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Summary of Zabeti v. State, 120 Nev. Adv. Rep. 60

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***Zabeti v. State*, 120 Nev. Adv. Rep. 60, 96 P.3d 773 (2004)¹**

CRIMINAL LAW – SEARCH & SEIZURE

Summary

After the Eighth Judicial District Court denied defendant’s motion to suppress evidence, he was convicted on a jury’s verdict of possession of a controlled substance. Defendant appealed.

Disposition/Outcome

Defendant’s conviction was affirmed but the case was remanded for correction of a clerical error in the judgment.

Factual and Procedural History

On May 2, 2001, a district court judge from White Pine County, Nevada, signed a search warrant authorizing police to search defendant Zabeti’s residence in Clark County, Nevada. The search warrant was obtained for an investigation regarding the crime of providing a controlled substance to a state prisoner. The search warrant was executed on May 4, 2001, during the daytime, and there were seventeen SWAT officers involved because the search warrant was classified as high-risk due to numerous prior arrests of both Zabeti and his brother, who lived at the residence with him.

Zabeti was outside the residence with another individual when the police arrived and both men were handcuffed. The police then approached the front door of the residence and they announced: “Police officer search warrant” in a loud voice after which the officers waited less than ten seconds before entering the residence. A police officer testified at trial that numerous factors necessitated this approach to entering the house including: (1) Zabeti’s prior arrests; (2) the fact that the house was two-stories which would make it easy for someone to shoot down on the officers from the top story; (3) Zabeti’s and another individual’s presence outside of the residence; and (4) the open garage door from which a suspect could shoot the officers without being seen.

After hearing arguments on Zabeti’s motion to suppress, the district court concluded that the White Pine County district court judge had jurisdiction to issue a search warrant that would be executed in another jurisdiction. Additionally, the district court held an evidentiary hearing on the State’s failure to knock and announce before entering the residence. Based on the totality of the circumstances, the district court found that the police officers did not violate NEV. REV. STAT. 179.055.² Zabeti contends on appeal that the district court erred in the above conclusions and appealed the decisions.

¹ By Z. Ryan Pahnke

² NEV. REV. STAT. 179.055(1) provides: “The officer may break open any outer or inner door or window of a house, or any part of the house, or anything therein, to execute a warrant, if, after notice of his authority and purpose, he is refused admittance.”

Discussion

1. Under Nevada law, does a White Pine County district judge have jurisdiction to issue a search warrant to be executed in Clark County?

In order to answer this question of first impression in Nevada, the Nevada Supreme Court was required to interpret NEV. REV. STAT. 179.025 which provides that “[a] search warrant authorized by NEV. REV. STAT. 179.015 to 179.115, inclusive, may be issued by a magistrate of the State of Nevada.”³ Fortunately, NEV. REV. STAT. 179.025 is similar to an Indiana statute which was recently interpreted by the Indiana Court of Appeals which reasoned that “although some jurisdictions limit magistrates to their own territorial jurisdiction with regard to issuance of search warrants, our controlling statute specifically states that a search warrant issued by a court of record may be executed ‘anywhere in the state.’”⁴ Nowhere in NEV. REV. STAT. 179.025 is there a specific limitation that requires search warrants to be issued and executed in the same county. Additionally, NEV. REV. STAT. 3.220 provides that “the district judges shall possess equal coextensive and concurrent jurisdiction and power. They each shall have power to hold court in any county of this state.”

2. Under Nevada law, should Zabeti’s motion to suppress the evidence obtained from the search of his residence be excluded?

Zabeti contends that the police officer’s announcement before entering without knocking on the door is a violation of 18 U.S.C. § 3109, NEV. REV. STAT. 179.055, and the Fourth Amendment to the United States Constitution. In Nevada, 18 U.S.C. § 3109 has been codified at NEV. REV. STAT. 179.055. The United States Supreme Court has interpreted § 3109 and held that the “common law ‘knock and announce’ principle forms a part of the reasonableness inquiry under the Fourth Amendment.”⁵ In *Richards v. Wisconsin*, the United States Supreme Court held that in order for a “no-knock” search to be reasonable, “the police must have a reasonable suspicion that knocking and announcing their presence, under the particular circumstances, would be dangerous or futile, or that it would inhibit the effective investigation of the crime.”⁶

Here, the police knew of Zabeti’s prior arrests and they could observe the two-story residence and the open garage door which led the officers to reasonably believe that if they knocked and waited at the door their safety could be compromised. A statement such as “Police officer, search warrant” in a loud voice has been held to satisfy the “knock and announce” requirements in Nevada⁷ and it does so here given the exigent circumstances. Although less than ten seconds from announcing their presence until entering was a brief period of time, the officers had valid concerns for their safety and thus the ten seconds was a sufficient amount of time.

³ NEV. REV. STAT. 179.015 to NRS 179.115 provide the law in Nevada with regard to search warrants.

⁴ *Brannon v. State*, 801 N.E.2d 750, 751 (Ind. Ct. App. 2004).

⁵ *Wilson v. Arkansas*, 514 U.S. 927, 929 (1995).

⁶ 520 U.S. 385, 394 (1997).

⁷ *See King v. State*, 116 Nev. 349, 358, 998 P.2d 1172, 1177 (2000) (concluding that the police did not violate NEV. REV. STAT. 179.055 by failing to knock prior to entering the premises after stating “Police officer. Search warrant,” given the valid concerns for officer safety).

Conclusion

The warrant in this case was properly issued because NEV. REV. STAT. 179.025 does not limit a search warrant to be issued and executed in the same county, and NEV. REV. STAT. 3.220 provides that district judges have equal coextensive and concurrent jurisdiction and power throughout the state. Also, though the police did not knock, they said “police officer, search warrant” in loud voices before entering less than ten seconds later. Under the Fourth Amendment and NEV. REV. STAT. 179.055, the officers’ knowledge of Zabeti’s and his brother’s prior arrests, as well as the officers’ vulnerability to gunfire from the garage or the second story of the home if they delayed entry, justified their not actually knocking on the door and entering less than ten seconds after announcing their presence.