

People v. Dey  
(November 27, 2000) \_\_ Cal.App.4th \_\_

## ISSUE

If officers find illegal drugs in the passenger compartment of a vehicle, can they search the trunk for additional drugs if the quantity of drugs in the passenger compartment indicated it was possessed only for personal use?

## FACTS

Early one morning, two CHP officers in the Sacramento area made a traffic stop on a vehicle for expired registration. There were two men in the car. In the course of the stop, the officers learned the passenger was a parolee subject to arrest for parole violation. So they arrested him. Then they searched the passenger compartment of the car as an incident to the arrest. During the search, they found "a marijuana bud" in a day planner belonging to the driver, Dey.

The officers then searched the trunk and found more marijuana. Dey was convicted of transportation and possession of marijuana and methamphetamine.

## DISCUSSION

The People contended the officers' search of the trunk was lawful because the discovery of the marijuana bud in the passenger compartment gave them probable cause to believe there was additional marijuana in the trunk. This contention was based on the settled rule that when officers find drugs or other contraband in a vehicle, they automatically have probable cause to search the car--including the trunk--for additional contraband.[1] Or, as the rule is more commonly phrased, "If there's some there's probably more."

Dey attempted to skirt this rule by citing two cases from the mid-1970's (a rather infamous period in California jurisprudence). The cases--Wimberly v. Superior Court [2]and People v. Gregg [3]-- stand for the proposition that while an officer's discovery of drugs in the passenger compartment constitutes probable cause to search for additional drugs in the passenger compartment, it does not constitute probable cause to search the trunk unless it reasonably appears the drugs found in the passenger compartment were possessed for sale.

As the court in Dey pointed out, however, Wimberly and Gregg are at odds with the United States Supreme Court's decision in U.S. v. Ross.[4] In Ross, the Court ruled that if officers have probable cause to search a car for drugs or other evidence, they may search "every part of the vehicle and its contents that may conceal the object of the search." Under Ross, therefore, a trunk search is authorized whenever officers have probable cause to believe there are drugs anywhere in the vehicle. But Wimberly and Gregg require something more: probable cause to believe the drugs as possessed for sale.

The court in Dey pointed out that Wimberly and Gregg have never been expressly repudiated. So, based on California's Proposition 8, it did so: "[W]e do not think," said the court, "these holdings have continued validity, and it is Ross to which we must adhere."

The court then determined that the officer's discovery of a marijuana bud in Dey's car gave them probable cause to search the trunk, as well as the passenger compartment. In the words of the court, "We find that a person of ordinary caution would conscientiously entertain a strong suspicion that even if defendant makes only personal use of the marijuana found in his day planner, he might stash additional quantities for future use in other parts of the vehicle including the trunk. Such a suspicion is sufficient for a search of the trunk."

Dey's conviction was affirmed.

[1] See *United States v. Ross* (1982) 456 US 798, 800, 825.

[2] (1976) 16 Cal.3d 557.

[3] (1974) 43 Cal.App.3d 137.

[4] (1982) 456 US 798.