

ISSUE

Under what circumstances can officers detain a person for officer-safety?

FACTS

At about 8:45 P.M., two U.S. Marshals and a deputy sheriff went to a mobile home in Albuquerque, New Mexico to arrest Rachel Page on a warrant for drug trafficking. Not only was the mobile home located in a “high crime area,” the court noted it had been the scene of a homicide and “had been the location of numerous violent crimes and that several narcotics traffickers and violent fugitives had been arrested there.”

As the officers arrived, they saw a man named Burhle standing in the driveway. Because the deputy knew that Burhle was the son of the home’s owner, and that he was a “homicide suspect with a violent history,” he asked him to sit down in the carport area. When Burhle told the marshals that Rachel was inside the mobile home, they went in to arrest her. The deputy waited outside with Burhle to make sure he did not interfere with the arrest.

Over the next couple of minutes in quick succession, a total of seven people in four vehicles pulled up to the mobile home and stopped. One of the arrivals was Maddox who, as he approached in a pickup truck, reached under the seat, an action the deputy classified as “an unknown threat.” The deputy instructed everyone to stay in the carport area while the arrest was underway. At this point, Maddox began to “act erratically,” pacing in circles and, at one point, urinating in the carport. One of the other detainees tossed an item (later determined to be drug paraphernalia) under a vehicle.

When backup arrived, the deputy told one of the responding officers to “separate Mr. Maddox from the group” because he considered him a “critical and deadly threat.” After separating Maddox, the deputy asked him if he had any weapons or drugs in his possession. Maddox said he was carrying a concealed weapon. The deputy seized the gun and arrested Maddox, who was subsequently charged with being a felon in possession of a firearm.

DISCUSSION

Maddox contended he was detained by the deputy at some point before the gun was found, and that the detention was unlawful because the deputy had no reason to believe he had committed a crime. Consequently, he argued that the gun should be suppressed as the fruit of an unlawful detention.

An encounter with a suspect is deemed a “detention” if a reasonable person in the suspect’s position would have believed he was not free to leave or refuse the officers’ requests.¹ Because a reasonable person in Maddox’s position would probably not have felt free to ignore the deputy’s request to stay in the carport area, it is likely he was detained at that point or, at the very latest, when he was separated from the group.

Having concluded that Maddox was detained, the court had to determine whether the detention was lawful. As a general rule, officers may detain a person only if they have

¹ See *Kaupp v. Texas* (2003) 538 U.S. 626, 629 [seizure occurs when “the police conduct would have communicated to a reasonable person that he was not at liberty to ignore the police presence and go about his business.”]; *United States v. Drayton* (2002) 536 U.S. 194, 201 [“If a reasonable person would feel free to terminate the encounter, then he or she has not been seized.”]; *Florida v. Bostick* (1991) 501 U.S. 429, 438; *Ford v. Superior Court* (2001) 91 Cal.App.4th 112, 124.

reasonable suspicion that he was committing a crime.² This was the basis of Maddox's argument that the detention was unlawful: the deputy had no reason to suspect him of criminal activity.

Maddox might have won this argument a few years ago. But lately, more and more courts have recognized a new type of detention, commonly known as a "special needs detention."³ As we explained in the Winter 2003 edition of *Point of View*, one type of special needs detention is an officer-safety detention which is permitted if the following circumstances existed: (1) the officer's duties must have required him to be in the detainee's presence,⁴ (2) there must have been specific facts that reasonably indicated the detainee posed a threat to the officer,⁵ and (3) the intrusiveness of the detention must have been outweighed by the need to take immediate action.⁶

In ruling on the legality of Maddox's detention, the court noted, (1) the deputy was assisting in the arrest of a suspected drug trafficker, and that such arrests "are notoriously and routinely dangerous"; (2) Maddox's actions and odd behavior reasonably indicated he posed a threat to the deputy and the marshals; and (3) the deputy "employed no more force than was necessary for officer protection in temporarily detaining Mr. Maddox." Consequently, the court ruled the detention was lawful, noting, "[The deputy's] articulable and reasonable suspicion of potential danger supports the temporary, protective detention of Mr. Maddox on officer safety grounds."

² See *Alabama v. White* (1990) 496 U.S. 325, 329-30; *United States v. Sokolow* (1989) 490 U.S. 1, 7; *People v. Bell* (1996) 43 Cal.App.4th 754, 761.

³ See *People v. Glaser* (1995) 11 Cal.4th 354, 363; *People v. Samples* (1996) 48 Cal.App.4th 1197; *People v. Hannah* (1996) 51 Cal.App.4th 1335; *U.S. v. King* (10th Cir. 1993) 990 F.2d 1552, 1561 [threat resulting from handgun in car did not disappear merely because the gun was legal]; *U.S. v. Fountain* (9th Cir. 1993) 2 F.3d 656 [officers may detain residents and people who are on the premises when officers arrive]; *U.S. v. Bohannon* (6th Cir. 2000) 225 F.3d 615, 616 [officers may detain people who arrive at the scene after officers arrived]; *Burchett v. Kiefer* (6th Cir. 2002) 310 F.3d 937, 943-4 [officers may detain a person "who approaches a property being searched pursuant to a warrant, pauses at the property line, and flees when the officers instruct him to get down."]; *U.S. v. Clark* (11th Cir. 2003) 337 F.3d 1282, 1288 [officer lawfully ordered a non-suspect passenger in a vehicle to stay inside the vehicle while he interviewed the driver who had been fighting with another man]; *U.S. v. Flett* (8th Cir. 1986) 806 F.2d 823, 828.

⁴ See *U.S. v. Flett* (8th Cir. 1986) 806 F.2d 823, 828.

⁵ See *People v. Glaser* (1995) 11 Cal.4th 354, 363; *Terry v. Ohio* (1968) 392 U.S. 1, 27; *U.S. v. King* (10th Cir. 1993) 990 F.2d 1552, 1561 [threat resulting from handgun in car did not disappear merely because the gun was legal].

⁶ See *Illinois v. Lidster* (2004) 540 U.S. ___ [157 L.Ed.2d 843, 890] ["(I)n judging reasonableness, we look to the gravity of the public concerns served by the seizure, the degree to which the seizure advances the public interest, and the severity of the interference with individual liberty."]; *People v. Matelski* (2000) 82 Cal.App.4th 837, 849. NOTE: Although special needs detentions are based on federal law, it appears the court in *Maddox* might have been unfamiliar with them. So parts of its analysis were rather strained; i.e., it sought authority for its position with the U.S. Supreme Court case of *Maryland v. Buie* (1990) 494 U.S. 325 in which the Court ruled on the legality of protective sweeps of homes. It is noteworthy, however, that despite its apparent unfamiliarity with the subject (it did not use the term "special needs detention," instead it termed the detention of Maddox a "protective detention"), the test it applied was precisely the same as the test employed by courts in special needs cases.