

People v. Turner

(2013) 219 Cal.App.4th 151

Issues

(1) Did officers have reasonable suspicion to detain a parent at a high school football game? (2) If so, did the manner in which they detained him result in a de facto arrest?

Facts

During an evening football game at Everett Alvarez High School in Salinas, assistant coach Anthony Stewart notified head coach Rafael Ward that Turner had threatened him. Turner was the father of an Everett Alvarez player and, according to Stewart, Turner was “upset about something that [Stewart] had said or done” and had called him a “bitch-ass [racial slur]” and said “I’ll see you after the game.” At this time, according to Ward, the game had become “intense” after an Alvarez player suffered a broken leg, and the crowd had a “negative vibe.” When the school principal was informed of the threat, he instructed two county probation officers (who were providing security) to go to the parking lot after the game “because one or more people in the crowd had threatened one of the coaches.”

After the game ended, Ward was heading out to the parking lot when his aunt walked up to him and said “you need to be careful” because she had been told by a friend, Jeannette Smith, that Turner “has a gun.” Smith was “an acquaintance” of Turner’s. Ward conveyed this information to one of the probation officers who notified Salinas PD and requested assistance.

At about this time, one of the probation officers noticed six or seven people standing near a dumpster in the parking lot; they were apparently drinking beer and looking “a little intimidating.” One of the men was Turner and, shortly after the first patrol car arrived in the parking lot, he broke away from the group and started walking away. It appears that Turner matched the description of the suspect because one of the probation officers identified himself, drew his service weapon and told Turner to raise his hands. At least one of the responding Salinas PD officers also drew a gun and ordered Turner to get on the ground. Turner complied and was handcuffed. An officer then asked him if he was carrying any weapons and he said he had a gun in his front pocket. The officer recovered the weapon (a loaded revolver) and arrested Turner for, among other things, carrying a firearm on school grounds.

Discussion

Turner filed a motion to suppress the gun, claiming the officers lacked grounds to detain him and, even if they had grounds, their act of drawing their weapons converted the detention into an illegal de facto arrest. The court denied the motion and Turner pled no contest. He then appealed the court’s ruling.

GROUND TO DETAIN: It is settled that officers may detain a suspect only if they have reasonable suspicion, and that reasonable suspicion requires information that has some indicia of reliability. Thus, in *Florida v. J.L.*¹ the Supreme Court ruled that the detention of the defendant was unlawful because it was based solely on an anonymous tip that he was currently standing at a particular bus stop and was carrying a concealed firearm.

¹ (2000) 529 U.S. 266.

Based on the similarities between his detention and the one in *J.L.*, Turner argued that he, too, was detained unlawfully but the court disagreed because, unlike *J.L.*, the source of the information about Turner was not an anonymous caller. On the contrary, (1) the source's identity was known, (2) she knew Turner, (3) she apparently had first-hand knowledge about the gun, and (4) she had personally conveyed the information about the gun to Ward's aunt. In addition, the court noted that Turner's act of walking away when he saw the first patrol car arrive was a circumstance that increased the level of suspicion.

It should be noted that the California Supreme Court has ruled that, even if the source of a tip was anonymous, it might be reasonable for officers to detain a suspect if they had sufficient reason to believe he presented an imminent threat to the public, such as driving while intoxicated.² Although it was unnecessary for the court in *Turner* to invoke this rule, it said "we cannot ignore that the reported crime here of carrying a concealed, loaded firearm serves as a grim reminder of the numerous mass shootings that have occurred in schools in the past decade or so."

DE FACTO ARREST: As noted, Turner argued that even if there were sufficient grounds to detain him, the officers' act of ordering him to the ground at gunpoint had converted the detention into a de facto arrest. It is true that a detention will be deemed a de facto arrest if the officers employed safety precautions that were unnecessary or excessive.³ And, like any arrest, a de facto arrest is illegal if officers lacked probable cause. But even if the officers in *Turner* lacked probable cause, it was apparent that the precautions they took were reasonable. After all, Turner was reportedly carrying a firearm and had indicated he was about to shoot Stewart in the parking lot.⁴ Accordingly, the court ruled that the officers' actions were "reasonable and appropriate in order to safely determine whether defendant was armed." Turner's conviction was affirmed. POV

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² See *People v. Wells* (2006) 38 Cal.4th 1078; *People v. Dolly* (2007) 40 Cal.4th 458. ALSO SEE *Florida v. J.L.* (2000) 529 U.S. 266, 273.

³ See *People v. Gorrostieta* (1993) 19 Cal.App.4th 71, 83 ["When the detention exceeds the boundaries of a permissible investigative stop, the detention becomes a de facto arrest requiring probable cause."]; *U.S. v. Shabazz* (5th Cir. 1993) 993 F.2d 431, 436 ["A prolonged investigative detention may be tantamount to a *de facto* arrest, a more intrusive custodial state which must be based upon probable cause rather than mere reasonable suspicion."].

⁴ See *People v. Glaser* (1995) 11 Cal.4th 354, 366 [the issue is whether "detention at gunpoint [was] justified by the need of a reasonably prudent officer"]; *People v. Celis* (2004) 33 Cal.4th 667, 676; *People v. McHugh* (2004) 119 Cal.App.4th 202, 211 ["A police officer may use force, including ... displaying his or her weapon, to accomplish an otherwise lawful stop or detention as long as the force used is reasonable under the circumstances to protect the officer or members of the public or to maintain the status quo."]; *Gallegos v. City of Los Angeles* (9th Cir. 2002) 308 F.3d 987, 991 ["Our cases have made clear that an investigative detention does not automatically become an arrest when officers draw their guns."].