People v. Sanders
(July 31, 2003) __ Cal.4th __

ISSUE

If officers discover evidence while conducting an illegal warrantless search of a residence, is the evidence admissible if, unbeknownst to the officers, one of the occupants is on parole with a search condition?

FACTS

Two Bakersfield police officers were dispatched to a disturbance inside an apartment. As they stood outside the front door, they heard a man and a woman yelling inside. The woman, Arlene Sanders, opened the door; the man, Kenton McDaniel, was standing behind her. Sanders' face appeared to have been recently cut or scraped. The officers entered the apartment and, as they did so, they saw McDaniel place "something metal" behind a couch cushion.

Sanders immediately began ordering the officers to leave, yelling, "What the fuck you all doing in my house!" And, "Get the fuck out of my house!" Then she started "grappling" with one of the officers. McDaniel started to advance on the officer but the other officer pressed him against the wall, telling him not to get involved. Still, McDaniel tried to push the officer away, so the officer handcuffed him. Meanwhile, the other officer subdued and eventually handcuffed Sanders.

At this point, one of the officers made a "protective sweep" of the apartment. As he walked into a bedroom closet, he saw a "large amount" of rock cocaine in plain view. He did not, however, seize it. Instead, he checked with his dispatcher and learned that McDaniel was on parole and, like all parolees, was subject to a search condition.[1] The officers then conducted a parole search and seized 4.7 grams of cocaine. They also discovered that the metal object McDaniel hid behind the cushion was a pair of scissors.[2]

DISCUSSION

Sanders and McDaniel acknowledged that the officers' entry into their apartment was lawful. But they contended the drugs must be suppressed because the circumstances did not justify a protective sweep. The Attorney General's Office conceded the sweep was unlawful, and that the cocaine could not be used against Sanders.

It argued, however, that because McDaniel was on parole with a search clause which covered his apartment, he did not have a reasonable expectation of privacy in the closet and, therefore, lacked standing to challenge the search. In support of this, the Attorney General cited the California Supreme Court's decision in *In re Tyrell J.*[3] in which it ruled that evidence obtained during an unlawful search of a minor was admissible when it was later discovered the minor was on probation with a search clause.

The *Sanders* court, however, refused to extend *Tyrell J.* to cover unlawful residential searches of adult parolees. Instead, it ruled that when officers are unaware the adult is on parole, any evidence obtained during the search is inadmissible. As the court put it:

> [W]e hold that an otherwise unlawful search of the residence of an adult parolee may not be justified by the circumstance that the suspect was subject to a search

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[1] NOTE: All California parolees are subject to the same search condition which reads as follows: "You and your residence and any property under your control may be searched without a warrant at any time by any agent of the Department of Corrections or any law enforcement officer." See *People* v. *Williams* (1992) 3 Cal.App.4th 1100, 1105-6; Penal Code §3067.

[2] NOTE: Some facts were taken from *People* v. *Sanders* (2000) 84 Cal.App.4th 1211.

[3] (1994) 8 Cal.4th 68, 86.

condition of which the law enforcement officers were unaware when the search was conducted.

Consequently, the drugs were suppressed.

DA's COMMENT

Although adult parolees pose a much greater threat to society than juvenile probationers, the court's decision was not unexpected. It has been agonizing over this issue for years.[4] Still, there are some things about its analysis that are disturbing.

First, the court said that in determining the legality of the sweep it had to consider whether the officers knew that McDaniel was on parole. In reality, the "legality" of the sweep did not depend one iota on this unless, of course, the prosecution sought to justify the sweep as a parole search—which it did not.[5]

Instead, the legality of the sweep depended on, (1) whether it complied with the United States Supreme Court's decision in *Maryland* v. *Buie* in which the Court ruled that sweeps are permissible if officers reasonably believed there was someone on the premises who posed a threat to them;[6] or (2) whether the officers reasonably believed there was someone on the premises who was in danger.[7]

Curiously, although the court in *Sanders* repeatedly said it was ruling on the legality of the sweep,[8] it did no such thing. Instead, in a footnote it said, "We express no view regarding the Court of Appeal's ruling that the 'protective sweep' of the apartment violated the rule announced in [*Buie*]."[14] The question arises: How can the court rule the sweep was unlawful if it was "express[ing] no view" on the subject?

Second, in discussing the circumstances that led to the officers' decision to conduct the sweep, the court omitted certain pertinent details. If you had read the Court of Appeal's decision in *Sanders*, you would have learned that when the officers knocked on the door, the occupants stopped yelling. Sanders then "peeked out through some blinds," and immediately activated the dead-bolt. After waiting 15-30 seconds, the officers knocked again and ordered the occupants to open the door. Nothing happened for another 15-30 seconds. Sanders then released the deadbolt and opened the door. Under these circumstances, a reasonable officer would have been apprehensive. Why was it was so important for the occupants to delay the officers' entry into the apartment? Was there a third occupant who was hiding? The Supreme Court, however, ignored this entire episode, saying only, "After a short delay, Sanders opened the door."

Readers of the Court of Appeal's decision were also informed that Sanders started "grappling" with one of the officers, and yelled, "What the fuck you all doing in my

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[4] See, for example, *In re Tyrell J.* (1994) 8 Cal.4th 68, 89; *People* v. *Woods* (1999) 21 Cal.4th 668; *People* v. *Robles* (2000) 23 Cal.4th 789. NOTE: The Supreme Court granted review in this case in *2001*—on February 28, 2001.

[5] NOTE: Whether McDaniel was on parole was relevant to the issue of whether he reasonably expected privacy in the bedroom closet which, in turn, was relevant only to the issue of whether he had standing to challenge the search and whether a "search" *occurred*—not the legality of the search. See *Rakas* v. *Illinois* (1978) 439 US 128; *Illinois* v. *Andreas* (1983) 463 US 765, 771; *Kyllo* v. *United States* (2001) 533 US __ [150 L.Ed.2d 94, 101; *In re Tyrell J.* (1994) 8 Cal.4th 68, 89. NOTE: The court also said that to determine the legality of the search it needed to consider the purpose of the exclusionary rule; i.e. to deter police misconduct. But, as Justices Kennard and Brown observed in their concurring opinions, this circumstance is also irrelevant to the issue of whether a search was lawful.

[6] (1990) 494 US 325, 334.

[7] See *Tamborino* v. *Superior Court* (1986) 41 Cal.3d 919, 924; *People* v. *Macioce* (1987) 197 Cal.App.3d 262, 272-5; *People* v. *Ray* (1999) 21 Cal.4th 464, 477 ["Given the known facts, would a prudent and reasonable officer have perceived a need to act in the proper discharge of his or her community caretaking functions?"]; *People* v. *Stamper* (1980) 106 Cal.App.3d 301, 306; *People* v. *Superior Court (Haflich)* (1986) 180 Cal.App.3d 759, 769.

[8] NOTE: Although the court's analysis indicates it might not have intended to rule on the *legality* of the search, it repeatedly said that was, in fact, its intent; e.g., "We granted review to decide whether the search was lawful because McDaniel was on parole, despite the fact that the officers were unaware of McDaniel's parole status when they conducted the search." "[W]hether the parolee has a reasonable expectation of privacy is inextricably linked to whether the search was reasonable." "Our holding in *Robles* mandates the conclusion that the search in the present case was unlawful as to Sanders." "Having concluded that the search was unlawful as to Sanders, we turn to the more difficult question of whether the search was also unlawful as to McDaniel."

house!" And, "Get the fuck out of my house!" Readers of the Supreme Court's decision got the sanitized version: "Sanders demanded that the officers leave and began 'tussling' with Officer Thatcher."

The Supreme Court also downplayed the threat that McDaniel presented when it neglected to mention that one of the officers had to press him against the wall as he was going after the other officer. It also failed to note that McDaniel attempted to "push away from [the officer] a few times." Even if the Supreme Court believed these facts would not have justified the sweep, it should not have omitted them. After all, these were the facts that caused the officers to believe the sweep was necessary and, thus, lawful.

Third, the court attempted to justify its decision to suppress the evidence by claiming the decision was necessary to prevent officers from routinely engaging in illegal searches in high-crime neighborhoods. The court reasoned that if evidence obtained by means of illegal searches of parolees was admissible, there would be a danger that officers would "engage in facially invalid searches," especially in "high crime areas where police might suspect probationers to live" "in the hope that at least one of the occupants would be subject to a search condition."[9]

We trust this does not reflect the court's opinion of the integrity of California's law enforcement officers. In any event, the court offered no evidence to support its concern. Moreover, because after-the-fact validation of certain illegal searches has been permitted in California since 1994,[10] and because the court cited no evidence that this has resulted in "facially invalid searches," it appears the court's concern was misplaced.

Fourth, recall that in *Tyrell J.*, the court ruled that a juvenile probationer could not challenge a search that was authorized by the terms of probation, even if the officers were unaware he was on probation. In *Sanders*, the court noted that *Tyrell* "received a chilly reception" from a certain liberal law professor, and that several law review students were "unkind" or critical of the decision (*"Fourth Amendment Protection for Juvenile Probationers in California, Slim or None?"* Hastings Law Review).

This, of course, will surprise no one. What *is* surprising is that the court would give the appearance of attempting to appease law professors and law students—or, for that matter, any other segment.

Finally, we think the protective sweep in this case was lawful. In fact, we're certain of it. A sweep is lawful if there was "reasonable suspicion" that a person on the premises posed a threat to the officers or others while the officers were carrying out their duties.[11] To determine whether such a reasonable suspicion exists, the courts must interpret the surrounding circumstances in light of common sense and the officers' training and experience.[12] With this in mind, consider what the officers knew:

- An argument inside Sanders' apartment had become so heated that the neighbors called the police to intervene.
- An occupant, upon seeing the officers outside, dead-bolted the door and delayed opening it for 30 to 60 seconds.
- Although the officers had a legal right to be inside the apartment, Sanders was combative and menacing, yelling, "What the fuck you all doing in my house!" "Get the fuck out of my house!"
- McDaniel tried to hide a "metal" object from the officers.

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[9] Quoting from *People* v. *Robles* (2000) 23 Cal.4th 789, 800.
[10] See *In re Tyrell J.* (1994) 8 Cal.4th 68.
[11] See *Maryland* v. *Buie* (1990) 494 US 325, 334.
[12] See *Illinois* v. *Wardlow* (2000) 528 US 119, 125["(T)he determination of reasonable suspicion must be based on commonsense judgments and inferences about human behavior."]; *Illinois* v. *Gates* (1983) 462 US 213, 231; *Illinois* v. *Rodriguez* (1990) 497 US 177, 184; *United States* v. *Arvizu* (2002) 534 US ___ [151 L.Ed.2d 740, 749-50]["This process allows officers to draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that might well elude an untrained person."].

- Sanders and McDaniel were so out-of-control they assaulted the officers.
- When the officers saw the cut on Sander's face, they had reason to believe that someone on the premises had physically attacked her.
- Sanders and McDaniel appeared to be allies, an indication the attacker was a third person. Or, maybe Sanders and McDaniel were the attackers and their victim was injured and unconscious in another room. [Recall the delay in admitting the officers.]

Under these circumstances, it seems apparent that the sweep was justified.[13]

[13] See *People* v. *Maier* (1991) 226 Cal.App.3d 1670, 1674-7; *People* v. *Block* (1971) 6 Cal.3d 239, 245; *People* v. *Cain* (1989) 216 Cal.App.3d 666.