

FLORIDA CASE LAW UPDATE 19-01

Case: Rodgers v. State, 264 So.3d 1119 (Fla. 2d DCA 2019)

Date: February 20, 2019

Subject: Search of RV Exceeded Scope of Search Warrant

FACTS: As part of a child pornography investigation, a specific internet protocol (IP) address was identified as sharing child pornography. Subsequently, the lead investigator applied for a search warrant, which listed the address of the premises and described the premises as “a single story, block residence.” The warrant authorized law enforcement “to enter and search ‘the Premises’ aforesaid and curtilage thereof, and any vehicles thereon, or any persons located on ‘the Premises’ or within the curtilage reasonably believed to be connected with said illegal activity.” The warrant was issued and executed at the address. When the police arrived at the property, they discovered a detached mother-in-law suite behind the main house and several recreational vehicles (“RVs”) behind that. One RV had an Indiana license plate registered to Rodgers, window shades blocked any view of the interior, the RV had an attached awning affixed to the ground, a septic connection to the ground, and a router cable ran from the main portions of the residence to the RV. The investigator did not have specific information regarding which structure on the property was using the IP address. An entry team knocked on the door to Rodgers’ RV and announced that they had a search warrant. Rodgers disputed law enforcement’s authority to enter his RV. The police ordered Rodgers’ to come outside for officer safety, but he refused and disappeared from view. The police then heard “a commotion” in the RV, which was described as “unidentifiable noises.” The police forced entry into the RV out of concern that either someone else was inside or that Rodgers’ might “retrieve some sort of weapon.” Rodgers’ was immediately located in the main living area and taken outside. A sweep of the RV revealed that a computer broken into pieces was under the bed, and that Rodgers was alone. The entry team did not seize the computer; rather they called for the lead investigator. At that time, the lead investigator was speaking to the property owner, who informed him that Rodgers’ had been living in the RV located on his property for 5 years, paid rent and had access to utilities which included electric, water, and internet. The police then obtained a separate search warrant for the RV, after the initial entry. Rodgers’ computer was seized during the execution of the second search warrant. Rodgers filed a motion to suppress alleging that the initial entry into his RV was outside the scope of the search warrant because it was not separately identified in the warrant. The trial court denied the motion. Rodgers entered a plea to the charges and reserved his right to appeal the denial of the motion to suppress.

RULING: The Second District Court of Appeal found that the trial court erred in denying the motion to suppress, and held that the search of Rodgers’ RV exceeded the scope of the warrant.

DISCUSSION: While the initial entry onto the premises was lawful, the entry into the RV was not. The Court discussed the factors in determining whether it was apparent that an RV found on the curtilage is being used as a residence as opposed to a vehicle, including the exact location of the RV, whether it is owned by the homeowner or a third party, whether it is affixed to the ground or appears to be readily mobile, whether it has utility hook-ups connected to the main residence, whether it is occupied when the warrant is executed, and whether the police had previously been informed that the RV is being used as a separate residence. See U.S. v. Briscoe, 2017 WL 1908594 (D. Kan. 2017); U.S. v. Kinney, 2005 WL 3213090 (E.D. Mo. 2005); State v. Martini, 104 Or. App. 44, 799 P.2d 184 (1990). The Court found the facts analogous to those in State v. Martini, 104 Or. App. 44, 799 P.2d 184 (1990), and held that the police should have known that the RV was being used as a separate residence, and the initial search exceeded the scope of the warrant.

COMMENTS: The Court rejected the State’s first argument that the initial search was authorized as a protective sweep, as a protective sweep of a residence is not authorized without a separate, lawful basis for entry. Vasquez v. State, 870 So.2d 26, 31 (Fla. 2d DCA 2003). The Court also rejected the State’s argument that suppression was not required under the good faith exception because the officers knew

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.

that a separate structure that was not listed on the warrant was inhabited. The Court also discussed that the inevitable discovery doctrine did not apply because there was no evidence that the police were actively pursuing a search warrant for the RV at the time of the initial entry into Rodgers' RV, rather they sought an additional search warrant after they made entry. See Rodriguez v. State, 187 So.3d 841, 846 (Fla. 2015).

Heather Griffin Guarch
Regional Legal Advisor
Florida Department of Law Enforcement
Orlando 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.