entered the premises.”]; *Mincey v. Arizona* (1978) 437 US 385, 394 [“There was no indication that evidence would be lost, destroyed, or removed during the time required to obtain a search warrant.”]. **NOTE:** The courts have sometimes indicated the following circumstances are relevant in determining the lawfulness of a warrantless entry to secure the premises: (1) the degree of urgency involved and the amount of time necessary to obtain a warrant; (2) reasonable belief that the contraband is about to be removed; (3) the possibility of danger to police officers guarding the site of the contraband while a search warrant is sought; (4) information indicating the possessors of the contraband are aware that the police are on their trail; and (5) the ready destructibility of the contraband and, in the case of drugs, the knowledge that efforts to dispose of narcotics and to escape are characteristic behavior of persons engaged in the narcotics traffic. See *People v. Bennett* (1998) 17 Cal.4th 373, 385; *People v. Gentry* (1992) 7 Cal.App.4th 1255, 1261; *People v. Koch* (1989) 209 Cal.App.3d 770, 782.