

## People v. Espino

(2016) \_\_ Cal.App.4th \_\_ [2016 WL 2993994]

### Issues

(1) Was a traffic stop unduly prolonged? (2) Was the defendant under illegal de facto arrest when he consented to a search of his car?

### Facts

At about 7:30 P.M. an officer in Gilroy stopped Espino for speeding. After obtaining Espino's license, registration, and proof of insurance, the officer returned to his car and ran a warrant check. There were no warrants, but the computer showed that Espino was a registered sex offender. The officer attempted to verify that Espino still lived at the address listed on his sex registration form but was unable to contact an officer who might have known. About then, a detective contacted the officer and asked him to "hang on" to Espino until the detective arrived at the scene because the detective had information from a reliable informant that Espino was selling drugs and firearms. Based on this information, the officer had Espino remain in his car while he waited for the detective.

When the detectives and backup arrived about six minutes later, the officer ordered Espino to step out and walk to the sidewalk. While Espino was explaining that he still lived at the address on the registration form, he put his hands in his pockets several times. For that reason, the officer obtained his consent to search his pockets. During the search, he felt "some type of hard, small, little object" that was consistent with rock cocaine. At that point, Espino was handcuffed. The officer then used his patrol car spotlight to closely examine the suspected cocaine and discovered it was a diamond.

Lacking probable cause, the officer sought Espino's consent to search his car. Espino agreed but, significantly, he was not released from the handcuffs. He was also asked to sit on the curb. The search of the car netted several grams of methamphetamine and an electronic scale. The time that elapsed between the car stop and the search of the car was about 13 minutes.

In the trial court, Espino argued that the evidence should have been suppressed because his detention was illegal. The trial court denied the motion and Espino pled guilty.

### Discussion

The detention and handcuffing of Espino raised several legal issues that had to be resolved to determine if his consent to search his car was given during a lawful detention. Those issues were as follows.

**DURATION OF DETENTION:** As noted, Espino was detained for about 13 minutes. Although there is no absolute time limit on detentions,<sup>1</sup> and although officers are not required to "move at top speed,"<sup>2</sup> they must carry out their duties diligently. As the Supreme Court explained in the context of traffic stops, "A seizure that is justified solely

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<sup>1</sup> See *United States v. De Hernandez* (1985) 473 U.S. 531, 543; *People v. Gallardo* (2005) 130 Cal.App.4th 234, 238.

<sup>2</sup> *U.S. v. Hernandez* (11th Cir. 2005) 418 F.3d 1206, 1212, fn.7. Also see *U.S. v. Harrison* (2nd Cir. 2010) 606 F.3d 42, 45 [no requirement to terminate "at the earliest possible moment"].

by the interest in issuing a warning ticket to the driver can become unlawful if it is prolonged beyond the time reasonably required to complete that mission.”<sup>3</sup>

Officers are, however, permitted to do certain things that are not directly related to the traffic matter. Again quoting the Supreme Court, “Beyond determining whether to issue a traffic ticket, an officer’s mission includes ordinary inquiries incident to the traffic stop.”<sup>4</sup> Such inquiries, said the Court, typically involve “checking the driver’s license, determining whether there are outstanding warrants against the driver, and inspecting the automobile’s registration and proof of insurance.” Furthermore, as the court in *Espino* explained, “If the police develop reasonable suspicion of some other criminal activity, they may expand the scope of the detention to investigate that activity.”

Applying these principles to the facts, the court ruled that the initial detention of Espino was not unduly extended because an officer had seen him commit a traffic violation, and the officer had reason to investigate other matters, namely Espino’s compliance with his sex offender requirements, the report from a reliable informant that he was selling drugs, and his furtive movements to his pockets.

**HANDCUFFING:** Next, Espino argued that his detention became a de facto arrest when he was handcuffed. Because it is settled that officers may handcuff detainees if they reasonably believed the precaution was necessary,<sup>5</sup> the issue was whether the officers had such a reasonable belief.

Some circumstances indicated they did not. As the court pointed out, Espino made no physical threats, he was “peaceful and compliant at all times,” and he was also outnumbered by officers three-to-one. But there were two other circumstances that were overriding. First, an officer had felt a small, hard object in Espino’s pocket during the pat search, and it felt like a rock of cocaine. Second, an officer had received a reliable tip that Espino was selling drugs. Consequently, the court ruled that these circumstances provided the officers with probable cause to arrest Espino and, therefore, they had a legal right to handcuff him.

**PROBABLE CAUSE TO ARREST DISAPPEARS:** Sometimes, probable cause evaporates even before the arrestee is placed in a patrol car. And that was what happened here when the officers discovered that the suspected rock of cocaine in Espino’s pocket was actually a diamond. While it might be interesting to know why Espino was carrying a diamond in his pocket, it really didn’t matter because it is not illegal to do so. What was important was that probable cause no longer existed when Espino consented to the search of his car. And because he was still handcuffed then, he was under an illegal de facto arrest. As the court explained, the officers had a duty to remove the handcuffs “within a reasonable amount of time” after they determined that Espino posed no threat to them and that they no longer had probable cause to arrest him. As the result, the court ruled the search was unlawful and the evidence in Espino’s car should have been suppressed. POV

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<sup>3</sup> *Illinois v. Caballes* (2005) 543 U.S. 405, 407.

<sup>4</sup> *Rodriguez v. United States* (2015) \_\_ US \_\_ [135 S.Ct. 1609, 1611].

<sup>5</sup> See *People v. Celis* (2004) 33 Cal.4th 667, 675 [“[S]topping a suspect at gunpoint, handcuffing him, and making him sit on the ground for a short period, as occurred here, do not convert a detention into an arrest.”].