Recent Case Report

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People v. Watkins

(2009) __ Cal.App.4th __ [2009 WL 296160]

Issue

Are there circumstances in which a search can be upheld as a probation search even though officers were unaware that the suspect was on searchable probation?

Facts

At about 2:30 A.M., an Elk Grove police officer stopped a car for faulty brake lights. The driver, Stephon Watkins, falsely identified himself as his brother, Marques. Watkins said he was not carrying his driver's license and he admitted that he was on probation, although he didn't say whether it was searchable probation. When the officer ran a records check on Marques Watkins he learned that Marques was not on probation, but that his license had been suspended or revoked.

The officer figured that the conflict between Watkins saying he was on probation and the computer saying he wasn't was probably the result of a computer error. (After all, why would anyone lie that he was on probation?) So the officer conducted a probation search of Watkins' car and found drugs. After Watkins was arrested, he gave his true name, at which point the officer learned that he was on searchable probation.

Discussion

It is settled that a search can qualify as a parole or probation search only if officers knew that the suspect was on parole or searchable probation.[1] Citing this rule, Watkins argued that the search of his car was unlawful because, even though he admitted that he was on probation, this did not justify a search because he did not say that he was on *searchable* probation.

At the outset, it should be noted that the search might have been upheld as a search incident to arrest based on, (1) Watkins' saying he was Marques, and (2) the officers' discovery that the license issued to Marques had been suspended or revoked. The court did not, however, address the issue.

Instead, it ruled that even though the officer was unaware that Watkins was on searchable probation, there should be—and now there is—an exception to the rule

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[1] See *People* v. *Sanders* (2003) 31 Cal.4th 318, 332 ["[A] search conducted under the auspices of a properly imposed parole search condition, presumes the officer's awareness of the search condition, because a search cannot be conducted 'under the auspices' of a search condition if the officer is unaware that the condition exists."]; *In re Jaime P.* (2006) 40 Cal.4th 128; *People* v. *Medina* (2007) 158 Cal.App.4th 1571, 1577 ["[T]he officer must be aware of the [probation] search condition before conducting the search; after-acquired knowledge will not justify the search."].

requiring actual notice of the search condition. Citing the equitable principle that "no one can take advantage of his own wrong,"[2] the court ruled that a search can be upheld as a probation search even though the officer was unaware that the suspect was on searchable probation if both of the following circumstances existed:

(1) **Suspect lied**: The reason the officer didn't know the suspect was on probation was that he had lied about his identity.

(2) **Records check on false name**: The officer ran a records check on the false name, which means it was reasonably likely that, if the suspect had given his true name, the officer would have run it and, thus, would have been informed that he was on searchable probation.

Summarizing its ruling, the court said, "[D]efendant's wrongdoing in concealing his search condition from the officer by misrepresenting his identity estops him from contesting the search's validity as a probation search." POV

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[2] Civil Code § 3517.