

NOTE: THE CALIFORNIA SUPREME COURT HAS GRANTED REVIEW OF THIS CASE.

People v. Spence

(March 10, 2000) __ Cal.App.4th __ [C028033]

ISSUE

If a probation order authorizes a warrantless search of a probationer's home for stolen property, is it unlawful for officers to search the home *primarily* for drugs?

FACTS

In 1994, Spence was convicted of auto theft and placed on probation with a search condition that specifically authorized warrantless searches for "stolen property." In 1996, Woodland police officers checked a computer-generated list of people on probation in Yolo County who were subject to search conditions. The list, which was prepared by the Yolo County Probation Department, correctly showed that Spence was subject to a search condition. It failed to show, however, that the court had added a restriction to the search: the purpose of the search must be to find stolen property.

The officers decided to search Spence's home. However, as one of the officers later testified, they were searching "primarily for narcotics." During the search, officers found methamphetamine in Spence's bedroom. As the result, Spence was found to be in violation of probation and sentenced to one year in the county jail.

DISCUSSION

Spence contended the search of his bedroom was unlawful because the terms of his probation authorized searches only for stolen property—not drugs. The Court of Appeal agreed, ruling as follows:

- (1) The list prepared by the probation department was incomplete because it failed to include limitations on search conditions; i.e., that Spence could be searched only for stolen property.
- (2) Because one of the officers admitted they were searching "primarily" for drugs, the search exceeded the permissible scope of the search clause and was therefore unlawful.
- (3) Although the officers who searched Spence's home were unaware of the search limitation, the so-called "Good Faith" rule did not apply because the omission was the fault of the probation department, which is an arm of law enforcement.

Therefore, the drugs were ordered suppressed.

DA's COMMENT

The court's conclusion that the Good Faith Rule did not apply was correct—but not for the reason cited by the court. In our opinion, the reason the Good Faith Rule did not apply was that the search was entirely lawful.

The court properly analyzed the lawfulness of the search in terms of “scope.” It correctly noted that in the context of search and seizure law the term “scope” refers to those places and things officers are authorized to search under a probation order or search warrant. It also noted that a search is reasonable in scope if it is limited to those places and things in which the evidence they are authorized to seize may be found.⁽¹⁾

That being the case, it is apparent the search of Spence’s bedroom would be within the authorized scope of the probation order if the officers could have found stolen property there. And they could. We know that because the court made an express ruling on this issue: it ruled that Spence’s bedroom was located in “a place where stolen property could easily have been secreted.” (At fn.2.)

The court did not, however, stop there. Instead, it announced a new rule that “scope” also has a mental element. Specifically, if a probation order places a limit on what officers may search or seize (e.g., “stolen property”) the state of mind of the officers who conduct the search automatically becomes critically important. If the officers testify they were looking for stolen property the search is lawful. If the officers testify they were looking for drugs or “primarily for drugs,” the search is unlawful. (It is not clear how the court would rule if officers testified they were looking primarily for drugs but were also looking for stolen property.)

In any event, the court’s reasoning seems to be at odds with the California Supreme Court’s opinion in *People v. Woods*⁽²⁾ which also resulted from a probation search. In *Woods* the court observed:

“Indeed, there are good reasons to disregard an officer’s subjective intent in assessing the validity of a search or seizure. As the [United States] Supreme Court emphasized in a case involving the plain view doctrine, evenhanded law enforcement is best achieved by the application of objective standards of conduct, rather than standards that depend upon the subjective state of mind of the officer. The fact that an officer is interested in an item of evidence and fully expects to find it in the course of a search should not invalidate its seizure if the search is confined in area and duration by the terms of a warrant or a valid exception to the warrant requirement.⁽³⁾

Furthermore, the court in *Spence* also seemed to disregard the settled rule that a probationer who is subject to a search condition cannot have a reasonable expectation of privacy as to places and things that could be searched pursuant to the probation order.⁽⁴⁾ As noted, the court acknowledged that the drugs in Spence’s bedroom were found in a place in which stolen property could be found. Consequently, Spence could not reasonably expect privacy as to the drugs in his bedroom because he had expressly agreed that the place in which the drugs were found could be searched without a warrant. The officers’ state of mind—that they were searching “primarily” for drugs—does not magically bring Spence’s expectation of privacy back to life.

It is ironic that if the officers were unaware of Spence’s probation search clause and had searched his bedroom as the result of an inexcusable blunder (e.g., they were executing a warrant to search the house next door but entered Spence’s house by mistake), the drugs could not have been suppressed because Spence lacked a reasonable expectation of privacy. But because the officers were aware of the search condition, the evidence must be suppressed.

It is possible that the court's decision in *Spence* was intended to motivate the Yolo County Probation Department to change its procedures so that any limitations on probation searches would be included in the reports it sends to law enforcement agencies. If so, it is understandable. But this result could have been accomplished by other means without reversing a conviction, and without engaging in such questionable legal analysis.

(1) See *United States v. Ross* (1982) 456 US 798, 820-1; *People v. Berry* (1990) 224 Cal.App.3d 162, 167; *People v. Kibblewhite* (1986) 178 Cal.App.3d 783, 785 [“A search of the residence authorizes the search of all areas of the residence, including containers therein, which could hold the contraband described in the warrant.”]; *People v. McGraw* (1981) 119 Cal.App.3d 582, 603; *Skelton v. Superior Court* (1969) 1 Cal.3d 144, 158; *People v. Sanchez* (1972) 24 Cal.App.3d 664, 679; *People v. Superior Court (Meyers)* (1979) 25 Cal.3d 67, 74, 77; *U.S. v. Gomez-Soto* (9th Cir. 1983) 723 F.2d 649, 654.

(2) (1999) 21 Cal.4th 668.

(3) At p. 680, citing *Horton v. California* (1990) 496 US 128, 138. **NOTE:** The court in *Spence* attempts to distinguish *Woods* on grounds that officers who conducted the search of Woods' home had reason to believe Woods' girlfriend was using drugs, whereas the officers who searched Spence's home “had no objectively reasonable basis for the warrantless search.” This is puzzling for two reasons. First, the officers did, in fact, have an objectively reasonable” basis for the search: the search was specifically authorized by Spence's search clause and it was limited in scope to places in which stolen property could be found. Second, the court in *Woods* specifically stated that its ruling was not limited to situations in which the searching officers had grounds to believe the probationer was in possession of contraband or was otherwise in violation of the terms of probation. Said the court, “[O]ur cases effectively recognize that a search pursuant to a probation search condition may be reasonable and lawful without facts indicating a probation violation.”

(4) See *In re Tyrell J.* (1994) 8 Cal.4th 68, 85; *In re Marcellus L.* (1991) 229 Cal.App.3d 134, 145-6; *People v. Brown* (1987) 191 Cal.App.3d 761, 766; *Russi v. Superior Court* (1973) 33 Cal.App.3d 160, 166; *People v. Bravo* (1987) 43 Cal.3d 600, 610.