



SCHOOL THREATS, EXIGENT CIRCUMSTANCES AND ENTRY INTO PRIVATE PREMISES

10th Circuit *Armijo v. Peterson, et al*

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©2010 Brian S. Batterton, Attorney, Legal & Liability Risk Management Institute, *Armijo v. Peterson, et al*, decided April 13, 2010.

Note: Court holdings can vary significantly between jurisdictions. As such, it is advisable to seek the advice of a local prosecutor or your agency legal advisor regarding questions on specific cases. This answer is not intended to constitute legal advice on a specific case.

Imagine a case that involved gangs, threats of bombings and shootings at a school, warrantless home entry, and of course a civil rights lawsuit. That is exactly what the school officials and police officers of the Ocate High School in Las Cruces, New Mexico were facing in the fall of 2006. Ultimately, this became a lawsuit under 42 U.S.C. § 1983 for a violation of a student's rights under the *Fourth Amendment*. On April 13, 2010, the Tenth Circuit Court of Appeals decided *Armijo v. Peterson, et al*.¹

The facts of *Armijo*, taken directly from the case are as follows:

On September 22, 2006, an anonymous caller made two bomb threats to Ocate High School in Las Cruces, New Mexico. During the two months immediately preceding these calls, police officers assigned to the high school had dealt with various gang problems and multiple bomb and shooting threats. Only three days before, an anonymous caller had made a bomb and shooting threat.

The morning of the threats, two female students predicted them to Ocate High School's principal. The students told the principal that the day before they had seen a fight between two rival gangs, the East Siders and the Surenos. According to the students, the gang members said that they would bring guns to school the next day, call in a bomb threat to force the school to evacuate, and open fire on the students or start a gunfight when the students were outside.

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Although the students did not know the gang members' names, they recognized them from Onate High School and assumed they referred to that school.

Next, a woman identifying herself as the mother of a boy attending Mayfield High School called the principal of Onate High School. The woman said that her son told her that a male named Chris would call in a bomb threat to Onate High School. She said that Chris was a member of the East Siders gang and that Chris had formerly attended Onate High School but recently started at Mayfield High School. The principal told the police officer assigned to the school about these tips.

Soon, at 10:35 a.m., a juvenile-sounding male called 911 and made the first bomb threat to Onate High School. The police officer at the school had spoken to the two female students, who repeated everything to him. Because the officer viewed the shooting threats to be greater than the bomb threat, he told the principal to place the students under lock-down, so the students could not leave the school.

When his sergeant arrived, the officer told her that Christopher Armijo was the only suspect. The officer believed that (1) Onate High School had recently expelled Mr. Armijo and he now attended Mayfield High School, (2) Mr. Armijo was an East Sider, and (3) no other student named Chris had recently transferred between those schools.

At 11:00 a.m., a juvenile-sounding male made another bomb threat to Onate High School. Like the prior call, this one was from a disconnected cell phone. All cell phones can call 911, even if their service is disconnected, but disconnected phones are harder to trace than functioning phones. The officer thought that the person making the threat had seen that the students had not left the building, which frustrated the shooting, and that he was calling a second time to try again.

The officer then dispatched four other officers to Mr. Armijo's home, which they believed was a gang hangout. Ms. Armijo also lived there, although she was not at home. Three officers knocked on the front door and yelled "Police Department. Anybody in here?," "Come to the door," and "Let yourself be known" as loudly as they could for two to three minutes. When no one answered, one officer then tried the doorknob and found it unlocked.

The officers radioed a sergeant at the school. From her own knowledge, the sergeant believed Onate High School had recently expelled Mr. Armijo, that he now attended Mayfield High School, that expelled students might be angry with the school, and that bomb threats generally were made by angry or problematic students. The sergeant thought Mr. Armijo was the only suspect and authorized entry.

The officers entered. They searched the home for Mr. Armijo and anyone else within, in part to ensure officer safety. According to Mr. Armijo, he was sound asleep when the officers entered his bedroom. Two officers pointed their guns in his face, several yelled at him to get up, one or more pulled him out of bed, one handcuffed him, and one took him out on his porch in his underwear and T-shirt.

While Mr. Armijo was on the porch, the officers searched the home for about five minutes. They questioned him and requested his cell phone, which he provided. The officers checked the phone and the house's land line. After discovering that neither phone called in the threats, they removed the handcuffs and left. At most, the officers spent twenty minutes at the home. When they left, the school was still under lock-down.ⁱⁱ [internal citations omitted]

The district court denied qualified immunity for the officers. The officers appealed to the Tenth Circuit Court of Appeals. There were four issues before the court.

ISSUE 1:

Whether the exigent circumstances exception to the warrant requirement only justifies warrantless entries into a house to aid a potential victim in the house or if it also justifies warrantless entries into a house to stop a person or property inside the house from immediately harming people not in or near the house?

Absent a warrant, searches and seizures inside a home are presumed unreasonable.ⁱⁱⁱ However, warrantless searches and seizures inside a home can be reasonable if conducted with valid consent or exigent circumstances. Since consent was not obtained for entry into Armijo's home, the court had to decide if the exigent circumstance exception applied in this case. The court, in *Armijo*, stated:

One exigency obviating the requirement of a warrant is the need to assist persons who are seriously injured or threatened with such injury. That exigency exists when (1) the officers have an objectively reasonable basis to believe there is an immediate need to protect the lives or safety of themselves or others, and (2) the manner and scope of the search is [sic] reasonable. In such an emergency, officers do not need probable cause. The Supreme Court illustrated that police may enter a home without a warrant when they have an objectively reasonable basis for believing that *an occupant* is seriously injured or imminently threatened with such injury.^{iv} [internal citations omitted]

However, the difference between the facts of *Armijo* and the facts of other "exigent circumstance" cases is the fact that in *Armijo*, the officers did not need to protect someone *inside* the home, but rather in a nearby school. The court then observed:

The *Fourth Amendment's* touchstone is reasonableness in the totality of the circumstances. Would-be attackers and victims are frequently not in the same place, yet a requirement that they must be for exigent circumstances to occur could hamper law enforcement and compromise public safety.^v

In light of the above rules and considerations, the court then held **that the exigent circumstance exception permits warrantless home entry when the officers have a reasonable belief that**

some person or object in a residence may *immediately* cause harm to people or property not in or near the house.^{vi}

ISSUE 2:

Whether the bomb threats, combined with information from the tips, posed exigent circumstances that justified warrantless entry into Armijo's house?

Regarding this issue, the court noted that the school at issue had a history of gang problems. The officers also had received two separate tips of what might occur and there were two separate bomb threats. Here, the court found that it was reasonable for the police to believe that Mr. Armijo was involved in the bomb threats based on information that they had received. The court stated:

The Fourth Amendment evaluates reasonableness based upon what the officers reasonably believed at the time. It does not matter that, in retrospect, information provided to the officers was wrong, and that Mr. Armijo apparently had nothing to do with the threats.^{vii} [internal citations omitted]

Weighing whether the officer should have conducted a more thorough investigation to dispel their belief that Mr. Armijo was involved the court reasoned that, given the imminence of the threatened attacks, that a delay would have posed too great a risk. Therefore, the court held:

The plausible reports of a bomb and a gun fight posed an emergency. The officers thus had an objectively reasonable basis to believe they immediately needed to protect the lives and safety of those at the high school.^{viii}

Thus, the entry was permissible. The court also noted that the manner of entry was reasonable, in that they first knocked repeatedly and shouted to try to get someone to answer the door.

ISSUE 3:

Whether the exigent circumstances justified the officer's search of Armijo's house?

Regarding this issue, the court examined Tenth Circuit precedent. Particularly, in the *United States v. Walker*, the Tenth Circuit Court of Appeals stated:

The [protective] sweep [of a residence] may nevertheless have been proper under the exigent-circumstances doctrine if reasonable grounds existed to search to protect the safety of someone besides the officers. In other words, if they had a threat to a civilian's safety. [sic]^{ix} [internal quotations omitted]

Considering the fact that this case involved threats between rival gangs and there was information that indicated that Armijo was a gang member, the court found that it was reasonable for the police to believe that he could have accomplices in his house. The court then held:

An urgent need to protect those at the high school justified the officers' five-minute search. The need to find and neutralize those behind the threats made the entry reasonable. Necessarily, then, the circumstances made a search for the suspect reasonable. Entering, but failing to look for the suspect, would do nothing to prevent an attack. The emergency thus justified the search separate and apart from concerns for officer safety.^x

ISSUE 4:

Whether exigent circumstances, in the absence of probable cause, justified the detention of Mr. Armijo?

In this case, the parties all agree that the detention of Armijo in his home was considered a *Terry* Stop (also known as an investigative detention), that was based on reasonable suspicion of criminal activity.^{xi}

The court stated:

Absent exigent circumstances and probable cause, or a warrant, officers may not enter a home and seize an individual for routine investigatory purposes, no matter whether the seizure is an investigatory stop or an arrest. In that sense, *Terry* stops have no place in the home.^{xii} [internal citations omitted]

However, the court also noted that some detentions for investigatory purposes are allowed in a person's home. For example, when officers arrest a person inside a residence, if reasonable suspicion to believe that other people in the home pose a possible threat to the officer or others, officers may conduct a protective sweep of the residence; this sweep carries with it the right to briefly detain those persons encountered.^{xiii}

The court then found that that the brief detention of Armijo in his home was reasonable. Facts they considered were that the officers only briefly detained Armijo in his home. Once they determined that the call did not come from his phone, and they check the house for accomplices, they left. While the officers did display their guns and escort Armijo outside, they did not tell him that he was under arrest and did not put him in a police car. Further, the police did not question him about other crimes. Also, significant was the fact that the officer did have exigent circumstances to support their entry and seizure. The two threats to the school and the fact that the tips received pointed to Armijo justified the police action to immediately incapacitate the person suspected of making the threats. The court then held:

In short, if the simultaneous threats justify the entry and the search, they also justify the object of those actions: neutralizing the threat. They officers had to stop the suspect immediately or risk the attacks. It would be unreasonable to permit the officers to enter and search, but forbid them from briefly detaining the object of their quest. That the officers ultimately cleared Mr. Armijo of suspicion does not alter their actions' reasonableness.^{xiv}

Thus, the court reversed the denial of qualified immunity and held that the officers did not violated Armijo's constitutional rights.

CITATIONS:

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- ⁱ No. 09-2114, 2010 U.S. App. LEXIS 7572 (10th Cir. Decided April 13, 2010)
ⁱⁱ Id. at 2-6
ⁱⁱⁱ Payton v. New York, 445 U.S. 573 (1980)
^{iv} Armijo, No. 09-2114 at 9-10
^v Id. at 10 (see Mora v. City of Gaithersburg, Md., 519 F.3d 216 (4th Cir. 2008)
^{vi} Id. at 11
^{vii} Id. at 14
^{viii} Id. at 12
^{ix} Id. at 15(citing U.S. v. Walker, 474 F.3d 1249 (10th Cir. 2007)
^x Id.
^{xi} Id. at 16
^{xii} Id. at 17
^{xiii} Id. at 18
^{xiv} Id. at 20