

Recent Case Report

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People v. Nottoli

(2011) 199 Cal.App.4th 531.

Issue

Under what circumstances may officers conduct a vehicle search based on the “reasonable suspicion” standard announced in *Arizona v. Gant*?

Facts

At about 2 A.M. a Santa Cruz County deputy sheriff stopped a car for speeding. In the course of the stop, he observed that the driver, Reid Nottoli, was “not able to sit still,” his eyes were “watery, slightly bloodshot, and darted around in a really nervous kind of fidgeting fashion,” his speech was “rapid” and “disjointed,” he had “rapid eye tremors,” his pupils were “constricted,” and his breath was “very rapid” and “sharp.”

Based on these symptoms, the deputy concluded that Nottoli was under the influence of drugs. He also learned that Nottoli was driving on an expired license. So he arrested him on both charges and confined him in his patrol car. Having determined that it was necessary to impound Nottoli’s car, the deputy conducted an inventory search during which he found a loaded .50-caliber handgun under the driver’s seat and a small amount of drugs. He also found a smart phone.

Thinking the phone might contain evidence of Nottoli’s drug use, the deputy pressed a key to see if it was working. The screen immediately came to life, showing a man wearing a mask and wielding two AR-15 assault rifles. The deputy concluded that the man was Nottoli because they were similar in size and it appeared they were both wearing the same camouflage baseball cap. Although such rifles may be lawfully possessed by people who purchased them legally before the assault weapon ban in California, Nottoli claimed he did not own any assault rifles. Consequently, the deputy concluded that Nottoli possessed the weapons illegally, and he thought that the smart phone “would have evidence of possibly gun-related crimes, such as discussions related to obtaining, trafficking or selling illegal weaponry,” and that it might also “contain further evidence of drug use, drug transactions, and drug trafficking.”

At this point, the deputy handed the phone to another deputy who searched it and found, among other things, an email receipt from an internet gun broker for the purchase of “incendiary projectiles” for a .50-caliber handgun.

A chemical test later showed that Nottoli was not under the influence stimulants, although he tested “presumptive positive” for marijuana and opiates. He was subsequently charged with, among other things, possession of an assault weapon. (Nottoli died eight months later while this case was pending. Although this rendered the case moot, the court issued its opinion “because it raises important issues of public interest that are likely to recur in other cases.”)

Discussion

The central issue on appeal was the legality of the cell phone search. At the outset, the court rejected the argument that the search qualified as an inventory search. This was because the law is settled that, even when officers have a legal right to conduct an

inventory search, they may search only those places and things they were permitted or required to search pursuant to standard departmental policy or standard procedure.¹ But no testimony was presented that the search of the cell phone was conducted in accordance with such a policy or procedure.

The People also argued that the search qualified as a search incident to arrest as defined by the United States Supreme Court in *Arizona v. Gant*.² In *Gant*, the Court ruled that officers who have made a custodial arrest of an occupant of a vehicle may search the passenger compartment if either of the following circumstances existed:

- (1) **Arrestee had access:** The arrestee had immediate access to the passenger compartment when the search occurred.
- (2) **Reasonable suspicion:** Officers reasonably believed they would find evidence in the passenger compartment pertaining to the crime for which the occupant had been arrested.

It was apparent that the first exception did not apply because Nottoli had been handcuffed and confined in a patrol car when the search occurred. Thus, the issue was whether the second exception applied—and in deciding this issue, the court had to answer the following question: To conduct such a search, must officers be aware of specific facts that support a reasonable belief that evidence of the alleged crime will be found in the vehicle? Or, is it enough that they knew that the people who commit such a crime frequently possess fruits or instrumentalities? For example, if officers arrest the driver of a car for DUI, do they automatically have reasonable suspicion to search for liquor, or must they also be aware of specific circumstances that reasonably indicate there is liquor inside?

The court in *Nottoli* ruled that specific facts are not required, that the propriety of the search depends solely on the nature of the crime for which the person was arrested. Accordingly, because the deputy had probable cause to arrest Nottoli for being under the influence of drugs, he could search the vehicle for evidence pertaining to the crime. Said the court, the arrest itself “supplied a reasonable basis for believing that evidence relevant to that type of offense might be in his vehicle.”

Having determined that the search of the passenger compartment was lawful, the court had to decide whether the officers were permitted to search the cell phone. Here, the court ruled that when officers have a legal right to search the passenger compartment of a vehicle based on reasonable suspicion, they are not required to limit the search to places and things in which relevant evidence might be found. This ruling was based on the court’s reading of *Gant*, and its conclusion that *Gant* “does not require any degree of probability that evidence bearing on that offense will be found in a particular container that is searched.”

The court also ruled, however, that even if such searches must be restricted to places and things in which relevant evidence might reasonably be found, the search of the cell phone would have been lawful because the deputy testified that, “in his experience, drug users and sellers use cell phones as their main communication and cell phones can contain text messages related to acquiring and offering drugs.”

¹ See *Florida v. Wells* (1990) 495 U.S. 1, 4 [search must be conducted in accordance with “standardized criteria or established routine”]; *Colorado v. Bertine* (1987) 479 U.S. 367, 374, fn.6 [“Our decisions have always adhered to the requirement that inventories be conducted according to standardized criteria.”].

² (2009) 556 U.S. 332.

For these reasons, the court ruled that the search of Nottoli's cell phone was lawful and, therefore, "the deputies had unqualified authority under *Gant* to search the passenger compartment of the vehicle and any container found therein, including [Nottoli's] cell phone."

Comment

After *Nottoli* was decided, another appellate court in California addressed a similar issue. In *People v. Evans*,³ LAPD gang enforcement officers stopped a car for failing to signal a turn. One of the officers asked the driver, Evans, to exit the car, but instead he kept asking why he had been stopped. Although the officer explained the reason, Evans kept repeating the question and saying he wanted to talk with a police supervisor. This went on for about ten minutes, after which officers broke a window, tased Evans, and arrested him for interfering with an investigation pursuant to Penal Code § 148. Officers subsequently searched the car and found rock cocaine hidden in an air vent.

As in *Nottoli*, the search could not be upheld as an inventory search because there was no evidence that it was conducted pursuant to standard criteria. But unlike *Nottoli*, the search could not be based on reasonable suspicion because, as the court pointed out, "[i]mpeding an officer's investigation is unlikely to leave evidentiary traces, such as the fruits or instrumentalities of the crime, in a vehicle."

Two other things about these types of searches should be noted. First, they will be permitted only if the sought-after evidence pertains to the same crime for which the occupant was arrested. For example, the officers who arrested Evans apparently also had reasonable suspicion to believe he possessed drugs. But because he was not arrested for a drug offense, the search could not be based on that ground.

Second, because officers must have *reasonably* believed they may find fruits or instrumentalities of the alleged crime in the passenger compartment, wild speculation will be disregarded. For example, if the driver was arrested for driving on a suspended license with knowledge of the suspension, it is conceivable that relevant evidence consisting of a DMV suspension-notification letter would be found in the vehicle. But it is doubtful that such a weak connection between the crime and the evidence would constitute justification for a search.⁴ POV

³ (2011) __ Cal.App.4th __ [2011 WL 5252792].

⁴ See *Arizona v. Gant* (2009) 556 U.S. 332, __ [arrest for driving on a suspended license was "an offense for which police could not expect to find evidence in the passenger compartment"].