Recent Case Report

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People v. Rios

(2011) __ Cal.App. 4th __ [2011 WL 893026]

Issue

While conducting a probation search of a residence, did officers have sufficient grounds to detain a visitor?

Facts

At about 9:30 A.M. Terry Morris and five other Kern County probation officers went to the home of a "high risk" probationer (identified here as "R.R.") to conduct a probation search. Morris was aware that one of the conditions of R.R.'s probation was that he not associate with gang members. As Morris entered the house, he noticed Florencio Rios sitting in the living room. There were two other things his noticed about Rios: (1) he was wearing "layers of clothing" even though the day was already hot; and (2) he was sporting two gang-related tattoos: one read "One way in, One way out," and the other consisted of three dots on the web of one hand.

Morris asked Rios several questions about his identity and his reason for being in the house, but Rios either refused to answer or responded with obscenities. More troublesome, Rios was contorting his body in such a way as to prevent Morris from getting a good look of his midsection, an area where firearms are normally hidden. In fact, at one point Rios turned his back on Morris and "leaned his upper body down on the couch with his right arm pressed against his stomach." Having concluded that Rios was engaged in a pathetically inept attempt to hide something—most likely a firearm—Morris notified him that he was being detained and would be pat searched for weapons. Rios responded with a clever "Fuck you" and attempted to pull away. Morris then took him to the ground, handcuffed him, and conducted the pat search. The search netted a handgun and a switchblade.

When his motion to suppress the evidence was denied, Rios pled no contest to, among other things, possessing a weapon after having served four prison terms. He was sentenced to 25 years to life.

Discussion

Rios contended that the evidence should have been suppressed because Morris lacked grounds to detain and pat search him. The court disagreed. At the outset, it should be noted that both the detention and pat search could have been upheld simply because it reasonably appeared that Rios was attempting to hide something that, given his layered clothing and gang tattoos, was probably a handgun.[1] But the court did not consider this

[1] See *People* v. *Armenta* (1968) 268 Cal.App.2d 248, 249 ["[D]efendant crouched forward and placed his left hand toward the lower middle portion of his body. Defendant fumbled with his left hand in the right front portion of his body."]; *People* v. *Wigginton* (1973) 35 Cal.App.3d 732, 737-38 [the officer "saw defendant's left hand above his shoulder but his right hand remain[ed] near the right hand pocket of his jacket."]; *People* v. *Clayton* (1970) 13 Cal.App.3d 335, 337 [defendant "lifted himself up from the seat with both arms in his rear portion of his body behind his back, both arms went up and down rapidly"]; *U.S.* v. *Oglesby* (7th Cir. 2010) 597 F.3d 891, 894

theory because it assumed for the sake of argument that Rios was detained before he started trying to hide his handgun.

THE DETENTION: Rios contended that the detention was unlawful because Morris had no reason to believe he had committed, or was committing, a crime. There is, however, another type of detention—known as a "special needs detention"—that is defined as a temporary seizure of a person that serves a public interest other than the need to determine if the detainee committed a crime.[2] And here, the officers did, in fact, have a need to detain Rios: they needed to determine if he was associated with a gang because, as noted, one of the terms of R.R.'s probation was that he not hang out with gang members.

An almost identical issue was raised in 2000 in the case of *People* v. *Matelski*.[3] In *Matelski*, officers were about to enter a house to conduct a probation search when a visitor, Matelski, opened the door and started to leave. Although the officers had no reason to believe that Matelski was involved in criminal activity, they detained him because they knew that the probationer was prohibited from associating with felons, and they wanted to find out if Matelski was a felon. When the officers ran Matelski's name, they learned he was wanted on an arrest warrant, and this led to the discovery of drugs. Like Rios, Matelski argued that the officers had no legal basis to detain him, but the court disagreed, saying, "there was a need to determine [his] connection to the probationer because the probationer was prohibited by his general terms of probation from consorting with convicted felons."

The court in *Rios* was persuaded by this logic and concluded that, because Morris knew that R.R. "was subject to gang and drug conditions," he "could briefly detain [Rios] to ascertain his identity and relationship to the probationer and the probationer's residence."

THE PAT SEARCH: As for the pat search, it is settled that such a precaution is permitted if officers reasonably believed that a detainee was armed or dangerous.[4] And here there were ample circumstances that supported this conclusion. "In the present case," said the court, "Morris was dealing with a probable gang member who was overly dressed for the weather, belligerently refused to answer his questions or cooperate with him, and continued to make evasive movements even after Morris asked him to stop."

For these reasons, the court ruled that Rios's motion to suppress the firearm was properly denied. POV

[detainee "angled his body away from [the officers] so that they were unable to view [his] right side"]; *U.S.* v. *Price* (D.C. Cir. 2005) 409 F.3d 436, 442 [defendant "reached back inside the car toward his waistband"]; *Haynie* v. *County of Los Angeles* (9th Cir. 2003) 339 F.3d 1071, 1076 [the officer "noticed the driver lean to the right as if to conceal or obtain something"]; *U.S.* v. *Raymond* (4th Cir. 1998) 152 F.3d 309, 311 [suspect "clutched his stomach as he got out of the car, as if he were trying to keep something held against the front part of his body"].

[2] See *Illinois* v. *Lidster* (2004) 540 U.S. 419, 424 ["special law enforcement concerns will sometimes justify [detentions] without individualized suspicion"]; *Indianapolis* v. *Edmond* (2000) 531 U.S. 32, 37 ["[We have] upheld certain regimes of suspicionless searches where the program was designed to serve 'special needs,' beyond the normal need for law enforcement."].

[3] (2000) 82 Cal.App.4th 837.

[4] See *Arizona* v. *Johnson* (2009) 555 U.S. 323.