People v. Davis
(October 26, 2000) __ Cal.App.4th __

ISSUE

Under what circumstances is a search warrant required to inspect a jail inmate's property?

FACTS

Davis was arrested for robbing a bank in Sacramento. During booking at the county jail, officers seized two rings Davis was wearing. The rings, along with Davis's other property, were put in a plastic bag which was placed inside a nylon bag and stored in the jail property room.

About two months later while Davis was still in custody, an FBI agent asked a detective to check Davis's property to see if he had been wearing any rings when he was booked. It appears the agent made the request because Davis had become a suspect in another bank robbery in which the robber had worn a certain type of ring. The detective went to the jail where he checked the booking inventory sheet and saw that two rings had been in Davis's possession when he was booked. The detective then removed the rings from the property bag, took custody of them and presumably showed them to the FBI agent.

Davis was charged with both robberies. During the trial, a teller identified the ring removed from the jail property room as the same ring worn by the robber. Davis was convicted of both robberies.

DISCUSSION

Davis contended the warrantless inspection of his property was unlawful and, therefore, the rings should have been suppressed. Specifically, he argued that a search warrant is required to look through a jail prisoner's property after it had been inventoried and booked into the property room.

As noted in California Criminal Investigation 2001, a warrant is not required if officers merely want to inspect a prisoner's property; e.g., examine clothing, a ring or car keys.[i] This is because an inspection of such property does not constitute a "search" inasmuch as it was already inspected when it was inventoried and booked. Thus, a second inspection infringes on no reasonable expectation of privacy.[ii] As the Court of Appeal observed, "Once articles have lawfully fallen into the hands of the police they may examine them to see if they have been stolen, test them to see if they have been used in the commission of a crime, return them to the prisoner on his release, or preserve them for use as evidence art the time of trial. During their period of police custody an arrested person's personal effects, like his person itself, are subject to reasonable inspection, examination, and test."[iii]

Accordingly, the court ruled the detective's warrantless inspection of the ring was lawful. Said the court, "Here, there was no search of the property held in police storage. [The detective] merely opened the plastic bag to retrieve the rings which he already knew to be contained therein. In this sense, the present matter is analogous to the seizure of items observed in plain view. Whether he could see them or not, [the detective] knew the rings were in the plastic bag when he opened it and retrieved them."

Davis's conviction was affirmed.

DA's COMMENT

Note that in Davis the detective merely inspected property he knew was inside the jail property bag. For this reason, the inspection did not constitute a "search," which meant a search warrant was not required.

But would the result have been different if the detective did not know the bag contained the item he was looking for? For example, would a warrant have been required if the FBI agent had asked the detective to search a wallet booked with Davis's property to see if it contained any evidence that might help connect Davis to other bank robberies?

At present, there seems to be a conflict as to whether a warrant is required to search stored property.[iv] So in the absence of exigent circumstances or consent, it would be best to seek a warrant in situations where officers want to search the prisoner's property for an item that may or may not have been booked with him, as opposed to merely inspecting and seizing an item that was inventoried or otherwise observed during booking.[1]

[1]

[i] See United States v. Edwards (1974) 415 US 800, 806; People v. Superior Court (Gunn) (1980) 112 Cal.App.3d 970, 977; People v. Bradley (1981) 115 Cal.App.3d 744, 750-1; People v. Remiro (1979) 89 Cal.App.3d 809, 835; People v. Superior Court (Gunn) (1980) 112 Cal.App.3d 970, 977-8; U.S. v. Thompson (5th Cir. 1988) 837 F.2d 673, 675-6.

[ii] See Arizona v. Hicks (1987) 480 US 321, 325. ALSO SEE United States v. Jacobsen (1984) 466 US 109, 115-6 [the Court. s discussion of Walter v. United States essentially explains the rationale for second-look searches].

[iii] People v. Remiro (1979) 89 Cal.App.3d 809, 835 [quoting from People v. Rogers (1966) 241 Cal.App.2d 384, 389-90.

[iv] See People v. Bradley (1981) 115 Cal.App.3d 744, 751; People v. Smith (1980) 103 Cal.App.3d 840, 845, fn.7; People v. Panfili (1983) 145 Cal.App.3d 387, 393; Arizona v. Hicks (1987) 480 US 321, 325. COMPARE: United States v. Edwards (1974) 415 US 800, 807 [The United States Supreme Court noted with apparent approval the rulings of the federal circuit courts that "once the accused is lawfully arrested and is in custody, the effects in his possession at the place of detention that were subject to search at the time and place of his arrest may lawfully be searched and seized without a warrant even though a substantial period of time has elapsed . . . ." The Court also said, "Indeed, it is difficult to perceive what is unreasonable about the police examining and holding as evidence those personal effects of the accused that they already have in their lawful custody as the result of a lawful arrest."]; Cooper v. California (1967) 386 US 58, 61-2 ["It would be unreasonable to hold that the police having to retain the car in their custody for such a length of time, had no right, even for their own protection, to search it."]. NOTE re scientific testing of property: Although there is California authority to support warrantless testing of a prisoner's property, See People v. Earls (1980) 109 Cal.App.3d 1009, 1012, there is language in an opinion of the U.S. Supreme Court that could be interpreted as requiring a warrant. See

Arizona v. Hicks (1987) 480 US 321. In Hicks, the United States Supreme Court said that by taking action "unrelated to the objectives of the authorized intrusion,"[e.g., looking at the serial number of a turntable during an exigent-circumstances entry into an apartment)], officers "produced a new invasion of respondent. s privacy . . . ." At p. 325. The "second look" cases, the defense could argue that scientific testing is unrelated to the objectives of a booking search and, therefore, it produced a new intrusion that required a warrant. So until this issue is resolved, a warrant is recommended.