IN THE CALIFORNIA SUPREME COURT

OCTOBER TERM 2005

DOCKET No. 03-021288

Andrea Cite,

Appellant,

- against -

The People,

Respondent.

ON WRIT OF CERTIORARI TO THE
SIXTH DISTRICT COURT OF APPEAL

Problem for the Appellant, Andrea Cite
(Team 15 – Sriranga Veeraraghavan and Lien Dang)

QUESTIONS PRESENTED

I. WHETHER EVIDENCE OBTAINED BY OFFICERS WHO CONDUCTED A DOG SNIFF WITHOUT A VALID WARRANT MAY BE ADMITTED UNDER THE "GOOD FAITH" EXCEPTION TO THE FOURTH AMENDMENT EXCLUSIONARY RULE?

II. WHETHER THE DOCTRINE OF IMPERFECT SELF DEFENSE APPLIES REGARDLESS OF THE CAUSE OR NATURE OF DELUSIONS THAT GIVE RISE TO DEFENDANT'S UNREASONABLE BELIEF? [OMITTED]

ARGUMENT

I. THE EVIDENCE OBTAINED IN A SEARCH PURSUANT TO MS. CITE'S ARREST SHOULD NOT HAVE BEEN ALLOWED INTO EVIDENCE

The methamphetamine and the handgun found during the search of Ms. Cite's car should not have been allowed into evidence because (A) the officer who stopped Ms. Cite initiated a dog sniff of her car in violation of the Fourth Amendment and (B) the conduct of the investigating and arresting officers was not objectively reasonable precluding the use of the "good faith" exception to the Fourth Amendment exclusionary rule.

A. The Dog Sniff Violated the Fourth Amendment Because Reasonable Suspicion Of A Drug Offense Did Not Exist

The Fourth Amendment protects against arbitrary seizures of personal property by the police, by requiring the police to obtain a warrant based on a showing of probable cause sufficient to satisfy a neutral and detached magistrate. *See* United States v. Leon et. al., 468 U.S. 897, 914. Generally any seizure of personal property by the police without a valid warrant is "per se unreasonable within the meaning of the Fourth Amendment." United States v. Place, 462 U.S. 696, 701 (1983). Ms. Cite was stopped for driving with a broken taillight, a minor traffic infraction. Even before speaking to Ms. Cite or viewing the interior of Ms. Cite's car, Officer Reisen called for a drug-sniffing dog. At that moment, Ms. Cite lost any limited control she had of the situation. Officer Reisen had effectively seized Ms. Cite and her car. The purpose of the Fourth Amendment is to protect the public from such conduct by the police.

In some circumstances The Supreme Court has recognized that a substantial law enforcement interest can support "limited intrusions on an individual's personal security based on less than probable cause" Place, 462 US at 702 citing to Michigan v. Summers, 452 U.S. 692,

698 (1981). In allowing officers to "frisk" a suspect by making a forcible stop, The Court stated that an officer must have "a reasonable, articulable suspicion that the person has been, is or is about to be engaged in criminal activity." Id. citing to Terry v. Ohio, 392 U.S. 1, 22 (1968). As the concurrences noted this narrow authority is not "a commission to employ whatever investigative techniques [the officers] deem appropriate." Id. at 716 (Concurrence).

In Place The Court applied this standard to the detention of luggage under a passenger's control and concluded that such detentions are subject to "the limitations applicable to investigative detentions." Id. at 708-709. Similarly the reasonable, articulable suspicion standard should be applied in the present case because (1) the traffic stop effectively restrained Ms. Cite's ability to leave without Officer Reisen's permission, (2) the dog sniff of her car was similar to a "frisk" in that it provided the officer with information about things that were present but not visible from outside the car and (3) absent a reasonable, articulable suspicion standard the rights of car owners to be safe from unreasonable searches and seizures rests solely on the discretion of the officer who makes the stop. The application of this standard is not foreclosed by People v. Mayberry, 31 Cal. 3d 335 (1982) (allowing drug sniffing dogs to be used to search luggage in the "absence of prior specific suspicion that narcotics are present") because Mayberry only limited its holding to the case of a dog sniff of in-transit luggage that was out of the passenger's control. Place, on the other hand, dealt with the case of a dog sniff of luggage that was under a passengers control prior to seizure, which is conceptually similar to the present case because Ms. Cite's car was under her control prior to seizure by Officer Reisin. Even in Mayberry, the court recognized that a "police dog's positive reaction … is not sufficient cause to search and seize [a suitcase] without a warrant" absent "exigent circumstances or consent by the owner." Id. at 342.

In light of the facts before us, it is apparent that Officer Reisen called for a drug-sniffing dog prior to approaching Ms. Cite's car, speaking with Ms. Cite or viewing the interior of the car. At that point in time, the only reasonable suspicion that Officer Reisen could have formulated about Ms. Cite was that her car had a broken taillight. A broken taillight is only a minor traffic infraction and does not imply that the driver has been or may be involved in any type of criminal activity, drug related or otherwise. A stop for a minor traffic infraction cannot be characterized as a "forcible stop" and should not provide a basis for further investigative measures without at least approaching the car and viewing either the driver or the interior of the car.

After Officer Stopp's dog had started to sniff the car, Officer Reisen approached Ms. Cite to tell her the reason for the stop. While speaking to Ms. Cite, Officer Reisen could not have seen either the methamphetamine or the handgun as both were underneath the passenger seat. Thus, Officer Reisin could not have formed any reasonable suspicion that Ms. Cite was involved in a crime. Only when the drug-sniffing dog alerted near the passenger side of the car could Officer Reisen have reasonably formed a suspicion that Ms. Cite might be involved in drug-related activities. Once the dog alerted, Officer Reisen did not ask for Ms. Cite's permission to search the car. Instead she turned to a vague warrant in a vain attempt to comply with the Mayberry requirements. Although the police may have arrested the right individual, they succeeded only by disregarding that person's Fourth Amendment rights.

Another basis for finding that Officer Reisen acted unreasonably may be inferred from Kyllo v. United States, 533 U.S. 27, 40 (2001). In Kyllo, the Supreme Court barred the use of thermal imagers to gather evidence absent a warrant holding that "[w]here … the Government uses a device that is not in general public use, to explore details of the home that would

previously have been unknowable without physical intrusion, the surveillance … is presumptively unreasonable without a warrant." While the holding specifically mentioned homes, it may be extended to anything that a person "seeks to preserve as private, even in an area accessible to the public" because the "*Fourth Amendment protects people not places.*" Kyllo (Dissent), 533 US at 347 citing to Katz v. United States, 389 U.S. 347, 351-352 (1967) (emphasis added).

Our case satisfies the Kyllo criteria, entitling Ms. Cite's car to Fourth Amendment protection. First, a drug-sniffing dog is not a device that is in general public use; the general public hardly ever encounters such an animal. Second, the drug sniffing dog was used to determine the presence of methamphetamine located under the passenger seat out of the officers' view. The dog enabled the officers to explore details of the interior of Ms. Cite's car that would have been unknowable without a physical intrusion. Finally, Ms. Cite had a subjective interest in keeping the prying eyes of the government out of her car. She did not place the items discovered by the police in a place where they would be openly visible. The only way for officers to lawfully obtain these items would have been to follow proper procedure and obtain a valid warrant to either search Ms. Cite's car or to arrest her.

Although Place and People v. Deutsch, 44 Cal. App. 4th 1224 (1996), suggest that a dog sniff in a public place does not violate a subjective expectation of privacy, their holdings are not controlling. In his concurrence in Place, Justice Brennan correctly points out that the discussion regarding dog sniffs is mere dicta because the court did not need to address that issue in order to reach its decision. *See* Place (Concurrence), 462 U.S. at 719. Similarly, the discussion of dog sniffs by the Court of Appeals in Deutsch is unrelated to the holding that the use of thermal

imagers without a warrant violates the Fourth Amendment. In addition the cases[1] that the court in Deutsch relies on in its discussion are distinguishable from the present case because each one involved a situation in which the owner of the contraband had willingly placed it in a location open to the public. Ms. Cite did not willingly make the contraband public. She placed her car on the publicly accessible roadside only after being ordered to do so by the police.

To adopt the Mayberry view in the present case completely undermines the purpose of the Fourth Amendment. The court must not overlook the violations of Ms. Cite's Fourth Amendment rights or the court would risk bringing forth "a totalitarian police state … [with its] indiscriminate, blanket use of trained dogs at roadblocks, airports and train stations." Mayberry (Dissent), 31 Cal. 3d at 352 citing to United States v. Beale, 674 F. 2d 1327 (1982).

B. The Evidence Obtained By The Search Must Be Excluded Because The Leon Exception to the Fourth Amendment Rule Does Not Apply

The evidence found during the search of Ms. Cite's car should be barred because the conduct of the officers involved did not meet the objectively reasonable standard required to invoke the "good faith" exception.

The Fourth Amendment prohibits the police from searching and seizing private property without a proper warrant. When police act without a proper warrant, they violate the Fourth Amendment rights of the accused. The exclusionary rule bars the introduction of evidence obtained from such a violation. *See* United States v. Leon et. al. (Dissent), 468 U.S. 897, 936. By baring evidence, the rule deters future police misconduct by requiring officers to exercise a "greater degree of care towards the rights of the accused." Id. at 919 citing to United States v.

[1] United States v. Lingenfelter, 997 F. 2d 632 (1993) (Dog sniff from an alley open to the public permissible), United States v. Solis, 536 F. 2d 880 (1976) (Dog sniff of a semi trailer in a parking lot permissible) and United States v. Colyer, 878 F. 2d 469 (1989) (Dog sniff of a railroad compartment permissible)

Peltier, 422 U.S. 531, 539 (1975). In creating a "good faith" exception in to the exclusionary rule in Leon, the Supreme Court recognized that where officers act as "reasonable officer[s] would and should act in similar circumstances," excluding the evidence would not deter similar conduct in the future and would serve only to frustrate law enforcement. Leon, 468 U.S. at 920 citing to Stone v. Powell, 428 U.S. 465, 539-540 (1976). Although Leon dealt with a search warrant, California Courts have applied the exception to arrest warrants. *See* People v. Palmer, 207 Cal. App. 3d 663, 666 (1989).

In order for evidence to be introduced under the "good faith" exception the controlling question is whether "the officer's conduct is objectively reasonable." Leon, 468 U.S. at 919. The Supreme Court emphasized that it was "necessary to consider the objective reasonableness, not only of the officers who eventually executed a warrant, but also of the officers who originally obtained it." Id. at 923. Of several examples of objectively unreasonable conduct enumerated by the Court in Leon, two are applicable here. First, The Court stated that the conduct of an officer who "obtain[ed] a warrant on the basis of a 'bare bones' affidavit and then rel[ied] on colleagues who are ignorant of the circumstances under which the warrant was obtained" to execute the warrant was not objectively reasonable. Id. Second, the Court stated that in situations where a warrant was "so facially deficient … that the executing officers [could] not reasonabl[y] presume it to be valid", the conduct of the executing officers was not objectively reasonable. Id.

In our case, neither the officer who obtained the warrant nor the officer who made the arrest acted in a reasonably objective manner. The conduct of Officer Anable, the officer who obtained the arrest warrant, was not objectively reasonable because she knowingly used a vague description of the suspect to obtain the warrant. The only information available in Officer Anable's affidavit was that the suspect in the killing of Mr. Pidman was a "white female adult,

20-25 years, 5 ft 6 in, 150 lbs. long dark hair, medium build." Prior to obtaining the warrant, Officer Anable told another officer that she hoped she didn't "have to go to Judge Ed" because he was "a real stickler for details." Her statement indicates that she knew there were magistrates who would refuse to issue warrants "based on an affidavit that d[id] not 'provide the magistrate with a substantial basis for determining the existence of probable cause'." Leon, 468 U.S. 914 citing to Illionis v. Gates, 462 U.S. 213, 329 (1983). The "details" that Officer Anable recognized were missing from the affidavit were essentials needed to describe a particular arrestee pursuant to the Fourth Amendment. Despite this knowledge, Officer Anable treated the details as mere formalities. Given the obvious deficiency in the affidavit, an officer of reasonable training and experience would have conducted further investigations to determine additional identifying characteristic of the suspect, such as a description of the suspect's clothing or vehicle. By failing to do this, Officer Anable's conduct was not objectively reasonable.

Unfortunately, the conduct of arresting officer, Officer Reisen, in relying on the arrest warrant was not objectively reasonable for two reasons. First, a reasonable officer would have recognized that the warrant was facially deficient. Second, Ms. Cite did not sufficiently match the description of the arrestee. The trial court correctly determined that the warrant in this case was facially deficient. In a metropolitan city such as San Jose with a population of nearly a million, the warrant in question could easily apply to thousands of individuals. Without something specific about Ms. Cite, such as a description of her clothing or vehicle, an officer of reasonable experience and training would not have concluded that Ms. Cite was the suspect described in the warrant.

Furthermore, Officer Riesen's reliance on the warrant was not objectively reasonable because Ms. Cite only matches the "white female adult" portion of the description. Ms. Cite, a

twenty-eight year old woman with light brown hair who stands 5'4", does not fall into the age, height or the hair color group specified in the warrant. Even if theses mistakes regarding her age, height and hair color could be considered reasonable because the arrest took place at 2 AM, Ms. Cite was seated, and was wearing a hooded sweatshirt, the mistakes regarding weight and build cannot be considered reasonable by any measure. Even late at night, a 120 lbs. woman who is 5"4' can hardly be mistaken for a 150 lbs. woman of "medium build." Unlike the technical defect of the warrant in Palmer, the warrant before us does not require a "sophisticated lawyer" to recognize that the over-generalized description of the suspect is a blatant defect. Any reasonably well-trained officer should have known that the warrant was defective. *See* Palmer, 207 Cal. App. 3d at 675.

The exclusionary rule should be applied in this case in order to convey a clear message to Officers Anable, Reisen and others on the police force that (1) investigating officers must prepare a detailed affidavit before obtaining a warrant and (2) arresting officers must make sure that a warrant identifies the arrestee with reasonable certainty. Investigating officers need to recognize and realize that detailed warrants are crucial to protect the right of people to be secure in their persons. More importantly, arresting officers must learn to stop blindly relying on facially deficient arrest warrants. Instead, they should be more proactive by insisting fellow officers to conduct proper investigations. By excluding evidence here, the officers will be encouraged to conduct detailed investigations to ensure that affidavits meet the probable cause requirement. Only then can we be guaranteed that "the protections of the Fourth Amendment [do not] evaporate." Leon, 468 US at 915 citing to Henry v. United States, 361 U.S. 98 (1959).

II. THE TRIAL COURT ERRED BY FAILING TO PERMIT MS. CITE TO PRESENT EVIDENCE IN SUPPORT OF IMPERFECT SELF DEFENSE [OMITTED]

CONCLUSION

The court should reverse Ms. Cite's conviction because the evidence presented against her was obtained in violation of her Fourth Amendment rights; failing that the court should remand the case for a new trial because the jury was not instructed about imperfect self defense.