

People v. McKnight

(2017) __ P.3d __ [2017 WL 2981808]

Note

This case was decided by the Court of Appeals in Colorado. Although it is not binding authority in California, we are including it because its analysis seems sound and it addresses an important issue resulting from the legalization of marijuana in California.

Issues

(1) Does the use of a K9 to detect marijuana in a vehicle constitute a “search” in states where possession of small amounts of marijuana is lawful? (2) If so, did the officers have probable cause to search?

Facts

In the course of a pretext traffic stop, a police officer in Colorado recognized the passenger as a meth user. Because the vehicle had just left a known drug house, the officer requested a K9 to check it for drugs. The dog had been trained to detect a variety of drugs including marijuana, so when the dog alerted, the officers searched the vehicle and found methamphetamine. The driver, McKnight, was arrested and, after his motion to suppress the drugs was denied, he was found guilty of possession.

Discussion

McKnight argued that the drugs should have been suppressed because (1) the use of a K9 to smell the outside of a stopped vehicle constituted a “search” under the Fourth Amendment, and (2) the officers lacked probable cause for a search because the possession of marijuana is no longer a crime in Colorado.

A K9’s sense of smell is so accurate that an alert will ordinarily and automatically establish probable cause to search.¹ Furthermore, the Supreme Court has ruled that a K9’s act of sniffing the outside of a stopped vehicle does not constitute a “search” if the dog had been trained to detect only drugs that were illegal to possess. Said the Court, “A dog sniff conducted during a concededly lawful traffic stop that reveals no information other than the location of a substance that no individual has any right to possess does not violate the Fourth Amendment.”²

The problem in *McKnight* was that the officer did not have probable cause to believe that the amount of marijuana in McKnight’s car exceeded one ounce. That is because a dog who is trained to detect marijuana will alert to any amount of marijuana—not just to amounts that are illegal to possess.

Consequently, the court ruled that (1) a K9’s act of sniffing the outside of a vehicle for marijuana constitutes a “search,” and (2) the dog’s alert while sniffing does not automatically establish probable cause for a search. Although the court also ruled that a K9’s alert is still relevant in establishing probable cause, it concluded that the

¹ See *Illinois v. Caballes* (2005) 543 U.S. 405, 410; *Indianapolis v. Edmond* (2000) 531 U.S. 32, 40; *Florida v. Royer* (1983) 460 US 491, 505-6 [“The courts are not strangers to the use of trained dogs to detect the presence of controlled substances in luggage”].

² *Illinois v. Caballes* (2005) 543 U.S. 405, 410. Also see *United States v. Jacobsen* (1984) 466 U.S. 109, 124.

combination of the alert, the passenger's known methamphetamine use, and her recent visit to a drug house were not enough. POV

Date posted: July 18, 2017