

## People v. Zabala

(2017) \_\_ Cal.App.5th \_\_ [2018 WL 359950]

### Issue

While conducting vehicle inventory searches, may officers routinely search potential secret compartments?

### Facts

In the course of a traffic stop, a Santa Clara County sheriff's deputy determined that the driver, Saul Zabala, was driving on a suspended license. Having decided to impound the vehicle, the officer conducted an inventory search of its contents and, while looking under the driver's seat, found four baggies filled with white powder. Although he had not yet conducted a field test on the substance, he testified that he believed it was cocaine "based on the way the substance looked, the way it was packaged and where it was placed in the vehicle."

Continuing his search, the deputy noticed that the radio console was "loose" and that the space between the radio and the dashboard "looked enlarged, like it had been removed and replaced." Thinking that it might be a secret compartment, he used a pocket knife to remove the console. As he did so, he found several bags of methamphetamine between the air conditioning ducts. When Zabala's motion to suppress the drugs was denied, he pled guilty.

### Discussion

Zabala argued that the methamphetamine should have been suppressed because the deputy exceeded the permissible scope of a vehicle inventory search when he removed the radio console. The Supreme Court has ruled that officers who are conducting a vehicle inventory search may search those places and things that they are required or permitted to search pursuant to departmental policy.<sup>1</sup> Here, the deputy testified that his department allows officers to search "closed containers" and "places in a vehicle where people commonly put items of value, including under the seat, the glove compartment, the center console, and the trunk."

The question, then was whether a secret compartment constitutes a closed container or a place in which items of value are commonly stored. The court ruled it is neither. "A concealed area behind the dashboard console," said the court, "is not an area where people commonly put items of value, nor is it a closed container, such as a suitcase, box, or backpack." Consequently, the court agreed with Zabala that the deputy "exceeded the scope of the Sheriff's Department protocol by removing the console for investigatory purposes, and the intrusion into the area behind the console cannot be upheld as an inventory search."

But there's more. The court ruled that the search was nevertheless lawful because it fell within the "probable cause" exception to the warrant requirement. Under this rule (also known as the "automobile exception") officers may search a vehicle in a public place if they have probable cause to believe there is evidence of a crime inside. As the

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<sup>1</sup> 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."].

Supreme Court explained, a vehicle search “is not unreasonable if based on facts that would justify the issuance of a warrant, even though a warrant has not actually been obtained.”<sup>2</sup>

The issue, then, was whether the deputy was aware of facts that constituted probable cause. The answer might seem obvious because, based on the discovery of the cocaine, there was probable cause to believe the vehicle contained more of it, or at least evidence that Zabala was involved in trafficking. The problem is that, after the search, the officer field tested the powder and determined it was not a cocaine or any other controlled substance. Instead, it was apparently a cutting agent that was used to increase the volume of cocaine. Nevertheless, the court ruled the search was lawful because, at the time it was conducted, the officer was aware of other circumstances that reasonably indicated that Zabala was a drug trafficker; specifically, the discovery of the cutting agent, the manner in which it was packaged, and what appeared to be a secret compartment. Said the court, “The substance was packaged in a manner consistent with illegal narcotics activity which, together with the tampered dashboard, established probable cause to believe that contraband would be found behind the console.” POV

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<sup>2</sup> *United States v. Ross* (1982) 456 U.S. 798, 809. Also see *People v. Carpenter* (1997) 15 Cal.4th 312, 365 [“The police had probable cause to search the vehicle. Under the ‘automobile exception’ to the warrant requirement, they did not need a warrant at all.”]; *People v. Superior Court (Nasmeh)* (2007) 151 Cal.App.4th 85, 100 [“When the police have probable cause to believe an automobile contains contraband or evidence they may search the automobile and the containers within it without a warrant.”].