87 S.Ct. 1727
Supreme Court of the United States

Roland CAMARA, Appellant,
v.
MUNICIPAL COURT OF the CITY AND COUNTY OF SAN FRANCISCO.

No. 92.
|
Argued Feb. 15, 1967.
|
Decided June 5, 1967.

Action by lessee of ground floor of apartment building for writ prohibiting his prosecution in California municipal court on criminal charge of violating city housing code by refusing to permit warrantless inspection of his premises. The California superior court denied the writ, the California District Court of Appeals affirmed, and the California Supreme Court denied a petition for hearing, and probable jurisdiction was noted. The United States Supreme Court, Mr. Justice White, held that administrative searches by municipal health and safety inspectors constitute significant intrusions upon interests protected by Fourth Amendment, and such searches, when authorized and conducted without warrant procedure, lack traditional safeguards which Fourth Amendment guarantees to individuals. The Court further held that probable cause to issue warrant for inspection of dwelling by municipal health and safety officials must exist if reasonable legislative or administrative standards for conducting area inspection are satisfied with respect to particular dwelling.

Judgment vacated and case remanded for further proceedings.

Mr. Justice Clark, Mr. Justice Harlan and Mr. Justice Stewart dissented.

For dissenting opinion see 87 S.Ct. 1741.

West Headnotes (15)

[1] **Searches and Seizures** ⇐ Fourth Amendment and reasonableness in general

Basic purpose of Fourth Amendment prohibition against unreasonable searches and seizures is to safeguard privacy and security of individuals against arbitrary invasions by governmental officials. U.S.C.A.Const. Amend. 4.

789 Cases that cite this headnote

[2] **Searches and Seizures** ⇐ Fourth Amendment and reasonableness in general

Fourth Amendment prohibition against unreasonable searches and seizures gives concrete expression to right of

Exhibit 5 1 of 18

rights because it 'is part of a regulatory scheme which is essentially civil rather than criminal in nature, inasmuch as that section creates a right of inspection which is limited in scope and may not be exercised under unreasonable conditions.' Having concluded that Frank v. State of Maryland, to the extent that it sanctioned such warrantless inspections, must be overruled, we reverse.

I.

[1] [2] [3] The Fourth Amendment provides that, 'The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.' The basic purpose of this Amendment, as recognized in countless decisions of this Court, is to safeguard the privacy and security of individuals against arbitrary invasions by governmental officials. The Fourth Amendment thus gives concrete expression to a right of the people which 'is basic to a free society.' Wolf v. People of State of Colorado, 338 U.S. 25, 27, 69 S.Ct. 1359, 1361, 93 L.Ed. 1782. As such, the Fourth Amendment is enforceable against the States through the Fourteenth Amendment. Ker v. State of California, 374 U.S. 23, 30, 83 S.Ct. 1623, 1628, 10 L.Ed.2d 726.

[4] [5] Though there has been general agreement as to the fundamental purpose of the Fourth Amendment, translation of the abstract prohibition against 'unreasonable searches and seizures' into workable guidelines for the decision of particular cases is a difficult task which has for many years divided the members of this Court. Nevertheless, **1731 one governing principle, justified by history and by current experience, has consistently been followed: except in certain carefully defined classes of cases, a search of private property without proper consent *529 is 'unreasonable' unless it has been authorized by a valid search warrant. See, e.g., Stoner v. State of California, 376 U.S. 483, 84 S.Ct. 889, 11 L.Ed.2d 856; United States v. Jeffers, 342 U.S. 48, 72 S.Ct. 93, 96 L.Ed. 59; McDonald v. United States, 335 U.S. 451, 69 S.Ct. 191, 93 L.Ed. 153; Agnello v. United States, 269 U.S. 20, 46 S.Ct. 4, 70 L.Ed. 145. As the Court explained in Johnson v. United States, 333 U.S. 10, 14, 68 S.Ct. 367, 369, 92 L.Ed. 436:

> 'The right of officers to thrust themselves into a home is also a grave concern, not only to the individual but to a society which chooses to dwell in reasonable security and freedom from surveillance. When the right of privacy must reasonably yield to the right of search is, as a rule, to be decided by a judicial officer, not by a policeman or government enforcement agent.'

In Frank v. State of Maryland, this Court upheld the conviction of one who refused to permit a warrantless inspection of private premises for the purposes of locating and abating a suspected public nuisance. Although Frank can arguably be distinguished from this case on its facts,[4] the Frank opinion has generally been interpreted as carving out an additional exception to the rule that warrantless searches are unreasonable under the Fourth Amendment. See Eaton v. Price, supra. The District Court of Appeal so interpreted Frank in this case, and that ruling is the core of appellant's challenge here. We proceed to a re-examination of the factors which *530 persuaded the frank majority to adopt this construction of the Fourth Amendment's prohibition against unreasonable searches.

To the Frank majority, municipal fire, health, and housing inspection programs 'touch at most upon the periphery of the important interests safeguarded by the Fourteenth Amendment's protection against official intrusion,' 359 U.S., at 367, 79 S.Ct., at 809, because the inspections are merely to determine whether physical conditions exist which do not comply with minimum standards prescribed in local regulartory ordinances. Since the inspector does not ask that the property owner open his doors to a search for 'evidence of criminal action' which may be used to secure the owner's criminal conviction, historic interests of 'self-protection' jointly protected by the Fourth and Fifth Amendments[5] are said not to be involved, but only the less intense 'right to be secure from intrusion into personal privacy.' Id., at 365, 79 S.Ct. at 808.

We may agree that a routine inspection of the physical condition of private property is a less hostile intrusion than the typical policeman's search for the fruits and instrumentalities of crime. For this reason alone, Frank differed from the great bulk of Fourth Amendment cases which have been considered by this Court. But we cannot agree that the Fourth Amendment interests at **1732 stake in these inspection cases are merely 'peripheral.' It is surely anomalous to say that the individual and his private property are fully protected by the Fourth Amendment only when the individual is suspected of criminal

Exhibit J 2018

behavior.[6] For instance, even the most law-abiding citizen *531 has a very tangible interest in limiting the circumstances under which the sanctity of his home may be broken by official authority, for the possibility of criminal entry under the guise of official sanction is a serious threat to personal and family security. And even accepting Frank's rather remarkable premise, inspections of the kind we are here considering do in fact jeopardize 'self-protection' interests of the property owner. Like most regulatory laws, fire, health, and housing codes are enforced by criminal processes. In some cities, discovery of a violation by the inspector leads to a criminal complaint.[7] Even in cities where discovery of a violation produces only an administrative compliance order,[8] refusal to comply is a criminal offense, and the fact of compliance is verified by a second inspection, again without a warrant.[9] Finally, as this case demonstrates, refusal to permit an inspection is itself a crime, punishable by fine or even by jail sentence.

The Frank majority suggested, and appellee reasserts, two other justifications for permitting administrative health and safety inspections without a warrant. First, it is argued that these inspections are 'designed to make the least possible demand on the individual occupant.' 359 U.S., at 367, 79 S.Ct., at 809. The ordinances authorizing inspections are hedged with safeguards, and at any rate the inspector's particular decision to enter must comply with the constitutional standard of reasonableness even if he may enter without a warrant.[10] In addition, the argument *532 proceeds, the warrant process could not function effectively in this field. The decision to inspect an entire municipal area is based upon legislative or administrative assessment of broad factors such as the area's age and condition. Unless the magistrate is to review such policy matters, he must issue a 'rubber stamp' warrant which provides no protection at all to the property owner.

[6] In our opinion, these arguments unduly discount the purposes behind the warrant machinery contemplated by the Fourth Amendment. Under the present system, when the inspector demands entry, the occupant has no way of knowing whether enforcement of the municipal code involved requires inspection of his premises, no way of knowing the lawful limits of the inspector's power to search, and no way of knowing whether the inspector himself is acting under proper authorization. These are questions which may be reviewed by a neutral magistrate without any reassessment of **1733 the basic agency decision to canvass an area. Yet, only by refusing entry and risking a criminal conviction can the occupant at present challenge the inspector's decision to search. And even if the occupant possesses sufficient fortitude to take this risk, as appellant did here, he may never learn any more about the reason for the inspection than that the law generally allows housing inspectors to gain entry. The practical effect of this system is to leave the occupant subject to the discretion of the official in the field. This is precisely the discretion to invade private property which we have consistently circumscribed by a requirement that a disinterested party warrant the need to *533 search. See cases cited, p. 1731, supra. We simply cannot say that the protections provided by the warrant procedure are not needed in this context; broad statutory safeguards are no substitute for individualized review, particularly when those safeguards may only be invoked at the risk of a criminal penalty.

[7] The final justification suggested for warrantless administrative searches is that the public interest demands such a rule: it is vigorously argued that the health and safety of entire urban populations is dependent upon enforcement of minimum fire, housing, and sanitation standards, and that the only effective means of enforcing such codes is by routine systematized inspection of all physical structures. Of course, in applying any reasonableness standard, including one of constitutional dimension, an argument that the public interest demands a particular rule must receive careful consideration. But we think this argument misses the mark. The question is not, at this stage at least, whether these inspections may be made, but whether they may be made without a warrant. For example, to say that gambling raids may not be made at the discretion of the police without a warrant is not necessarily to say that gambling raids may never be made. In assessing whether the public interest demands creation of a general exception to the Fourth Amendment's warrant requirement, the question is not whether the public interest justifies the type of search in question, but whether the authority to search should be evidenced by a warrant, which in turn depends in part upon whether the burden of obtaining a warrant is likely to frustrate the governmental purpose behind the search. See Schmerber v. State of California, 384 U.S. 757, 770—771, 86 S.Ct. 1826, 1835—1836, 16 L.Ed.2d 908. It has nowhere been urged that fire, health, and housing code inspection programs could not achieve their goals within the confines of a reasonable search warrant requirement. Thus, we do not find the public need argument dispositive.

*534 [8] In summary, we hold that administrative searches of the kind at issue here are significant intrusions upon the interests protected by the Fourth Amendment, that such searches when authorized and conducted without a warrant procedure lack the traditional safeguards which the Fourth Amendment guarantees to the individual, and that the reasons put forth in Frank v. State of Maryland and in other cases for upholding these warrantless searches are insufficient to justify so substantial a weakening of the Fourth Amendment's protections. Because of the nature of the municipal programs under consideration, however, these conclusions must be the beginning, not the end, of our inquiry. The Frank majority gave recognition to the unique character of these inspection programs by refusing to require search warrants; to reject that disposition does not justify ignoring the question whether some other accommodation between public need and individual rights is essential.

Exhibit J 30 of 18

II.

[9] The Fourth Amendment provides that, 'no Warrants shall issue, but upon probable cause.' Borrowing from more **1734 typical Fourth Amendment cases, appellant argues not only that code enforcement inspection programs must be circumscribed by a warrant procedure, but also that warrants should issue only when the inspector possesses probable cause to believe that a particular dwelling contains violations of the minimum standards prescribed by the code being enforced. We disagree.

[10] In cases in which the Fourth Amendment requires that a warrant to search be obtained, 'probable cause' is the standard by which a particular decision to search is tested against the constitutional mandate of reasonableness. To apply this standard, it is obviously necessary first to focus upon the governmental interest which allegedly justifies official intrusion upon the constitutionally protected *535 interests of the private citizen. For example, in a criminal investigation, the police may undertake to recover specific stolen or contraband goods. But that public interest would hardly justify a sweeping search of an entire city conducted in the hope that these goods might be found. Consequently, a search for these goods, even with a warrant, is 'reasonable' only when there is 'probable cause' to believe that they will be uncovered in a particular dwelling.

[11] Unlike the search pursuant to a criminal investigation, the inspection programs at issue here are aimed at securing city-wide compliance with minimum physical standards for private property. The primary governmental interest at stake is to prevent even the unintentional development of conditions which are hazardous to public health and safety. Because fires and epidemics may ravage large urban areas, because unsightly conditions adversely affect the economic values of neighboring structures, numerous courts have upheld the police power of municipalities to impose and enforce such minimum standards even upon existing structures.[11] In determining whether a particular inspection is reasonable—and thus in determining whether there is probable cause to issue a warrant for that inspection—the need for the inspection must be weighed in terms of these reasonable goals of code enforcement.

There is unanimous agreement among those most familiar with this field that the only effective way to seek universal compliance with the minimum standards required by municipal codes is through routine periodic *536 inspections of all structures.[12] It is here that the probable cause debate is focused, for the agency's decision to conduct an area inspection is unavoidably based on its appraisal of conditions in the area as a whole, not on its knowledge of conditions in each particular building. Appellee contends that, if the probable cause standard urged by appellant is adopted, the area inspection **1735 will be eliminated as a means of seeking compliance with code standards and the reasonable goals of code enforcement will be dealt a crushing blow.

In meeting this contention, appellant argues first, that his probable cause standard would not jeopardize area inspection programs because only a minute portion of the population will refuse to consent to such inspections, and second, that individual privacy in any event should be given preference to the public interest in conducting such inspections. The first argument, even if true, is irrelevant to the question whether the area inspection is reasonable within the meaning of the Fourth Amendment. The second argument is in effect an assertion that the area inspection is an unreasonable search. Unfortunately, there can be no ready test for determining reasonableness *537 other than by balancing the need to search against the invasion which the search entails. But we think that a number of persuasive factors combine to support the reasonableness of area code-enforcement inspections. First, such programs have a long history of judicial and public acceptance. See Frank v. State of Maryland, 359 U.S., at 367—371, 79 S.Ct. at 809—811. Second, the public interest demands that all dangerous conditions be prevented or abated, yet it is doubtful that any other canvassing technique would achieve acceptable results. Many such conditions—faulty wiring is an obvious example—are not observable from outside the building and indeed may not be apparent to the inexpert occupant himself. Finally, because the inspections are neither personal in nature nor aimed at the discovery of evidence of crime, they involve a relatively limited invasion of the urban citizen's privacy. Both the majority and the dissent in Frank emphatically supported this conclusion:
'Time and experience have forcefully taught that the power to inspect dwelling places, either as a matter of systematic area-by-area search or, as here, to treat a specific problem, is of indispensable importance to the maintenance of community health; a power that would be greatly hobbled by the blanket requirement of the safeguards necessary for a search of evidence

Exhibit J 7 of 18

of criminal acts. The need for preventive action is great, and city after city has seen this need and granted the power of inspection to its health officials; and these inspections are apparently welcomed by all but an insignificant few. Certainly, the nature of our society has not vitiated the need for inspections first thought necessary 158 years ago, nor has experience revealed any abuse or inroad on freedom in meeting this need by means that history and dominant public opinion have sanctioned.' 359 U.S., at 372, 79 S.Ct. at 811.

***538** '* * * This is not to suggest that a health official need show the same kind of proof to a magistrate to obtain a warrant as one must who would search for the fruits or instrumentalities of crime. Where considerations of health and safety are involved, the facts that would justify an inference of 'probable cause' to make an inspection are clearly different from those that would justify such an inference where a criminal investigation has been undertaken. Experience may show the need for periodic inspections of certain facilities without a further showing of cause to believe that substandard conditions dangerous to the public are being maintained. The passage of a certain period without inspection might of itself be sufficient in a given situation to justify the issuance of warrant. The test of 'probable cause' required by the Fourth Amendment can take into account the nature of the search that is being sought.' 359 U.S., at 383, 79 S.Ct. at 87 (Mr. Justice Douglas, dissenting).

[12] [13] [14] Having concluded that the area inspection is a 'reasonable' search of private property within the meaning of the Fourth Amendment, it is obvious ****1736** that 'probable cause' to issue a warrant to inspect must exist if reasonable legislative or administrative standards for conducting an area inspection are satisfied with respect to a particular dwelling. Such standards, which will vary with the municipal program being enforced, may be based upon the passage of time, the nature of the building (e.g., a multifamily apartment house), or the condition of the entire area, but they will not necessarily depend upon specific knowledge of the condition of the particular dwelling. It has been suggested that so to vary the probable cause test from the standard applied in criminal cases would be to authorize a 'synthetic search warrant' and thereby to lessen the overall protections of the Fourth Amendment. ***539** Frank v. State of Maryland, 359 U.S., at 373, 79 S.Ct. at 812. But we do not agree. The warrant procedure is designed to guarantee that a decision to search private property is justified by a reasonable governmental interest. But reasonableness is still the ultimate standard. If a valid public interest justifies the intrusion contemplated, then there is probable cause to issue a suitably restricted search warrant. Cf. Oklahoma Press Pub. Co. v. Walling, 327 U.S. 186, 66 S.Ct. 494, 90 L.Ed. 614. Such an approach neither endangers time-honored doctrines applicable to criminal investigations nor makes a nullity of the probable cause requirement in this area. It merely gives full recognition to the competing public and private interests here at stake and, in so doing, best fulfills the historic purpose behind the constitutional right to be free from unreasonable government invasions of privacy. See Eaton v. Price, 364 U.S., at 273—274, 80 S.Ct., at 1468—1469 (opinion of Mr. Justice Brennan).

III.

Since our holding emphasizes the controlling standard of reasonableness, nothing we say today is intended to foreclose prompt inspections, even without a warrant, that the law has traditionally upheld in emergency situations. See North American Cold Storage Co. v. City of Chicago, 211 U.S. 306, 29 S.Ct. 101, 53 L.Ed. 195 (seizure of unwholesome food); Jacobson v. Commonwealth of Massachusetts, 197 U.S. 11, 25 S.Ct. 358, 49 L.Ed. 643 (compulsory smallpox vaccination); Compagnie Francaise de Navigation a Vapeur v. Louisiana State Board of Health, 186 U.S. 380, 22 S.Ct. 811, 46 L.Ed. 1209 (health quarantine); Kroplin v. Truax, 119 Ohio St. 610, 165 N.E. 498 (summary destruction of tubercular cattle). On the other hand, in the case of most routine area inspections, there is no compelling urgency to inspect at a particular time or on a particular day. Moreover, most citizens allow inspections of their property without a warrant. Thus, as a practical matter and in light of the Fourth Amendment's requirement that a warrant specify the property to be searched, it seems likely that warrants should normally be sought only after entry is refused unless ***540** there has been a citizen complaint or there is other satisfactory reason for securing immediate entry. Similarly, the requirement of a warrant procedure does not suggest any change in what seems to be the prevailing local policy, in most situations, of authorizing entry, but not entry by force, to inspect.

IV.

Exhibit J 5/8/18

[15] In this case, appellants has been charged with a crime for his refusal to permit housing inspectors to enter his leasehold without a warrant. There was no emergency demanding immediate access; in fact, the inspectors made three trips to the building in an attempt to obtain appellant's consent to search. Yet no warrant was obtained and thus appellant was unable to verify either the need for or the appropriate limits of the inspection. No doubt, the inspectors entered the public portion of the building with the consent of the landlord, through the building's manager, but appellee does not contend that such consent was sufficient **1737 to authorize inspection of appellant's premises. Cf. Stoner v. State of California, 376 U.S. 483, 84 S.Ct. 889, 11 L.Ed.2d 856; Chapman v. United States, 365 U.S. 610, 81 S.Ct. 776, 5 L.Ed.2d 828; McDonald v. United States, 335 U.S. 451, 69 S.Ct. 191, 93 L.Ed. 153. Assuming the facts to be as the parties have alleged, we therefore conclude that appellant had a constitutional right to insist that the inspectors obtain a warrant to search and that appellant may not constitutionally be convicted for refusing to consent to the inspection. It appears from the opinion of the District Court of Appeal that under these circumstances a writ of prohibition will issue to the criminal court under California law.

The judgment is vacated and the case is remanded for further proceedings not inconsistent with this opinion. It is so ordered.

Judgment vacated and case remanded.

All Citations

387 U.S. 523, 87 S.Ct. 1727, 18 L.Ed.2d 930

Footnotes

1 The inspection was conducted pursuant to s 86(3) of the San Francisco Municipal Code, which provides that apartment house operators shall pay an annual license fee in part to defray the cost of periodic inspections of their buildings. The inspections are to be made by the Bureau of Housing Inspection 'at least once a year and as often thereafter as may be deemed necessary.' The permit of occupancy, which prescribes the apartment units which a building may contain, is not issued until the license is obtained.

2 'Sec. 507 PENALTY FOR VIOLATION. Any person, the owner or his authorized agent who violates, disobeys, omits, neglects, or refuses to comply with, or who resists or opposes the execution of any of the provisions of this Code, or any order of the Superintendent, the Director of Public Works, or the Director of Public Health made pursuant to this Code, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding five hundred dollars ($500.00), or by imprisonment, not exceeding six (6) months or by both such fine and imprisonment, unless otherwise provided in this Code, and shall be deemed guilty of a separate offense for every day such violation, disobedience, omission, neglect or refusal shall continue.'

3 Givner v. State, 210 Md. 484, 124 A.2d 764 (1956); City of St. Louis v. Evans, 337 S.W.2d 948 (Mo.1960); State ex rel. Eaton v. Price, 168 Ohio St. 123, 151 N.E.2d 523 (1958) aff'd by an equally divided Court, 364 U.S. 263, 80 S.Ct. 1463, 4 L.Ed.2d 1708 (1960). See also State v. Rees, 258 Iowa 813, 139 N.W.2d 406 (1966); Commonwealth v. Hadley, 351 Mass. 439, 222 N.E.2d 681 (1966), appeal docketed Jan. 5, 1967, No. 1179, Misc., O.T.1966; People v. Laverne, 14 N.Y.2d 304, 251 N.Y.S.2d 452, 200 N.E.2d 441 (1964).

4 In Frank, the Baltimore ordinance required that the health inspector 'have cause to suspect that a nuisance exists in any house, cellar or enclosure' before he could demand entry without a warrant, a requirement obviously met in frank because the inspector observed extreme structural decay and a pile of rodent feces on the appellant's premises. Section 503 of the San Francisco Housing Code has no such 'cause' requirement, but neither did the Ohio ordinance at issue in Eaton v. Price, a case which four Justices thought was controlled by Frank. 364 U.S., at 264, 265, 80 S.Ct. 1464, 1465, n. 2 (opinion of Mr. Justice Brennan).

5 See Boyd v. United States, 116 U.S. 616, 6 S.Ct. 524, 29 L.Ed. 746. Compare Schmerber v. State of California, 384 U.S. 757, 766—772, 86 S.Ct. 1826, 1833—1836, 16 L.Ed. 908.

6 See Abel v. United States, 362 U.S. 217, 254—256, 80 S.Ct. 683, 705—706, 4 L.Ed.2d 668 (Mr. Justice Brennan, dissenting); District of Columbia v. Little, 85 U.S.App.D.C. 242, 178 F.2d 13, 13 A.L.R.2d 954, aff'd, 339 U.S. 1, 70 S.Ct. 468, 94 L.Ed. 599.

7 See New York, N.Y., Administrative Code s D26—8.0 (1964).

Exhibit J 6 8 18

30 Cal.App.3d 282
Court of Appeal, First District, Division 4, California.

The PEOPLE of the State of California, Plaintiff and Respondent,
v.
William E. WHEELER, Defendant and Appellant,
Ahimsa Church, Inc., Appellant.

Civ. 30279.
|
Jan. 30, 1973.
|
Hearing Denied March 29, 1973.

Appeal from a judgment of the Superior Court, Sonoma County, Lincoln F. Mahan, J., ordering defendants, inter alia, to abate certain hazards and to tear down certain structures. The Court of Appeal, Bray, J., held, inter alia, that substantial evidence existed to support finding that conditions on ranch constituted an actual and impending threat to the enjoyment of life and property arising from threat of epidemic to those living on the land and the community as a whole, as well as a structural threat to those residing upon the ranch, that evidenct was insufficient to show that such conditions had been substantially abated by time of trial, and that inspection warrant which authorized inspection of entire ranch for purpose of determining the existence of noncode structures and compliance with health code described the places to be searched with sufficient particularity, where the inspection at issue was to determine if there was compliance with minimal physical standards for private property, which required an inspection of all structures on the property as well as the property itself.

Affirmed.

West Headnotes (13)

[1] **Municipal Corporations** ⇐ Concurrent and Conflicting Exercise of Power by State and Municipality

Whenever the legislature has adopted a general scheme for the regulation of a particular subject, a local ordinance is invalid if it attempts to regulate the same subject matter.

Cases that cite this headnote

[2] **Statutes** ⇐ Superfluousness

Every word, phrase, or provision of a statute is deemed to have been intended to have a meaning and perform a useful function.

Cases that cite this headnote

[3] **Counties** ⇐ Governmental powers in general

Since Sonoma County ordinance relating to nuisances was in existence at time statute was enacted which stated, inter alia, that "Nothing contained in this part shall be construed to require the governing body of any city or county to alter in any way building regulations enacted on or before the effective date of this section.", the ordinance was not void on grounds that the legislature had preempted the field of defining a public nuisance.

Exhibit J 1 of 18

particularly described and that several living units should not, as in the Coulon case, be searched upon a showing of probable cause to search one.

Sheehan and Coulon are easily distinguishable from the instant case. They involved a search for specific contraband. A search for specific contraband goods, even with a warrant, is "reasonable' only when there is 'probable cause' to believe that they will be uncovered in a particular dwelling.' (Camara v. Municipal Court (1967) 387 U.S. 523, 535, 87 S.Ct. 1727, 1734, 18 L.Ed.2d 930.)

Here the inspection at issue was to determine if there was compliance with minimum physical standards for private property and this required an inspection of all structures on the property as well as the property itself.

In Camara v. Municipal Court, Supra, 387 U.S. 523, at page 538, 87 S.Ct. 1727, at page 1735, the court quoted from (Frank v. State of Md.) 359 U.S. (360) at page 383, 79 S.Ct. (804) at 817 (3 L.Ed.2d 877).

'Where considerations of health and safety are involved, the facts that would justify an inference of 'probable cause' to make an inspection are clearly different from those that would justify such an inference where a criminal investigation has been undertaken . . . The test of **272 'probable cause' required by the Fourth Amendment can take into account the nature of the search that is being sought.'

The court went on to say (387 U.S. at p. 538, 87 S.Ct. at p. 1735):

'Having concluded that the area inspection is a 'reasonable' search of private property within the meaning of the Fourth Amendment, it is obvious that 'probable cause' to issue a warrant to inspect must exist if Reasonable legislative or administrative standards for conducting an area inspection are satisfied with respect to a particular dwelling. Such standards, which will vary with the municipal program being enforced, may be based upon the passage of time, the nature of the building (E.g., a multi-family apartment house), or the condition of the entire area, But they will not necessarily depend upon specific knowledge of the condition of the particular dwelling.' (Emphasis added.)

*299 [13] The legislative standards of the Code of Civil Procedure section 1822.50 et seq., were met in the instant case. Section 1822.51 provides that an inspection warrant shall be issued only upon 'cause, supported by affidavit, particularly describing the place . . . to be searched . . .' In the instant case the place was described as 19100 Coleman Valley Road used as the residence of William and Sarah Wheeler and other structures. Ten photos of the other structures were attached as exhibits. The photos also depicted violations of the code. Requests for permission to inspect were also attached.

Camara v. Municipal Court is authoritative. The affidavit for the warrant in the instant case showed that the Wheeler ranch and all its structures and tents were in violation of the building and health codes and should be inspected, and the warrant specifically described the land and structures to be inspected.

Judgment affirmed.

DEVINE, P.J., and RATTIGAN, J., concur.

All Citations

30 Cal.App.3d 282, 106 Cal.Rptr. 260

Footnotes

* Retired Presiding Justice of the Court of Appeal sitting under appointment of the Chairman of the Judicial Council.

1 The Ahimsa Church, Inc. filed herein a notice of appeal. The record before us fails to show any appearance by the church in the trial court.

Exhibit J 8 of 18

175 Cal.App.3d 413, 220 Cal.Rptr. 621

LEROY GLEAVES et al., Plaintiffs and Appellants,
v.
ROBBIE WATERS, as Sheriff, etc., et al., Defendants and Respondents.

Civ. No. 24444.
Court of Appeal, Third District, California.
Dec 6, 1985.

SUMMARY

Plaintiff property owners applied for a preliminary injunction to prevent defendant state agricultural control officials from entering plaintiffs' private yards, without consent or a valid warrant, for the purpose of abating a declared public nuisance, the Japanese beetle. The trial court denied plaintiffs' application after finding that a public nuisance had been established, that summary abatement measures were authorized under such circumstances, that the state's eradication program required entry into closed yards but not homes, and that the application of chemicals in private residential property did not constitute an inspection requiring an inspection warrant. (Superior Court of Sacramento County, No. 319491, James Timothy Ford, Judge.)

The Court of Appeal affirmed. The court held that, absent exigent circumstances, the need to summarily abate a public nuisance does not of itself justify state invasion of legitimate privacy interests without consent or a warrant. It held that abatement of a nuisance involved simultaneous inspection and treatment requiring compliance with Code Civ. Proc., § 1822.50 et seq., governing the issuance of administrative inspection warrants. However, it held that plaintiffs failed to make the necessary threshold showing that they were in immediate danger of sustaining some real injury as a result of state efforts to eradicate the Japanese beetle. It noted that, under recently enacted Code Civ. Proc., § 1822.59, state agricultural officials may obtain inspection warrants for entire geographical areas in cases involving pest eradication. (Opinion by Puglia, P. J., with Blease and Sparks, JJ., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

(1)
Injunctions § 21--Preliminary Injunctions--Appeal--Trial Court Discretion.
The granting or denial of a preliminary injunction rests in the sound discretion of the trial court and may not be disturbed on appeal absent an abuse of discretion.

(2)
Injunctions § 21--Preliminary Injunctions--Appeal--Interpretation of Conflicting Evidence.
Where the evidence with respect to the right to a preliminary injunction is conflicting, the reviewing court must interpret the facts in the light most favorable to the prevailing party and indulge in all reasonable inferences in support of the trial court's order.

(3)
Injunctions § 13--Preliminary Injunctions--Grounds--Irreparable Injury.

Exhibit J 9 of 18

The parties do not dispute that the Japanese beetle constitutes a public nuisance. A member of the scarab beetle family, the Japanese beetle has the capacity rapidly to generate overwhelming numbers. It is a general feeder which attacks over 250 plant varieties, including valuable ornamental plants and food crops such as corn, grapes, and stone fruits.

Pursuant to statutory authority (Food & Agr. Code, §§ 407, 5322, 5401), in 1983 the Director of the State Department of Food and Agriculture proclaimed Sacramento County an eradication area known to be infested with the Japanese beetle. (Cal. Admin. Code, tit. 3, § 3589.) At the time they filed their amended petition, plaintiffs' homes were within the targeted area of actual infestation and their yards were scheduled to be treated with a series of pesticide applications.

Plaintiffs do not contest the Department of Food and Agriculture's authority summarily to abate a public nuisance. Rather, they maintain that abatement officers cannot enter their private, enclosed yards without first obtaining consent or a warrant. Defendants rejoin that, once a public nuisance has been established and declared, summary abatement measures may be taken under the state's police power without an administrative warrant authorizing entry into plaintiffs' private yards. Defendants' position is predicated on alternative theories that (1) summary abatement of a declared public nuisance does not constitute a search in any constitutional sense or, if it does, (2) there are exigent circumstances here which justify the intrusion ***418** into plaintiffs' private yards without a warrant. We shall reject each of defendants' arguments in turn.

([4])Underlying defendants' position is the assertion that treatment of the infested area with pesticides constitutes "abatement" as distinguished from "inspection." The significance of this distinction resides in the fact the statutory scheme for administrative warrants provides only for inspection warrants. Code of Civil Procedure section 1822.50 authorizes issuance of "An inspection warrant ... signed by a judge ... directed to a state or local official, commanding him to conduct any inspection required or authorized by state or local law or regulation relating to building, fire, safety, plumbing, electrical, health, labor or zoning."

However, the record shows that where consent to enter cannot be obtained, inspection and abatement activities are conducted at the same time. Approximately two weeks prior to treatment defendants undertake to inspect the affected properties to identify the presence of "host material" and to plan for safety measures ("e.g. removal of dog dishes, children's toys, laundry, etc."); where pretreatment inspection occurs, it is conducted with the consent of the property owner; where consent is refused or cannot otherwise be obtained, defendants obtain an inspection warrant authorizing entry into the property to inspect; all inspections carried out pursuant to warrants occur *simultaneously* with the actual treatment. The trial court's finding "that the application of chemicals on private residential property does not constitute an inspection requiring an inspection warrant" may be correct as a generalization. However, because the state relies on inspection warrants simultaneously to enter, inspect *and* abate, it is irrelevant to the disposition of this case.

([5])Quite apart from the inspection/abatement quibble, we disagree with the trial court's conclusion that Fourth Amendment protection against unreasonable governmental intrusion upon individual privacy is not implicated under the circumstances of this case. Entries onto private property by administrative functionaries of the government, like searches pursuant to a criminal investigation, are governed by the warrant requirement of the Fourth Amendment. (*Camara v. Municipal Court* (1967) 387 U.S. 523 [18 L.Ed.2d 930, 87 S.Ct. 1727]; *Michigan v. Tyler* (1978) 436 U.S. 499, 504-508 [56 L.Ed.2d 486, 494-498, 98 S.Ct. 1942]; *Michigan v. Clifford* (1984) 464 U.S. 287, 292 [78 L.Ed.2d 477, 483, 104 S.Ct. 641].) Thus, where there is a legitimate privacy interest in the property entered, a warrantless and nonconsensual entry is permissible only where exigent circumstances justify the intrusion. (*Michigan v. Clifford*, *supra.*, 464 U.S. at p. 292 [78 L.Ed.2d at p. 483].) Depending on the circumstances, a reasonable expectation of privacy may be recognized in certain of the areas surrounding ***419** one's home which are, perforce, protected from nonexigent warrantless intrusions by governmental officers. (See generally, Witkin, Cal. Criminal Procedure (1985 supp., pt. 2, ch. IX) Exclusion of Illegally Obtained Evidence, § 921, pp. 120-121.)

Exhibit J 10 of 18

"'A "search," as that term is used in the Fourth Amendment ... and in our own Constitution, implies some exploratory investigation or an invasion and a quest, a looking for or seeking out [citation].'" (*People v. Haugland* (1981) 115 Cal.App.3d 248, 257 [171 Cal.Rptr. 237], quoting *People v. Ammons* (1980) 103 Cal.App.3d 20, 26 [162 Cal.Rptr. 772].) "The essence of a search is the viewing of that which was ... intended to be private or hidden, ..." (*People v. Holloway* (1964) 230 Cal.App.2d 834, 839 [41 Cal.Rptr. 325].) "Succinctly stated, a search within the meaning of the Fourth Amendment occurs whenever one's reasonable expectation of privacy is violated by unreasonable governmental intrusion." (*People v. Smith* (1977) 67 Cal.App.3d 638, 651 [136 Cal.Rptr. 764]; see also *Haugland*, at p. 257; *Katz v. United States* (1967) 389 U.S. 347, 353 [19 L.Ed.2d 576, 583, 88 S.Ct. 507]; *Oliver v. United States* (1984) 466 U.S. 170, 177, 183 [80 L.Ed.2d 214, 223, 227, 104 S.Ct. 1735].) Whether the governmental purpose for the invasion here is to abate a public nuisance by the application of chemicals or to perform a routine inspection, the privacy interests of homeowners are no less affected. The governing principle is explained in *Michigan v. Tyler*, *supra.*: "The decisions of this Court firmly establish that the Fourth Amendment extends beyond the paradigmatic entry into a private dwelling by a law enforcement officer in search of the fruits or instrumentalities of crime. As this Court stated in *Camara v. Municipal Court*, 387 U.S. 523, 528 [18 L.Ed.2d 930, 87 S.Ct. 1727], the 'basic purpose of this Amendment ... is to safeguard the privacy and security of individuals against arbitrary invasions by governmental officials.' The officials may be health, fire, or building inspectors. *Their purpose may be to locate and abate a suspected public nuisance, or simply to perform a routine periodic inspection.* The privacy that is invaded may be sheltered by the walls of a warehouse or other commercial establishment not open to the public. *See v. Seattle*, 387 U.S. 541 [18 L.Ed.2d 943, 87 S.Ct. 1737]; *Marshall v. Barlow's Inc., ante*, at 311-313 [56 L.Ed.2d 305, 98 S.Ct. 1816]. These deviations from the typical police search are thus clearly within the protection of the Fourth Amendment." (436 U.S. at pp. 504-505 [56 L.Ed.2d at p. 495], italics added.)

Accordingly, we hold that in the absence of consent or exigent circumstances, government officials engaged in the abatement of a public nuisance must have a warrant to enter any private property where such entry would invade a constitutionally protected privacy interest. We do not mean to suggest or imply that the warrant requirement extends to all entries onto ***420** private property for nuisance abatement purposes, only those which infringe upon constitutionally recognized expectations of privacy.

Defendants' alternative position is that exigent circumstances excuse the necessity for a warrant. ([6])For Fourth Amendment purposes, exigency turns on "whether the burden of obtaining a warrant is likely to frustrate the governmental purpose behind the search." (*Camara*, *supra.*, 387 U.S. at p. 533 [18 L.Ed.2d at p. 938]; *People v. Hyde* (1974) 12 Cal.3d 158, 168 [115 Cal.Rptr. 358, 524 P.2d 830].) Defendants cite uncontradicted evidence presented to the trial court that it was of critical importance, in order effectively to eradicate the Japanese beetle in the 4,000 properties located in the infested area, to maintain a rigorous treatment schedule; if the required intervals between repeated pesticide applications had to be extended in order to secure a warrant, the treatment program would have to begin anew and the beetle might spread to unaffected areas as well; the required interval between treatments is 10-14 days.

The burden of obtaining a warrant may vary according to the statutory procedure, if any, with which administrative officials must comply. The constitutional requirement of a warrant is not of course dependent upon the enactment by the Legislature of an implementary procedure. Indeed, we are unaware of any statutory procedure for issuance of a warrant authorizing entry into private property specifically to abate a public nuisance. However, it is the prospective invasion of constitutionally protected interests by an entry onto property and not the purpose of the entry which calls forth the warrant requirement. Here the evidence shows that all nonconsensual entries onto private property were for the purposes "simultaneously" of inspection and treatment. Since there is a statutory procedure for issuance of warrants of inspection, and the state utilizes that procedure as authority to enter in order to inspect and treat the affected properties, we shall examine that scheme in dealing with the defendants' claim of exigency.

During the relevant events here and through the time of trial, Code of Civil Procedure section 1822.54 required that all inspection warrants issued thereunder particularly describe "each place, dwelling, structure, premises, or vehicle to be inspected ...." Section 1822.51 required that the affidavit in support of the warrant "contain either a statement that

Exhibit J 11/8/18

consent to inspect has been sought and refused or facts or circumstances reasonably justifying the failure to seek such consent." Section 1822.56 provided that entry under the warrant "shall not be made by means of forcible entry" except where expressly authorized on a showing of good cause.

Code of Civil Procedure section 1822.59, enacted after trial of this matter, now provides a more expeditious procedure for obtaining and executing ***421** inspection warrants in connection with "an animal or plant pest or disease eradication effort." Effective January 1, 1985 (Stats. 1984, ch. 476, § 4), the new section provides: "(a) Notwithstanding the provisions of Section 1822.54, for purposes of an animal or plant pest or disease eradication effort pursuant to Division 4 (commencing with Section 5001) or Division 5 (commencing with Section 9101) of the Food and Agricultural Code, the judge may issue a warrant under the requirements of this title describing a specified geographic area to be inspected by authorized personnel of the Department of Food and Agriculture. [¶] (b) A warrant issued pursuant to this section may only authorize the inspection of the exterior of places, dwellings, structures, premises or vehicles, and only in areas urban in character. The warrant shall state the geographical area which it covers and the purpose of and limitations on the inspection. [¶] (c) A warrant may be issued pursuant to this section whether or not the property owners in the area have refused to consent to the inspection. A peace officer may use reasonable force to enter a property to be inspected if so authorized by the warrant." A legislative finding accompanying the enactment of section 1822.59 states "that quick action is often required to eradicate animal or plant pests or diseases in urban as well as rural areas, and that the expeditious issuance of inspection warrants may be necessary for that purpose. It is the intent of the Legislature that these warrants be issued pursuant to the provisions of Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure, and that nothing in this act shall be construed as attempting to modify any requirement in existing law that a particular warrant be issued only on a showing of probable cause." (Stats. 1984, ch. 476, § 1.)

([7])Since relief by injunction operates in futuro, "the right to such relief must be determined under the law which exists at the time of an appellate court's decision." (*California Satellite Systems*, 170 Cal.App.3d at p. 66; see also *White v. Davis* (1975) 13 Cal.3d 757, 773, fn. 8 [120 Cal.Rptr. 94, 533 P.2d 222].)

In view of the new, untried enactment applicable to these circumstances, it is premature to speculate as to what combination of circumstances in the future would be required to excuse state agricultural officials from complying with the less burdensome requirements for obtaining and executing an inspection warrant in connection with pest eradication efforts.

([8])Plaintiffs have failed to make the necessary threshold showing they are in immediate danger of sustaining some real injury as a result of state efforts to eradicate the Japanese beetle. Absent such a showing, we shall not disturb the trial court's exercise of discretion in denying plaintiffs injunctive relief. ***422**

The order denying the preliminary injunction is affirmed.

Blease, J., and Sparks, J., concurred. ***423**

End of Document

Exhibit J 12 of 18

4 Cal.App.4th 1208
Court of Appeal, Third District, California.

The PEOPLE, Plaintiff and Respondent,
v.
Leroy George LEPEILBET, Defendant and Appellant.

C008109.
|
March 24, 1992.
|
Certified For Partial Publication *
|
Review Denied June 17, 1992.

Defendant was convicted in the Superior Court, El Dorado County, No. 53022, Eddie T. Keller, J., of possession of methamphetamine for sale, and he appealed. The Court of Appeal, Scotland, J., held that 24–hour notice requirement for inspection warrants was a procedural requirement which did not rise to an invasion of Fourth Amendment rights which would dictate a suppression of evidence.

Affirmed.

West Headnotes (3)

[1] **Searches and Seizures** ⇐ Time of Execution

Officers' failure to comply with requirement that they give defendant who refused to consent to premises inspection 24–hour notice before execution of inspection warrant did not contravene the reasonableness requirement of the Fourth Amendment so as to require suppression of evidence seized during execution of inspection warrant. West's Ann.Cal.C.C.P. § 1822.56; U.S.C.A. Const.Amend. 4; West's Ann.Cal. Const. Art. 1, § 28(d).

4 Cases that cite this headnote

[2] **Criminal Law** ⇐ Relevancy in General

Criminal Law ⇐ Searches, seizures, and arrests

Relevant evidence will not be excluded unless suppression is required by the Fourth Amendment of the United States Constitution. U.S.C.A. Const.Amend. 4; West's Ann.Cal. Const. Art. 1, § 28(d).

1 Cases that cite this headnote

[3] **Searches and Seizures** ⇐ Manner of Entry;Warning and Announcement

Searches and Seizures ⇐ Time of Execution

Compliance with 24–hour notice requirement for executing inspection warrants was not necessary to accomplish safety objectives of knock-notice provisions, which were intended to prevent situations conducive

Exhibit J 13 of 18

to violent confrontations between the occupants of a home and those who entered it without proper notice. U.S.C.A. Const.Amend. 4; West's Ann.Cal.Penal Code §§ 844, 1531; West's Ann.Cal.C.C.P. § 1822.56.

3 Cases that cite this headnote

Attorneys and Law Firms

***1210** ****371** Lyle H. Shattuck, Grass Valley, for defendant and appellant.

Daniel E. Lungren and John K. Van de Kamp, Attys. Gen., Richard B. Iglehart, Chief Asst. Atty. Gen., Arnold O. Overoye, Sr. Asst. Atty. Gen., Michael Weinberger, Supervising Deputy Atty. Gen. and Garrick W. Chock, Deputy Atty. Gen., for plaintiff and respondent.

Opinion

SCOTLAND, Associate Justice.

When officials have sought and been refused consent to inspect a premises for building, fire, safety, plumbing, electrical, health, labor or zoning violations, "notice that a[n inspection] warrant [Code Civ.Proc. §§ 1822.50 et seq.] has been issued must be given at least 24 hours before the warrant is executed, unless the judge [issuing the warrant] finds that immediate execution is reasonably necessary in the circumstances shown." (Code Civ.Proc., § 1822.56.)

This case presents the question whether failure to comply with the 24 hours notice ****372** requirement compels suppression of evidence seized during the inspection. While we do not condone such lack of compliance, we conclude the trial court correctly determined the 24 hours notice provision "is a procedural requirement and does not rise to the invasion of Fourth Amendment rights which would dictate a suppression of the evidence."

***1211** FACTS

After unsuccessfully attempting to get defendant's consent to inspect, officers obtained an inspection warrant for defendant's property ("the premises"), including two dwellings, a storage shed, a camper, numerous inoperable or dismantled vehicles, and piles of scrap, refuse, debris and rubbish, to determine whether building, health, safety, zoning, and vehicle violations existed. The issuing judge did not find immediate execution of the warrant was reasonably necessary.

Contrary to the requirements of Code of Civil Procedure section 1822.56, defendant was not given at least 24 hours notice before the warrant was executed.

Once officers were in defendant's residence, they observed numerous televisions, VCRs, microwave ovens, tools and other items stacked in the living room. Believing the items to be stolen, officers confronted defendant with their suspicion and asked if he would consent to a search of the premises. Defendant assured officers there was no stolen property on the premises and signed a written form authorizing them to search the residence. During the ensuing search, officers found 68 grams of methamphetamine inside a metal box. After waiving his *Miranda* rights (*Miranda v. Arizona* (1966) 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694), defendant showed officers "other items of narcotics."

Defendant admitted the drugs belonged to him and was charged with possessing more than 57 grams of methamphetamine for sale. (Health & Saf.Code, § 11378; Pen.Code, § 1203.073, subd. (b)(2).)

Exhibit J 14 of 18

At the preliminary hearing, defendant asked the magistrate to suppress evidence seized during execution of the inspection warrant (Pen.Code, § 1538.5) on the ground he was not given the statutorily required notice before the warrant was executed. In denying the motion, the magistrate held: "such failure does *not* require the exclusion of the evidence. The court finds the notice requirement to be a statutory procedural requirement and that non-compliance does not constitute a 4th [A]mendment violation." (Italics in original.)

In the superior court, defendant again moved to suppress the evidence on the ground, inter alia, that he was not given at least 24 hours notice of the inspection warrant as required by Code of Civil Procedure section 1822.56. The court denied the motion, ruling: "the notice requirement of the Inspection Warrant is a procedural requirement and does not rise to the invasion of ***1212** Fourth Amendment rights which would dictate a suppression of the evidence."

Convicted by jury as charged, defendant appeals, contending the trial court erred in denying his motion to suppress the evidence seized during service of the inspection warrant. We shall affirm the judgment.

DISCUSSION

I

Code of Civil Procedure sections 1822.50 et seq. authorize issuance of an inspection warrant to determine whether a "place, dwelling, structure, premises or vehicle" is in compliance with state or local laws or regulations "relating to building, fire, safety, plumbing, electrical, health, labor, or zoning." (Code of Civ.Proc. §§ 1822.50, 1822.51; further statutory references are to this code unless otherwise specified.) The affidavit in support of the warrant "shall contain either a statement that consent to inspect has been sought and refused or facts or circumstances reasonably justifying the failure to seek such consent." (§ 1822.51.)

Section 1822.56 limits the time and manner in which the inspection warrant may be served. Among other things it provides: "An inspection pursuant to a warrant shall ****373** not be made by means of forcible entry, except that the judge may expressly authorize a forcible entry where facts are shown sufficient to create a reasonable suspicion of a violation ... which, if such violation existed, would be an immediate threat to health or safety, or where facts are shown establishing that reasonable attempts to serve a previous warrant have been unsuccessful." As previously noted, this section also provides: "Where prior consent has been sought and refused, notice that a warrant has been issued must be given at least 24 hours before the warrant is executed, unless the judge finds that immediate execution is reasonably necessary in the circumstances shown."

[1] It is uncontested that officers sought and were refused defendant's consent to inspect his premises, that the judge issuing the warrant did not find immediate execution of the inspection warrant was reasonably necessary, and that defendant was not given 24 hours notice before the inspection warrant was executed. Because officials did not comply with the section 1822.56 notice requirement, defendant contends the evidence seized from his premises must be suppressed. In his view, the requirement "should be considered an implementation of the Fourth Amendment and it's [*sic*] violation of constitutional magnitude." We disagree.

[2] Relevant evidence will not be excluded unless suppression is required by the Fourth Amendment of the United States Constitution. (***1213** Cal. Const., art. I, § 28, subd. (d); *In re Lance W.* (1985) 37 Cal.3d 873, 886–887, 210 Cal.Rptr. 631, 694 P.2d 744; *People v. Tillery* (1989) 211 Cal.App.3d 1569, 1579, 260 Cal.Rptr. 320.)

Whether a violation of section 1822.56 implicates Fourth Amendment safeguards was addressed in *Tillery,* supra. There, officers executing an inspection warrant violated the section's prohibition against forcible entry without judicial authorization. The court noted: "[A] statutory violation does not necessarily require suppression of evidence. Although

Exhibit J 15 of 18

the purpose of the statutory requirements for service of warrants is the implementation of the Fourth Amendment, the particular procedures the statute mandates are not necessarily part of the Fourth Amendment. [Citation.] Where, despite statutory violations, the search is 'reasonable' in the constitutional sense, exclusion of the evidence is not warranted.... [I]t is important to differentiate between the *right* to personal security free from unnecessary intrusions by the state and the *procedures* which have been established to protect that right." (211 Cal.App.3d at p. 1580, 260 Cal.Rptr. 320, italics in original; see also, *Rodriguez v. Superior Court* (1988) 199 Cal.App.3d 1453, 1469–1470, 245 Cal.Rptr. 617 [a violation of Pen.Code, § 1533, which precludes nighttime service of a search warrant unless authorized by a magistrate, does not compel suppression of evidence "if the search is otherwise reasonable in the constitutional sense"]; *People v. Rawlings* (1974) 42 Cal.App.3d 952, 956, 117 Cal.Rptr. 651 ["Where a statute ... does not specifically provide that evidence shall be excluded for failure to comply with said statute and there are no constitutional issues involved ... such evidence is not inadmissible"].)

With this principle in mind, the *Tillery* court examined the purpose of the prohibition against use of force without judicial authorization in executing an inspection warrant. "[O]ne of the purposes of this procedure is to avoid violent confrontations between owners and/or occupants of private residences and the administrative inspectors." (211 Cal.App.3d at p. 1581, 260 Cal.Rptr. 320.) By violating this statutory procedure, the officers in *Tillery* caused the very thing the statute was designed to prevent, a violent episode during which the occupant fought with officers as they attempted to restrain him and enter the premise. The court concluded such official conduct was not reasonable within the meaning of the Fourth Amendment because the "government's interest in conducting the administrative search did not justify the forceful and coercive nature of the intrusion." (*Ibid.*) Thus, it ordered that evidence seized during the inspection ****374** must be suppressed. [2]

Here, unlike the statutory violation in *Tillery,* the officers' failure to comply with the 24 hours notice provision of section 1822.56 did not ***1214** contravene the reasonableness requirement of the Fourth Amendment. Although the Legislature undoubtedly had a legitimate reason for imposing the 24 hours notice provision as a matter of administrative policy, [3] the *Fourth Amendment* does not compel officials to give at least 24 hours notice before executing an inspection warrant. (See *Camara v. Municipal Court* (1967) 387 U.S. 523, 87 S.Ct. 1727, 18 L.Ed.2d 930; *See v. Seattle* (1967) 387 U.S. 541, 87 S.Ct. 1737, 18 L.Ed.2d 943.) The Fourth Amendment requires only "minimal limitations on administrative action [to inspect for building, health, safety, vehicle and zoning violations]." (*See, supra,* at p. 545, 87 S.Ct. at p. 1740, 18 L.Ed.2d at p. 947.) To comply with the constitutional requirement of reasonableness, an inspection warrant must be issued by a judicial officer based on a showing that reasonable legislative or administrative standards for conducting an inspection are satisfied and the warrant "should normally be sought only after entry is refused unless there has been a citizen complaint or there is other satisfactory reason for securing immediate entry." (*Camara, supra,* 387 U.S. at pp. 529, 538–540, 87 S.Ct. at pp. 1731, 1735–1737, 18 L.Ed.2d at pp. 941–942.) Other than the notice of intent to inspect inherent in every request for consent to inspect (which, in most circumstances, the officer must seek prior to obtaining an inspection warrant), and the notice the official gives when he or she displays the inspection warrant and seeks entry, nothing in *Camara* or *See* suggests the Fourth Amendment requires additional notice prior to execution of an inspection warrant.

A determination of reasonableness involves a balancing of the need to search against the invasion it entails. (*Camara,* supra, 387 U.S. at p. 537, 87 S.Ct. at p. 1735, 18 L.Ed.2d at p. 940.) Our high court has recognized that government has a significant need to routinely inspect for violations of public health and safety standards for private property, and that such inspections involve "a ***1215** relatively limited invasion of ... privacy." (*Id.,* at pp. 535–537, 87 S.Ct. at pp. 1734–1735, 18 L.Ed.2d at p. 940.) Balancing these interests, we find no constitutional requirement for 24 hours notice before serving an inspection warrant. While such notice may minimize the intrusion inherent in inspections for health and safety violations, such intrusion is relatively limited. On the other hand, a 24 hours notice requirement may frustrate a significant public interest by forewarning a violator so he or she may take steps to make it more difficult to detect health and safety violations. The reasonableness requirement ****375** of the Fourth Amendment does not compel such solicitude.

Exhibit J 16-0418

[3] Defendant disagrees, likening the 24 hours notice requirement to the knock-notice provisions of Penal Code sections 844 and 1531. (See fn. 2, *ante.*) We are unpersuaded.

The knock-notice provisions embody the Fourth Amendment's reasonableness requirement because they are intended to prevent situations conducive to violent confrontations between the occupants of a home and those who enter without proper notice, thereby protecting the occupants and innocent persons who may be on the premise, as well as safeguarding law enforcement officers who might be injured by a startled and fearful householder. (*Duke v. Superior Court* (1969) 1 Cal.3d 314, 321, 82 Cal.Rptr. 348, 461 P.2d 628.) A 24 hours notice requirement is not necessary to accomplish this safety objective. To the extent a notice requirement relates to one's privacy in his or her home (*ibid.*), defendant has not cited, and we have not found, any authority indicating the Fourth Amendment compels 24 hours notice to protect a privacy interest.

In sum, although the officers' failure to comply with the 24 hours notice provision violated section 1822.56, the officers' nonforceable entry onto the premise armed with an inspection warrant the justification for which defendant does not challenge, after having sought and been refused consent to inspect the residence, was not unreasonable under the Fourth Amendment. (See *Camara,* supra, 387 U.S. 523, 87 S.Ct. 1727, 18 L.Ed.2d 930; *See,* supra, 387 U.S. 541, 87 S.Ct. 1737, 18 L.Ed.2d 943.) Consequently, the statutory violation does not compel suppression of evidence seized during the inspection pursuant to a consent to search signed by defendant after the officers gained entry to the premises. (Cf. *Tillery,* supra, 211 Cal.App.3d at p. 1580, 260 Cal.Rptr. 320; *Rodriguez,* supra, 199 Cal.App.3d at pp. 1469–1470, 245 Cal.Rptr. 617; *Rawlings,* supra, 42 Cal.App.3d at p. 956, 117 Cal.Rptr. 651.)

***1216** II–IV **

DISPOSITION

The judgment is affirmed.

PUGLIA, P.J., and DAVIS, J., concur.

All Citations

4 Cal.App.4th 1208, 6 Cal.Rptr.2d 371

Footnotes

* Pursuant to California Rules of Court, rule 976.1, this opinion is certified for publication with the exception of parts II, III, and IV.

2 (Cf. *People v. Jacobs* (1987) 43 Cal.3d 472, 484, 233 Cal.Rptr. 323, 729 P.2d 757 [in the absence of exigent circumstances, noncompliance with Pen.Code, § 844, which authorizes an officer to use force in entering a house to make an arrest after having demanded admittance and explained the purpose in seeking same, renders any search and seizure following the entry unreasonable within the meaning of the Fourth Amendment]; *People v. Tacy* (1987) 195 Cal.App.3d 1402, 1413, 241 Cal.Rptr. 400 [the knock-notice requirement of Pen.Code, § 1531, which permits forcible entry to execute a search warrant if the officer serving the warrant has given notice of his authority and purpose and has been refused admittance, is "dictated by the standard of 'reasonableness' embedded in the Fourth Amendment," hence, in the absence of exigent circumstances, violation of that statute compels suppression of evidence seized during the search].)

3 Legislative history does not indicate why the 24 hours notice requirement was enacted. Defendant suggests it is intended "to provide for a minimum invasion of privacy in the service of inspection warrants and to protect a householder's right to be secure in his [or her] home free from surprise governmental intrusion as an implementation of reasonable search policy." To

Exhibit J 17 of 18

the extent the 24 hours notice requirement minimizes the invasion of one's privacy by giving that person time to "clean up his or her act" before the officials arrive to execute the warrant, nothing in the Fourth Amendment reasonableness requirement compels such gratuity. Likewise, to the extent 24 hours notice eliminates surprise, defendant has not cited, and we have not found, any authority indicating such extended notice is compelled by the Fourth Amendment.

** See footnote *, ante.

End of Document

Exhibit J 18 of 18

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

MONA ALLEN, et al.,

Plaintiffs,

v.

COUNTY OF LAKE, et al.,

Defendants.

Case No. 14-cv-03934-TEH

AMENDED ORDER FOR PRETRIAL PREPARATION

Good cause appearing, IT IS HEREBY ORDERED that:

1. **TRIAL DATE**

Trial before the JURY will begin in Courtroom No. 2 on **Tuesday, June 27, 2017, at 9:00 AM.** If necessary, this case may trail a case set to begin trial before this Court on June 20, 2017. The Court will further advise the parties of this possibility at the pretrial conference. The trial shall last for an estimated **6-8** trial days. The trial of liability and damages issues SHALL NOT be separate.

2. **PRETRIAL CONFERENCE**

The Court will hold a pretrial conference on **Monday, June 12, 2017, at 3:00 PM**. **Counsel who intend to try the case must attend the pretrial conference.**

3. **PRETRIAL CONFERENCE STATEMENT.**

(a) **Required Meeting and Disclosure Prior to Pretrial Conference.** Lead counsel who will try the case shall meet and confer on or before **May 2, 2017** (at least 30 calendar days before the pretrial conference). At that time, they shall discuss:

(1) Prospects for settling the action;

(2) The preparation and content of the joint pretrial conference statement;

Exhibit K 1 of 6

United States District Court
Northern District of California

6. **PROCEDURE FOR AMENDING THIS ORDER.** No provision of this order may be changed except by written order of this Court. The Court may enter such an order upon its own motion or upon motion of one or more of the parties. The parties must make any such motion in accordance with the Civil Local Rules and with a demonstration of very good cause. The mere fact that the parties have stipulated to a change does not constitute good cause, nor does a conflict with a court date set after the date of this order.

IT IS SO ORDERED.

Dated: 1/25/2017

THELTON E. HENDERSON
United States District Judge

United States District Court
Northern District of California

Exhibit K 20f6

THERESE Y. CANNATA (SBN 88032)
MARK P. FICKES (SBN 178570)
KEVIN LIU (SBN 295287)
CANNATA, O'TOOLE, FICKES & ALMAZAN LLP
100 Pine Street, Suite 350
San Francisco, CA 94111
Telephone: (415) 409-8900
Facsimile: (415) 409-8904

Attorneys for Plaintiff
HANEXAYSANA RATTANAVONG

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LAKE

HANEXAYSANA RATTANAVONG, an individual

Plaintiff,

v.

LAKE COUNTY, a political subdivision of the State of California, RICHARD COEL, an individual, KEVIN INGRAM, an individual, MICHAEL LOCKETT, an individual, BRANDON HOLLERAN, an individual, GROUND CONTROL TRUCKING, MATTHEW GEORGE, an individual, STEVEN GEORGE, an individual, SEAN ALAN KITE, an individual, MICHAEL ROSE, an individual, KELSEYVILLE AUTO SALVAGE, and DOES 1 through 30,

Defendants.

AND RELATED CROSS-ACTIONS
_____/

HANEXAYSANA RATTANAVONG,

Plaintiff,

v.

GROUND CONTROL TRUCKING, MATTHEW GEORGE, an individual, STEVEN GEORGE, an individual, SEAN ALAN KITE, an individual, MICHAEL ROSE, an individual, KELSEYVILLE AUTO SALVAGE, and DOES 1 THROUGH 30, inclusive

Defendants.

AND RELATED CROSS-ACTIONS
_____/

CASE NO. CV 413923

Consolidated with Lake County Superior Court Case No. CV 414622

NOTICE OF FURTHER CASE MANAGEMENT CONFERENCE

Hearing Date:	May 8, 2017
Time:	10:30 a.m.
Location:	Dept. 2
Judge:	Hon. Richard C. Martin

_____/

CANNATA, O'TOOLE, FICKES & ALMAZAN LLP
ATTORNEYS AT LAW
100 Pine Street, Suite 350
San Francisco, CA 94111
TEL: (415)409-8900 ▪ FAX: (415)409-8904

BY FAX

Exhibit K 3086

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD, please take notice that the Court set a further Case Management Conference for May 8, 2017 at 10:30 a.m. in Department 2.

Dated: January 9, 2017

CANNATA, O'TOOLE, FICKES & ALMAZAN LLP

KEVIN LIU

Attorney for Plaintiff
HANEXAYSANA RATTANAVONG

CANNATA, O'TOOLE, FICKES & ALMAZAN LLP
ATTORNEYS AT LAW
100 Pine Street, Suite 350
San Francisc o, CA 94111
TEL: (415)409-8900 ▪ FAX: (415)409-8904

Exhibit K 4 of 6

CANNATA, O'TOOLE, FICKES & ALMAZAN LLP
Attorneys at Law
100 Pine Street, Suite 350
San Francisco, CA 94111
Tel: (415) 409-8900 Fax: (415) 409-8904

PROOF OF SERVICE

I declare that I am employed in the County of San Francisco, State of California. I am over the age of eighteen (18) years and not a party to the within entitled cause, and my business address is CANNATA, O'TOOLE, FICKES & ALMAZAN LLP, 100 Pine Street, Suite 350, San Francisco, CA 94111.

On January 9, 2017, I served the following documents in the manner(s) selected:

1. **NOTICE OF FURTHER CASE MANAGEMENT CONFERENCE**

[X] (U.S. MAIL) placing true and correct copies thereof enclosed in a sealed envelope(s), mailed in the United States mail with first class postage fully prepaid, at San Francisco, California, addressed as set forth below:

[X] (EMAIL) delivering true and correct copies thereof to the following email address(es):

By U.S. Mail and Email

John R. Whitefleet
Jeffrey A. Clause
Porter / Scott
350 University Avenue, Suite 200
Sacramento, California 95825
jwhitefleet@porterscott.com
jclause@porterscott.com

Sean Alan Kite
21673 Highway 29
Middletown, CA 95461

Vincent M. Spohn, APC
P.O. Box 5748
Napa, CA 94581
vms@vspohnlaw.com

Kelseyville Auto Salvage
7666 Highway 29
Kelseyville, California 95451

Steven J. Brookes
Law Offices of Steven J. Brookes
435 N. Main Street
Lakeport, CA 95453
SJB571@mchsi.com

I declare that the foregoing is true and correct and that this declaration was executed in San Francisco, California, on January 9, 2017.

Eric Joseph de Lara

Exhibit K 516

IN THE SUPERIOR COURT OF CALIFORNIA
COUNTY OF LAKE

Hanexaysana Rattanavong Plaintiff/Petitioner, VS. **Lake County, et al.** Defendant/Respondent.	)	Case No. **CV413923** Event Date: **January 9, 2017** Event Type: **Case Management Conference** Mtn/OSC: Add'l Info: Judge: **Honorable Richard C Martin** Clerk: **Anne Howe** Reporter: **Nicole Worthen**

CIVIL MINUTES

Appearances:

☒ Attorney Kevin Liu is present by telephone on behalf of Plaintiff Hanexaysana Rattanavong.
☒ Attorney John Whitefleet is present by telephone on behalf of Defendant Lake County.
☒ Attorney Steven Brookes is present on behalf of Defendant Michael Rose.
☒ There are no other appearances.

CASE MANAGEMENT:

Court Action:

☒ The Case Management Conference statements have been reviewed.
☒ Mr. Whitefleet has discovery up through April or May
☒ Mr. Liu is amenable to a 90 to 120 day continuance.
☒ Mr. Brookes has no objection to a continuance.
☒ Mr. Brookes indicates the DBA (Kelseyville Auto) is just that an entity and he is requesting it be dismissed.
☒ Mr. Liu does agree with Mr. Brookes request.

Court Orders:

☒ The matter is continued to **5/8/17** at **10:30 am** in **Department 2**.

Exhibit K 6.8.16