Filed 7/23/12 P. v. Santoyo CA2/3

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. ENRIQUE SILVA SANTOYO, Defendant and Appellant.	B233850 (Los Angeles County Super. Ct. No. PA068738)

APPEAL from a judgment of the Superior Court of Los Angeles County, Harvey Giss, Judge. Affirmed.

Rachel Lederman, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Victoria B. Wilson and Viet H. Nguyen, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant, Enrique Silva Santoyo, appeals the judgment entered following his plea of no contest to cultivating marijuana and theft of services over $950 (Health & Saf. Code, § 11358; Pen. Code, § 498, subd. (b)). He was sentenced to state prison for a term of 16 months.

The judgment is affirmed.

BACKGROUND[1]

On September 10, 2010, Los Angeles Fire Captain Randall James Beach responded to a 911 call about a structure fire. Upon arriving at the location, Beach smelled burning marijuana and saw smoke coming from the backyard of a house. The front door of the house was open. Beach went through the house and into the backyard where he saw the building that had burned, a small detached garage. Beach saw "a haze of smoke . . . but no active burning. There was nothing that was still on fire." Beach later learned a bystander had poured water on the fire.

Beach entered the garage. The temperature inside was warm, and one of the walls was charred and burned. He saw many marijuana plants. The fire apparently started when one of the heavy grow lights hanging over the marijuana plants short-circuited and overheated a plug. The combination of water and electricity in the garage had created a very hazardous situation: "Many of these lights were still on. The breakers did not blow for these other lights. . . . I had to have my firefighters go in and find the electrical panel in the back of this room so we could actually turn these . . . lights off individually or unplug them from their little transformers which again was dangerous. I was afraid of electricity and water because they were walking on water where the hose had been put in through the window." "[T]here was still a lot of hazard to us because we had water now in the room and we had electricity in the room. Those are a bad combination."

---

[1] The background facts are taken from evidence presented at the suppression hearing.

Because of the marijuana plants, Beach asked for a police unit to be dispatched to the scene. Officers arrived within 20 minutes. Beach's fire crew was still working when the police arrived: "We were still putting holes in the walls and checking for any fires that might be behind any electrical plug to make sure there was no hidden fire. [¶] The Court: So the fire wasn't over – [¶] The witness: The fire is not over until we're actually leaving."

Beach testified that although there were no visible flames when he first arrived at the scene, the situation constituted a continuing danger: "Q. When a fire is out is there still a continuing danger that embers from a recently put out fire will ignite again and start further fire damage? [¶] A. Sure. We . . . had to open up the wall. We made holes [with hatchets] to make sure there was no fire burning inside the wall which . . . is part of our job, is to make sure the fire is completely out. So we actually tore open the wall and made sure that there was no unseen fire burning still. We made sure it was completely out before we left the scene."

Beach also noticed conduit coming out of one of the walls, which indicated the occupants might have bypassed the electrical meter in order to obtain power to run the grow lights. This was also a dangerous condition because the bypass "can overload [and] there is really no way to turn it off. . . . So even if the whole house was on fire, we could not turn the detached garage off. It's a very dangerous situation if the fire had gotten bigger."

Los Angeles Police Officer Nelson Ramaya responded to the call for police assistance. He did not know the assistance call had anything to do with marijuana. Upon arrival, he saw firefighters inside the detached garage, and he smelled smoke and marijuana. Beach met him in the backyard. Through a broken window in the side of the garage, Ramaya could see numerous marijuana plants. He entered the garage and saw tables with fire-damaged marijuana plants on them. There was an elaborate lighting system, a ventilation system, and a large air conditioning system. There were nine 1000-watt lights and nine ballasts. A ballast is a form of lighting used for marijuana

grow operations; "[i]t amplifies the electrical current that's going to the thousand watt lightbulb." There were 216 marijuana plants in the garage.

Ruben Chacon, a theft investigator with the Los Angeles Department of Water and Power, testified he was called to the scene to investigate a possible illegal electrical bypass and to rule out any safety hazards it might be causing. When he arrived, police and firefighters were at the scene. He pulled the electrical meter, which was attached to the house, and confirmed there was an illegal bypass. Chacon testified this kind of bypass might cause a fire due to an overload of electrical output, and that "[i]t appeared there was more electricity being used than could be handled by the system at the house." For safety reasons, Chacon "had a crew come out and climb[] the pole and cut the wires to the property."

CONTENTION

The trial court erred when it denied Santoyo's motion to suppress evidence.

DISCUSSION

Santoyo moved to suppress all the evidence flowing from the warrantless observations Ramaya and Chacon made at the fire scene. In denying the motion, the trial court concluded the plain-view observations of both men were admissible because they had been made during exigent circumstances. The trial court was right.

1. *Legal principles.*

"The Fourth Amendment provides '[t]he right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated . . . .' (U.S. Const., 4th Amend.) This guarantee has been incorporated into the Fourteenth Amendment to the federal Constitution and is applicable to the states. [Citation.] A similar guarantee against unreasonable government searches is set forth in the state Constitution (Cal. Const., art. I, § 13) but, since voter approval of Proposition 8 in June 1982, state and federal claims relating to exclusion of evidence on grounds of unreasonable search and seizure are measured by the same standard. [Citations.] 'Our state Constitution thus forbids the courts to order the exclusion of evidence at trial as a remedy for an unreasonable search and seizure unless that remedy is required by the

federal Constitution as interpreted by the United States Supreme Court.' [Citation.]" (*People v. Camacho* (2000) 23 Cal.4th 824, 829-830, fn. omitted.) "In reviewing the action of the lower courts, we will uphold those factual findings of the trial court that are supported by substantial evidence. The question of whether a search was unreasonable, however, is a question of law. On that issue, we exercise 'independent judgment.' [Citations.]" (*Id.* at p. 830.)

"It is a 'basic principle of Fourth Amendment law' that searches and seizures inside a home without a warrant are presumptively unreasonable." (*Payton v. New York* (1980) 445 U.S. 573, 586 [63 L.Ed.2d 639, 100 S.Ct. 1371], fn. omitted.) However, the "warrant requirement is excused . . . when exigent circumstances require prompt action by the police . . . ." (*People v. Bacigalupo* (1991) 1 Cal.4th 103, 122.) " '[E]xigent circumstances' means an emergency situation requiring swift action to prevent imminent danger to life or serious damage to property, or to forestall the imminent escape of a suspect or destruction of evidence. There is no ready litmus test for determining whether such circumstances exist, and in each case the claim of an extraordinary situation must be measured by the facts known to the officers." (*People v. Ramey* (1976) 16 Cal.3d 263, 276.)

One well-recognized exigent circumstance is a fire. "Our decisions have recognized that a warrantless entry by criminal law enforcement officials may be legal when there is compelling need for official action and no time to secure a warrant. [Citations.] Similarly, in the regulatory field, our cases have recognized the importance of 'prompt inspections, even without a warrant, . . . in emergency situations.' [Citations.] [¶] A burning building clearly presents an exigency of sufficient proportions to render a warrantless entry 'reasonable.' Indeed, it would defy reason to suppose that firemen must secure a warrant or consent before entering a burning structure to put out the blaze. And once in a building for this purpose, firefighters may seize evidence of arson that is in plain view." (*Michigan v. Tyler* (1978) 436 U.S. 499, 509 [56 L.Ed.2d 486, 98 S.Ct. 1942].)

Tyler made it clear that this exigent circumstance does not automatically cease "with the dousing of the last flame": "Although the Michigan Supreme Court appears to have accepted this principle [i.e., that a fire constitutes an exigent circumstance], its opinion may be read as holding that the exigency justifying a warrantless entry to fight a fire ends, and the need to get a warrant begins, with the dousing of the last flame. [Citation.] We think this view of the firefighting function is unrealistically narrow, however. Fire officials are charged not only with extinguishing fires, but with finding their causes. Prompt determination of the fire's origin may be necessary to prevent its recurrence, as through the detection of continuing dangers such as faulty wiring or a defective furnace. Immediate investigation may also be necessary to preserve evidence from intentional or accidental destruction. And, of course, the sooner the officials complete their duties, the less will be their subsequent interference with the privacy and the recovery efforts of the victims. For these reasons, officials need no warrant to remain in a building for a reasonable time to investigate the cause of a blaze after it has been extinguished. And if the warrantless entry to put out the fire and determine its cause is constitutional, the warrantless seizure of evidence while inspecting the premises for these purposes also is constitutional." (*Michigan v. Tyler*, *supra*, 436 U.S. at pp. 509-510, fn. omitted.)

"Both fire and police personnel are agents of the state; both are subject to Fourth Amendment requirements. [Citation.] Once a fireman has lawfully entered a burning building, 'the invasion of privacy is not increased by an additional officer, albeit a [police] officer,' entering the edifice to seek out the fire's genesis. [Citation.] [¶] . . . [¶] This is not to say there are no limits on what police may do once inside a fire-damaged structure. 'In essence, they step into the shoes of the fire fighters. They cannot enter any area that the fire fighters were not justified in entering . . . .' [Citation.] They cannot search any area the fire fighters were not justified in searching. They may only venture into areas affected by the flames and places where evidence of arson might reasonably be found." (*People v. Glance* (1989) 209 Cal.App.3d 836, 845-846.)

2. *Discussion*.

Santoyo contends Ramaya and Chacon's observations should have been suppressed because they did not fall within the exigent circumstance exception set forth in *Michigan v. Tyler*. We disagree.

Santoyo cites *United States v. Hoffman* (9th Cir. 1979) 607 F.2d 280, as demonstrating the trial court here erred. However, his reliance on that case is misplaced. In *Hoffman*, a police officer arrived at the scene of a trailer fire after it was already under control. When one of the firefighters told the officer there was a sawed-off shotgun inside the trailer's bedroom, the officer entered the trailer with the express purpose of seizing the weapon. *Hoffman* held the trial court should have suppressed the shotgun: "Officer Heiden did not enter the trailer to aid in extinguishing the blaze or to investigate its cause. His only purpose in entering appellant's trailer . . . was to seize evidence of an unrelated federal crime. The fact that the police officer's actual physical intrusion was no greater than that of the firemen does not control our examination of appellant's Fourth Amendment claims." (*Id*. at p. 284, fn. omitted.)

Santoyo argues the same analysis applies here because "the fire was undisputedly out before" Ramaya arrived at the scene, and "Chacon also entered the yard well after the fire had been put out and the firefighters had eliminated any hazard by turning off and unplugging the lights and other appliances in the garage. Chacon did not assist in safety efforts in any way, but was clearly there only to document utility theft."

These arguments are without merit. The evidence clearly showed both Chacon and Ramaya made their observations while engaged in fire-related activities undertaken while the firefighters were still making sure the fire would not be rekindled.[2] Moreover,

---

[2] For instance, as to Chacon the trial court ruled: "To the court it looks like he's there for the same reason the fire department is there. He's there to correct the situation that could cause damage to the entire neighborhood. He's got to decide whether people have to come out and disengage the electricity. If he doesn't do that the DWP is grossly negligent. [¶] So it's like an ongoing fire. Until they get it corrected I think he has every right to be there, and it's an emergency."

both of the crimes to which their observations were pertinent, the marijuana operation and the illegal utility bypass, appeared to be *directly related* to the cause of the fire. Hence, this was very different from the illegal weapon in *Hoffman*, which was unrelated to the cause of the fire.

As the Attorney General points out, "the trial court expressly found that the firemen were still determining whether the fire was completely out when the police arrived, i.e., the firefighters 'were still knocking holes in the wall.' " *Hoffman* is distinguishable on this point as well because there the evidence tended to show all firefighting efforts had ceased *before* the officer entered the trailer to seize the shotgun. "According to some evidence introduced in the suppression hearing, firemen were still going in and out of the trailer, but it was not clear what they were doing inside the trailer at that time. There is no intimation in the record that the firemen were continuing to fight a blaze." (*United States v. Hoffman, supra,* 607 F.2d at p. 282.) Here, when Officer Ramaya arrived, the firefighters were still chopping holes in the walls and checking electrical plugs for hidden flames.

The trial court did not err by denying Santoyo's suppression motion.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

KLEIN, P. J.

We concur:

KITCHING, J. ALDRICH, J.