People v. Burton

(2013) __ Cal.App.4th Supp. __

Issue

Under California's "in the presence" rule, if an officer makes an arrest for a misdemeanor that was not committed in his presence, will the evidence obtained as a result of the arrest be suppressed?

Facts

A caller notified a police department in Ventura County that he saw a man "acting erratically," and that the man had gotten into a red truck which he was now driving on the freeway. The witness also provided the truck's license number. About twenty minutes later, an officer saw the truck parked at the side of a road. A man, later identified as David Burton, was standing nearby. The officer contacted Burton, detected an odor of alcohol and determined that Burton was "unsteady on his feet and swayed as he walked." After Burton confirmed that he had driven the truck recently, the officer arrested him for DUI.

Although the court did not discuss the matter, it appears that Burton took a blood or breath test because he filed a motion to suppress evidence (presumably the test results) on grounds that he was arrested in violation of the rule that officers may not ordinarily arrest a person for a misdemeanor unless the crime had been committed in the officer's presence. The trial court denied the motion and Burton was convicted. He appealed the ruling to the Superior Court's Appellate Division.

Discussion

At the outset it should be noted that, while we do not ordinarily report on superior court appellate division rulings, this one is different because the California Supreme Court ordered that the ruling be published. It seems likely, then, that the Supreme Court is in full agreement with the Appellate Division's ruling and analysis and, as a result, the courts throughout the state are apt to give the ruling considerable weight. For that reason, and also because the legal issue is an important one, we decided to report on it.

Pursuant to California's "in the presence" rule, officers are prohibited from making an arrest for a misdemeanor or infraction unless they had (1) probable cause to arrest, and (2) probable cause to believe the crime had been committed in their presence.[1] (In cases where a misdemeanor was not committed in an officer's presence, the usual procedure is to submit the matter to the DA or city attorney for a charging decision and then, if the case is charged, seek an arrest warrant.)

There are, however, exceptions to the "presence" rule. In DUI cases, there are five, one of which is that officers may arrest an intoxicated driver if they reasonably believed he may injure himself or damage property unless he was arrested immediately.[2] While the Appellate Division might have relied on this exception in rejecting Burton's argument

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[1] Pen. Code § 836(a)(1). ALSO SEE *In re Alonzo C.* (1978) 87 Cal.App.3d 707, 712 ["[T]he correct test for misdemeanors is whether the circumstances exist that would cause a reasonable person to believe a crime has been committed in his presence."] *Green v. D.M.V.* (1977) 68 Cal.App.3d 536, 540 ["[A] warrantless arrest for an offense other than a felony must be based on *reasonable cause* to believe that the arrestee has committed the offense in the officer's presence." Emphasis added].

[2] Veh. Code § 40300.5(d).

that he was arrested illegally, it decided to address Burton's more significant argument which was as follows: The Fourth Amendment—not just the California Penal Code—prohibits officers from arresting a person for a misdemeanor that was not committed in the officer's presence. Consequently, any evidence obtained as the result of such an arrest must be suppressed.

The U.S. Supreme Court has, in fact, occasionally mentioned the "in the presence" requirement in its cases.[3] But, as the Appellate Division pointed out, the Court has never ruled it was constitutionally mandated. On the contrary, the Court's decisions clearly indicate it is merely a statutory rule that states may or may not impose upon themselves as they see fit.

Consequently, there is only one constitutional requirement for an arrest—be it a felony, misdemeanor or infraction: officers must have probable cause. Said the Appellate Division, "[T]he Fourth Amendment supports arrests for misdemeanors when there is objective and reasonable probable cause to justify the arrest, regardless of the 'in the presence' requirement outlined [in the Penal Code]." Accordingly, it ruled that, because the officer who arrested Burton had probable cause to arrest him for DUI, the arrest was lawful under the Fourth Amendment, and therefore the trial court had properly denied Burton's motion to suppress. POV

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[3] See *Atwater v. City of Lago Vista* (2001) 532 U.S. 318, 354 ["If an officer has probable cause to believe that an individual has committed even a very minor criminal offense in his presence, he may, without violating the Fourth Amendment, arrest the offender."]; *Virginia v. Moore* (2008) 553 U.S. 164, 171 ["In a long line of cases, we have said that when an officer has probable cause to believe a person committed even a minor crime in his presence, the balancing of private and public interests is not in doubt."]; *Carroll v. United States* (1925) 267 U.S. 132, 156-57 ["The usual rule is that a police officer may arrest without warrant one believed by the officer upon reasonable cause to have been guilty of a felony, and that he may only arrest without a warrant one guilty of a misdemeanor if committed in his presence."]. ALSO SEE *People v. Trapane* (1991) 1 Cal.App.4th Supp 10, 13 ["There is no federal constitutional requirement that a misdemeanor be committed in an officer's presence to justify a warrantless arrest."].