Search and Seizure: Warrantless Entry on Curtilage Violates Fourth Amendment

Covey v. Assessor of Ohio County, No. 13-1227 (4th Cir. Jan. 26, 2015).

The Sixth Circuit has reversed the dismissal of a case brought by a homeowner against a tax assessor and police officers who entered the curtilage of his property without a warrant, declining to apply the "knock and talk" exception to the warrant requirement.

In 2009, the Ohio County, West Virginia tax assessor entered plaintiff Christopher Covey's property to assess its value for tax purposes. His entry violated the "standard visitation procedures" in the jurisdiction, which provide that a tax data collector may not enter private property where "No Trespassing" signs are posted, as was the case with the Covey's property. After finding no one home, the assessor searched an outdoor patio area, where he found marijuana. The assessor informed local police, who later returned to Covey's home, entered the patio area without a warrant, and arrested him.

After pleading guilty to drugs charges, the plaintiff brought suit under 42 U.S.C. § 1983 alleging that the tax assessor and the police officers violated his Fourth Amendment rights by conducting an unreasonable search of his outdoor patio. The lower court dismissed the action for failure to state a claim, and Covey appealed.

HELD: The Fourth Circuit reversed and remanded, finding a violation of plaintiff's clearly established Fourth Amendment rights and denying defendants' qualified immunity claim.

DISSCUSION: The issues on appeal were (1) whether plaintiff alleged plausible Fourth Amendment violations, and (2) whether the defendants were entitled to qualified immunity.

Citing *Florida v. Jardines*, 133 S. Ct. 1409, 1414 (2013), the court reiterated that the Fourth Amendment protects the curtilage of a home from unreasonable government intrusions and that a warrantless search of curtilage is presumed to be unreasonable. The officers argued that their conduct fell within the "knock and talk" exception to the Fourth Amendment's warrant requirement, which permits officers to approach a home "as a private citizen might do." Under this exception, a police officer may "bypass the front door" when circumstances reasonably indicate that the officer might find the homeowner elsewhere on the property. The officers argued that they were justified in bypassing the front door because they saw the plaintiff in the patio area, *before* entering the curtilage, thus giving them an implied invitation to approach him.

The court noted however that the complaint alleged that the officers could only see the plaintiff *after* entering the curtilage and that they had no reason to suspect that he would be there. Accepting as true all factual allegations in the complaint and considering the

case in the light most favorable to the plaintiff, the Circuit Court concluded that plaintiff plausibly alleged that the police officers did not see him in time to avoid a violation of his Fourth Amendment rights.

With respect to the tax assessor's entry on the property, the court stated that a violation of an administrative regulation (in this case, a prohibition against entry on property where "No Trespassing" signs are posted), does not amount to a violation of the Fourth Amendment per se. However, the court found that even if the tax assessor's initial entry on to the property was merely an administrative violation, his entry onto the curtilage infringed on the plaintiff's constitutional rights.

The defendants also argued that they were entitled to qualified immunity. The court held that, based on the allegations in the complaint, the police officers violated a "clearly established right" when they entered the patio area without a warrant. The court also found that the tax assessor was not entitled to qualified immunity. As a general rule, an official who performs an act clearly established to be beyond the scope of his discretionary authority is not entitled to claim qualified immunity under § 1983. Here, the court found that the assessor had exceeded the scope of his authority by entering the property despite the "No Trespassing" signs.

http://www.ca4.uscourts.gov/Opinions/Published/131227.P.pdf (last accessed Jan. 28, 2015).