People v. Douglas

(2015) 240 Cal.App.4th 855

Issue

Before searching a person pursuant to a parole or PRCS search condition, what level of proof must an officer have that the person was, in fact, searchable?

Facts

A Richmond police officer whose assignment was to keep tabs on parolees and probationers happened to notice Douglas sitting in a parked car. The officer testified he "knew" that Douglas was on Postrelease Community Supervision (PRCS) because the officer had arrested him on a felony firearms charge just two years earlier, and also because the officer's duties included "regularly monitor[ing] to see who is on probation and parole." So the officer decided to search Douglas based on the statutory requirement that all people released on PRCS are subject to warrantless searches.

As the officer walked up to the car, Douglas started to pull away from the curb. The officer ordered him to stop and he complied; but when the officer ordered him to get out of the car, Douglas started to "scuffle." So the officer decided to handcuff him. As he was doing so, Douglas dropped a loaded .380 caliber semiautomatic handgun on the floorboard. Accordingly, the officer arrested him for felony possession of a firearm and, when Douglas's motion to suppress was denied, he pled guilty.

One other thing: The officer testified that, before conducting a parole or PRCS search, he would usually confirm through a police database that the person was actually on parole or PRCS. But he explained that, because of Douglas's defiant conduct, there was no time to seek confirmation before searching the floorboard for the gun.

Discussion

Although it turned out that Douglas was, in fact, on PRCS, he argued that his gun should have been suppressed because the officer did not have enough information to make that determination. Before addressing this issue, the court explained that, pursuant to California's Criminal Justice Realignment Act of 2011, a judge who sentences a defendant to state prison for certain low-level offenses may order that the defendant serve his time in a local county jail. Furthermore, upon his release, he will be supervised by a probation officer instead of a parole officer.

But, despite the similarities between PRCS and probation, a person released on PRCS is subject to essentially the same search conditions as parolees; i.e., by statute they are "subject to search at any time of the day or night, with or without a warrant, by an agent of the supervising county agency or by a peace officer."[1] Because these search conditions are mandatory, an officer who knows that a person is on PRCS is also deemed to know that he is searchable. As the court in *Douglas* pointed out, "[A]n officer's knowledge that the individual is on PRCS is equivalent to knowledge that he or she is subject to a search condition."

[1] See Penal Code § 3453(f); *People v. Fandinola* (2013) 221 Cal.App.4th 1415, 1422 [a PRCS sentence is "akin to a state prison commitment"]; *People v. Jones* (2014) 231 Cal.App.4th 1257, 1266, 1266.

Nevertheless, Douglas argued that the search of his floorboard was unlawful because the officer did not confirm his PRCS status beforehand and, therefore, he lacked sufficient knowledge that he was on PRCS.[2] The court ruled, however, that the term "knowledge," as used in the Realignment Act, does not require actual knowledge or even direct evidence of knowledge. Instead, it requires only *reasonable suspicion,* which means the officer must simply have an "objectively reasonable belief" based on the totality of circumstances.[3] Accordingly, this determination may be based on circumstantial evidence and the officer's training and experience in interpreting this evidence. On the other hand, hunches and unsupported conclusions are irrelevant.[4]

Applying these principles to the facts of the case, the court ruled that, for the following reasons, the officer had an objectively reasonable belief that Douglas was on PRCS. First, he knew about Douglas's prior arrest for weapons possession. Second, he was presumably aware that the ordinary term of PRCS is three years. Third, the officer's duties included the monitoring of parolees, PRCS releasees, and probationers who live in Richmond. Therefore, said the court, the search was lawful because the officer was able to make a "rough calculation that Douglas would still be on PRCS as a result of that earlier offense."

Comment

There were two other recent cases in which the courts addressed issues pertaining to the scope of probation searches. By way of background, the term "scope" refers to the places and things that may be searched pursuant to the terms of probation. But "scope" is not an issue in parole and PRCS cases because, as noted earlier, it is set by statute. In contrast, the scope of probation searches will vary because the sentencing judge—not a statute—determines what may be searched. Consequently, one significant difference between parole and probation searches is that officers who conduct probation searches must be able prove that they knew what places and things the sentencing judge had authorized them to search.

The first recent case in which this issue was addressed was *People v. Romeo,*[5] in which the court ruled that prosecutors may prove the permissible scope of a probation search by introducing a copy of the probation order (which will almost always specify the permissible scope of the search) or by proving that the officer who conducted the search was personally aware of the probation order and it scope. But because no such evidence had been presented in *Romeo*, it ruled the search was unlawful.

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[2] See *People v. Schmitz* (2012) 55 Cal.4th 909, 916 [the "parolee's status [must be] known to the officer"]; *In re Jaime P.* (2006) 40 Cal.4th 128; *People v. Sanders* (2003) 31 Cal.4th 318, 332 ["[A] search conducted under the auspices of a properly imposed parole search condition, presumes the officer's awareness of the search condition, because a search cannot be conducted 'under the auspices' of a search condition if the officer is unaware that the condition exists."].

[3] Also see *United States v. Arvizu* (2002) 534 U.S. 266, 273 ["When discussing how reviewing courts should make reasonable-suspicion determinations, we have said repeatedly that they must look at the totality of the circumstances of each case to see whether the detaining officer has a particularized and objective basis for suspecting legal wrongdoing."].

[4] See *Illinois v. Gates* (1983) 462 U.S. 213, 239 [a "wholly conclusory statement" is irrelevant]; *United States v. Sokolow* (1989) 490 U.S. 1, 7 ["The officer must be able to articulate something more than an inchoate and unparticularized suspicion or hunch."].

[5] (2015) 240 Cal.App.4th 931.

The second case was *People v. Wolfgang*[6] in which a Riverside County sheriff's deputy ran a warrant check on a suspect and was advised that he was on probation for brandishing a weapon. Although the deputy was not told that Wolfgang was subject to a probation search condition, he assumed he was because "generally when a person is on probation for a weapons violation, they have search conditions." In fact, the deputy testified that he "had never encountered an individual on probation for a weapons violation who was not subject to some type of search condition." As in *Douglas*, the court in *Wolfgang* ruled that the facts known to the deputy constituted sufficient circumstantial proof. Said the court, "[A]lthough the deputy did not ask dispatch and was not told whether defendant's probation included a search condition, the deputy, based on his training and experience, was aware that search conditions are part of probationary terms for an individual placed on probation for weapons violations." POV

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[6] (2015) 240 Cal.App.4th 1268, 1276