

Recent Case Report from POV

U.S. v. Marquez

(9th Cir. 2005) 410 F.3d 612

ISSUE

Must airport security officials reasonably believe a passenger is armed before subjecting him to secondary screening?

FACTS

Marquez arrived at Seattle-Tacoma International Airport for a flight to Anchorage. Although nothing he was carrying set off an alarm when he went through the primary Transportation Security Administration (TSA) checkpoint, he was randomly selected for “secondary security screening” and was diverted to the “selectee lane.”¹ When the secondary screener passed his magnetometer over Marquez’s right hip, it beeped. The screener then touched Marquez’s hip to determine what was there but Marquez “swatted” his hand away. Still, the screener felt something there—he described it as a “hard brick type of thing.”

Marquez was then taken to a private screening room where, in response to a TSA supervisor’s repeated requests to tell him what he was carrying on his hip, Marquez suddenly pulled his pants down, revealing “bricks of stuff in his crotch area with a pair of spandex leggings over the top.” It turned out the “stuff” in the bricks was two kilograms of cocaine. He was then arrested.

When Marquez’s motion to suppress the cocaine was denied, he pled guilty to possession with intent to distribute and was sentenced to 60 months in prison.

DISCUSSION

Marquez contended his motion to suppress should have been granted, claiming it is unconstitutional to randomly select passengers for secondary screening. Instead, he argued that more intensive screening of a passenger should be permitted only if officials have specific reason suspicion to believe the passenger is armed or there is other evidence of “wrongdoing.”

At the outset, the court addressed the need for airport screening. Said the court, “It is hard to overestimate the need to search air travelers for weapons and explosives before they are allowed to board the aircraft. As illustrated over the last three decades, the potential damage and destruction from air terrorism is horrifically enormous.”

¹ **NOTE:** The court explained, “A passenger chosen for the selectee lane is subjected to more thorough search procedures, regardless of whether or not the x-ray luggage scan reveals something suspicious or the walkthrough magnetometer sounds an alarm.”

Nevertheless, airport screening is subject to the Fourth Amendment's requirement of "reasonableness." As the court observed, "[E]ven with the grave threat posed by airborne terrorist attacks, the vital and hallowed strictures of the Fourth Amendment still apply: these searches must be reasonable to comport with the Constitution."

The court then noted that the Ninth Circuit previously ruled that airport screening is reasonable if three requirements are met:

- (1) **Reasonably intrusive:** The screening must have been no more extensive or intensive than necessary in light of current technology.
- (2) **Not a pretext:** The screening must not have been a pretext to search for drugs or other evidence.
- (3) **Passenger can turn back:** Passengers who want to avoid being screened must be permitted to leave the airport unless, of course, there were grounds to detain or arrest them.²

In applying these requirements to the facts in *Marquez*, the court made the following rulings. First, the primary and secondary screenings were reasonable in scope. Second, "nothing in the record indicates that [the TSA screener] was looking for drugs or criminal evidence." Third, Marquez was free to leave the airport before the cocaine was found and, therefore, "had ample opportunity to choose to forego air travel in order to avoid the screening."

Although the secondary screening of Marquez met all three requirements, he asked the court to adopt a fourth requirement: that secondary screening of a passenger is permitted only if there is reason to believe that passenger is carrying weapons or explosives. The court refused the request, noting that random secondary screening serves an important function:

[T]he randomness of the selection for the additional screening procedure arguably increased the deterrent effects of airport screening procedures because potential passengers may be influenced by their knowledge that they may be subject to random, more thorough procedures.

Accordingly, the court ruled "the random, more thorough screening involving scanning of Marquez's person with the handheld magnetometer was reasonable," and his motion to suppress the cocaine was properly denied.

COMMENT

In light of the recent terrorist bombings in London, the question has arisen whether local transit police can lawfully implement the same kinds of random screening procedures that are utilized by the TSA. Although it is apparent that local governments do not have the funds to employ full TSA-type screening, it would seem any random procedure that meets the requirements discussed above should be deemed lawful. In other words, it is hard to imagine how a court could somehow conclude that the reasonable screening procedures that the TSA utilizes to screen airplane passengers are somehow unlawful if they are used by local authorities to prevent bombings and other violence on public transportation.

² (9th Cir. 1973) 482 F.2d 893, 913.