Recent Case Report

Date posted: January 11, 2010

People v. Branner

(2009) 180 Cal.App.4th 308

Issue

Should evidence be suppressed if it was obtained in the course of a police search that, although lawful when it was conducted, would have been unlawful had it occurred after the law had changed?

Facts

In 2004, Sacramento County sheriff's deputies made a traffic stop on a vehicle for two equipment violations. The deputies were aware that the driver, Branner, was a drug offender registrant.[1] So, after obtaining his ID, one of the deputies ran a records check and learned that he was not living at the address he had listed on his registration form. Consequently, they arrested Branner for violating the registration requirement.

After confining Branner in their parole car, the deputies searched his car incident to the arrest and found cocaine and a firearm in the passenger compartment. As a result, Branner was charged with drug possession and possession of a firearm by a convicted felon.

Discussion

In 1981, the United States Supreme Court ruled in *New York* v. *Belton*[2] that officers who had arrested an occupant of a vehicle could, as an incident to the arrest, conduct a contemporaneous search of the passenger compartment for weapons and evidence. The Court also ruled that these searches could be conducted even though the arrestee had been handcuffed or was otherwise unable to reach into the passenger compartment to grab a weapon or destroy evidence. Because *Belton* was the law when the officers searched Branner's car, the search was plainly lawful.

But five years after the search occurred, the Supreme Court gutted *Belton.* In the case of *Arizona* v. *Gant*[3] it decided that *Belton* searches would now be permitted only in the unlikely event that the arrestee had ready access to the passenger compartment when the search occurred. It was therefore apparent that, because the search of Branner's car occurred while he was restrained in a patrol car, it would have been unlawful if it had occurred after *Gant* was decided.

So the issue in *Branner* was whether evidence should be suppressed if it was obtained in the course of a police search that, although lawful when it was conducted, would have been unlawful had it occurred after the law had changed. To resolve this issue, it was necessary for the court to look no further than the legal justification suppressing evidence; i.e., deterring officers from violating the law. As the Supreme Court explained, "[E]vidence should be suppressed only if it can be said that the law enforcement officer

[1] Health & Saf. Code § 11595.
[2] (1981) 453 U.S. 454.
[3] (2009) __ U.S. __ [129 S.Ct. 1710].

had knowledge, or may properly be charged with knowledge, that the search was unconstitutional under the Fourth Amendment."[4]

Accordingly, the court in *Branner* ruled that it would make no sense to suppress evidence when, as here, the officers acted in full compliance with the existing law. Said the court:

> [T]o require suppression of evidence against defendant not because the constable blundered but because the constable did precisely what the Supreme Court told him he could do—but then changed its mind after the constable acted—would be unjustified because it would not advance the purpose of the exclusionary rule, it would offend basic concepts of the criminal justice system by allowing a guilty and possibly dangerous criminal to go free, and it would damage public confidence in the judicial system.

Thus, the court ruled that the firearm and drugs found in Branner's car were admissible.

Comment

As we reported in the Winter 2010 edition, the Ninth Circuit in *U.S.* v. *Gonzales*[5] reached the opposite conclusion, ruling that evidence obtained during a lawful *Belton* search must be suppressed if the violated *Gant*, even though *Gant* was not the law when the search occurred. The question arises: How is it possible for two courts to reach contrary conclusions in cases that were, for all practical purposes, identical?

The answer is that, unlike the court in *Branner*, the Ninth Circuit ignored the fact that there is no rational basis for punishing officers by suppressing evidence when the officers did nothing wrong. Instead, the court claimed that suppression was required to promote its concept of judicial "integrity," which it accomplished at the expense of the integrity of the officers, the protection of the public, and the search for "truth." POV

[4] *Illinois* v. *Krull* (1987) 480 U.S. 340, 348. ALSO SEE *Michigan* v. *Tucker* (1974) 417 U.S. 433, 447 ["The deterrent purpose of the exclusionary rule necessarily assumes that the police have engaged in willful, or at the very least negligent, conduct which has deprived the defendant of some right. By refusing to admit evidence gained as a result of such conduct, the courts hope to instill in those particular investigating officers, or in their future counterparts, a greater degree of care toward the rights of an accused."]; *Mann* v. *Superior Court* (1970) 3 Cal.3d 1, 8 ["The [exclusionary] rule is intended to discourage illegal police conduct in the future."].

[5] (9th Cir. 2009) 578 F.3d 1130.