

United States v. Garcia

(9th Cir. March 7, 2000) __ F.3d __ [99-10001]

ISSUES

(1) Was a traffic stop unduly prolonged? (2) Did the arresting officer have probable cause exist to search a tissue box? (3) Was the search of the car's glove box and trunk lawful?

FACTS

While following a Chevy Barretta, a Nevada Highway Patrol officer saw the car "swerving slightly" within the number-two lane, then the car's left side tires briefly crossed into the number-one lane. A little later as the car was passing a truck in the number-one lane, the officer saw it swerve "over the center yellow line into the paved shoulder throwing dirt and debris up." The officer decided to stop the driver because of the "erratic" driving and for failing to stay within a single lane of traffic, a violation of a Nevada statute.

There were two men in the car: driver Jacob Jones, and passenger Jessie Garcia. After obtaining a Wyoming driver's license and vehicle registration from Jones, the officer had him step to the rear of the car where the officer explained the purpose of the stop.

At this point, some things happened that caused the officer to become somewhat suspicious. Jones said the car belonged to his girlfriend's mother but the officer noticed it was registered to "Ed Clingan." In response to questioning by the officer, Jones said he and Garcia were traveling from Petaluma to Laramie, Wyoming where they were going to see a University of Wyoming football game. Garcia, who was still in the car and did not hear Jones' story, told the officer that he and Jones were going to Wyoming to "attend a technical school."

The officer then returned to his car and ran a "records check on Jones' driver's license" and a warrant check. While waiting for the records and warrant information, the officer asked the pair some additional questions about their trip. Once again, their stories were inconsistent.

The officer's dispatcher notified him a misdemeanor warrant had been issued for Jones' arrest. The officer then arrested Jones and began to search him incident to the arrest. Just then, a sheriff's deputy who had arrived as backup told the officer that Garcia was moving around in the car. The deputy asked Jones if there were any weapons in the car and Jones said yes, a .9 millimeter handgun. The officer and another backup officer went to the car to retrieve the gun.

Garcia was ordered out, but before the search began he asked the officers if he could take a Kleenex box from the front passenger seat because he had a runny nose. After determining the box did not contain any weapons, one of the officers gave it to Garcia.

Garcia then asked if he could wear his jacket which was still in the car. An officer said okay but before giving him the jacket he searched it for weapons. During the search he found a small bindle of suspected methamphetamine and some "burnt marijuana cigarettes."

Garcia was then asked to step back to the patrol cars. Before doing so, however, he asked if he could take the Kleenex box with him. An officer then picked up the box and checked it again for weapons. He noticed the box had suddenly become quite heavy, in fact about two to three times heavier than a normal Kleenex box. Suspicious, he examined the box, he found a bundle of methamphetamine and some marijuana. Garcia was then arrested.

A drug-detecting dog was then walked around the car and alerted to the trunk and the glove box. Searching the glove box first, officers found a loaded clip for the handgun. They also noticed the glove box screws “looked as if they had been off.” So they removed the screws and looked under the glove box. There they found a “large bundle wrapped in gray duct tape that smelled strongly of marijuana.”

Because the trunk was “packed full of items,” the officers decided to tow the car to NHP headquarters in Reno and search it there. During the search, they found a Fix-a-Flat can which they determined had a false bottom and contained more methamphetamine.

DISCUSSION

Garcia contended the drugs should have been suppressed for the following reasons: (1) the stop was unduly prolonged, (2) the officers did not have probable cause to search the tissue box, and (3) the search of the trunk was unlawful.⁽¹⁾

Length of the detention

An officer who has made a traffic stop may do only those things that are reasonably necessary to carry out his duties; e.g., examining the driver’s license, registration, proof of insurance, discussing the violation, and issuing a warning or a citation.⁽²⁾ Garcia contended the officer who stopped him violated this rule because he asked him questions that did not pertain to the violation, such as his destination and where he was coming from.

Although the court did not discuss this issue in any detail, it ruled the detention was not unduly prolonged, saying, “[The arresting officer] testified that it was standard procedure to delay drivers for a short period of time to wait for an arrest report. Thus, [the officer’s] brief conversation with Garcia during this period did not cause any additional delay.”

Search of the tissue box

The court also ruled the drugs discovered in the tissue box were obtained lawfully under the plain view rule. Under plain view, officers may seize an item in a container if, (1) officers had a legal right to be at the location in which they saw the container, and (2) they had probable cause to believe there were drugs or other evidence in the container.⁽³⁾

Here, the officer who picked up the tissue box had a legal right to do so because Garcia, who was now under arrest, asked the officer for permission to take the box with him because he had a runny nose. The officer also had probable cause to believe there was evidence in the box because, said the court, “the box was heavier than it should have been, and heavier than it had been a few minutes earlier. In addition,

[the officer] saw a plastic baggie sticking out from between the tissues; methamphetamine already had been found in Jones' possession. Because the baggie was within plain view, no warrant was required."

Search of the glove box and trunk

It is settled that officers may conduct a warrantless search of a vehicle if there is probable cause to believe the vehicle contains contraband or other evidence of a crime.⁽⁴⁾ In conducting their search, officers may also look inside any area or container in the vehicle in which the evidence being sought could have been concealed.⁽⁵⁾

Because the officers were looking for drugs which could be concealed anywhere in the vehicle, the only issue was whether the officers had probable cause to believe there were drugs in the trunk and glove box? The answer to both questions was yes, said the court, because a trained drug-detecting dog alerted to both locations.⁽⁶⁾ Said the court, "Because the dog alerted to both the trunk area and the glove box, probable cause existed to believe that both those areas contained narcotics."

Finally, Garcia argued that officers were not permitted to search the trunk after the car had been towed to NHP headquarters. It is settled, however, that a car search based on probable cause may be conducted where the car was stopped or discovered, or it may be conducted after the car had been towed; e.g., at a police garage, impound yard.⁽⁷⁾

Consequently, the court ruled the evidence was obtained lawfully, and Garcia's conviction was affirmed.

(1) **NOTE:** The court summarily rejected Garcia's additional contention that there were insufficient grounds to make the traffic stop.

(2) See *Berkemer v. McCarty* (1984) 468 US 420, 439; *People v. Manis* (1969) 268 Cal.App.2d 653, 661-2; *People v. Brown* (1998) 62 Cal.App.4th 493, 499-500.

(3) See *Arizona v. Hicks* (1987) 480 US 321, 326-8; *Horton v. California* (1990) 496 US 128, 136; *Minnesota v. Dickerson* (1993) 508 US 366, 375; *Washington v. Chrisman* (1982) 455 US 1, 5-6 ["The 'plain view' exception to the Fourth Amendment warrant requirement permits a law enforcement officer to seize what clearly is incriminating evidence or contraband when it is discovered in a place where the officer has a right to be."]; *Guidi v. Superior Court* (1973) 10 Cal.3d 1, 6 ["It is elementary that the legality of the seizure of an object falling within the plain view of an officer is dependent upon that officer's right to be in the position from which he gained his view of the seized object."].

(4) See *United States v. Ross* (1982) 456 US 798, 800, 809, 825; *California v. Carney* (1985) 471 US 386, 390-3; *United States v. Johns* (1985) 469 US 478, 483-4; *Pennsylvania v. Labron* (1996) 518 US ___ [135 L. Ed 2d 1031]; *People v. Carpenter* (1997) 15 Cal.4th 312, 365; *People v. Chavers* (1983) 33 Cal.3d 462, 466; *People v. Banks* (1990) 217 Cal.App.3d 1358, 1363; *People v. Carvajal* (1988) 202 Cal.App.3d 487, 497; *People v. Carrillo* (1995) 37 Cal.App.4th 1662, 1667; *People v. Lissauer* (1985) 169 Cal.App.3d 413, 420; *People v. Nicholson* (1989) 207 Cal.App.3d 707, 711; *People v. Chestnut* (1983) 151 Cal.App.3d 721, 724; *People v. Superior Court (Overland)* (1988) 203 Cal.App.3d 1114, 1118; *People v. Nonnette* (1990) 221 Cal.App.3d 659, 665, fn.2.

(5) See *United States v. Ross* (1982) 456 US 798, 807, fn.9; *Wyoming v. Houghton* (1999) 526 US ____ [143 L.Ed.2d 408, 416]; *People v. Hart* (1999) 73 Cal.App.4th 852, 860.

(6) See *Estes v. Rowland* (1993) 14 Cal.App.4th 508, 529; *People v. Salih* (1985) 173 Cal.App.3d 1009, 1015; *People v. Russell* (1987) 195 Cal.App.3d 186, 189-190. **ALSO SEE:** *People v. Mayberry* (1982) 31 Cal.3d 335, 342; *People v. Lester* (1980) 101 Cal.App.3d 613.

(7) See *United States v. Johns* (1985) 469 US 478, 484-7; *Chambers v. Maroney* (1970) 399 US 42; *California v. Acevedo* (1991) 500 US 565, 569-70; *People v. Carpenter* (1997) 15 Cal.4th 312, 365.