People v. McKay
(March 4, 2002) __ Cal.4th __

ISSUES

(1) Was the defendant lawfully arrested for failure to provide "satisfactory" ID pursuant to Vehicle Code § 40302(a)? (2) Does an arrest violate the Fourth Amendment if it was made in violation of a state statute?

FACTS

A Los Angeles County sheriff's deputy stopped McKay for riding a bicycle in the wrong direction on a residential street.[1] Intending to cite McKay, the deputy asked to see some ID. McKay said he had none in his possession, although he verbally identified himself and gave the officer an address and date of birth.

At this point, the deputy arrested McKay under the authority of Vehicle Code § 40302(a) which allows—but does not require—officers to make a custodial arrest for a minor Vehicle Code violation if the person fails to present "satisfactory" ID." During a search incident to the arrest, the deputy found a baggie containing methamphetamine in one of McKay's socks.

DISCUSSION

McKay contended the search was unlawful because his verbal identification of himself constituted "satisfactory" ID under Vehicle Code § 40302(a) and, therefore, the arrest was unlawful under state law. The court disagreed.

As a general rule, people who are cited for minor Vehicle Code violations must be cited and released.[2] There is, however, an exception to this rule when the person fails to provide "satisfactory" identification. If that happens, officers have the discretion of taking the person into custody.[3] And like any other custodial arrest, the officer may conduct a search incident to the arrest.[4]

The question, then, is what constitutes "satisfactory" ID? The court ruled that a driver's license certainly qualifies if it is "current, valid, and raises no suspicion that it has been altered or falsified." In addition, other types of documents may be deemed "satisfactory" ID if they are amount to the "functional equivalent of a driver's license," such as state-issued identification cards.[5]

As for identification documents that are not state-issued, the court ruled they, too, may constitute "satisfactory" identification if they contain the person's photograph, a physical description, current mailing address, and signature. In addition, the document must be "serially or otherwise numbered."[6]

McKay contended that a verbal ID also ought to be included. Apart from the fact that such a rule would defy common sense, the court pointed out it would be

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[1] See Vehicle Code § 21650.1.
[2] See Vehicle Code § 40302; *People* v. *Superior Court (Simon)* (1972) 7 Cal.3d 186, 199-200.
[3] See Vehicle Code § 40302(a).
[4] See *United States* v. *Robinson* (1973) 414 US 218, 224 ["It is well settled that a search incident to a lawful arrest is a traditional exception to the warrant requirement of the Fourth Amendment."]; *New York* v. *Belton* (1981) 453 US 454, 457.
[5] See Vehicle Code § 13005; *People* v. *Monroe* (1993) 12 Cal.App.4th 1174.
[6] **NOTE:** This was previously the rule per *People* v. *Monroe* (1993) 12 Cal.App.4th 1174.

inconsistent with the plain wording of § 40302(a) which requires the person to "present" ID for "examination." But because verbal ID cannot be "presented" or "examined," it cannot qualify as "satisfactory" identification under Vehicle Code § 40302(a).

Consequently, the court ruled McKay's arrest was lawful.

DA's COMMENT

Four things should be noted about this decision. First, the court was careful to point out that officers retain the discretion of citing and releasing a person whenever they are satisfied the person truthfully identified himself, even if the person identified himself verbally or through documents that did not qualify as the "functional equivalent" of a driver's license.

Second, after arresting McKay, the deputy ran his name and date of birth on his computer. The court said the deputy "received an address that matched the address defendant had given him and a general description that was consistent with defendant's appearance." This did not, however, constitute verification of McKay's ID because, as the court noted elsewhere, "the unscrupulous offender could just as easily memorize [the name, address, and date of birth of an acquaintance], parrot it back to the officer, and thus evade responsibility for any number of Vehicle Code offenses, since the physical description available through a computer database may well be too general to adequately confirm the offender's identity."

Third, the court noted that even if McKay's verbal identification of himself constituted "satisfactory" ID (in which case the arrest would have been unlawful) the evidence obtained as the result of the arrest could still not be suppressed. This is because, pursuant to Proposition 8, evidence can be suppressed in California only if the officer's conduct violated the U.S. Constitution.

This bring us to the issue that occupied most of the court's attention in this case. McKay, acknowledging that evidence can be suppressed only if it was obtained in violation of the federal constitution, urged the court to rule that a violation of a state statute pertaining to search or seizure (such as § 40302(a)) automatically constitutes a violation of the Fourth Amendment. The court did not need to address this issue because, as noted, it ruled the arrest was lawful under state law. Nevertheless, for reasons discussed later, it did so.

The court observed that this issue was decided by the U.S. Supreme Court as far back as 1944 when it said in *Snowden* v. *Hughes*, "Mere violation of a state statute does not infringe the federal Constitution."[7] Consequently, said the *McKay* court, "It will come as no surprise that the United States Supreme Court has never ordered a state court to suppress evidence that has been gathered in a manner consistent with the federal Constitution but in violation of some state law or local ordinance."

The court also pointed out that there is only one requirement for a valid arrest under the Fourth Amendment: *probable cause*. Thus, said the court, "So long as the officer has probable cause to believe that an individual has committed a criminal offense, a custodial arrest—even one effected in violation of state arrest

[7] (1944) 321 US 1, 11.

procedures—does not violate the Fourth Amendment." Consequently, McKay's arrest was lawful under the U.S. Constitution because the deputy did, in fact, have probable cause.

Why did the court address this issue? In the recent case of *Atwater* v. *City of Lago Vista*[8] the U.S. Supreme Court essentially ruled that the federal Constitution imposes few limits on police discretion to arrest for most minor offenses. *Atwater* does not, however, prevent the states, local governments, and law enforcement agencies from enacting statutes, rules, and departmental regulations limiting such discretion.

The court in *McKay* seemed to be concerned that the states, local governments, and law enforcement agencies might hesitate to limit this discretion if they thought that a violation of their statutes and rules could somehow be construed as a constitutional violation resulting in the suppression of evidence. So it took the time to made it clear that this would not happen. Said the court, "Constitutionalizing the myriad of technical state procedures that govern arrests would not only trivialize Fourth Amendment protections but would discourage states from even enacting such rules."

Despite this concern, the court warned that if officers violate state or local laws, criminal defendants and others are free to sue the officers and their departments "seeking injunctive or other relief." Said the court, "[E]liminating the sanction of exclusion does not mean that affected individuals or the public generally are without remedy against a wayward officer."

So here's how things stand: If officers violate state law pertaining to search and seizure, any evidence obtained as the result will not be suppressed if the officers' conduct was lawful under the U.S. Constitution. Nevertheless, the officers or their law enforcement agencies may be sued. This is not right.

The courts in California are essentially keeping two sets of books. Set #1 contains the rules officers must follow in order to avoid having evidence suppressed. Set #2 contains the rules officers must follow so as not to get sued. By definition, these rules are in conflict, and the way they conflict is consistent and unmistakable: the rules in Set #2 inevitably place greater restrictions on officers than the rules in Set #1.

By passing Proposition 8, the voters made it clear they want officers to follow Set #1—not Set #2. But because the courts continue to maintain Set #2, officers are forced to deal with the uncertainty that necessarily results whenever people are subject to conflicting rules. Like we said, this is not right.

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[8] (2001) 532 US 318.