Recent Cases

People v. Cuadra

(2021) 71 Cal.App.5th 348

Issue

Was the defendant unlawfully detained?

Facts

As the result of widespread violence and looting resulting from Black Lives Matter protests, the County of Los Angeles established a curfew between the hours of 6 p.m., and 6 a.m. At about 2:15 a.m. two LASD deputies on patrol drove into the parking lot of a motel in the City of Commerce. As they did so, they saw a man, later identified as Oscar Cuadra, standing near a parked car. While they remained inside their patrol car, they asked Cuadra if he knew about the curfew. He said no.

The deputies did not intend to cite or arrest Cuadra for violating the curfew since he was technically standing on private property. But they were wondering why, with so much ongoing violent crime and destruction in the area, a person would be walking around at 2 a.m. for no apparent reason. So they decided to contact him.

As they stepped out of their car, one of the deputies asked—but did not order—Cuadra "to walk over to the hood of our patrol vehicle." Instead of complying, Cuadra "raised his hands and stepped backward away from the patrol car, all the while asking why the officers were attempting to detain him when he had done nothing wrong." As Cuadra raised his hands, one of the deputies saw a "pretty big" bulge in his right front pants pocket. The deputy noticed that the bulge was consistent with the shape of a firearm.

At this point, Cuadra spontaneously said he had a gun. So the deputy ordered him to get on the ground and, after conducting a pat search, removed a loaded .38 caliber revolver. Cuadra was subsequently charged with possession of a firearm by a convicted felon. When his motion to suppress the gun was denied, he pled no contest.

Discussion

Cuadra argued that his handgun should have been suppressed because it was the fruit of an unlawful detention. In a 2-1 decision, the court agreed.

It was undisputed that Cuadra had, in fact, been detained when he was asked to raise his hands and walk over to the patrol car, even though he was not commanded to do so. Consequently, the central issues were (1) whether the deputies had grounds to detain him, and (2) did he comply with the deputy's command.

GROUNDS TO DETAIN: Officers may detain a person only if they have "reasonable suspicion," which is a much lower standard of proof than probable cause. As the Supreme Court explained, "The reasonable suspicion inquiry falls considerably short of 51% accuracy,"[1] and that "reasonable suspicion is a less demanding standard than probable cause and requires a showing considerably less than preponderance of the evidence."[2]

Moreover, in determining whether officers had grounds to detain, the courts must consider the totality of the surrounding circumstances. Thus, in reversing a circuit court in *District of Columbia v. Wesby,* the Supreme Court said that the two judges in the majority had "viewed each fact in isolation rather than as a factor in the totality of circumstances."[3] And yet, the two justices in *Cuadra* (the third dissented) not only ignored this requirement, but blatantly misrepresented the nature of the threat in those early morning hours.

Specifically, in discussing why the deputies were on high alert, majority thought it sufficient to say "there was a curfew in effect." But, for readers who thought it might be helpful to know why the area was under curfew, and why Cuadra's early morning activities were of concern to the deputies, it was necessary to read the dissenting opinion of Justice Elizabeth Grimes. She explained: "National Guard troops and police officers guarded the barricaded steps of Los Angeles City Hall and tried to restore

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[1] *Kansas v. Glover* (2020) __ U.S. __ [140 S.Ct. 1183].
[2] *Illinois v. Wardlow* (2000) 528 U.S. 119, 123.
[3] (2018) __ U.S. __ [138 S.Ct. 577, 588].

order in Santa Monica and Long Beach. For two days, looters spent hours vandalizing and breaking into stores, stealing items and setting fires in Los Angeles, Santa Monica, and Long Beach."

Not only did the majority ignore these seemingly important facts, they shamefully referred to the rioters as "protesters." (Isn't there a significant difference between "rioters" and a "protesters?")

DID CUADRA COMPLY WITH THE DEPUTIES' REQUEST? As noted, the majority also ruled that Cuadra had complied with the deputy's request to walk over to the patrol car. But even if Cuadra had been illegally detained at that point, the detention would have automatically terminated if he did not comply with the officer's request or command. As the Supreme Court explained in *Brendlin v. California*, "There is no seizure without actual submission; otherwise, there is at most an attempted seizure."[4]

Did Cuadra comply to the deputy's request? In the view of the majority, a detainee who is asked to walk over to a patrol car necessarily complies if, instead of walking over to the car, he steps back, stands his ground, and starts arguing. In their words, Cuadra's act of raising his hands and stepping backward "is not, by any stretch of the imagination, an indication that he believed he was not being seized and was, instead, free to leave."

Apart from the obvious fact that Cuadra did not comply with the deputy's command, the majority compounded their error when they said (as noted above) that in determining whether a person was detained it is significant that the person subjectively believed he had been detained. And yet, the Supreme Court has expressly ruled that a person's beliefs are irrelevant in determining whether he had been detained. As the Court explained in *California v. Hodari D.*, the issue is "not whether the citizen perceived that he was being ordered to restrict his movement, but whether the officer's words and actions would have conveyed that to a reasonable person."[5]

There's more. The majority also claimed that Cuadra had been illegally detained because the deputies had *intended* to detain him. Here's what they said: "It is objectively apparent the officers intended to detain and frisk appellant." Apart from the fact that the majority had no way of knowing the deputies' subjective intentions, it was error to even consider them. As the Supreme Court said in *United States v. Mendenhall,* "The subjective intention of the DEA agent in this case to detain the respondent, had she attempted to leave, is irrelevant except insofar as that may have been conveyed to the respondent."[6] Thus, in *In re Manuel G.* the California Supreme Court ruled that "the officer's uncommunicated state of mind [is] irrelevant in assessing whether a seizure triggering Fourth Amendment scrutiny has occurred."[7]

It would be pointless to go further. Fortunately, the majority's opinion was so patently unsound that it will probably be overtured or virtually ignored. But it is still disconcerting that two justices of the California Court of Appeal could be so off the mark.

[4] (2007) 551 U.S. 249, 254.
[5] (1991) 499 U.S. 621, 628. Also see *Morgan v. Woessner* (9th Cir. 1993) 997 F.2d 1244, 1254.
[6] (1980) 446 U.S. 544, 554, fn.6.
[7] (1997) 16 Cal.4th 805, 821. Also see *People v. Ross* (1990) 217 Cal.App.3d 879, 884.