

# Recent Case Report

## **U.S. v. Ramirez**

(9<sup>th</sup> Cir. 2007) \_\_ F.3d \_\_ [2007 WL 92629]

### **ISSUE**

When an officer makes a car stop based solely on a request from another officer with probable cause, is the stop unlawful if the officer who made the stop was unaware of the facts upon which probable cause was based?

### **FACTS**

After arresting the driver of a Mercury Mountaineer, Glendale narcotics officers Meier, Lawrence, and Allen discovered that a secret compartment had been built into the rear cargo area. A drug detecting dog alerted to the vehicle, but it appears that no drugs were found.

About two weeks later, these same officers saw the Mountaineer parked outside a home in Los Angeles that was under surveillance. When two men, Ramirez and Beltran, got in and drove off, Lawrence and Allen followed them to the city of Paramount where they parked in a lot. One of the other vehicles in the lot was a Chevrolet Silverado occupied by two men.

A few minutes later, all four men met at the front of the Mountaineer. One of the men from the Silverado was carrying a gym bag that appeared to be heavy. He handed the bag to Beltran who opened the rear driver's side door of the Mountaineer and put it inside. It appeared he had stored it inside the secret compartment because, as he was reaching in, the officers noticed that the vehicle was "rocking back and forth," as if he was "forcibly moving the vehicle."

Ramirez and Beltran then drove off in the Mountaineer. The other two men walked back to the Silverado. One of them was now carrying an "envelope or box."

Sgt. Meier asked a patrol officer to make a "traffic stop" on the Mountaineer. The patrol officer did so after observing that the driver was straddling two lanes. The narcotics officers then arrived and had a drug-detecting dog check the inside and outside of the vehicle. When the dog alerted to the rear interior area, they opened the secret compartment and found eight kilograms of cocaine.

### **DISCUSSION**

Ramirez and Beltran contended that the cocaine should have been suppressed because the car stop was unlawful because there was no traffic violation. As they pointed out, lane straddling is not unlawful in California unless it interfered with other vehicles, and there was no testimony that that had occurred.<sup>1</sup>

The Government responded the officers had another reason for stopping the Mountaineer: the narcotics officers had probable cause to believe it contained drugs. Ramirez and Beltran conceded that probable cause did, in fact, exist. But they contended

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<sup>1</sup> See Vehicle Code § 21658.

the stop was nevertheless unlawful because the patrol officer who stopped them was unaware of any of the facts upon which probable cause was based.

At the outset, it should be noted that the courts do not permit post-detention, post-arrest, or post-search pooling of information to establish reasonable suspicion or probable cause.<sup>2</sup> This means a detention without reasonable suspicion or a warrantless arrest or search without probable cause cannot be validated after the fact by showing that reasonable suspicion or probable cause would have existed if the officer who had taken the action had been aware of the bits of information known to the other officers.

In contrast to after-the-fact pooling, there is a legal doctrine known as the “official channels” rule. Here, if an officer was aware of facts constituting probable cause or reasonable suspicion, that officer may request that another officer act on it. In such cases, it is immaterial that the requesting officer did not explain the facts upon which the action was based. As the United States Supreme Court observed, “[E]ffective law enforcement cannot be conducted unless police officers can act on directions and information transmitted by one officer to another and that officers, who must often act swiftly, cannot be expected to cross-examine their fellow officers about the foundation for the transmitted information.”<sup>3</sup>

Things can get tricky, however, when, as happened here, probable cause was based on information known to two or more officers, but, for whatever reason, there was insufficient evidence presented in court that the officers had pooled their information. In other words, it was unclear whether any one officer was aware of the facts giving rise to probable cause.

In these cases, the courts will ordinarily apply the “collective knowledge” rule by which they will presume they had shared the information if they were members of a team or were otherwise generally communicating as to the facts developed in the course of their investigation.<sup>4</sup> As the court in *Ramirez* observed, “[W]e have been willing to aggregate the facts known to each of the officers involved at least when there has been communication among agents.”

This requirement was satisfied in *Ramirez* because it was apparent that all three narcotics officers were generally communicating about what they had seen. Consequently, the court ruled the car stop was lawful. POV

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<sup>2</sup> See *Dyke v. Taylor Implement Mfg. Co.* (1968) 391 U.S. 216, 221-2; *People v. Coleman* (1968) 258 Cal.App.2d 560, 563, fn.2 [“The police cannot pool their information after an arrest made on insufficient cause.”]; *Giannis v. City of San Francisco* (1978) 78 Cal.App.3d 219, 224 [“[T]he knowledge which may have been possessed by anyone besides the arresting officers is irrelevant.”].

<sup>3</sup> *United States v. Hensley* (1985) 469 U.S. 221, 231.

<sup>4</sup> See *Illinois v. Andreas* (1983) 463 U.S. 765, 771, fn.5; *People v. Gomez* (2004) 117 Cal.App.4th 531, 540; *People v. Rodgers* (1976) 54 Cal.App.3d 508, 518 [“The record adequately supports the inference that the officers who were conducting the investigation both in Los Angeles and San Diego kept in touch with each other, so that [the knowledge of the officer who ordered the arrest] with respect to probable cause included the information gathered by the others. . . . This is therefore not a case of post-arrest pooling of information relevant to probable cause.”]; *U.S. v. Jensen* (9<sup>th</sup> Cir. 2005) 425 F.3d 698, 705 [“[W]hen there has been communication among agents, probable cause can rest upon the investigating agents’ collective knowledge.”]; *Bailey v. Newland* (9<sup>th</sup> Cir. 2001) 263 F.3d 1022, 1031 [“Here it is clear from the record that there was communication between the officers at the scene of the arrest”].