

People v. Jenkins

(May 5, 2000) __ Cal.4th __ [S007522]

ISSUES

(1) Was it reasonable for officers to believe that the defendant's sister could consent to a search of the defendant's briefcase? (2) If physical evidence was discovered as the result of an involuntary statement by a third person, must that evidence be suppressed in the trial of another?

FACTS

Jenkins was arrested for murdering an LAPD officer. The motive for the killing was that the officer investigated a robbery for which Jenkins had been held to answer.

Two days after the murder, LAPD detectives assigned to the case went to Jenkins' home to execute a search warrant. While they were there a neighbor informed them that someone had removed a briefcase from Jenkins' Jeep the night before and had driven off with it. The neighbor gave the detectives the license number of the car, which was registered to Jenkins' sister, Diane Jenkins.

The next day, the detectives went to Diane's home, explained they were investigating the murder of a police officer, and obtained her consent to search her house for evidence pertaining to the murder. At this point, a detective asked her whether any property belonging to her brother was located in her home. Diane said she was in possession of Jenkins' briefcase which she handed to the detective. The detective opened it (it was unlocked) and found evidence that was subsequently used against Jenkins in his trial.

Jenkins was found guilty and sentenced to death.

DISCUSSION

Jenkins contended the evidence discovered in the briefcase must be suppressed because, (1) Diane did not have authority to consent to a search of his briefcase, and (2) the detectives exceeded the permissible scope of the consent search. He also contended the murder weapon should have been suppressed because it was obtained as the result of an involuntary statement by an accomplice.

Authority to consent

The United States Supreme Court has ruled a search may be authorized by any person who reasonably appeared to have joint access or control over the place or thing to be searched.⁽¹⁾ This means "there must be some objective evidence of joint control or access to the places or items to be searched which would indicate that the person authorizing the search has the authority to do so."⁽²⁾

The question, then, was whether it was reasonable for the detectives to believe Diane had joint access or control over the briefcase. The answer, said the court, was yes:

"[I]t was reasonable for the officers to believe she had exercised control over the briefcase and had not only joint, but at the time of the search, exclusive access to it and control over it. It is reasonable to

conclude that a family member who officers believe has retrieved a brother's belongings from his premises and stored such belongings in her own bedroom has at the very least joint access to and control over the belongings."⁽³⁾

Scope of the consent

Jenkins also argued that the detectives exceeded the permissible scope of Diane's consent. As noted, Diane consented to a search of her home. Although she did not expressly consent to a search of the briefcase, it was located in her home.

In determining the permissible scope of a consent search, the courts apply the following rules. First, officers who have obtained consent to search may search those places and things they reasonably believed the consenting person authorized them to search.⁽⁴⁾ Second, if the consenting person was told what type of evidence officers were seeking, it is reasonable for officers to believe they may search those places and things in which such evidence may reasonably be found.⁽⁵⁾

Applying these rules to the facts, the court concluded that the search of the briefcase was within the permissible scope of the search because, said the court, "A briefcase obviously is a container that readily may contain incriminating evidence, including weapons. Because the announced object of the search was evidence connected with the murder of a police officer . . . [Ms. Jenkins' consent] would be understood by a reasonable person to include consent to search the briefcase."

Suppression of murder weapon

Finally, Jenkins contended the murder weapon should have been suppressed because it was discovered as the result of coercive questioning of an accomplice, Duane Moody. Although it seems to be the rule that physical evidence obtained as the result of coercive questioning of the *defendant* cannot be used against him,⁽⁶⁾ it was not clear whether such evidence would be admissible if it was obtained as the result of coercive questioning of a *third person*. It is now.

In *Jenkins*, the court specifically ruled that physical evidence obtained as the result of an involuntary statement by a third person may be suppressed only if it was shown the evidence was unreliable. Furthermore, the court seemed somewhat skeptical that physical evidence could ever be deemed unreliable as the result of an involuntary statement.⁽⁷⁾

In any event, the court ruled there was no reason to believe the murder weapon constituted unreliable evidence as the result of Moody's involuntary statement. Said the court, "We detect no connection between the asserted coercion of Moody-apparently arising out of offers of leniency in return for his cooperation with the investigating officers-and the reliability of . . . the murder weapon . . . as evidence of defendant's guilt."

Consequently, Jenkins conviction and death sentence were affirmed.

(1) See *Illinois v. Rodriguez* (1990) 497 US 177, 181-2; *United States v. Matlock* (1974) 415 US 164, 171, fn.7; *People v. Escudero* (1979) 23 Cal.3d 800, 806; *People v. Wolder* (1970) 4 Cal.App.3d 984, 994.

(2) See *People v. Jacobs* (1987) 43 Cal.3d 472, 481.

(3) **NOTE:** Jenkins argued that joint access and control requires "mutual use" of the property. This argument was based on the following language from *United States v. Matlock* (1974) 415 US 164, 171, fn.7: "Common authority . . . rests rather on mutual use of the property by persons generally having joint access or control for most purposes . . ." The court in *Jenkins* ruled, however, that although a requirement of "mutual use" may apply to consent searches of a home, it would not apply to searches of personal property.

(4) See *Florida v. Jimeno* (1991) 500 US 248, 251; *People v. Crenshaw* (1992) 9 Cal.App.4th 1403, 1408-9; *People v. Clark* (1993) 5 Cal.4th 950, 980.

(5) See *Florida v. Jimeno* (1991) 500 US 248, 251; *People v. Miller* (1999) 69 Cal.App.4th 190, 203 ["The scope of a consensual search for narcotics is very broad and includes closets, drawers, and containers."]; *People v. Crenshaw* (1992) 9 Cal.App.4th 1403, 1415; *People v. Harwood* (1977) 74 Cal.App.3d 460, 467-8 [consent to search for cocaine and money did not authorize answering the telephone]; *People v. \$48,715* (1997) 58 Cal.App.4th 1507, 1516 ["The permissible scope of the search in this case extended to any part of the pickup where drugs reasonably may have been hidden."]; *U.S. v. Turner* (1st Cir. 1999) 169 F.3d 84, 88 [consent to "look around" for an intruder or clues to the intruder's identity did not authorize a search of a computer].

(6) See *People v. Vasila* (1995) 38 Cal.App.4th 865, 873; *In re J. Clyde K.* (1987) 192 Cal.App.3d 710, 716; *People v. Whitfield* (1996) 46 Cal.App.4th 947, 955; *People v. Nicholas* (1980) 112 Cal.App.3d 249, 264.

(7) **NOTE:** The court noted, "Assuming, without deciding, that in some circumstances physical evidence might be excluded as unreliable . . ."