Search and Seizure: Invited Into Home While Firefighters Investigated Gas Leak, Police Who Saw Illegal Guns Had Probable Cause

Fagnan v. City of Lino Lakes, No. 12-4038 (8th Cir. Mar. 10, 2014).

The Eighth Circuit has upheld the actions of police who accompanied firefighters to investigate a residential gas leak and subsequently obtained a search warrant and made an arrest after observing, in plain sight, impermissibly short sawed-off shotguns in the residence.

Sandra Fagnan thought she smelled gas in her house so she called 911 and asked for help. Police and firefighters responded and she welcomed them in. Her son, Monty, was living with Sandra at the time and he escorted the officers to the basement laundry room where the family suspected the leak. While the firefighters searched the laundry room for the leak, the police waited in the basement living room area where Monty had stopped. Together Officers Bragelan and Noll stood with Monty at which point a conversation began about the gun cabinet in plain view in which Monty stored his guns. Officer Noll noted that a couple of the guns looked to have very short barrels, perhaps too short. The officer used his flashlight to illuminate the cabinet. Monty responded that they were legal and had been bought from a licensed dealer.

The firefighters and officers left without finding a gas leak, but the officers wondered whether the barrel length on the guns was in violation of Minnesota law, which requires barrels be at minimum eighteen inches. The officers submitted a report to City investigators wherein they stated, based on memory, they thought the gun barrels were too short. A search warrant was prepared and authorized, and officers went to the house and seized two shotguns with barrels measuring roughly 15.5 inches. Fagnan was arrested for felony possession of a "short-barreled" gun.

At trial Fagnan was acquitted on both counts of felony possession. He then sued the City under Section 1983, alleging the search of the house violated his Fourth Amendment rights and that the officers lacked probable cause to arrest him. The officers countered that they were entitled to qualified immunity. The district court granted summary judgment to the officers. Fagnan appealed.

HELD: The Eighth Circuit affirmed the district court. Both searches of the house were proper under the Fourth Amendment and the subsequent arrest was supported by probable cause.

DISCUSSION: Monty first argued that the officers' initial search was unconstitutional because the officers exceeded the scope of consent for the gas leak and were not lawfully in a place from which they could view the guns. The court rejected this argument, pointing out that the homeowners invited the officers into the house, the officers only went where escorted by Monty, they waited with Monty in the room just outside the suspected gas leak location, and from that vantage point the gun cabinet and guns were in plain view. The Court held these facts met the standard for measuring a person's consent under the Fourth Amendment; namely that a reasonable person, based on the permission granted, would have understood that the officers could stand in the basement living room while the firefighters worked to find the leak.

Next, Monty argued the warrant was issued, authorized, and executed without probable cause. Probable cause requires only that a reasonable person would suspect, based on the known facts, that the item in question was contraband – the officers did not have to know that the guns

were impermissibly short. The Court held this standard was met: Monty told them that the guns were "sawed off shotguns," the officers saw the guns themselves and at first sight thought the guns were too short as compared with other guns back at the police station. The affidavit in support of the warrant was also deemed valid since it included detailed observations from the officers and specified exactly what the officers sought from the house.

Last, Monty claimed the officers lacked probable cause to arrest him. Upon entering the house, they only had a warrant to search the house, not to arrest Monty. They therefore had to meet the standard for probable cause to arrest without a warrant, e.g. "at the moment of arrest police ha[d] knowledge of facts and circumstances grounded in reasonably trustworthy information sufficient to warrant a belief by a prudent person that an offense ha[d] been or [wa]s being committed by the person to be arrested." The Circuit Court found this standard satisfied since the arrest was executed in the house Monty lived in and the guns were found in a cabinet full of Monty's guns and trophies.

http://media.ca8.uscourts.gov/opndir/14/03/124038P.pdf (last accessed Mar. 20, 2014).

Takings: California Appellate Court Strikes Down Pre-Condemnation Entry Statutes

Property Reserve Inc. v. Superior Court, No. C067758 (Mar. 13, 2014).

In a decision greatly increasing the procedural burden on the state when contemplating the exercise of its eminent domain powers, the California Court of Appeal for the Third Appellate District has ruled that the state must initiate eminent domain proceedings *before* the Department of Water Resources (DWR) can enter onto private properties for the purpose of conducting environmental studies and geological testing.

California seeks to build a tunnel to transport water from the Sacramento-San Joaquin River Delta to central and southern California, and will need to condemn land for the project. Before condemnation, the state needs to conduct environmental and geological studies on hundreds of properties under which the tunnel may be constructed. The testing activities fall into two general categories. "Environmental activities" involve surveys about hydrology, botany, wildlife, and would include taking minor soil samples and observing and trapping wildlife. "Geological activities" involve soil testing and boring which in some cases would include boring into the ground to a depth of 200 feet and then filling in the hole with a permanent cement/bentonite grout. On each of the approximately 150 properties affected, these activities would require entry for up to 60 intermittent 24-hour days over a two year period, during which equipment may remain on the property.

To facilitate these studies, in 2009 the DWR filed petitions for entry onto a vast number of Delta properties via the state precondemnation statutes (Cal. Civ. Pro. Code §1245.010 *et seq.*), to allow it to enter private land. Most landowners contested these petitions, and the 150 cases