Recent Case Report

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U.S. v. Gonzalez

(9th Cir. 2009) 578 F.3d 1130

Issue

Should evidence be suppressed if it was discovered during a search that was lawful at the time, but later declared unlawful?

Facts

During a traffic stop in 2006, officers in Washington state arrested a passenger in the vehicle on outstanding warrants. After handcuffing him, they searched the passenger compartment of the vehicle pursuant to the United States Supreme Court's decision in *New York* v. *Belton* which permitted such searches incident to the arrest of an occupant.[1] In the course of the search, the officers found a loaded 9-millimeter Beretta inside the glove box. For reasons that are not apparent from the court's opinion, another passenger, Gonzalez, was arrested for possession of the weapon and later convicted of being an armed felon.

Discussion

Approximately three years after the search occurred, and while Gonzalez's case was still on appeal, the United States Supreme Court in *Arizona* v. *Gant* effectively overturned *Belton*, ruling that a search of a vehicle incident to the arrest of an occupant could be conducted only if the arrestee had immediate access to the passenger compartment when the search occurred.[2] So because the arrestee in *Gonzalez* had been handcuffed and locked in a police car at the time, Gonzalez argued that the gun should have been suppressed. The Ninth Circuit agreed.

With little discussion, the court asserted that the U.S. Supreme Court had mandated retroactive application to new Fourth Amendment rules as to cases that were not final when the change was made. The court in *Gonzalez* explained that the reason for this rule was that a failure to suppress the evidence "would violate the integrity of judicial review by turning the court into, in effect, a legislative body announcing new rules but not applying them." Accordingly, the court ordered that the gun in Gonzalez's possession be suppressed.

Comment

The court's ruling was based mainly on the Supreme Court's decision in *United States* v. *Johnson*.[3] But *Johnson* did not hold that all new Fourth Amendment rules must be applied retroactively to cases still on appeal. On the contrary, it concluded that retroactivity is inappropriate if the new rule had invalidated a "long-standing practice approved by a near-unanimous body of lower court authority," or if it constituted "a clear break with the past." Said the Court, "[W]here the Court has expressly declared a rule of criminal procedure to be 'a clear break with the past,' it almost invariably has gone on to find such a newly minted principle nonretroactive."

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[1] (1981) 453 U.S. 454

[2] (2009) __U.S.__ [2009 WL 1045962].

[3] (1982) 457 U.S. 537, 552-53.

While the Ninth Circuit concluded that *Belton* did not qualify as a case that generated such a "long-standing practice," it neglected to point out that *Belton* had been applied by the courts throughout the country for nearly 30 years. And those courts had almost universally interpreted it to permit searches of the passenger compartment regardless of whether the arrestee had ready access at the time of the search. In fact, the *Belton* Court addressed this issue when it rejected the argument that an item was not searchable if it was not accessible to the suspect because officers had gained "exclusive control" over it. Said the Court, "But under this fallacious theory no search or seizure incident to a lawful custodial arrest would ever be valid; by seizing an article even on the arrestee's person, an officer may be said to have reduced that article to his 'exclusive control'"[4]

Thus, the California Court of Appeal observed that it is the "near uniform rule" in the federal courts that "even where the arrestee is handcuffed and locked in a patrol car the police may search the passenger compartment of the arrestee's vehicle under *Belton*."[5] Similarly, the First Circuit pointed out that "the great weight of authority . . . holds that *Belton's* bright-line rule applies even in cases where the arrestee is under physical restraint and at some distance from the automobile during the search."[6]

The court in *Gonzalez* also ignored the fact that, when the search in *Belton* occurred, none of the four occupants of the vehicle had immediate access to the back seat where the officer found cocaine in Belton's zippered jacket pocket. As the *Belton* Court explained, the search occurred after the officer had patted down the four occupants of the vehicle and "split them up into four separate areas of the Thruway at this time so they would not be in physical touching area of each other." Under these circumstances, said the Court, Belton's jacket "was thus within the area which we have concluded was 'within the arrestee's immediate control.'" [7]

It is important to keep in mind that the sole purpose of suppressing evidence is to encourage officers to learn and apply the rules pertaining to criminal investigations. As the Supreme Court has explained, "[E]vidence should be suppressed only if it can be said that the law enforcement officer had knowledge, or may properly be charged with knowledge, that the search was unconstitutional under the Fourth Amendment."[8] Similarly, in *Michigan* v. *Tucker* the Court said:

> The deterrent purpose of the exclusionary rule necessarily assumes that the police have engaged in willful, or at the very least negligent, conduct which has deprived the defendant of some right. By refusing to admit evidence gained as a result of such conduct, the courts hope to instill in those particular investigating officers, or in their future counterparts, a greater degree of care toward the rights of an accused.[9]

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[4] *New York* v. *Belton* (1981) 453 US 454, 462, fn.5.
[5] *People* v. *Stoffle* (1991) 1 Cal.App.4th 1671, 1681.
[6] *U.S.* v. *Doward* (1st Cir. 1994) 41 F.3d 789, 791, fn.1.
[7] **NOTE**: The question arises: In light of the facts in *Belton*, how did the Court in *Gant* reach the conclusion that Belton had ready access to his jacket in the back seat when the search occurred, and that the *Belton* Court intended to permit these searches only if ready access existed? The answer is that the Court in *Gant* simply ignored the issue. Besides, if the lower courts were grossly misinterpreting *Belton* as the *Gant* Court claimed, why did it take almost 30 years for this "problem" to come to the Supreme Court's attention?
[8] *Illinois* v. *Krull* (1987) 480 U.S. 340, 348.
[9] (1974) 417 U.S. 433, 447. ALSO SEE *Herring* v. *United States* (2009) __ U.S. __ [the purpose of the exclusionary rule is "to deter deliberate, reckless, or grossly negligent conduct"].

But where, as here, there was no misconduct at all—when officers were acting in full compliance with established precedent—application of the exclusionary rule is indefensible. As the First Circuit recently pointed out, "[A] police officer who undertakes a search in reasonable reliance upon the settled case law . . . even though the search is later deemed invalid by Supreme Court decision, has not engaged in misconduct."[10]

It might be argued, of course, that one of the parties to a criminal action—the People or the defendant—must necessarily "lose"; and that by allowing the defendant to win, the criminal justice system displays its magnanimous and noble nature. But there is nothing magnanimous about twisting the law so as to put an armed felon back on the street so that he can continue to engage in the types of activities that require a loaded handgun. Moreover, there is a price to pay for such "nobility"—and the people who will pay it are the people who live or work in places where people like Mr. Gonzalez conduct business.

Finally, the court in *Gonzalez* claimed that suppression was necessary so as not to violate the "integrity" of judicial review. While there are many words that might come to mind after reading the court's opinion, "integrity" is not one of them. POV

[10] *U.S.* v. *McCane* (10th Cir. 2009) 573 F.3d 1037, 1044.