Recent Case Report

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People v. Antonio B.

(2008) 166 Cal.App.4th 435

Issue

Did officers have sufficient grounds to handcuff a detainee?

Facts

Three LAPD officers in an unmarked car noticed that one of two minors who were walking along a sidewalk was smoking what appeared to be a marijuana cigarette. So they detained him and, after confirming the cigarette was, in fact, a joint, they arrested him.

They had also detained the other minor, Antonio B., because, as one of the officers testified, "marijuana tends to be a communal drug; when one person is smoking it, his companions usually join in smoking it." The officer also handcuffed Antonio and obtained his consent to search. In the course of the search, the officer found six baggies containing marijuana, and four baggies containing cocaine.

Discussion

Antonio contended that the drugs should have been suppressed because he had been detained illegally. The court agreed.

It is settled that officers who have detained a suspect may do those things that are reasonably necessary to, (1) investigate the matter, and (2) ensure their safety.[1] But if the scope or intensity of the detention becomes unreasonable, it becomes a de facto arrest, which is an unlawful arrest unless there was probable cause.

In applying this principle, the courts have ruled that handcuffing was reasonably necessary when, for example, the suspect was detained for a violent felony,[2] burglary,[3] or possession of a weapon;[4] or when the officers were outnumbered,[5] or when the officers were going to transport the detainee to a showup,[6] or when the detainee refused to obey an officer's command.[7]

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[1] See *Terry* v. *Ohio* (1968) 392 U.S. 1, 23 ["The officers were authorized to take such steps as were reasonably necessary to protect their personal safety and to maintain the status quo during the course of the stop."].

[2] See *People* v. *Soun* (1995) 34 Cal.App.4th 1499, 1512, 1518.

[3] See *Gallegos* v. *City of Los Angeles* (9th Cir. 2002) 308 F.3d 987, 989.

[4] See *Haynie* v. *County of Los Angeles* (9th Cir. 2003) 339 F.3d 1071, 1075.

[5] See *People* v. *Celis* (2004) 33 Cal.4th 667, 676; *U.S.* v. *Bautista* (9th Cir. 1982) 684 F.2d 1286, 1287-8.

[6] See *People* v. *Carlos M.* (1990) 220 Cal.App.3d 372, 381, 335.

[7] See *Haynie* v. *County of Los Angeles* (9th Cir. 2003) 339 F.3d 1071, 1077.

In *Antonio B.,* however, the court noted that the officer offered no justification for the handcuffing, other than to say it was done was a matter of routine. As the officer testified, "We always handcuff people if we're going to detain [them] for further investigation. It's our procedure and our policy to handcuff people."

Thus, although the officer had sufficient grounds to detain Antonio, the court ruled that his act of handcuffing him converted the detention into an illegal de facto arrest. And because Antonio consented to the search while being illegally detained, the consent was ineffective and the evidence discovered during the search was suppressed.[8] POV

[8] **NOTE**: At one point in its opinion, the court said that officers are required to utilize the "least intrusive means" of conducting a detention. But the "least intrusive means" test has been abrogated. See *Atwater* v. *City of Lago Vista* (2001) 532 U.S. 318, 350 [the "least-restrictive-alternative limitation" is "generally thought inappropriate in working out Fourth Amendment protection"]; *People* v. *Bell* (1996) 43 Cal.App.4th 754, 761, fn.1 ["The Supreme Court has since repudiated any 'least intrusive means' test for commencing or conducting an investigative stop. The question is not simply whether some other alternative was available, but whether the police acted unreasonably in failing to recognize or pursue it."]; *U.S.* v. *Brigham* (5th Cir. en banc 2004) 382 F.3d 500, 511 ["least intrusive means test" is "contrary to express statements of the Supreme Court"].