

Bruno Rostain,

Petitioner,

v.

The State of Columbiana,

Respondent.

As celebrity photographers, Bruno Rostain and his husband, Darrin Quinto obtained financial independence at relatively young ages. To celebrate, the two decided to buy their “dream home,” a cabin on ten, wooded acres, located in the northern interior of Columbiana. The cabin is seven miles from the nearest town, Justice, (though calling Justice a “town” may be a misnomer as it consists only of one main street housing a hardware store, one hotel, three bars, and a gas station/convenience store.)

Columbiana Bureau of Land Management (BLM) land borders the Rostain/Quinto property to the south and west. Neighbors to the east and north have no permanent structures on either of their properties, though the new landowners have met their neighbors and soon learned that their properties were used almost every weekend for camping, hunting, and fishing. The cabin cannot be seen from these properties. Rather, the cabin is 200 yards from the south and west property lines, affording maximum privacy. It is a large “airy”, modern structure with vaulted ceilings, highlighted by windows that extend from floor to ceiling. The real estate brochure for the property highlighted that:

[T]he windows provide amazing views of the mountains and vistas, views that are especially breathtaking at sunset. The windows are unadorned (no blinds needed in this home!), giving the homeowner a full, unobstructed view. Inside, you will truly feel immersed in nature, just without the bugs!

Upon obtaining the property, Mr. Rostain and Mr. Quinto immediately began clearing some of the land to the south. Soon after, the neighbors noticed that a pick-up truck was “repeatedly coming and going from their property”. When asked later about the truck, neighbors noted that it looked like plants were being hauled in the vehicle. The neighbors also noted that “a number of young men arrived and left the property on a regular basis.”

State laws of Columbiana strictly prohibit the possession and use of marijuana under any circumstance; even medical exemptions are not allowed under Columbiana law. People living close to one of the state’s borders can easily obtain the drug in neighboring states but in the more isolated northern interior of the state, this is not an alternative, leading a number of local citizens to grow their own plants and distribute the resulting product. This has led to the area being known colloquially as “Mary Jane Ridge”, and has given the local police departments an interest in something other than setting up speed traps to ensnare unsuspecting, out-of-town travelers to the area.

In fact, this area has a working Drug Task Force (“Task Force”), led by Deputy Attorney General for the State of Columbiana, R. (Ronnie) Nixon and comprised of the Justice police officer, Jim Neighbors, along with a state drug enforcement officer.

After hearing of the activities from neighbors, Officer Neighbors began investigating the new residents. Using local utility reports and comparing usage with that of the previous owners during the same months of the prior year, Officer Neighbors discovered much higher electricity usage than that of the previous owners. He asked his good friend, Dave Cooper, a crop dusting pilot who owned a small plane, to fly him over the Rostain/Quinto property. The flight revealed nothing amiss outside the cabin; none of the interior of the home could be seen from the plane.

Although the flight proved unhelpful, Officer Neighbors was sure the two young men were “up to something” and worked with the Task Force in continuing to monitor the couple’s electricity usage. Month after month, the records consistently showed much higher electricity usage; after four months of review, the Task Force decided to investigate a possible crime of conspiracy to grow and distribute marijuana.

The Task Force next affixed a video camera atop a pole on the BLM land with the lens pointing to the southern facing windows of the cabin. The state officer provided the video camera - an “Ultra Long Range Multi-sensor EO IR PTZ CCTV IP Surveillance Camera System (HD 16x 85-1400)” - popularly known as “The Viper”. The Viper is a military-grade camera (though available for purchase to civilians¹) and is described by the manufacturer as:

[a] revolutionary ultra Long range HD Cooled infrared Thermal multi sensor PTZ camera boasting a long-range 128X visible day/night camera, long-range 55+km HD MWIR cooled thermal infrared zoom, and optional ZLID NIR illumination with LRF. This multi-sensor payload enables the Viper to provide high resolution imaging in virtually any environment from heavy fog to complete darkness. Designed for weapons systems pointing and accuracy, it meets and exceeds MIL-STD-810F military ratings for shock, vibration, temperature and dust/water ingress. This makes it the ultimate long range camera system for 24/7 situational awareness and long-range recognition and identification of targets.

The Viper was 200 yards from the Rostain/Quinto property. The camera remained on BLM land for over three months and at no time was the camera moved onto the actual Rostain/Quinto property. Officer Neighbors reviewed the video feed consistently throughout this time. Note that the truck was not included in the camera feed as it was parked in front of the house on the north side; however, by swiveling the camera on the pole, the officers could see every room in the house (except for bathrooms when the doors were closed). No indication of illegal drugs or plants was ever found.

¹ Note that no price is given on the website; the vendor asks that anyone interested in the camera contact the company directly.

After approximately three months of observation, however, Officer Neighbors was sleepily watching the video feed one afternoon when he was suddenly jolted from a post-lunch food coma. On the feed, Mr. Rostain appeared to slap Mr. Quinto and though there was no audio, it was clear that the two men were arguing. Mr. Rostain appeared to become quite volatile, pushing his husband. Mr. Quinto held up his hands in defense, which seemed to enrage Mr. Rostain all the more. He began punching Mr. Quinto with his fists. Mr. Quinto was now bleeding from his nose and mouth but Mr. Rostain did not pause. He continued to punch Mr. Quinto in the stomach and face, finally running outside, grabbing a heavy stick, and returning to the cabin to violently beat Mr. Quinto's with the weapon.

In his official report of the afternoon, Officer Neighbors noted that he viewed the unfolding scene approximately three minutes before running to his patrol car and driving to the Rostain/Quinto cabin. Along the way, he called for paramedic backup. It was further noted that Officer Neighbors arrived at the cabin in four minutes, 40 seconds; the paramedics arrived one minute, 58 seconds later. Officer Neighbors subsequently arrested Mr. Rostain while Mr. Quinto was taken by ambulance to the nearest hospital. Mr. Quinto sustained a severe head trauma, broken nose, and serious injuries to the abdominal area and legs. Doctors informed Mr. Quinto that he had severe blood loss and was fortunate to have survived. Mr. Quinto was left with a life-long limp (requiring the use of a cane) and would likely always have tinnitus (ringing in the ears) and balance problems due to the severity of the head trauma.

Mr. Rostain was charged with domestic violence. Due to the severity of Mr. Quinto's injuries, he was charged with first-degree assault, a charge that carries up to 25 years in prison under Columbiana's laws. Mr. Rostain believes that the state's evidence rests solely on the video footage obtained by the Task Force - it should be noted that, even given the severity of the attack, Mr. Quinto has loyally remained by his husband's side. Prosecutors in the criminal trial expect to treat Mr. Quinto as a hostile witness against his husband.

Prior to the criminal trial, Mr. Rostain appeared before the United States District Court for the Western District of Columbiana, asking to suppress the video evidence gathered by the Task Force due to it violating his Fourth Amendment rights. Mr. Quinto has also been vocal that he agrees with his husband regarding the video being a warrantless search that impacted on both of the men's constitutional rights.

The District Court agreed with Mr. Rostain, noting that, regardless of the heinousness of the crime, Mr. Rostain had a "reasonable expectation of privacy" in his home and that the camera was a search without the requisite probable cause. In a split opinion, the Thirteenth Circuit Court of Appeals reversed, concluding that there was no trespass by the government onto the Rostain/Quinto property; the camera was merely "observing" and as such, no search occurred. The Court also noted that, even though the cabin was "somewhat secluded," Mr. Rostain had no "reasonable expectation of privacy" when attacking his husband so near to public land where anyone hiking or camping might witness the attack.

Mr. Rostain's petition for *certiorari* has been granted by the United States Supreme Court to consider the following question:

Did the State of Columbian's use of the video camera constitute an unreasonable search violating Mr. Rostain's Fourth Amendment rights?