

Recent Case Report

Gillan v. City of San Marino et al.

(2007) 147 Cal.App.4th 1033

ISSUE

Did officers have probable cause to arrest a high school basketball coach for sexually molesting one of his players?

FACTS

An 18-year old woman told her psychiatrist that, while attending high school in San Marino one year earlier, she had been sexually molested by her basketball coach, Patrick Gillan. The psychiatrist notified police who interviewed her. She said that Gillan had “groped” her several times, usually at the gym.

To corroborate this information, investigators asked her to meet with Gillan and try to get him to discuss the incidents. So the next day, while wearing a recording device, she approached him at the gym and said she needed to come to terms with the “touching and things like that.” Gillan responded, “Touching? What do you mean?” She said, “Like one time I’m at practice and you come from behind me and you put your hand down my shorts.” “I’m not even going to respond to that,” said Gillan, “You made that up. I have never done that.”

That evening, the girl phoned Gillan at home and said she needed to get “some closure.” Gillan responded, “I’ve already called people at San Marino. I’ve warned them what’s going on. Because you’re obviously going after me.” When the girl said she wanted to talk to him about it, he responded, “It didn’t happen.”

Three days later, investigators met with a deputy district attorney who concluded there was insufficient evidence to charge Gillan with a crime.

To obtain additional evidence, officers came up with a plan. Figuring that Gillan might have molested other girls who could corroborate the woman’s story, they decided to publicize the case. So they arrested Gillan, immediately released him for insufficient evidence, then issued a press release in which they announced the arrest, explained that Gillan had been released pending further investigation, and mentioned that he had previously coached at another high school. The press release concluded by saying that investigators were trying to determine if there were “additional victims.”

When no additional victims surfaced, and no corroborating evidence was found, the DA closed the case. As the result, Gillan was permitted to return to work, having been suspended.

Gillan sued the city and several of the investigators, claiming, among other things, that they had not conducted a “reasonable investigation,” and that they arrested him without probable cause. The jury agreed and awarded Gillan over \$4 million in compensatory and punitive damages.

DISCUSSION

The main issue on appeal was whether the officers had probable cause to arrest Gillan. Although there was no corroborating evidence, there would have been no need for it if the officers reasonably believed that Gillan's accuser was reliable. This is because victims and other citizen informants are presumed to be reliable unless officers had reason to believe otherwise. As the California Supreme Court observed, "[I]t may be stated as a general proposition that private citizens who are witnesses to or victims of a criminal act, absent some circumstance that would cast doubt upon their information, should be considered reliable."¹

In determining whether there is reason to disbelieve an accuser, the courts will consider, among other things, whether she gave inconsistent statements, whether she was unable to provide specific and detailed information, and whether she had a motive to lie. In *Gillan*, all three of these circumstances virtually destroyed the accuser's reliability.

First, the court noted she had given officers inconsistent information about when, where, and how the incidents occurred. Second, on several occasions she said she was unable to provide details. As the court observed, "Some of the allegations were generalized and not specific as to time, date, or other details, including claims of touching in the gym. Other accusations concerning more specific events either lacked sufficient detail or were inconsistent in the details provided." Third, the court pointed out that the accuser had a motive to lie, as she had expressed "strong antipathy toward Gillan based on his treatment of her as a player on the basketball team."

Furthermore, the court noted that when the woman confronted Gillan at the gym, his responses to her allegations "did not suggest any consciousness of guilt or any attempt to silence the accuser, but only vehement denials and disbelief."

Consequently, the court ruled that the information known to the officers when they arrested Gillan was "not sufficiently consistent, specific, or reliable to cause a reasonable person to believe the accusation of sexual molestation."² POV

¹ *People v. Ramey* (1976) 16 Cal.3d 263, 269.

² **NOTES:** (1) The court ruled that the officers were not entitled to immunity from liability for false arrest or false imprisonment because "[t]he decision to arrest Gillan was not a basic policy decision, but only an operational decision by the police purporting to apply the law." Citing Government Code § 820.2. (2) The trial court had ruled that the officers "misused" Penal Code § 849(b) by arresting Gillan "for purposes other than instituting a proper criminal complaint or charge—it was used as an investigative tool without a good faith belief there were sufficient grounds to file a complaint." The Court of Appeal did not rule on this issue because the officers were immune from liability for "instituting or prosecuting any judicial or administrative proceeding within the scope of [their] employment," even if they act "maliciously and without probable cause." See Gov. C. § 821.6. (3) The court ordered a new trial on the issue of compensatory damages.