

## **People v. McKay**

(August 11, 2000) \_\_ Cal.App.4th \_\_

### **ISSUE**

Under what circumstances may an officer take a traffic violator into custody for failing to present "satisfactory" identification?

### **FACTS**

At about 6 P.M., a Los Angeles County sheriff's deputy stopped McKay for riding his bicycle in the wrong direction on a residential street. Intending to issue McKay a traffic citation, the officer requested ID. McKay said he had none in his possession but told the deputy his name and date of birth.

The deputy then arrested McKay in accordance with Vehicle Code § 40302(a) which states, in essence, that an officer must take a traffic violator into custody if the violator "fails to present his driver's license or other satisfactory evidence of his identity for examination." During a search incident to the arrest, the deputy found a baggie containing methamphetamine in McKay's sock.

### **DISCUSSION**

McKay contended he was unlawfully arrested and, therefore, the search incident to his arrest was unlawful. Specifically, he claimed he furnished the deputy with "satisfactory" ID when he told him his name and address.

At the outset, the court explained that Vehicle Code § 40302 is part of a "statutory scheme" that specifies when, or under what circumstances, people cited for traffic infractions and misdemeanors can be taken into custody. Although the scheme presumes most drivers will not be taken into custody, it states an officer must take a violator into custody if he fails to provide "satisfactory identification."<sup>(1)</sup>

In *People v. Monroe*,<sup>(2)</sup> the Court of Appeal ruled a driver's license is presumed to be satisfactory ID unless, of course, there was reason to believe the license was false or altered. Further, the court ruled a document that is the "functional equivalent of a driver's license" is also presumed to constitute "satisfactory" identification. It then explained that a document will be deemed the "functional equivalent" of a driver's license if it contains *all* of the following: (1) the person's photograph, (2) a brief physical description of the person, (3) the person's signature, (4) the person's current mailing address, (5) serial numbering, and (6) information establishing the document is current.

In the absence of a driver's license or its functional equivalent, officers have discretion in determining what forms of ID are "satisfactory." The question in *McKay* was whether a violator's oral assertion of his identity is sufficient. The court ruled it was not: "While an officer is required to accept either a driver's license or its functional equivalent as satisfactory evidence of identity, lacking that, the decision whether any other evidence of identity is satisfactory should be left to the discretion of the officer in the field."

Consequently, the arrest of McKay was ruled lawful. "Here," observed the court, "no documentary evidence of identification was offered. The officer acted within the scope of discretion given in the statute in refusing to accept an oral statement alone."

The court also agreed with the ruling in *Monroe* that when a violator states he had no identification in his possession, officers are not required to question him in hopes they might be able to identify him. As the court in *Monroe* put it, "Once the officer has made some inquiry which puts the citee on notice that he or she has a duty to produce evidence of his or her identity, we believe the officer has done all that is required by the statute."

The court went on to say, however, that an officer may not exercise this discretion in an improper, discriminatory manner. Said the court, "When a citee believes the officer's decision as to the sufficiency of identification is based on invalid criteria such as race, religion, or other classification unrelated to the purpose of the statute, the propriety of the decision to take the citee into custody may be challenged on that basis."

(1) **NOTE:** If the suspect has no satisfactory evidence of ID, the arresting officer may-but is not required to-release the suspect if he provides a thumbprint or fingerprint on the promise to appear. See Penal Code §§ 853.5; 853.6(i)(5); Vehicle Code §§ 40500(a); 40504(a); *People v. Hart* (1999) 73 Cal.App.4th 852, 860-1. **NOTE:** The other situations in which custody is mandatory per Vehicle Code § 40302 are: (1) the violator demanded an immediate appearance before a magistrate, (2) the violator refused to sign a promise to appear, (3) a violator who was unable to provide satisfactory identification refused to provide a thumbprint of fingerprint on the promise to appear.

(2) (1993) 12 Cal.App.4th 1174.