

ISSUES

(1) Was a detention unduly prolonged? (2) Did the detaining officer have probable cause to arrest the suspect?

FACTS

Narcotics officers who were monitoring a court-ordered wiretap learned that one of the suspects would be transporting a large quantity of cocaine in a silver Thunderbird from a certain house in Pomona to an unknown location. When the Thunderbird left the Pomona residence, the driver engaged in counter-surveillance activity, but the officers were able to follow him. He drove to a house in Fountain Valley which was placed under surveillance.

The next day at about 1 P.M., the surveillance team saw a man in a pickup truck back into the driveway, then drive off about ten minutes later. Anticipating something like this, the narcotics officers had arranged to have a Fountain Valley police officer in the vicinity for the purpose of making pretext stops on cars leaving the house. The purpose of the stops was to identify the drivers.

It appears the narcotics officers radioed a description of the pickup to the patrol officer because, having observed the driver of the pickup commit a traffic infraction, he stopped it. While talking with the driver, Melendrez, the officer saw 14 kilogram-size packages in a bag inside the vehicle. The court did not explain what happened next, except that the officer arrested Melendrez after he found cocaine inside the packages.

A few hours later, a man driving an SUV arrived at the house. About 20 minutes later, he and another man—later identified as Gomez, the defendant—drove off in the SUV and traveled along the same route taken by Melendrez. When the men returned to the house, they carried a large cardboard box from the SUV to the garage.

About 25 minutes later, a man driving a Chevy Suburban backed into the driveway and stopped near the garage. Gomez and another man then loaded several large boxes into the back of the Suburban. Gomez then drove off in the Suburban but he was quickly stopped by the patrol officer because he was not wearing a seat belt. During the stop, the officer looked through the rear window and saw two large boxes sealed with duct tape. When Gomez refused to consent to a search of the boxes, a narcotics-sniffing dog was brought to the scene. Although the stop was made at 4:50 P.M., for some unexplained reason the dog was not requested until 6-6:30 P.M. The K-9 officer arrived within a few minutes and, when the dog alerted to the back of the Suburban, the officers opened one of the boxes and found bricks of cocaine.

DISCUSSION

Gomez contended the cocaine should have been suppressed because the initial traffic stop was prolonged to the point it had become a *de facto* arrest.¹ Although there are no absolute time limits on detentions, officers must carry out their duties diligently.² If not, the detention is automatically converted into a *de facto* arrest at the point the detention

¹ NOTE: Because of the seatbelt violation, the traffic stop was lawful even though it was pretextual. See *Arkansas v. Sullivan* (2001) 532 US 769, 771-2.

² See *Florida v. Royer* (1983) 460 US 491, 500 [“(A)n investigative detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop.”]; *United States v. Sharpe* (1985) 470 US 675, 686; *United States v. Place* (1983) 462 US 696, 709.

became unduly prolonged. And, like any arrest, a *de facto* arrest is unlawful unless probable cause existed.³

Here, the court ruled the detention became a *de facto* arrest at some point before the dog alerted to the Suburban. As the court pointed out, “[I]t appears defendant was detained for well over an hour before the K-9 unit was even requested. And the record is devoid of evidence to explain the reason for the delay in making the request.” Consequently, the court ruled that Gomez was effectively under arrest before the dog arrived.

The question, then, was whether the *de facto* arrest was lawful; i.e., did the officer have grounds to arrest Gomez when he stopped him or shortly thereafter? It was apparent that the narcotics investigators had probable cause based on the circumstances described above. But because the arrest was made by the patrol officer, the issue was whether *he* had probable cause.

At the outset, it should be noted that the courts will not permit post-arrest pooling of information. In other words, an arrest without probable cause cannot be validated later by showing that probable cause would have existed *if* the arresting officer had been aware of information known to another officer.⁴ Instead, the prosecution must prove that the arresting officer actually possessed the information or, least, it was reasonable to infer he possessed it.

In *Gomez*, the record did not reflect what, if any, information was given to the patrol officer by the narcotics investigators. All we know for sure is that the patrol officer was asked to make a pretext traffic stop on Gomez.

The courts will, however, infer that officers pooled their information if they were “generally communicating” as to the facts developed in the course of an investigation in which they were involved.⁵ The question, then, was whether there was sufficient evidence

³ See *Hayes v. Florida* (1985) 470 US 811, 815-6 [(A)t some point in the investigative process, police procedures can qualitatively and quantitatively become intrusive with respect to a suspect’s freedom of movement and privacy interests as to [require PC]; *People v. Gorrostieta* (1993) 19 Cal.App.4th 71, 83 [“At some point, a detention can become an arrest if not by actual express designation, then by effect. When the detention exceeds the boundaries of a permissible investigative stop, the detention becomes a *de facto* arrest requiring probable cause.”].

⁴ See *People v. Coleman* (1968) 258 Cal.App.2d 560, 563, fn.2 [“The police cannot pool their information after an arrest made on insufficient cause.”]; *People v. Ford* (1984) 150 Cal.App.3d 687, 698; *Dyke v. Taylor Implement Mfg. Co.* (1968) 391 US 216, 221-2; *Giannis v. City of San Francisco* (1978) 78 Cal.App.3d 219, 224 [“(T)he knowledge which may have been possessed by anyone besides the arresting officers is irrelevant.”].

⁵ See *Illinois v. Andreas* (1983) 463 US 765, 771, fn.5; *U.S. v. Del Vizo* (9th Cir. 1990) 918 F.2d 821, 826; *U.S. v. Sawyer* (7th Cir. 2000) 224 F.3d 675, 680; *U.S. v. Twiss* (8th Cir. 1997) 127 F.3d 771, 774; *People v. Rodgers* (1976) 54 Cal.App.3d 508, 518 [“The record adequately supports the inference that the officers who were conducting the investigation both in Los Angeles and San Diego kept in touch with each other, so that [the knowledge of officer who ordered the arrest] with respect to probable cause included the information gathered by the others. . . This is therefore not a case of post-arrest pooling of information relevant to probable cause.”]. ALSO SEE *Bailey v. Newland* (9th Cir. 2001) 263 F.3d 1022, 1031-2 [“(T)he Supreme Court has not addressed whether there must be a communication between the officers to support this presumption. ¶ Similarly, the lower federal courts have not adopted a uniform rule whether a stop or arrest can be justified by looking to the collective knowledge of the officers, in the absence of evidence of a communication between the officers. Some courts that have considered this issue have held the knowledge of officers working closely together to be mutually imputed without requiring proof of actual communication. At least two courts have allowed knowledge to be imputed between officers upon evidence of some communication between them, although without evidence that the specific facts necessary to establish probable cause were communicated. Still

of such “general communication.” The court ruled there was, mainly because the narcotics investigators and patrol officer were in direct communication and were working closely together.

Although the court did not elaborate, the facts supported its inference. The narcotics officers must have thoroughly briefed the patrol officer on what they had learned to date because he needed to know that he would be making traffic stops on drivers who were suspected drug dealers. Moreover, he needed to know that the occupants of the car might take desperate measures because they were probably transporting large quantities of cocaine. In addition, the officer had, just a few hours earlier, personally discovered a large quantity of cocaine in another vehicle that had just left the residence. Thus, the court concluded:

The probable cause requirement was met in this case based on the collective knowledge of the officers participating in the investigation which led to defendant’s detention. Officers can make arrests based on information and probable cause furnished by other officers. And when police officers work together to build “collective knowledge,” the important question is not what each officer knew, but how valid and reasonable the probable cause was that developed in the officers’ collective knowledge.

Consequently, the court ruled the *de facto* arrest was lawful and that the cocaine was properly admitted into evidence.

other courts have rejected the idea of imputed knowledge when the district court found that the information at issue had not been shared.”].