

# Recent Case Report

## People v. Hunter

(2005) \_\_ Cal.App.4<sup>th</sup> \_\_ [2005 WL 2539313]

### ISSUE

After finding marijuana inside a stopped vehicle, did officers have probable cause to search the trunk for more?

### FACTS

At about 5:15 P.M., two Vallejo police officers stopped a car for excessive noise in violation of Vehicle Code section 27150. There were three men in the car. Hunter was the driver.

From the start, the officers had reason to be wary. For one thing, as the cars were coming to a stop, the backseat passenger looked back several times and kept moving around. Then, when the officers approached the car, they recognized the front passenger as a “street drug dealer” whom they had encountered “numerous” times. In addition, the backseat passenger volunteered that he was on CYA parole.

After ordering the men to step outside, one of the officers looked inside and saw a “knotted” clear plastic sandwich baggie on the seat, and it contained a “green residue” which he recognized as marijuana, although probably not a “usable” amount. When he went inside to retrieve it, he spotted another baggie, this one was in the ashtray and it contained a usable quantity.

The officers decided to search the trunk for more marijuana. They asked Hunter for the key to the trunk but he claimed he didn’t have it. This was a lie, as the officers discovered when they determined that one of the keys from the ignition opened the trunk. While searching it, the officers found a backpack containing 14 more bags of marijuana, a loaded .9-millimeter semi-automatic handgun, two additional loaded magazines, a stun gun, a “black head cover,” and a white hockey mask. Hunter was arrested and transported to the police station where, during a search, officers found nine rocks of cocaine in a plastic bag “stuck in his buttocks.”

Hunter was subsequently charged with possession of cocaine and marijuana for sale and possession of a handgun by a felon. The trial judge, however, dismissed the charges after ruling the warrantless search of the trunk was unlawful.

### DISCUSSION

The trial judge’s ruling was, of course, wrong. The search of the trunk was clearly lawful based on two settled rules of police procedure: (1) probable cause to search a vehicle for drugs exists if officers observe *any* quantity of drugs in the passenger compartment; and (2) if such probable cause exists, officers may search the trunk, as well

as the passenger compartment.<sup>1</sup> As the court stated in *People v. Dey*, “We find that a person of ordinary caution would conscientiously entertain a strong suspicion that even if defendant makes only personal use of the marijuana found in his day planner, he might stash additional quantities for future use in other parts of the vehicle, including the trunk.”<sup>2</sup>

Why, then, did the trial judge rule the search was unlawful? It appears he thought that California courts were still bound by the 1976 case of *People v. Wimberly*.<sup>3</sup> In *Wimberly*, the California Supreme Court ruled that if officers have probable cause to believe that drugs in the passenger compartment are possessed only for personal or “casual” use, they may not search the trunk unless they have additional information that more drugs are, in fact, concealed there.

*Wimberly* was one of those cases from the '70's and early '80's in which appellate courts in California and elsewhere would routinely announce more and more restrictive rules for conducting police investigations. The courts were forced to base these rules on so-called “independent state grounds” because the police conduct they were outlawing was perfectly lawful under the U.S. Constitution. Eventually, the voters of California became fed up with *Wimberly* and its ilk and, in 1982, passed Proposition 8 which said that courts can no longer suppress evidence in California based on independent state grounds.<sup>4</sup>

Consequently, *Wimberly* has been a dead letter in California since 1982 because it is contrary to the United States Supreme Court's decision in *U.S. v. Ross*.<sup>5</sup> In *Ross*, the Court ruled that officers who have probable cause to believe that evidence is inside a car may look for it in any place in the vehicle in which it might be found, including the trunk.

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<sup>1</sup> See *United States v. Ross* (1982) 456 U.S. 798, 800, 809, 825; *California v. Carney* (1985) 471 U.S. 386, 390-3; *United States v. Johns* (1985) 469 U.S. 478, 483-4; *Colorado v. Bannister* (1980) 449 U.S. 1; *Pennsylvania v. Labron* (1996) 518 U.S. 938, 940 [“If a car is readily mobile and probable cause exists to believe it contains contraband, the Fourth Amendment thus permits police to search the vehicle without more.”]; *People v. Carpenter* (1997) 15 Cal.4<sup>th</sup> 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.4<sup>th</sup> 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; *People v. Wheeler* (1974) 43 Cal.App.3d 898, 903; *People v. Hunt* (1990) 225 Cal.App.3d 498, 509.

<sup>2</sup> (2000) 84 Cal.App.4<sup>th</sup> 1318, 1322. **NOTE:** The trial judge in *Hunter* was aware of *Dey* but refused to apply it, saying, “I’m not going to follow [*Dey*] willy-nilly, that any presence of marijuana in the passenger compartment of a vehicle supports a trunk search.” This statement troubled the Court of Appeal which observed that because no California appellate court had disagreed with *Dey*, the lower courts are not free to ignore it.

<sup>3</sup> (1976) 16 Cal.3d 557.

<sup>4</sup> See *In re Lance W.* (1985) 37 Cal.3d 873, 889, fn.9 [Excerpt from Proposition 8 ballot argument: “For too long our courts . . . have demonstrated more concern with the rights of criminals than the rights of innocent victims . . .”].

<sup>5</sup> (1982) 456 U.S. 798, 821, 824. ALSO SEE *People v. Dey* (2000) 84 Cal.App.4<sup>th</sup> 1318, 1321-2 [court notes that two cases which authorized trunk searches only if the drugs found in the passenger compartment were possessed for sale, *Wimberly* and *People v. Gregg* (1974) 43 Cal.App.3d 137, were abrogated by Proposition 8].

This brings us back to *Hunter*. The Court of Appeal ruled that because the discovery of the marijuana in Hunter's passenger compartment provided the officers with probable cause to believe that more marijuana would be found in the car, the officers could look for it in the trunk. Said the court:

There was nothing in the circumstances of the discovery of the marijuana in the passenger area of defendant's car that foreclosed more drugs being found in the trunk as well, and marijuana is a drug that can be concealed in a variety of containers that might be concealed in a trunk.

Accordingly, the court ruled the search of Hunter's trunk was lawful.

#### COMMENT

The Court of Appeal pointed out that, not only was the trial judge wrong in applying *Wimberly*, he was wrong when he ruled the search would have been unlawful under *Wimberly*. This was because *Wimberly*'s rule prohibiting trunk searches did not apply if the officers had probable cause to believe the drugs discovered in the passenger compartment were possessed for sale. And, as the *Hunter* court explained, there was good reason to believe the marijuana in Hunter's car fell into this category:

[F]acts taking this out of the personal-use only category include suspicious movements and looks from the backseat passenger, defendant saying he owned the car yet had no key to the trunk, lack of any odor or smoking device in the passenger area, the street-type packaging of the ashtray marijuana, and the presence of a small logo-bearing bag in the front with a larger bag in the back holding only residue. The bags allowed a reasonable inference that the larger one had held smaller bags and that, given a known drug dealer in the front seat, there could be more in the trunk.

POV