People v. Waxler

(2014) __ Cal.App.4th __ [2014 WL 935470]

Issues

(1) Can an officer search a vehicle for marijuana under the "automobile exception" if he has probable cause to believe the vehicle contains substantially less than an ounce? (2) Is such a search prohibited if the driver presented the officer with a medical marijuana card?

Facts

A Del Norte County sheriff's deputy received a report that a man was illegally dumping trash in the parking lot behind the Safeway store in Crescent City. When the deputy arrived he saw a man in a parked truck, so he walked over to talk to him. As he approached the truck he could smell marijuana and, next to the driver, he saw a marijuana pipe with a small amount of residue in the bowl (apparently about 0.3 grams).

After detaining the driver, Michael Waxler, the deputy searched the truck and, in addition to the pipe, found methamphetamine. Waxler then told the deputy he had a "215 card," otherwise known as a medical marijuana card, and he showed it to the deputy. Waxler was arrested for possession of methamphetamine. When his motion to suppress the evidence was denied, he pled guilty.

Discussion

On appeal, Waxler contended that the search was illegal for two reasons. First, because the marijuana in the pipe obviously weighed much less than one ounce, the deputy lacked probable cause to believe he had committed a criminal offense and, therefore, the search would not fall within the automobile exception. Second, even if the search was legal at the outset, it was rendered illegal when he produced his medical marijuana card. The court rejected both arguments.

PROBABLE CAUSE: Pursuant to the "automobile exception," officers may search a vehicle without a warrant if it was in a public place and they had probable cause to believe it contained contraband or other evidence of a crime.[1] Although the deputy clearly had probable cause, Waxler contended that a warrantless search of a vehicle for marijuana is not permitted if the officer had reason to believe the amount of marijuana in the vehicle was less than one ounce and, therefore, the offense under investigation was merely an "infraction."[2] The court disagreed for two reasons.

First, an officer who sees a small amount of marijuana "may reasonably suspect additional quantities of marijuana might be found in the car."[3] Second, probable cause to

---

[1] See *United States v. Ross* (1982) 456 U.S. 798, 809 ["[A vehicle] search is not unreasonable if based on facts that would justify the issuance of a warrant, even though a warrant has not actually been obtained."]; *People v. Superior Court* (*Nasmeh)* (2007) 151 Cal.App.4th 85, 100 ["When the police have probable cause to believe an automobile contains contraband or evidence they may search the automobile and the containers within it without a warrant."].

[2] See Health & Saf. Code § 11357(b).

[3] See *People v. Superior Court (Marcil)* (1972) 27 Cal.App.3d 404, 413 ["Numerous cases have upheld search warrants on the theory that one who sells narcotics may have more at his residence or place of operations."]; *People v. Golden* (1971) 20 Cal.App.3d 211, 218-19 (dis. opn. of Kaus. J.) ["We have all handled enough narcotics cases and thus gained knowledge of the habits of

search will exist "irrespective of whether possession of up to an ounce of marijuana is an infraction and not an arrestable offense." This is because, said the court, "[u]nder the current state of California law, nonmedical marijuana—even in amounts within the statutory limit set forth in section 11357(b)—is 'contraband.'" Consequently, the court ruled that, if officers have probable cause to believe there is marijuana in a vehicle, officers may search it "regardless of its quantity." (Note that the permissible scope of the search includes the trunk.[4])

MEDICAL MARIJUANA: As noted, Waxler also contended that the search of his truck was illegal because he had presented the deputy with a "215 card." The court explained that a "215 card" is a "government card issued under the Compassionate Use Act of 1996 (CUA), also known as Proposition 215," and that California later enacted the Medical Marijuana Program Act (MMPA) which created a voluntary medical marijuana identification card program.

Apart from the fact that Waxler presented the card to the deputy *after* the search had been completed, the court ruled that "possession of a '215 card' does not vitiate probable cause to search pursuant to the automobile exception." As the court observed, although "California has decriminalized medicinal marijuana in some situations," the law does not prohibit vehicle searches for marijuana in possession of a cardholder." This is because officers have a duty "to determine whether [the cardholder] possessed marijuana for personal medical needs and to determine whether he adhered to the CUA's limits on possession." In other words, said the court, "The CUA provides a limited immunity—not a shield from reasonable investigation."[5]

The court added that, if officers were not permitted to make such searches, anyone with a medical marijuana card would be able to "deal marijuana from his car with complete freedom from any reasonable search." For these reasons, the court ruled that the search of Waxler's truck was lawful. POV

Date posted: March 15, 2014

---

peddlers, that we may perhaps reasonably suspect that such a person who deals a small amount of merchandise from his home, has more where it came from."]; *U.S. v. Brooks* (6th Cir. 2010) 594 F.3d 488, 494 [officers are not required "to assume that Brooks had just smoked his last bit of marijuana immediately before the officers arrived"].

[4] **NOTE**: In the past, it was the rule in California that officers could not search the trunk based on the discovery of a small amount of drugs in the passenger compartment (e.g., a single joint, odor of burnt marijuana) as this would indicate the drugs were for personal use only, which meant it was unlikely that additional drugs would be found in the trunk. See, for example, *People v. Wimberly* (1976) 16 Cal.3d 557, 572-73. But because this rule was contrary to the U.S. Supreme Court's rule that officers may search any place in which the evidence might reasonably be located, it has been abrogated. See *United States v. Ross* (1982) 456 U.S. 798, 821-22; *People v. Dey* (2000) 84 Cal.App.4th 1318, 1321-22 ["The holdings of *Gregg* and *Wimberly* have never been expressly repudiated. However, in light of *Ross* … we do not think these holdings have continued validity"]; *People v. Hunter* (2005) 133 Cal.App.4th 371, 379 ["On *Wimberly's* validity, we agree with *Dey's* rejection of both it and [*Gregg*]."]; *People v. Hunt* (1990) 225 Cal.App.3d 498, 509 [OK to search trunk based on discovery of two rocks of cocaine in passenger compartment].

[5] Quoting from *People v. Strasburg* (2007) 148 Cal.App.4th 1052, 1059-60.