
FLORIDA CASE LAW UPDATE 14-05

Case: Coronado v. State, 39 FLW D2113b (Fla. 2d DCA)

Date: October 8, 2014

Subject: **Though officers established probable cause for a warrant to search a shed located on the property, the probable cause did not extend to the residence next to the shed on the same property, and the search of the residence was therefore invalid**

FACTS: Deputies responded to a location to serve an outstanding arrest warrant. Upon arriving, they noticed a grey pickup truck parked at the premises. A registration check disclosed that the tag on the truck was registered to an Audi which had been reported stolen in 2013. The officers made contact with the owner of the property, and after determining that the subject of the arrest warrant was not present, asked her about the truck. She advised that the truck belonged to her son, and called him outside. He advised the officers that he had found the tag in a ditch, and kept it. During the conversation the deputies noticed numerous vehicles and car parts on the premises. The defendant explained that he scrapped cars and repaired vehicles for his friends. The deputies sought and received permission to walk around the property looking for the stolen Audi. During the walk, one of the deputies noticed the odor of marijuana emanating from a small shed in the yard, which was located about thirty feet from the house. They sought permission to search the shed, which was denied. Based on these events, the deputy drafted a search warrant affidavit requesting to search not only the shed, back yard, and vehicles on the property, but also the residence, alleging that probable cause existed that the residence was being used in violation of Chapter 893. The warrant was granted. No marijuana was found in the shed, nor stolen vehicles/parts found in the yard, but a small amount of methamphetamine was located during the search of the residence. During the suppression hearing, the deputy testified that he had smelled burnt marijuana coming from the shed, and included the residence in the warrant because in his experience it was not uncommon to locate items of evidentiary value in a home which was so close to another structure believed to contain contraband, such as the shed. The defendant argued that the odor of marijuana from a shed does not extend probable cause to the home. The trial court denied the suppression and admitted the evidence. Coronado appealed.

RULING: The Second District Court of Appeal reversed the trial court, finding that the warrant application failed to establish probable cause the search the residence. The evidence was suppressed.

DISCUSSION: The appellate court began its analysis by noting that a search warrant affidavit must establish, via case-specific facts, a nexus between the place to be searched and evidence of a crime. *Burnett v. State*, 848 So.2d 1170 (Fla. 2d DCA 2003). Mere speculation that evidence might be found if the police are allowed to search broadly enough is insufficient. *Dyess v. State*, 988 So.2d 146 (Fla. 1st DCA 2008). In this case, the court found that the deputies did establish probable cause to search the shed (per the "plain smell" doctrine), and arguably established probable cause to search the yard for evidence of car theft, but clearly did not articulate sufficient facts to establish probable cause for a search of the residence. The court noted that mere proximity to the shed, standing alone, cannot create probable cause for a search of the residence where none otherwise exists. The court also declined to apply the good faith exception, ruling that an objectively reasonable police officer would have known that the affidavit, "which contained not a single allegation to support a conclusion that narcotics, stolen items, or other evidence of criminal activity" would be found in the residence, was insufficient for the issuance of a warrant, and as such the good faith exception does not apply.

COMMENTS: Another example of the importance of articulating sufficient facts establishing probable cause. Remember that hunches and intuition are legally insufficient - the affidavit must stand on its own.

John E. Kemner
Regional Legal Advisor
Florida Department of Law Enforcement
Jacksonville Regional Operations Center

Officers should consult with their agency legal advisors to confirm the interpretation provided in this Update and to determine to what extent the case discussed will affect their activities.