

People v. Bush

(May 3, 2001) __ Cal.App.4th __

ISSUE

During a routine traffic stop, may officers conduct a protective search of a car based on six-year old information that the driver had an arrest record for possession of weapons?

FACTS

An Oroville police officer stopped a car because there were no registration stickers on the rear license plate. The sole occupant of the car was Robert Bush. The officer, having asked his dispatcher to run a DMV check on Bush and the car, was notified that the registration was not current and Bush's driver's license had been suspended. In addition, the dispatcher warned the officer that Bush "has a history of 12021/12025 PC [felon in possession of a weapon/possession of a concealed weapon], very violent, kick boxer."

When backup arrived, the officers ordered Bush out of the car. Because they were concerned he might have a weapon in the car, one of the officers looked under driver's seat and found a loaded handgun. The officers later found drugs in Bush's possession when they searched him incident to the arrest.

The officers later learned the information that Bush was violent and carried weapons was six years old.

DISCUSSION

Bush contended the officers had no legal right to look for weapons inside the passenger compartment. The People contended the search was justified as a vehicle protective search.

When officers stop a car, they may conduct a protective search of the passenger compartment if they reasonably believe a dangerous weapon—even a legal weapon—is located there.¹ Bush contended the officers' belief that he was in possession of a weapon was unreasonable because it was based on information six-years old.

Although it is likely that a criminal record for violence or weapons offenses may, at some point, become too "stale" to justify protective actions, the court ruled the information about Bush's background had not reached that point. Said the court:

[U]nfortunately, felons convicted of illegal weapons offenses often later carry concealed weapons, and they do so more than six years after the initial conviction. Moreover, while some persons who are "very violent" reform such tendencies, many, many others do not.

Consequently, the court ruled the search was lawful.

DA's COMMENT

Two things should be noted about this case. First, the search of the passenger compartment might also have been justified as a search incident to arrest. This is because the officers had probable cause to arrest Bush for driving on a suspended license and could, therefore have searched the passenger compartment as an incident to the arrest if they had decided to take him into custody.²

Second, the court's reasoning would seem to apply equally to pat searches. Specifically, if officers have information that a suspect has a history of violence or weapons offenses, a pat search may be justified even if the information is not particularly current.

¹ See *Michigan v. Long* (1983) 463 US 1032, 1050-1; *People v. King* (1989) 216 Cal.App.3d 1237; *People v. Molina* (1994) 25 Cal.App.4th 1038, 1042; *People v. Lafitte* (1989) 211 Cal.App.3d 1429, 1433. NOTE: Technically, there is an additional requirement that officers must have reasonably believed the detainee might gain immediate control of the weapon. See *Michigan v. Long* (1983) 463 US 1032, 1049. In *Long*, however, the Court noted that a detainee will usually have the ability to gain control of a weapon until he is taken into custody because until then he may forcibly re-enter the car and grab the weapon. At pp. 1051-2. Consequently, California courts have generally upheld protective searches whenever officers reasonably believed a weapon was located inside a lawfully stopped vehicle.

² See *New York v. Belton* (1981) 453 US 454; Vehicle Code § 40403(J).