KENTUCKY v . KING May 16, 2011

Certiorari to the Supreme Court of Kentucky

No. 09–1272. Argued January 12, 2011—Decided May 16, 2011

Police officers in Lexington, Kentucky, followed a suspected drug dealer to an apartment complex. They smelled marijuana outside an apartment door, knocked loudly, and announced their presence. As soon as the officers began knocking, they heard noises coming from the apartment; the officers believed that these noises were consistent with the destruction of evidence. The officers announced their intent to enter the apartment, kicked in the door, and found respondent and others. They saw drugs in plain view during a protective sweep of the apartment and found additional evidence during a subsequent search. The Circuit Court denied respondent's motion to suppress the evidence, holding that exigent circumstances—the need to prevent destruction of evidence—justified the warrantless entry. Respondent entered a conditional guilty plea, reserving his right to appeal the suppression ruling, and the Kentucky Court of Appeals affirmed. The Supreme Court of Kentucky reversed. The court assumed that exigent circumstances existed, but it nonetheless invalidated the search. The exigent circumstances rule did not apply, the court held, because the police should have foreseen that their conduct would prompt the occupants to attempt to destroy evidence.

Held :

1. The exigent circumstances rule applies when the police do not create the exigency by engaging or threatening to engage in conduct that violates the Fourth Amendment . Pp. 5–16.

(a) The Fourth Amendment expressly imposes two requirements: All searches and seizures must be reasonable; and a warrant may not be issued unless probable cause is properly established and the scope of the authorized search is set out with particularity. Although " 'searches and seizures inside a home without a warrant are presumptively unreasonable,' " Brigham City v. Stuart , 547 U. S. 398 , this presumption may be overcome when " 'the exigencies of the situation' make the needs of law enforcement so compelling that [a] warrantless search is objectively reasonable under the Fourth Amendment ," Mincey v. Arizona , 437 U. S. 385 . One such exigency is the need "to prevent the imminent destruction of evidence." Brigham City , supra, at 403. Pp. 5–6.

(b) Under the "police-created exigency" doctrine, which lower courts have developed as an exception to the exigent circumstances rule, exigent circumstances do not justify a warrantless search when the exigency was "created" or "manufactured" by the conduct of the police. The lower courts have not agreed, however, on the test for determining when police impermissibly create an exigency. Pp. 7–8.

(c) The proper test follows from the principle that permits warrantless searches: warrantless searches are allowed when the circumstances make it reasonable, within the meaning of the Fourth Amendment , to dispense with the warrant requirement. Thus, a warrantless entry based on exigent circumstances is reasonable when the police did not create the exigency by engaging or threatening to engage in conduct violating the Fourth Amendment . A similar approach has been taken in other cases involving warrantless searches. For example, officers may seize evidence in plain view if they have not violated the Fourth Amendment in arriving at the spot from which the observation of the evidence is made, see Horton v. California , 496 U. S. 128 ; and they may seek consent-based encounters if they are lawfully present in the place where the consensual encounter occurs, see INS v. Delgado , 466 U. S. 210 , n. 5. Pp. 8–10.

(d) Some courts, including the Kentucky Supreme Court, have imposed additional requirements—asking whether officers " 'deliberately created the exigent circumstances with the bad faith intent to avoid the warrant requirement,' " 302 S. W. 3d 649, 656 (case below); reasoning that police may not rely on an exigency if " 'it was reasonably foreseeable that [their] investigative tactics … would create the exigent circumstances,' " ibid.; faulting officers for knocking on a door when they had sufficient evidence to seek a warrant but did not do so; and finding that officers created or manufactured an exigency when their investigation was contrary to standard or good law enforcement practices. Such requirements are unsound and are thus rejected. Pp. 10–14.

(e) Respondent contends that an exigency is impermissibly created when officers engage in conduct that would cause a reasonable person to believe that entry was imminent and inevitable, but that approach is also flawed. The ability of officers to respond to an exigency cannot turn on such subtleties as the officers' tone of voice in announcing their presence and the forcefulness of their knocks. A forceful knock may be necessary to alert the occupants that someone is at the door, and unless officers identify themselves loudly enough, occupants may not know who is at their doorstep. Respondent's test would make it extremely difficult for officers to know how loudly they may announce their presence or how forcefully they may knock without running afoul of the police-created exigency rule. And in most cases, it would be nearly impossible for a court to determine whether that threshold had been passed. Pp. 14–15.

2. Assuming that an exigency existed here, there is no evidence that the officers either violated the Fourth Amendment or threatened to do so prior to the point when they entered the apartment. Pp. 16–19.

(a) Any question about whether an exigency existed here is better addressed by the Kentucky Supreme Court on remand. P. 17.

(b) Assuming an exigency did exist, the officers' conduct—banging on the door and announcing their presence—was entirely consistent with the Fourth Amendment . Respondent has pointed to no evidence supporting his argument that the officers made any sort of "demand" to enter the apartment, much less a demand that amounts to a threat to violate the Fourth Amendment . If there is contradictory evidence that has not been brought to this Court's attention, the state court may elect to

address that matter on remand. Finally, the record makes clear that the officers' announcement that they were going to enter the apartment was made after the exigency arose. Pp. 17–19.

302 S. W. 3d 649, reversed and remanded.