

Recent Case Report

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People v. Bennett

(2011) __ Cal.App.4th __ [2011 WL 2905597]

Issue

Can officers detain the driver of a car for a parking violation?

Facts

At about 8 P.M., two LAPD officers were on patrol in an area known for drug trafficking when they saw a Lincoln Town Car parked in a red zone. The defendant, Bryant Bennett, was sitting in the driver's seat. As the officers walked up to the car, Bryant looked at them, put the car in drive and accelerated. The officers ordered him to stop, and he did after driving only about three feet. But then he leaned forward and dropped something on the floor. One of the officers ordered him to step out of the car and, as he did so, the officer looked in the area where the object fell and saw a baggie containing rock cocaine. The officers arrested Bennett and seized the baggie. They also searched the car for more drugs, and found evidence of drug sales.

When Bennett's motion to suppress the evidence was denied, he went to trial and was found guilty of possession for sale.

Discussion

On appeal, Bennett argued that officers are not permitted to detain the driver of a car for a run-of-the-mill parking violation and, therefore, the evidence should have been suppressed because it was the fruit of an unlawful detention. This argument was based on Vehicle Code section 40200 which says that a person who parks illegally is subject only to a "civil penalty." Bennett reasoned that because a parking violation is "civil" in nature, officers cannot enforce it by means of a detention, which is "criminal" in nature.

The court acknowledged that while California law "has enacted a civil administrative process to enforce parking penalties," parking regulations are still considered "traffic laws" which, under longstanding law, are enforceable by means of detention.¹

In his backup argument, Bennett noted that Vehicle Code section 40202(d) states that if the driver of an illegally parked vehicle leaves before officers are able to attach a citation to the windshield, the correct procedure is to mail the citation to the registered owner. But the court pointed out that, even if state law were interpreted as mandating this procedure, it would not invalidate the detention because the legality of searches and seizures in California is determined by applying federal constitutional law, not state law.² And under federal constitutional law, officers may detain a person when, as here, they have reasonable suspicion to believe that he has violated or is violating a law.³

Accordingly, the court ruled that Bennett's motion to suppress the evidence in his car was properly denied. POV

¹ QUOTING FROM *U.S. v. Choudhry* (9th Cir. 2006) 461 F.3d 1097, 1100 and also citing *Whren v. United States* (1996) 517 U.S. 806.

² See *People v. McKay* (2002) 27 Cal.4th 601, 610.

³ See *Terry v. Ohio* (1968) 392 U.S. 1, 21; *Alabama v. White* (1990) 496 U.S. 325.