

On July 23, 2003 the California Supreme Court ordered this case nonpublished. It is therefore not citable authority.

People v. Spence
(April 9, 2003) __ Cal.App.4th __

ISSUE

Does the Good Faith Rule apply if officers conduct a probation search for drugs based on a Probation Department list that failed to note the probationer could be searched only for stolen property?

FACTS

The Yolo County Probation Department prepares a list of people on active probation and makes this list available to local law enforcement agencies. The list is formatted so that the notation “01” or “search” appears after the names of probationers who are subject to a search condition. Although judges sometimes restrict probation searches to drugs, stolen property, or other types of property, the list does not indicate if such a restriction applies.

Officers with the Woodland Police Department obtained information from the Probation Department that Spence, a Woodland resident, was on probation with a search condition. Officers decided to conduct a probation search of his home, “primarily for narcotics.”

Unbeknownst to the officers, the terms of Spence’s probation authorized warrantless searches for stolen property only. When they arrived at the house, they confirmed with Spence that he was “searchable,” but they did not recall asking him whether there were any limitations on the search. During the search, officers found paraphernalia and a small amount of meth. This resulted in the revocation of Spence’s probation.

DISCUSSION

Although the search was not authorized by the terms of Spence’s probation, the People argued the evidence was admissible under the Good Faith Rule. Under this rule, evidence obtained as the result of an illegal search will, nevertheless, be admissible if the following requirements are met:

- (1) **Not a law enforcement error:** The illegality was not attributable to employees of a law enforcement agency or to employees of an agency serving as an adjunct to law enforcement.¹
- (2) **Reasonable reliance:** Officers reasonably believed the search was authorized by a statute, search warrant, arrest warrant, or a probation or parole search condition.²

The theory behind the Good Faith Rule is this: Because the purpose of the exclusionary rule is to deter police misconduct,³ it makes no sense to suppress evidence

¹ See *United States v. Leon* (1984) 468 US 897, 916 [Court notes that judges are not adjuncts to the law enforcement team”].

² See *Illinois v. Krull* (1986) 480 US 340; *United States v. Leon* (1984) 468 US 897, 919; *Arizona v. Evans* (1995) 514 US 1, 3-4; *Miranda v. Superior Court* (1993) 13 Cal.App.4th 1628; *People v. Wilson* (1986) 182 Cal.App.3d 742, 749; *People v. Willis* (2002) 28 Cal.4th 22, 31-5.

when the illegality of a search is attributable to someone who works outside of law enforcement. For example, the Good Faith Rule is commonly applied in search warrant cases when a court determines there was no probable cause; i.e., the error was made by the judge who signed the warrant.

At first glance it might seem that both of the above requirements were met in *Spence* because the officers were relying on information they'd obtained from the probation department. But, as we will now explain, the court ruled otherwise.

LAW ENFORCEMENT ERROR? The court ruled that although probation departments are not law enforcement agencies, they may sometimes function as adjuncts to law enforcement—which is what happened here. Said the court:

The list provides a useful law enforcement tool for investigating and fighting crime, especially when probationers are targets of criminal investigations. It would be anomalous to conclude that [the employees who compile the list] are not adjuncts to the law enforcement team.

REASONABLE RELIANCE? The court also ruled it was not reasonable for the officers to rely on a list that obviously did not include limitations on the nature of the search that could be conducted. Said the court:

The error was compounded by law enforcement agencies' failures to recognize that the condensed search information cannot be adequate or complete, and that the single word or pair of digits must be supplemented by means such as examining the probation order before a search is conducted.

Consequently, the court ruled the Good Faith Rule did not apply. The evidence was suppressed.

DA's COMMENT

When officers are notified that a certain person is on searchable probation, in most cases the only limitations they are told about are those pertaining to the scope of the search. For example, they might be informed the probationer was subject to a “four-way” search condition which authorizes a search of, (1) the suspect, (2) his home, (3) any vehicle under his control, and (4) any other property under his control.⁴ As the result of *Spence*, however, officers must now be notified if there are limits as to the type of property officers may search for.

Although this will require that probation departments to make some changes in their reporting procedure, it's impact on law enforcement should be negligible. This is because most judges who grant probation do not place limits on the types of things officers may search for and seize. This is mainly because they want to encourage probationers to obey *all* laws.

In addition, when officers are conducting a probation search they are seldom interested in finding only certain types of evidence. For example, an officer who is searching for drugs will also be looking for paraphernalia, stolen property and weapons

³ See *United States v. Leon* (1984) 468 US 897, 916.

⁴ See, for example, *People v. Mason* (1971) 5 Cal.3d 759, 762; *In re Anthony S.* (1992) 4 Cal.App.4th 1000, 1002; *People v. Tidalgo* (1981) 123 Cal.App.3d 301, 304; *United States v. Knights* (2001) 534 US ___ [151 L.Ed.2d 497, 502].

because of the close connection between all four.⁵ It appears this actually occurred in *Spence* because the officers testified they were searching “*primarily* for narcotics,” which means they were searching for other things as well.

So the question arises: Would the result in *Spence* have been different if the officers testified that, although they were searching “*primarily*” for drugs, they were also looking for stolen property and weapons? We hope so.

⁵ See *People v. Constancio* (1974) 42 Cal.App.3d 533, 540 [“It requires no recitation of authority to observe that drug offenders frequently commit burglary and theft as a means of funding their illegal activities with drugs.”].