People v. Cervantes

(2017) __ Cal.App.5th __ [2017 WL 2180484]

Issue

Did officers exceed the permissible scope of a probation search of a vehicle when they searched two bags in the back seat even though the bags did not belong to the probationer?

Fact

During a traffic stop in San Diego, officers determined that the front-seat passenger, Tiffany Craft, was on probation with a "standard" search condition that authorized warrantless searches of her "person, vehicle, residence, property, and personal effects." Having decided to search the vehicle, the officers began by opening two bags located in the back seat directly behind the driver, Jaime Cervantes. As they did so, they discovered that both bags apparently belonged to Cervantes—not Tiffany—because they contained men's toiletries and men's clothing. The officers then searched both bags and found, among other things, over 185 grams of methamphetamine, 4.4 grams of heroin, and a digital scale. The officers then searched the front center console and found more methamphetamine.

After Cervantes was arrested and charged, he filed a motion to suppress the drugs on grounds they were discovered in the course of a illegal probation search. The court rejected the argument and Cervantes eventually pled guilty to a variety of drug offenses.

Discussion

On appeal, Cervantes argued that the search of the bags in the back seat exceeded the permissible scope of Tiffany's probation search condition because it would have been apparent to them that neither bag belonged to her. It turned out that the California Supreme Court had recently decided a case that seemed to be on point.[1] The case was *People v. Schmitz*.[2]

In *Schmitz*, as in *Cervantes*, officers made a traffic stop and determined that the front seat passenger was on parole. So they conducted a parole search of some items in the back seat and found drugs. As the result, the driver, Schmitz, was arrested and convicted. The Court of Appeal ruled the search was illegal, and the People appealed to the California Supreme Court which ruled as follows: Officers who are conducting a lawful parole search of a vehicle are not limited to searching places and things within the parolee's immediate control but may search "those areas of the passenger compartment where the officer reasonably expects that the parolee could have stowed personal belongings or discarded items when [the passenger became] aware of police activity." In other words, the legality of the search depended on whether the officers reasonably believed that the parolee had temporary access to the containers, not on whether the containers *belonged* to the parolee.

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[1] **NOTE**: The only significant difference was that *Schmitz* involved a parole search while *Cervantes* involved a probation search. However, the court in *Cervantes* ruled this difference was irrelevant.

[2] (2012) 55 Cal.4th 909. Also see *People v. Ermi* (2013) 216 Cal.App.4th 277, 281.

Although the court in *Cervantes* could have summarily resolved the case based on *Schmitz*, the court appeared to be uncertain as to exactly what the court in *Schmitz* had ruled. Specifically, it thought it was important that the court in *Schmitz* had "expressed concern" about searches of personal property belonging to someone other than the probationer or parolee. So, rather than deal with the issue of whether these particular bags located at a particular place in the vehicle were subject to a probation search, the court decided the issue based on an exception to the suppression rule known as "inevitable discovery."

Pursuant to this rule, evidence obtained as the result of an illegal search may not be suppressed if it would have been acquired inevitably by lawful means. As the U.S. Supreme Court explained, "If the government can prove that the evidence would have been obtained inevitably and, therefore, would have been admitted regardless of any overreaching by the police, there is no rational basis to keep that evidence from the jury."[3]

In applying this rule to the facts in *Cervantes* the court concluded that, even if the search of the bags was illegal, it was inevitable that the officers would have legally discovered the drugs because (1) Tiffany was, in fact, on probation with a search condition; (2) it was inevitable that the officers would have searched the console during their subsequent probation search of the vehicle; (3) the search of the console would have been within the scope of a lawful probation search because Tiffany was sitting next to it and could have stowed the drugs inside it; (4) it was therefore inevitable that the officers would have found the drugs in the console; (5), having found the drugs in the console, the officers would have had probable cause to search the entire vehicle. Thus, having concluded that the officers' discovery of the drugs in the bags was inevitable, it ruled that the drugs were not subject to suppression.

Comment

We think the court was unnecessarily concerned about whether it was reasonable for the officers to believe that Tiffany actually owned the bags. That is because the California Supreme Court in *Schmitz* made it clear that its ruling was based on whether the parolee had an opportunity to stow the evidence in bags—not on whether it was reasonable to believe the parolee *owned* them. POV

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[3] *Nix v. Williams* (1984) 467 U.S. 431, 444, 447. Also see *Murray v. United States* (1988) 487 U.S. 533, 539 ["Since the tainted evidence would be admissible if in fact discovered through an independent source, it should be admissible if it inevitably would have been discovered."].