

## People v. Schmitz

(2013) 55 Cal.4th 909

### Issue

What is the permissible scope of a parole search of a vehicle if the parolee was a passenger, not the driver?

### Facts

After seeing a car enter a dead-end street and make a U-turn, an Orange County sheriff's deputy pulled alongside and asked the driver, Douglas Schmitz, if he was lost. He said no. There were three other people in the car: a man sitting on the front passenger seat, and a woman and small child in the backseat. At the deputy's request, Schmitz handed her his driver's license, at which point the deputy observed that his arms were covered with abscesses "which she associated with drug use." She asked Schmitz if he was on probation or parole, and he said no. She asked if he would consent to a search of his car, and he refused. The deputy then asked the front-seat passenger if he was on probation or parole and he said he was on parole.

Consequently, the deputy conducted a parole search of the car and, in the backseat, found two syringes in a bag of chips and methamphetamine inside a shoe. As a result, Schmitz was charged with possession of a controlled substance and possession of a syringe. When his motion to suppress the evidence was denied, he pled guilty to reduced charges.

### Discussion

Under California law, parolees are subject to warrantless searches of (1) their homes, and (2) any property under their "control."<sup>1</sup> Citing the "control" requirement, Schmitz argued that the search was unlawful because the backseat was not within the control of the parolee. In fact, Schmitz argued that a parolee who is a passenger in a vehicle has control over nothing except property he was carrying and maybe property on the seat immediately next to him. The Court of Appeal agreed with this reasoning and ruled that the evidence should have been suppressed. The California Supreme Court reversed.

The court pointed out that a strict "control" requirement for vehicle searches would be "unworkable" because "a standard five-passenger automobile generally affords ready access to areas in both the front and back seats," and that passengers do not ordinarily act "as if they were confined in separate divided compartments, coats and other possessions piled on their laps, elbows clamped at their sides." The court also noted that "[a] front seat passenger, even if only a casual acquaintance of the driver, will likely feel free to stow personal items in available space at his or her feet, in the door pocket, or in the backseat, until they are needed or the journey ends."

For these reasons, the court ruled that officers who are conducting a search of a vehicle based on a passenger's parole status may search those areas of the passenger compartment in which the officer reasonably believes the parolee (1) "could have stowed personal belongings" when he entered the vehicle, or (2) could have "discarded items when [he became] aware of police activity." Such a bright-line rule, said the court, was

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<sup>1</sup> See 15 CA ADC § 2511(b)(4) ["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."],

necessary because officers should not be required “to assess in each case the parolee’s immediate grasping distance and limit the search to that area,” and also because the nature of the typical passenger compartment is “relatively nonprivate.”

Applying this test to the facts in *Schmitz*, the court ruled the search of the shoe and bag of chips in the back seat was lawful because, “[c]onsidering the layout of a standard five-passenger car, it was objectively reasonable for the officer to expect that this parolee could have stowed his personal property in the backseat, tossed items behind him, or reached back to place them in accessible areas upon encountering the police.”

### **Comment**

Two other things should be noted. First, the court cautioned that it was not deciding whether, based on a passenger’s parole status, officers could search closed compartments in the vehicle, such as the glove box, center console, or trunk. Instead, it said that the legality of these searches would depend on such factors as the parolee’s proximity to them, and whether they were locked or otherwise secured.<sup>2</sup>

Second, it did not decide when, or under what circumstances, officers could search a woman’s purse if the parolee was a man. It did, however, indicate that such a search might be unreasonable if the purse was closed and “closely monitored” by the woman<sup>3</sup> (in which case it would presumably not be within the control of the parolee). On the other hand, a search of a purse or other closed container would probably still be permitted if it reasonably appeared to the officers that the parolee reached for it at some point before the car was stopped.<sup>4</sup> POV

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<sup>2</sup> At fn.22.

<sup>3</sup> At p. 932 [“In this respect, an open shoe differs markedly from a purse, which is likely to be more closely monitored by its owner or otherwise secured.”].

<sup>4</sup> See *People v. Clayton* (1970) 13 Cal.App.3d 335 [a passenger in a car stopped for a traffic violation “lifted himself up from the seat with both arms in his rear portion of his body behind his back, both arms went up and down rapidly”]; *U.S. v. Davis* (8th Cir. 2006) 457 F.3d 817, 822 [an officer making a traffic stop “saw Davis [a passenger] rise off the seat and place his hand behind his back as if he were placing something underneath or behind him.”]; *U.S. v. Hunnicutt* (10th Cir. 1998) 135 F.3d 1345, 1349 [“after the stop, the passengers repeatedly moved back and forth and leaned over.”].