

## People v. Gutierrez

(2018) \_\_ Cal.App.5th \_\_ [2018 WL 1531154]

### Issue

When conducting a probation search of a residence, under what circumstances may officers detain a visitor?

### Facts

At approximately 7 P.M., Kern County sheriff's deputies arrived at the home of Timothy Beltran to conduct a probation search. It was a routine search, meaning it was not conducted because officers had reason to believe that Beltran had violated the terms of his probation. While speaking with Beltran at the front door, the deputies determined that the defendant, Reynaldo Gutierrez, was also in the house. So they ordered both men to step outside where they were pat searched and directed them to sit on the front porch.

About ten minutes later, while other deputies were searching the house, a deputy who was detaining Gutierrez obtained his ID and ran a warrant and probation check. He was informed that Gutierrez was on Post-Release Community Supervision (PRCS), which includes search authorization.<sup>1</sup> The deputy then searched him and found a “wad” of cash in his front pocket. Other deputies then searched Gutierrez's car and found a digital scale and almost an ounce of methamphetamine.

The court was unable to establish how much time elapsed between the start of the detention and the search of Gutierrez's car. For purposes of this appeal, however, the court figured it was between 30 and 50 minutes.

Gutierrez was charged with, among other things, possession of methamphetamine for sale. When his motion to suppress the evidence was denied, he pled no contest.

### Discussion

The central issue on appeal was whether Gutierrez was legally detained when he and his car were searched. If not, the evidence should have been suppressed as the fruit of an unlawful detention.

The Supreme Court has ruled that officers who arrive at a residence to execute a search warrant may detain all residents and visitors until the search is completed.<sup>2</sup> Does this rule also apply to probation searches? The court ruled it did not, and the reason was

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<sup>1</sup> **NOTE:** It turned out the Gutierrez's PRCS status had terminated almost two years earlier. However, in light of the court's decision, it was unnecessary to determine whether the error affected the legality of the searches. **NOTE:** Under California's Criminal Justice Realignment Act of 2011, people who have been convicted of certain lower-level felonies may be permitted serve their prison sentences in a local county jail. Pen. Code §§ 3450 et seq. Then, upon release, they are supervised for up to three years by a county probation officer. Even though the person is not confined in a state prison or supervised by a parole officer, his status is “akin to a state prison commitment; it is not a grant of probation or a conditional sentence.” See *People v. Fandinola* (2013) 221 Cal.App.4th 1415, 1422; *U.S. v. Cervantes* (9th Cir. 2017) 859 F.3d 1175, 1181 [California courts concur that “the State's interest in supervising offenders placed on mandatory supervision is comparable to its interest in supervising parolees”].

<sup>2</sup> See *Michigan v. Summers* (1981) 452 U.S. 692, 705; *Bailey v. United States* (2013) 568 U.S. 186, 195.

that, unlike the execution of search warrants, the execution of routine probation searches are simply not as dangerous.

The court did not, however, rule that officers may never detain visitors at homes that are being searched pursuant to a search condition. Instead, it ruled there must be some specific reason for doing so. For example, it might suffice that officers had reason to believe the occupants were armed or dangerous; or that the probationer had one or more accomplices who might also be on the premises; or that the terms of probation prohibited the probationer from associating with felons, and the purpose of the detention was to make sure he wasn't.<sup>3</sup> In this case, however, there was little, if any, justification for detaining Gutierrez, at least after the deputies determined he was not armed and did not live in the residence.

The court also ruled that, in determining whether such a detention was justified, the courts should also consider the intrusiveness of the detention.<sup>4</sup> It then noted that Gutierrez's detention was moderately intrusive, even if not greatly so." And, although it might have been permissible to detain him at the outset, (e.g., officer safety), there was plainly insufficient reason to detain him for 30 minutes or more, especially after the deputy determined that he was unarmed and did not live in the house. Said the court, "[W]e cannot say that the entire period of Gutierrez's detention—from the inception of Beltran's probation search until the deputies were notified by dispatch that Gutierrez was on PRCS—was justified by government interests made applicable to his detention by individualized and objective facts." Thus, it ruled that Gutierrez was illegally detained when the deputy learned that he was searchable and, therefore, the evidence found in his possession should have been suppressed. POV

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<sup>3</sup> See *People v. Rios* (2011) 193 Cal.App.4th 583.

<sup>4</sup> See *Utah v. Strieff* (2016) \_\_ U.S. \_\_ [136 S.Ct. 2056, 2059 ["even when there is a Fourth Amendment violation, this exclusionary rule does not apply when the costs of exclusion outweigh its deterrent benefits"]; *Hudson v. Michigan* (2006) 547 U.S. 586, 595; *Davis v. United States* (2011) 564 U.S. 229, 231.