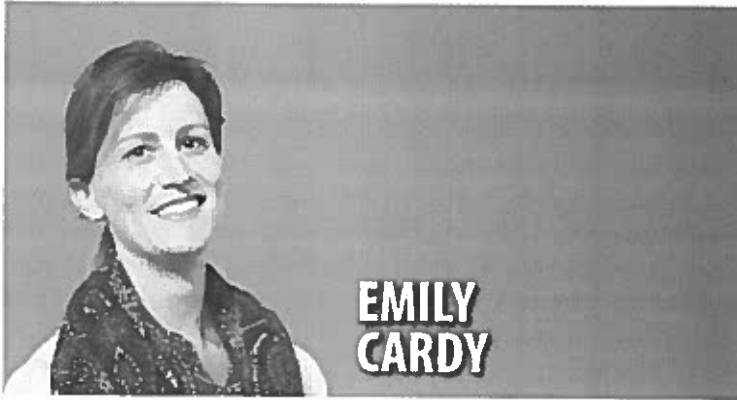


SJC limits exigency exception to warrant requirement

Police can't enter home based on emergency they created, court says

By: Eric T. Berkman December 27, 2018



CPCS lawyer 'ecstatic'

Evidence seized during a warrantless entry into a defendant's home was inadmissible because the police officers' lawful actions created a foreseeable emergency that they used to justify the intrusion, the Supreme Judicial Court has decided.

In so ruling, the SJC determined that Article 14 of the Massachusetts Declaration of Rights limits the "exigent circumstances" exception to the warrant requirement to a greater degree than the Fourth Amendment to the

U.S. Constitution.

Lynn police, investigating a home invasion, planned to knock on the door of defendant Jean Alexis' home to see if he was there before questioning and possibly arresting him for the crime. Alexis saw police coming and ran toward the back, where an officer saw him climbing out a window.

When the officer shouted at him to show his hands, Alexis retreated into the house, where he encountered the other officers who had forced their way in through the front door. The officers arrested Alexis and, during a protective sweep of the home, seized evidence implicating him in the home invasion.

Appealing a Superior Court judge's order that the evidence be suppressed, the commonwealth argued that under the U.S. Supreme Court's 2011 *Kentucky v. King* decision, the evidence was admissible because the police conduct creating the exigency did not violate the Fourth Amendment. Accordingly, the commonwealth contended, the warrantless entry was justified to prevent Alexis from destroying evidence.

But the SJC disagreed.

"[B]alancing the interests of law enforcement with the rights of people to be protected from warrantless searches in the home, we conclude that art. 14 provides greater protection than the Fourth Amendment in these circumstances and that under art. 14 the police cannot avail themselves of the exigency exception to the warrant requirement when it was foreseeable that their actions would create the exigency, even if their conduct was lawful," Justice Elspeth B. Cypher wrote for the court.

The 24-page decision is *Commonwealth v. Alexis*, Lawyers Weekly No. 10-203-18. The full text of the ruling can be found [here](#).

'Robust history'

The defendant's lawyer, Emily A. Cardy of the Committee for Public Counsel Services in Boston, said she and her client were "ecstatic" over the decision.

"Massachusetts has a really robust history of affording greater substantive protections under Article 14 than the Fourth Amendment, and we were hoping the SJC would situate this case within that history and line of cases and continue to protect people's right to privacy in their homes and decide not to follow the rule set out in *King*," Cardy said. "And they did."

Essex County District Attorney Jonathan W. Blodgett, whose office prosecuted the case, said the decision departs from the federal standard.

"[This] will limit the ability of police to investigate crimes effectively and bring criminal defendants to justice," he said.

But Christopher P. Basso, a criminal defense lawyer in Andover, said he was pleased to see the SJC embrace an opportunity to prevent the further erosion of the constitutional principles of sanctity of the home and the warrant requirement. The Supreme Court disregarded those principles in *King*, he said.

"The officers [in this case] chose to circumvent the warrant requirement by flushing the defendant out of his house," Basso said. "*King* permits such a result, because by knocking on the defendant's front door, police violated no Fourth Amendment protections. However, the SJC recognized, as did Justice [Ruth Bader] Ginsburg in her dissent in *King*, that by allowing this type of behavior to go unchecked, police can intentionally and easily dispense with the warrant requirement. This is an unacceptable result."

D. Christopher Dearborn, who teaches criminal trial practice at Suffolk University Law School and runs the Suffolk Defenders Program, said the decision sends a message to police officers in Massachusetts that the SJC will not allow them to take advantage of an emergency they create themselves.

"They're saying, 'If you have time to get an arrest or search warrant, we'll require you to do that instead of allowing you to walk your way into an exception,'" Dearborn said.

The decision also serves as a reminder for defense lawyers to carefully scrutinize warrantless searches and arrests, particularly in the home, even if police get a warrant later or have probable cause, he said.

Worcester criminal defense attorney Brian E. Murphy said the decision reiterates that the home has special protection, and even when the Supreme Court is willing to narrow that protection, the SJC does not have the same predilection.

"Also, the facts of the case were particularly egregious because it's clear police could have gotten an arrest warrant hours before but elected not to," Murphy said. "The ease with which they could have gotten a warrant seems to have been important."

"[This] will limit the ability of police to investigate crimes effectively and bring criminal defendants to justice."

— Essex DA Jonathan W. Blodgett



Warrantless entry

On the morning of June 14, 2016, Lynn police responded to a report of a home invasion.

Arriving at the scene, Detective Stephen Pohle spoke with the victim, Shomar Garcia, who said that when he was leaving for work earlier that morning, three African-American males forced their way into the apartment, where one of them struck him in the face with a silver handgun.

Garcia said the men restrained him with duct tape and took his jewelry and wallet. Before leaving the house, the man with the silver handgun allegedly struck his 6-month-old baby in the face with the weapon.

The victim said he recognized the man with the gun as someone he had attended high school with; later that afternoon at the police station, he identified Alexis after looking through a few hundred photos.

Pohle filled out an arrest warrant application, but apparently because it was late in the day and his shift had ended, he placed the application in the "court box" for the next day, though he later testified that the nature of the investigation justified an after-hours warrant.

Early the next morning, before starting his shift, Pohle informed Sgt. Michael Kenny that Alexis had been identified as a perpetrator and that he was in the process of getting a warrant.

Kenny, who knew where the defendant lived, apparently decided there was probable cause to arrest Alexis and that circumstances necessitated immediate action. He gathered four other members of the warrant task force and proceeded to Alexis' address. The officers were dressed in plainclothes and had their badges displayed.

As the officers approached the home, Alexis saw them through his glass front door and ran to the back of the house, where he tried to flee through a back window.

When another officer shouted for him to show his hands, Alexis retreated into the house, where he encountered other officers who had forced their way in through the front. They ordered Alexis to the ground and handcuffed him.

The officers then conducted a protective sweep, during which Kenny observed, in plain view, jewelry matching the description of jewelry taken during the home invasion.

Once the premises were secured, Kenny applied for a search warrant, which was approved. During the subsequent search, officers seized other items of evidentiary significance.

The commonwealth later brought home invasion, armed robbery and various assault charges against Alexis in Superior Court.

Alexis moved to suppress the evidence. Judge James F. Lang granted the motion and the commonwealth filed an interlocutory appeal, which a single justice reported to the full SJC.

More protection

The SJC rejected the commonwealth's argument that the evidence was admissible under *King* and therefore admissible in Massachusetts.

"We interpret art. 14 to provide greater protection than the Fourth Amendment where the police have relied on a reasonably foreseeable exigency to justify the warrantless entry into a dwelling," Cypher said.

Turning to the facts at hand, Cypher noted that before arriving at Alexis' home, Sgt. Kenny knew Detective Pohle was in the process of getting an arrest warrant. Additionally, she observed, Kenny testified that he had planned to knock on the door to see if Alexis was home, question him, and if the opportunity arose, arrest him.

"Based on his testimony, it was evident that Kenny went to the defendant's home with the purpose of making an arrest without a warrant," Cypher said. "There is nothing in the record indicating that it was impracticable to get a warrant. ... Forgoing multiple opportunities to procure an arrest warrant further highlights the unreasonableness of the arrest."

Because the warrantless arrest was unlawful, the SJC found, police could not rely on the plain view doctrine to justify their post-arrest observations in the residence. Accordingly, the court concluded, the suppression order should be affirmed.

Commonwealth v. Alexis

THE ISSUE: Was evidence seized during a warrantless entry into a defendant's home admissible when the police officers' own lawful actions created the emergency situation they used to justify the intrusion?

DECISION: No (Supreme Judicial Court)

LAWYERS: Emily R. Mello of the Essex County District Attorney's Office (commonwealth)

Emily A. Cardy of the Committee for Public Counsel Services, Boston (defense)