In re Lennies H.
(February 16, 2005) __ Cal.App.4th __

ISSUE

While pat searching a carjacking suspect, did an officer have probable cause to remove a set of keys from the suspect's pocket?

FACTS

Lennies and two other young men stole a Chevy TrailBlazer from the owner at gunpoint in Sacramento. Vallejo police were notified of the carjacking and, the next day, spotted the TrailBlazer parked in a residential area. Corp. John Garcia conducted surveillance on the vehicle beginning at about 3:30 P.M. During the next 2½ hours, he saw three men walk "half a dozen or more" times from a nearby house and "kind of look around, look at the [TrailBlazer], go on the sidewalk again, look at the vehicle and then look side to side up and down the street." The men matched a general description of the carjackers.

As the men completed one of their reconnaissance trips and were walking back to the house, Corp. Garcia and two other officers detained them. In response to questioning, one of the men, Lennies, said he didn't know anything about the TrailBlazer. Meanwhile, a K-9 officer who had walked his dog around the TrailBlazer commanded the dog to "track." The dog pulled the officer in the direction of the three detainees.

Corp. Garcia then pat searched Lennies and felt some keys in his front pants pocket. When Lennies "denied any knowledge of the keys," the officer removed them and noticed they were car keys and they bore the Chevrolet insignia. When another officer pushed a button on the key fob, the horn and lights on the TrailBlazer were activated. Lennies was then arrested and later confessed. The juvenile court sustained the carjacking charge.

DISCUSSION

Although Lennies acknowledged that the officer had sufficient grounds to detain and pat search him, he contended the removal of the key was unlawful. Consequently, he argued the keys and his subsequent confession should have been suppressed.

Officers who are conducting a pat search may, of course, remove any item that feels like a weapon or feels like an object that could be used as a weapon.[1] In addition, under the so-called "plain feel" doctrine, they may remove any other object if both of the following circumstances existed:

(1) Lawful pat search: Officers had not exceeded the permissible scope of the pat search when they felt the object.[2]

(2) Probable cause: Upon feeling the object, they had probable cause to believe it was contraband or other evidence of a crime.[3]

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[1] See *People* v. *Mosher* (1969) 1 Cal.3d 379, 394.

[2] See *Minnesota* v. *Dickerson* (1993) 508 U.S. 366, 378.

[3] See *People* v. *Dibb* (1995) 37 Cal.App.4th 832, 836-7 ["The critical question is not whether [the officer] could identify the object as contraband based on only the 'plain feel' of the object, but whether the totality of circumstances made it immediately apparent to [the officer] when he first felt the lump that the object was contraband."]; *People* v. *Holt* (1989) 212 Cal.App.3d 1200, 1204; *People* v. *Lee* (1987) 194 Cal.App.3d 975; *U.S.* v. *Bustos-Torres* (8th Cir. 2005) __ F.3d __ [2005 WL 233831] [deputies felt a large amount of currency ($10,000) in a drug suspect's pockets: "Were the bills, by their mass and contour, immediately identifiable to the Sergeant's touch as incriminating evidence? Pondering the question with a dose of common sense, we believe they were."]; *People* v. *Nonnette* (1990) 221 Cal.App.3d 659; *People* v. *Thurman* (1989) 209 Cal.App.3d 817 [officer felt rock cocaine].

As noted, Lennies did not dispute that the officer had grounds to pat search him. He did, however, argue the officer did not have probable cause to believe the keys in his pocket were evidence of the carjacking. The court disagreed, pointing out that when the officer removed the keys, he knew the following:

- Lennies matched the description of one of the carjackers
- Lennies inspected the TrailBlazer six or more times in a 2½ hour period
- A police dog tracked from the TrailBlazer to Lennies and the other detainees
- Lennies denied knowing anything about the keys in his pocket or the TrailBlazer.

"Taken together," said the court, "these circumstances would warrant a reasonable person to conclude that the minor was hiding evidence that would connect him to the crime being investigated." The juvenile court's finding was affirmed.

DA's COMMENT

The court pointed out that these circumstances also constituted probable cause to arrest Lennies for the carjacking. Thus, the removal of the key could also have been justified as a search incident to the arrest.[4]

[4] NOTE: Even though a suspect has not been formally arrested, a search may be deemed "incident to an arrest" if there is probable cause to arrest him. See *People* v. *Gonzales* (1989) 216 Cal.App.3d 1185, 1189; *People* v. *Mims* (1992) 9 Cal.App.4th 1244, 1251 ["(T)he fact that the search preceded the formal arrest is of no consequence."]; *People* v. *Gibson* (1963) 220 Cal.App.2d 15, 22 ["(I)t is immaterial whether the search precedes or follows the arrest."]; *People* v. *Adams* (1985) 175 Cal.App.3d 855, 861; *People* v. *Avila* (1997) 58 Cal.App.4th 1069, 1075-6; *People* v. *Brown* (1989) 213 Cal.App.3d 187, 192.