

People v. Hall

(2020) __ Cal.App.5th __ [2020 WL 6882240]

Issue

Did an officer have probable cause to search a vehicle for marijuana?

Facts

At about 11 P.M., a San Francisco police officer stopped a car driven by Dontaye Hall because the license plate light was out. As he approached the driver's side window, he saw "a clear plastic baggie" on the center console, and it appeared the baggie contained marijuana. Although he did not detect an odor of fresh or burnt marijuana, he concluded that he had probable cause to search the car "due to the fact that having an open container of marijuana is a violation of the law." During the search, the officer found a loaded firearm inside Hall's backpack. As the result, he was charged with "two felony weapons counts."

When his motion to suppress the gun was denied, the DA allowed him to plead guilty to one misdemeanor count of carrying a loaded firearm. He then appealed the denial of his suppression motion.

Discussion

Hall argued that his motion to suppress should have been granted because the officer did not have probable cause to believe that the marijuana in the baggie was possessed illegally. Under California law, it is legal to possess one ounce or less of marijuana in a vehicle if the marijuana was in a "closed" container.¹ Thus, the search of Hall's car would have been lawful if the officer reasonably believed that the amount of marijuana in the baggie exceeded one ounce, or if the baggie was "open."

HOW MUCH MARIJUANA WAS IN THE BAGGIE? The amount of marijuana in the baggie might or might not have exceeded one ounce. But it doesn't matter because the officer, while testifying at the suppression hearing, was not asked to explain why he believed it did. As the court pointed out, "There was no testimony about the weight of the baggie and no description of the baggie from which one could reasonably infer that it contained over 28.5 grams of marijuana. Thus, there was no evidence to support a belief that Hall had an unlawful amount of marijuana in his car."

WAS THE BAGGIE "OPEN" OR "CLOSED"? At the suppression hearing, the officer testified "I observed a clear plastic baggie, inside of which was green leafy substance. Based on my training and experience, I believed it to be marijuana." The officer's belief that the substance was marijuana was not challenged. Instead, Hall argued that prosecutors failed to prove that the baggie was "open." And, again, the court agreed because "there simply was no evidence about the condition of the plastic baggie" and "for all we know, the baggie was purchased from a dispensary and had never been opened, or it may have been vacuum sealed."

For these reasons, the court ruled that the officer did not have probable cause to believe that the marijuana in Hall's car was possessed illegally and, therefore, the search was unlawful.

¹ See Health & Saf. Code §§ 11362.1(a) [one-ounce limitation], 11362.3(a)(4) ["closed" container requirement].

Comment

There is some confusion as to whether a container of marijuana in a vehicle must be “closed” or “sealed.” The source of this confusion is the interrelationship between the Health & Safety Code and the Vehicle Code. Specifically, the Vehicle Code prohibits driving a vehicle in which there is a container of marijuana that “has been opened *or has a seal broken*.”² In contrast, the Health and Safety Code requires only that these containers be closed.³ Which one applies?

The answer is that the Health and Safety Code overrides “any other provision of law” pertaining to the possession of marijuana.⁴ And because it prohibits only “open” containers—not “unsealed” containers—there is no requirement that containers of marijuana in vehicles be sealed. The only case in which a court ruled that containers of marijuana must be both closed and sealed is *People v. McGee*.⁵ But this ruling is questionable because it ruled that McGee violated Health and Safety Code section 11362.3(a)(4) because he possessed “an *unsealed* container of marijuana.”⁶ But, as noted, this section does not require that such containers be sealed. POV

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² Vehicle Code § 23222(b)(1) Emphasis added.

³ Health & Saf. Code § 11362.3(a)(4).

⁴ Health & Saf. Code § 11362.1(a). ⁴ Also see *People v. Johnson* (2020) 50 Cal.App.5th 620, 634 [“Based on the plain language of the statute and its legislative history, we conclude section 11362.3, subdivision (a)(4) applies to a container or package of cannabis that is open when found”]; *U.S. v. Talley* (2020 N.D. Cal.) __ F.Supp.3rd __ [2020 WL 3275735] [court rejects the government’s argument that “any non-sealed container is illegal”]; *People v. Shumake* (2019) 45 Cal.App.5th Supp.1 [court rejects the government’s argument that cannabis being transported in a vehicle “must be in a heat-sealed container.”].

⁵ (2020) 53 Cal.App.5th 796, 804.

⁶ Emphasis added.