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Summary of Hannon v. State, 125 Nev. Adv. Op. No. 15

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***Hannon v. State*, 125 Nev. Adv. Op. No. 15 (May 21, 2009)¹**

CRIMINAL LAW - EMERGENCY EXCEPTION TO WARRANTLESS ENTRY

Summary

The Court took this opportunity to align Nevada's standard for emergency home entries with the recent Supreme Court opinion in *Brigham City v. Stuart*.² The Supreme Court held in that case that for a warrantless entry to be lawful there must be an objectively reasonable basis to believe that a party inside is in danger.³ Accepting this standard eliminates Nevada's previous test, which allowed courts to look at the law enforcement agent's lack of intent to arrest or search.⁴

Disposition/Outcome

The lower court erred by concluding that the officer in the case had an objectively reasonable basis to believe a party inside the residence was in danger. The facts did not show any evidence that a party inside the house was in need of immediate assistance or in danger of imminent harm. Therefore the drugs and drug paraphernalia found inside the house must be excluded from evidence because it was seized after an illegal entry into a private residence.

Factual and Procedural History

On July 29, 2006, a neighbor overheard appellant Sean Andrew Hannon and his girlfriend Lea Robinson arguing. The neighbor heard screaming and thumping against the walls. Officer Eric Friberg and his trainee were dispatched to the residence to investigate the possible domestic disturbance.

Officer Friberg arrived at the residence about 45 minutes later. Robinson answered the door. She had been crying and had labored breathing. Officer Friberg also saw Hannon in the background, who appeared to be flushed and angry. Both parties told the officer that no was injured or in need of police assistance. Officer Friberg requested to enter the premises multiple times, but Hannon and Robinson declined to give their permission.

Although Hannon and Robinson refused to give permission for the officers to enter, Officer Friberg forcibly entered the premises. Officer Friberg states he did this to protect the safety of any occupants. While inside, the officers discovered drug paraphernalia. To avoid Officer Friberg obtaining a warrant, Hannon agreed to allow the officers to search the cupboards where they found a pillowcase size bag of marijuana.

Hannon was charged with possession of a controlled substance for the purpose of sale. He filed a motion to suppress on the grounds that the warrantless entry was

¹ By Shannon Rowe

² 547 U.S. 398, 404 (2006).

³ *Id.*

⁴ *State v. Hardin*, 518 P.2d 151, 154 (1974).

unreasonable. The district court determined there was objective information (i.e. Robinson's distressed appearance and the 911 call) to justify the officers' warrantless entry and denied Hannon's motion. After Hannon entered a conditional plea of nolo contendere to simple possession he filed this appeal.

Discussion

Emergency Exception

Warrantless home entries are presumptively unreasonable under the Fourth Amendment unless justified by a well-defined exception.⁵ One such exception is when emergency situations exist.⁶ This exception allows law enforcement officers to enter residences to "render emergency assistance to an injured occupant or to protect an occupant from imminent injury."⁷

Controlling Standard—Brigham City v. Stuart

Nevada's existing test allows an unwarranted entry into a private residence if law enforcement officers reasonably believe that emergency assistance is needed and they lack an intent to arrest or search within the premises.⁸ The Nevada Supreme Court rejected that test and instead adopted the standard announced by the United States Supreme Court in *Brigham City*. The new test does not consider the subjective motivation of the law enforcement agent. The only measure of the reasonableness of a warrantless entry into a private residence is if the circumstances, viewed objectively, justified the action.⁹

Officer Friberg lacked an objectively reasonable belief

This Court disagreed with the district court, and instead held that the circumstances did not justify the warrantless entry because the facts did not create an objectively reasonable basis for the officers to believe a party was injured or in need of assistance inside.

In *Brigham City* officers witnessed one person punch another followed by that person spitting out blood, after which the officers forcibly entered the premises.¹⁰ In this case, the officers did not witness nor overhear any violence, and knocked on the door rather than entering to halt any ensuing violence. In addition, neither party exhibited any injuries, and both told the officers they were unharmed.

The officers also had no reason to believe that a third party was inside the house. Officer Friberg admitted that although he suspected someone else might be inside, he had no evidence.

⁵ See *Camacho v. State*, 75 P.3d 370, 374 (2003).

⁶ *Id.*

⁷ *Brigham City*, 547 U.S. at 403.

⁸ See *Geary v. State*, 544 P.2d 417, 421 n.3 (1975).

⁹ *Brigham City*, 547 U.S. at 402.

¹⁰ *Id.* at 406.

Considering the totality of the circumstances, the Court held that Officer Friberg had no objectively reasonable basis to believe any party inside the residence needed immediate protection. Because the warrantless entry was unlawful, the marijuana discovered during the search was illegally seized.¹¹

Conclusion

The Court held that the warrantless entry into Hannon's apartment was unjustified because there was no objectively reasonable belief that any occupants of the residence required immediate protection or assistance. Therefore, the Court concluded that the district court erred in denying Hannon's motion to suppress. Accordingly, the Court reversed the district's court's judgment of conviction.

¹¹ See *Ford v. State*, 138 P.3d 500, 505 (2006); see generally *Wong Sun v. U.S.*, 371 U.S. 471 (1963).