

**People v. Camacho**

(July 27, 2000) \_\_ Cal.4th \_\_

**ISSUES**

(1) Did officers have implied consent to enter the side yard of the defendant's home? (2) Did exigent circumstances justify an officer's entry into Camacho's side yard?

**FACTS**

At about 11 P.M., two police officers in Ventura County were dispatched to investigate a complaint of a "loud party disturbance" at Camacho's home. When they arrived they heard no loud noise and, apparently, no sign of a party. Nevertheless, they decided to investigate.

Rather than knock on Camacho's front door, one of the officers walked into the side yard of the house. According to the court, this side yard "was an open area covered in grass. No fence, gate or shrubbery suggested entrance was forbidden. Neither, however, did anything indicate the public was invited to enter; there was neither path nor walkway, nor was there an entrance to the house accessible from the side yard."

While in the side yard, the officer noticed a window which was open a few inches and was uncovered by curtains or anything else. Looking through the window, the officer saw Camacho in plain view "sitting with his back to the window, manipulating some clear plastic baggies" containing a "white powdery substance."

The officers then entered the house through the window, arrested Camacho, and seized the baggies which, as it turned out, contained cocaine.

**DISCUSSION**

Camacho contended the cocaine should be suppressed because the officer did not have a legal right to be outside his window. The court analyzed two legal theories that would have justified the officer's entry into Camacho's yard: (1) implied consent, and (2) exigent circumstances.

**Consent**

It is settled that residents, business owners and others impliedly give the public-including police officers-consent to walk on sidewalks, driveways, porches, and other normal access routes on their property. Furthermore, visitors may depart somewhat from a such routes provided the departure was neither substantial nor unreasonable.<sup>(1)</sup> The question, then, was whether it was reasonable for the officer who looked through Camacho's window to believe he had been given implied consent to enter the side yard.

The court acknowledged there were no fences or other physical barriers that would have prevented entry. In addition, the court noted that homeowners like Camacho would probably be deemed to have

given consent to certain people to enter a side yard; e.g., implied consent given to a child to retrieve an errant ball or dog, or consent to a utility company employee to take a meter reading.

The court concluded, however, that while consent for such a limited purpose could be implied, "Certainly the same cannot be said for the unconsented-to intrusion by police at 11:00 o'clock at night." Said the court, "Most persons, we believe, would be surprised, indeed startled, to look out their bedroom window at such an hour to find police officers standing in their yard looking back at them."

Consequently, the court ruled Camacho had not impliedly consented to the officer's entry onto his property.

### **Exigent circumstances**

As noted, a second legal theory that would have justified the officer's entry into Camacho's side yard was "exigent circumstances." The term "exigent circumstances" essentially means a situation in which there is a "compelling need for official action and no time to secure a warrant."<sup>(2)</sup>

In determining whether a certain police action was justified by exigent circumstances, the courts typically apply a balancing test,<sup>(3)</sup> weighing the justification for the officer's actions against their intrusiveness. The court in *Camacho* applied such a test but, although the officer's act of walking into Camacho's yard was not particularly intrusive, the court concluded the circumstances simply did not justify it.

The court added, however, "if the facts were different, perhaps only slightly so, we might conclude the officers were entitled to enter defendant's yard." But, as the court explained, "The lateness of the hour, the relative lack of seriousness of the phoned-in complaint, the failure first to knock on defendant's front door, all are relevant to evaluating the reasonableness of the officers' conduct in this case. We cannot say, however, that the officers, having arrived at defendant's house close to midnight in response to an anonymous complaint of a loud party and perceiving nothing amiss, were entitled to enter defendant's private property without a warrant and look through his windows."

Consequently, the court ruled the cocaine must be suppressed.

### **DA's COMMENT**

Perhaps the most incisive observation concerning this decision, came from Justice Kenneth Yegan who noted in the Court of Appeal's decision in *Camacho*, "The majority opinion gives new meaning to the phrase, 'Keep Off The Grass.'"<sup>(4)</sup>

(1) See *People v. Thompson* (1990) 221 Cal.App.3d 923, 943-4.

(2) See *Michigan v. Tyler* (1978) 436 US 499, 509; *People v. Ortiz* (1995) 32 Cal.App.4th 286, 291-2; *People v. Avalos* (1988) 203 Cal.App.3d 1517, 1521; *People v. Baird* (1985) 168 Cal.App.3d 237, 241; *People v. Dean* (1974) 39 Cal.App.3d 875, 885-6.

(3) See *People v. Glaser* (1995) 11 Cal.4th 354, 367-8; *People v. Wilson* (1997) 59 Cal.App.4th 1053, 1059-60; *Maryland v. Buie* (1990) 494 US 325, 331; *Mincey v. Arizona* (1978) 437 US 385, 391 [claim that exigent circumstances justified a search "is hardly tenable in light of the extensive nature of this search."]. **ALSO SEE:** *People v. Superior Court (Peebles)* (1970) 6 Cal.App.3d 379, 382 ["One way of testing the reasonableness of a search is to ask ourselves what the situation would have looked like had another bomb exploded, killing a number of people while officers were explaining the matter to a magistrate."]. **NOTE:** In *Florida v. J.L.* (2000) \_\_\_ US \_\_\_ the U.S. Supreme Court seems to endorse the balancing approach when it said, "The facts of this case do not require us to speculate about the circumstances under which the danger alleged in an anonymous tip might be so great as to justify a search even without a showing of reliability."

(4) **NOTE:** From Justice Yegan's dissenting opinion in the Court of Appeals decision in *Camacho*, (1998) 68 Cal.App.4th 37.