United States v. $109, 179
(9th Cir. 2000) __ F.3d __

ISSUES

(1) Did officers have grounds to detain Maggio? (2) Was the detention, in reality, an unlawful arrest? (3) Did officers have grounds to pat search Maggio? (4) Did the officers'act of inserting a key into the lock of Maggio's car constitute a search?

FACTS

While cleaning a motel room, two housekeepers found a bag containing "a white powdery substance." Suspecting drugs, they turned it over to the motel manager who called police. The manager told officers the room--number 320--had been rented to a man named Kalatschan.

Shortly before officers arrived, Kalatschan and another man went to room 320 and told the housekeepers they wanted the bag. When the housekeepers said they did not have it, the men searched through the trash and offered them money for it. When the housekeepers insisted they did not have it, the men left. As the housekeepers looked outside, they saw Kalatschan walk into room 323.

When officers arrived, they conducted a field test that revealed the powder was cocaine--about one pound of it. They then went to room 323 and spoke with Kalatschan. While doing so, they determined he was under the influence of cocaine and arrested him.

At about this time, the officers heard a man, later identified as Maggio, knocking on the door to room 320. One of the officers approached Maggio who verbally identified himself but said he had no ID. The officer had some more questions for Maggio, so he "escorted" him to room 323. Before doing so, however, he had Maggio "place his hands on his head." The officer then "placed his left hand on top of Maggio's interlocked hands and unholstered his gun with his right hand, holding the gun next to his right leg." When they entered room 323, the officer reholstered his gun.

After informing Maggio he was not under arrest and after explaining the purpose of the detention, the officer pat searched him. During the search, the officer detected an object which felt like "a large metallic bulge"in Maggio's pocket. The officer removed the object and determined it consisted of "numerous" keys attached to key chains. The officer noticed one of the keys was to a Cadillac and another was to a Porsche. He asked Maggio if he had driven the Porsche to the motel; Maggio said yes, but then claimed he had driven the Cadillac.

At this point, the officer took the keys out to the motel parking lot where he saw one Porsche. The officer inserted Maggio's Porsche key into the door and determined it "fit." As the officer looked inside the Porsche he saw a camera bag on the front seat "with a sizeable amount of U.S. currency bulging from an open pocket." The officer did not, however, open the door to the Porche. Instead, he returned to room 323 and obtained Maggio's consent to search the car. During the search, officers found almost $4,000 in cash, 2 ½ kilos of cocaine, a loaded handgun, and two locked briefcases.

Maggio claimed he did not own the briefcases, so the officers did not open them. Instead, they took them to the police station, stored them in an evidence locker, and applied for a search warrant. When the warrant was issued, the officers opened the briefcases and found one-half kilo of cocaine and over $105,000 in cash.

Following a forfeiture hearing, the trial court ruled the officers had seized the money lawfully and ordered it forfeited.

DISCUSSION

Maggio contended the money was obtained unlawfully for the following reasons: (1) the officer did not have grounds to detain him, (2) the officer's act of moving him into the motel room converted the detention into an unlawful *de facto* arrest, (3) officers did not have grounds to pat search Maggio, and (4) the officers. act of inserting a key into the lock of his car constituted an illegal "search."

Grounds to detain

Officers may detain a suspect if they have "reasonable suspicion" to believe the detainee was committing a crime or was about to commit a crime.[1] In determining whether reasonable suspicion exists, the courts apply the following principles:

Conduct consistent with criminal activity: Reasonable suspicion exists when the circumstances were *consistent* with criminal activity.[2]

Possibility of innocent explanation: Reasonable suspicion may exist even though there might have been an innocent explanation for the suspect's conduct.[3]

Training and experience: In determining whether certain conduct or circumstances were sufficiently suspicious to justify a detention, an officer may take into account his training and experience as it relates to similar conduct or circumstances.[4]

Strength of suspicion: Reasonable suspicion may be based on information that is less incriminating and less reliable than information needed to establish probable cause.[5]

Objective facts: In determining whether reasonable suspicion existed, what counts are the objective circumstances known to the officers.[6]

After reviewing the objective facts, the court ruled reasonable suspicion to detain Maggio existed. Among other things, the court noted that approximately one pound of cocaine had been found in room 320, two men had just attempted to retrieve the cocaine, one of the two men had been arrested but the whereabouts of the second man were unknown, Maggio claimed he had no ID and gave inconsistent stories about the car he had arrived in. "Given these circumstances," said the court, "a reasonable articulable suspicion existed to support [the officer's] initial stop and temporary investigatory detention of Maggio."

De facto arrest?

Maggio claimed that even if the initial detention was lawful, it became an unlawful *de facto* arrest as the result of the officer-safety precautions taken by the officer.

Officers who have detained a suspect may take action that is reasonably necessary for their safety. But if their actions are deemed unreasonable, the detention may be transformed into a *de facto* arrest which is an unlawful arrest unless probable cause existed at that point.[7]

As noted, the officer physically restrained Maggio and had even drawn his gun. The question, then, was whether these precautions were reasonably necessary. The court said yes:

"[The officer] had reasonable suspicion to believe that Maggio was involved in a narcotics operation, and thus that he might be armed. Requesting that Maggio place his hands on his head was less intrusive than handcuffing him; [the officer] never pointed his gun at Maggio but instead held it against his leg; and he moved Maggio only a short distance down the hall to Room 323. Neither handcuffing a suspect nor relocating a suspect automatically turns a detention into an arrest where these actions are reasonably taken for safety and security purposes."

The pat search

As noted, the officer pat searched Maggio when they arrived in room 323. Maggio contended the pat search was unlawful. The court disagreed.

Under certain circumstances, officers may pat search a detainee for weapons--not for the purpose of discovering evidence of a crime, "but to allow the officer to pursue his investigation without fear of violence."[8] The most common legal basis for conducting a pat search is that officers reasonably believed the suspect was armed or dangerous.[9]

In most cases, an officer's belief that a suspect is armed or dangerous is based on circumstantial evidence. One circumstances that is highly relevant is the nature of the crime for which the suspect had been detained. For example, a pat search is almost always justified when the suspect was lawfully detained for a crime of violence,[10] or possession of a concealed or illegal weapon.[11]

In addition, a detainee who is reasonably believed to be a drug dealer may be pat searched because drug dealers are often extremely violent people for whom guns are "tools of the trade."[12] Accordingly, the court ruled the pat search of Maggio was lawful. Said the court, "[The officer] was in close proximity to an individual suspected of narcotics trafficking, his experience provided him with the knowledge that narcotics suspects are often armed and dangerous, and his belief that Maggio might be armed was not unreasonable."[13]

Inserting the key into the lock: a search?

Finally, Maggio contended the officer's act of inserting the key into the lock of his Porsche constituted a "search"; and that it was an illegal search because the officer lacked probable cause. The court, however, ruled that merely inserting a key into a lock is a "search" for the following reasons: (1) Maggio had only a "minimal expectation of privacy in the lock of his car door," and (2) the officer's intrusion was also minimal. In the words of the court, "The police merely sought to identify Maggio through his ownership

of the vehicle. The intrusion upon Maggio's privacy was minimal. By inserting the key into the car door, the police sought to learn only one thing: which car belonged to Maggio. Fitting the key into the car door did not give police any knowledge about the contents inside the vehicle, but revealed only that Maggio had access to that car."

Accordingly, the court affirmed the forfeiture of the $109,179.

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

[2] See *In re Tony C.* (1978) 21 Cal.3d 888, 894; *People* v. *Souza* (1994) 9 Cal.4th 224, 233; *People* v. *Brown* (1990) 216 Cal.App.3d 1442, 1449; *People* v. *Daugherty* (1996) 50 Cal.App.4th 275, 287; *Kodani* v. *Snyder* (1999) 75 Cal.App.4th 471,476-7 . **COMPARE:** *People* v. *Hokit* (1998) 66 Cal.App.4th 1013 [reasonable suspicion did not exist merely because the defendant. s car triggered a Border Patrol sensor on a public road near the Mexico border].

[3] See *United States* v. *Sokolow* (1989) 490 US 1, 10; *New Jersey* v. *T.L.O.* (1985) 469 US 325, 346; *People* v. *Green* (1994) 25 Cal.App.4th 1107, 1111; *People* v. *Brown* (1990) 216 Cal.App.3d 1442, 1449-50; *People* v. *Foranyic* (1998) 64 Cal.App.4th 186, 189; *People* v. *Conway* (1995) 25 Cal.App.4th 385, 390; *People* v. *Dolliver* (1986) 181 Cal.App.3d 49, 56.

[4] See *United States* v. *Cortez* (1981) 449 US 411, 418; *People* v. *Mims* (1992) 9 Cal.App.4th1244, 1248; *Illinois* v. *Wardlow* (2000) 528 US __ [145 L.Ed.2d 570, 577][. (T)he determination of reasonable suspicion must be based on commonsense judgments and inferences about human behavior..]; *People* v. *Brown* (1985) 169 Cal.App.3d 159.

[5] See *Alabama* v. *White* (1990) 496 US 325, 330; *Illinois* v. *Wardlow* (2000) 528 US __ [145 L.Ed.2d 570]; *People* v. *Harris* (1975) 15 Cal.3d 384, 388-9; *In re Tony C.* (1978) 21 Cal.3d 888, 894; *People* v. *Souza* (1994) 9 Cal.4th 224, 233; *People* v. *Brown* (1990) 216 Cal.App.3d 1442, 1449.

[6] See *Brown* v. *Texas* (1979) 443 US 47, 51.

[7] See *People* v. *Rivera* (1992) 8 Cal.App.4th 1000, 1006-7; *People* v. *Soun* (1995) 34 Cal.App.4th 1499, 1516-7; *In re Carlos M.* (1990) 220 Cal.App.3d 372, 384; *People* v. *Campbell* (1981) 118 Cal.App.3d 588, 595-6; *In re Justin Michael B.* (1999) 69 Cal.App.4th 874, 887; *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."]. **ALSO SEE** *U.S.* v. *Meza-Corrales* (9th Cir. July 16, 1999) 183 F.3d 1116, 1123 ["When we make such judgments, common sense and ordinary human experience rather than bright-line rules serve as our guide, and we recognize that we allow intrusive and aggressive police conduct without deeming it an arrest in those circumstances when it is a reasonable response to legitimate safety concerns on the part of the investigating officers."].

[8] See *Adams* v. *Williams* (1972) 407 US 143, 146.

[9] See *Terry* v. *Ohio* (1968) 392 US 1, 27-8; *Ybarra* v. *Illinois* (1979) 444 US 85, 93-4.

[10] See *Terry* v. *Ohio* (1968) 392 US 1, 6, 30 [detention for suspected casing for robbery]; *People* v. *Franklin* (1985) 171 Cal.App.3d 627 [detention for armed robbery]; *People* v. *Anthony* (1970) 7 Cal.App.3d 751, 762 [detention for armed robbery]; *People* v. *Craig* (1978) 86 Cal.App.3d 905, 912 [detention for armed robbery]; *People* v. *Stone* (1981) 117 Cal.App.3d 15, 19 [detention for strong-arm robbery]; *People* v. *Gonzalez* (1998) 64 Cal.App.4th 432, 439 [detention for armed robbery].

[11] See *Adams* v. *Williams* (1972) 407 US 143; *People* v. *Duren* (1973) 9 Cal.3d 218; *People* v. *Superior Court (Saari)* (1969) 2 Cal.App.3d 197; *In re Richard C.* (1979) 89 Cal.App.3d 477; *People* v. *Methey* (1991) 227 Cal.App.3d 349, 358.

[12] See *Ybarra* v. *Illinois* (1979) 444 US 85, 106 (dis. Opn. By Rehnquist, J.); *People* v. *Thurman* (1989) 209 Cal.App.3d 817, 822 ["In the narcotics business, firearms are as much "tools of the trade" as are most commonly recognized articles of narcotic paraphernalia."]; *People* v. *Simpson* (1998) 65 Cal.App.4th 854, 863 ["Illegal drugs and guns are a lot like sharks and remoras. And just as a diver who spots a remora is well-advised to be on the lookout for sharks, an officer investigating cocaine and marijuana sales would be foolish not to worry about weapons. Particularly where large quantities of illegal drugs are involved, an officer can be certain of the risk that individuals in possession of those drugs, which can be worth hundreds of thousands or even millions of dollars, may choose to defend their livelihood with their lives--or, in this case, with the lives of 14 Rottweilers, the Luddite equivalent of a cache of AK-47's."]; *People* v. *Glaser* (1995) 11 Cal.4th 354, 367-8; *People* v. *Limon* (1993) 17 Cal.App.4th 524, 534-5; *People* v. *Lee* (1987) 194 Cal.App.3d 975, 983; *People* v. *Campbell* (1981) 118 Cal.App.3d 588, 595; *U.S.* v. *Salas* (9th Cir. 1989) 879 F.2d 530, 535 [" (I)t is not unreasonable to assume that a dealer in narcotics might be armed and subject to a pat-search."]. **ALSO SEE:** *People* v. *Osuna* (1986) 187 Cal.App.3d 845, 856 [. It should come as no great surprise that those who would profit by the illicit manufacture and sale of drugs which so often destroy their customers' very lives, are not above adopting lethal means to protect their products from seizure and themselves from apprehension."]. **COMPARE:** *Santos* v. *Superior Court* (1984) 154 Cal.App.3d 1178, 1185 which was decided before drug-related violence became so prevalent.

[13] Citing *U.S.* v. *Post* (9th Cir. 1979) 607 F.2d 847.