

Case depublished: On July 11, 2007, the California Supreme Court ordered that this case be depublished.

Recent Case Report

People v. Herndon

(2007) 149 Cal.App.4th 274

ISSUE

Was Herndon's right to due process violated when, under orders from the trial judge, bailiffs forcibly rolled his fingerprints in a courtroom?

FACTS

Herndon was on trial in Los Angeles for armed robbery. The evidence against him included a fingerprint found at the crime scene that matched a print on his booking card. In the course of the trial it became necessary to obtain a new set of prints for an in-court comparison. So, after the jurors had been excused from the courtroom, the judge ordered bailiffs to take Herndon's prints. But Herndon threatened to resist, saying:

[They're] not taking my print. . . . They can do what they want. We can tear this courtroom up, your honor, with all due respect to the justice system. But for them to take my prints forcefully, that's how they gonna have to get it. We can get cracking.

The judge then ordered the bailiffs to carry out her order. A struggle ensued, which the judge later described for the record:

[The bailiffs] started taking his arm to try to fingerprint him. He refused. He closed his fist. He started to, basically—I don't know if fight is a good word—but, basically, started to put dead weight on himself and refused to cooperate. Then more bailiffs were called in to assist. It appears the defendant is a very strong guy, and continued to resist and got on the floor; and, finally, they were able to take one thumb print . . .

When the jury came back into the courtroom, a fingerprint examiner was able to testify that he personally saw Herndon's print taken, and that it matched the print found at the crime scene. Herndon was convicted.

DISCUSSION

The Court of Appeal ruled that the taking of Herndon's fingerprint in such a manner violated his right to due process. Here are the court's words:

We find the conduct in the present case so brutal, offensive and unreasonable as to violate Herndon's right to due process of law.

The court added, "The image of five deputy sheriff's wrestling the defendant to the ground and prying open his clenched fists to roll his fingerprints is repugnant, to say the least." The court then made the following observation: A courtroom is not a wrestling ring and a trial is not a WWF spectacle."

Although the court ruled that Herndon's due process rights were violated, it did not reverse his conviction, mainly because the jurors did not witness the incident.

COMMENT

The Court of Appeal was right: Courtrooms are not places for wrestling matches or other forms of low entertainment. They are, instead, places in which a search for truth is supposed to be conducted in a dignified and orderly manner. And to ensure that that happens, they are presided over by judges who have been given the authority to issue orders and, just as important, enforce them.

What, then, was the trial judge to do when Herndon refused to comply with her lawful order, and threatened to "get cracking" if she had the audacity to enforce it? The three justices who issued this remarkable opinion thought she should have backed down and tried to find a more sophisticated way of resolving the problem.

We wonder what they would have done if, during oral argument, Herndon had walked into the courtroom and threatened to "get cracking" if they refused to listen to his complaints about the criminal justice system. To ensure the dignity of the courtroom, would they have sat quietly and listened to his criticism? Or is it more likely that they would they have had him forcibly removed?

Even more troubling than the court's tranquility-at-all-costs mindset, they blamed the judge who issued the order—not the defendant who arrogantly refused to obey it—for the ensuing melee. Here are the court's words:

This is not a case in which the defendant initiated violent behavior which required the physical response by the bailiffs. Although Herndon threatened to 'tear this courtroom up' if the court attempted to take his fingerprints by force it was the court's decision to put that threat to the test.

Although the dignity of a courtroom is diminished when it is the scene of a physical confrontation, a restriction on the ability of trial judges to enforce their orders (other than requiring that force be proportionate to the defendant's resistance) would give immature and contentious defendants the ability to exercise a significant degree of control over the proceedings— a situation that will ultimately produce exactly the type of "spectacles" that the court was trying to avoid.

While there is a temporary absence of dignity in a courtroom in which a physical confrontation is occurring, there is a permanent absence of dignity in a courtroom in which the defendant has a "due process" right to decide which orders he will obey. POV