

People v. Watson

(January 20, 2000) __ Cal.4th __ [S078207]

ISSUE

Did a "sting" operation, in which officers left an unlocked car in a public place--with the keys in the ignition--constitute entrapment?

FACTS

One evening, Bakersfield police conducted a somewhat elaborate vehicle theft "sting" operation. It went like this: Officers in a patrol car made a phony car stop on a 1980 Monte Carlo, driven by an undercover officer. The driver pulled into a parking lot and stopped. A group of spectators watched as an officer ordered the driver out, patting him down, handcuffed him, placed him in the back seat of the patrol car, and drove away, leaving the Monte Carlo behind--unlocked and with the keys in the ignition. Surveillance officers were also left behind.

A couple of hours later, the surveillance officers arrested Watson as he drove the Monte Carlo from the parking lot. He was subsequently charged with car theft (Vehicle Code ' 10851).

DISCUSSION

Watson contended the officers' sting operation constituted entrapment. The California Supreme Court disagreed.

It is settled that entrapment occurs in California if the officers' conduct would likely have induced a "normally law-abiding person" to commit the crime with which the defendant was charged.⁽¹⁾ In applying this test, the courts will presume that a normally law-abiding person would resist the temptation to commit a crime when officers did nothing more than give him an opportunity to do so.⁽²⁾ For example, in the absence of overbearing police conduct, entrapment will not result from a drug or prostitution decoy operation, the use of underage operatives to purchase alcohol from bars or retailers, or a reverse sting.⁽³⁾ Applying this principle, it was apparent that Watson was not entrapped.

Watson, however, invoked another entrapment principle: Entrapment occurs if the officers' conduct would have made the commission of the crime appear unusually attractive to a normally law-abiding person. For example, entrapment may occur if officers represented to the defendant that the crime would not be detected or that it was not illegal, or officers offered the suspect an exorbitant payoff for committing the crime.⁽⁴⁾

So, the question was whether an unlocked car with the keys in the ignition would appeal "unusually attractive" to a normally law-abiding person. The court said no:

The police did nothing more than present to the general community a tempting opportunity to take the Monte Carlo. Some persons, obviously including defendant, might have found the temptation hard to resist. But a person who steals when given the opportunity is an opportunistic thief, not a normally law-

abiding person. Specifically, normally law-abiding persons do not take a car not belonging to them merely because it is unlocked with the keys in the ignition and it appears they will not be caught.

1. See *People v. Barraza* (1979) 23 Cal.3d 675, 689-90; *People v. McClellan* (1980) 107 Cal.App.3d 297, 302; *People v. Peppars* (1983) 140 Cal.App.3d 677, 683; *People v. Thoi* (1989) 213 Cal.App.3d 689, 694-6; *People v. Grant* (1985) 165 Cal.App.3d 496, 500; *Reyes v. Municipal Court* (1981) 117 Cal.App.3d 771, 777; *Arellanes v. Civil Service Com.* (1995) 41 Cal.App.4th 1208, 1215.

2. See *People v. Barraza* (1979) 23 Cal.3d 675, 688-90; *People v. McClellan* (1980) 107 Cal.App.3d 297, 302; *People v. Peppars* (1983) 140 Cal.App.3d 677, 683; *People v. Thoi* (1989) 213 Cal.App.3d 689, 694-6; *People v. Grant* (1985) 165 Cal.App.3d 496, 500; *Reyes v. Municipal Court* (1981) 117 Cal.App.3d 771, 777; *Arellanes v. Civil Service Com.* (1995) 41 Cal.App.4th 1208, 1215; *People v. Kelley* (1984) 158 Cal.App.3d 1085, 1096; *People v. Towery* (1985) 174 Cal.App.3d 1114, 1137.

3. See *People v. Barraza* (1979) 23 Cal.3d 675, 690; *People v. Holloway* (1996) 47 Cal.App.4th 1757 [reverse sting-drugs]; *People v. West* (1990) 224 Cal.App.3d 1337 [reverse sting-drugs]; *People v. Wesley* (1990) 224 Cal.App.3d 1130 [reverse sting-drugs]; *Reyes v. Municipal Court* (1981) 117 Cal.App.3d 771, 777 [reverse sting-prostitution]; *Douglass v. Board of Medical Quality Assurance* (1983) 141 Cal.App.3d 645 [decoy used to obtain prescriptions from physician]; *Provigo Corp. v. Alcoholic Beverage Control Appeals Board* (1994) 7 Cal.4th 561 [underage decoys to purchase alcoholic beverages from retailers]; *People v. Reed* (1996) 53 Cal.App.4th 389, 400-1 [officers responded to defendant's newspaper ad seeking sex with a female of "any age."].

4. See *People v. Barraza* (1979) 23 Cal.3d 675, 690.