

Recent Case Report

People v. Gomez

(2004) 117 Cal.App.4th 531

Issues

(1) Was a detention unduly prolonged? (2) Did the officer have probable cause to arrest the detainee?

Facts

Narcotics officers who were monitoring a court ordered wiretap learned that one of the suspects would be transporting a large quantity of cocaine in a silver Thunderbird from a certain house in Pomona to an unknown location. When the Thunderbird left the Pomona residence, the driver engaged in counter surveillance measures, but the officers were able to follow him. He drove to a house in Fountain Valley which was immediately placed under surveillance.

The next day at about 1 P.M., the surveillance officers saw a man in a pickup truck back into the driveway. About ten minutes later, he drove off. Anticipating something like this, the officers had arranged to have a Fountain Valley patrol officer in the vicinity for the purpose of making pretext traffic stops on cars leaving the house. The purpose of the stops was to identify the drivers.

The patrol officer, having observed a traffic violation, stopped the pickup and spoke with the driver, Melendrez. While doing so, the officer saw 14 kilogram-size packages in a bag inside the vehicle. The court did not explain what happened next, except to say the officer arrested Melendrez after he found cocaine inside the packages.

A few hours later, a man driving an SUV arrived at the house. About 20 minutes later, he and another man-later identified as Gomez-drove off in the SUV and traveled along the same route taken by Melendrez. When the men returned to the house, they carried a large cardboard box from the SUV to the garage.

About 25 minutes later, a man driving a Chevy Suburban backed into the driveway and stopped near the garage. A little later, Gomez and another man loaded several large boxes into the back of the Suburban. Gomez then drove off in it, prompting another pretext traffic stop (no seat belt) by the same officer. As the officer looked through the rear window of the Suburban, he saw two large boxes sealed with duct tape. When Gomez refused to consent to a search of the boxes, a drug-sniffing dog was brought to the scene. Although the stop was made at 4:50 P.M., for some unexplained reason the dog was not requested until around 6:30 P.M. In any event, the K-9 officer arrived a few minutes later and the dog alerted to the back of the Suburban. Officers then opened one of the boxes and found bricks of cocaine.

Discussion

Gomez contended the cocaine should have been suppressed because the initial traffic stop was prolonged to the point it had become a *de facto* arrest.¹ Although there are no

¹ **NOTE:** Because of the seat belt violation, the traffic stop was lawful, though pretextual. See *Arkansas v. Sullivan* (2001) 532 U.S. 769.

absolute time limits on detentions, officers must carry out their duties diligently.² If not, the detention is automatically converted into a *de facto* arrest at the point the detention became unduly prolonged. And, like any arrest, a *de facto* arrest is unlawful unless there was probable cause.³

In *Gomez*, the court ruled the lengthy detention became a *de facto* arrest at some point before the dog alerted to the Suburban. As the court pointed out, "[I]t appears defendant was detained for well over an hour before the K-9 unit was even requested. And the record is devoid of evidence to explain the reason for the delay in making the request." Consequently, the court ruled that Gomez was effectively under arrest before the dog arrived.

The question, then, was whether the *de facto* arrest was lawful; i.e., did the officer have grounds to arrest Gomez when he stopped him or shortly thereafter? It was apparent that the narcotics investigators had probable cause based on the circumstances described above. But because the arrest was made by the patrol officer, the issue was whether *he* had probable cause.

At the outset, it should be noted that the courts will not permit post -arrest pooling of information. In other words, an arrest without probable cause cannot be validated later by showing that probable cause would have existed *if* the arresting officer had been aware of information known to other officers.⁴ Instead, the prosecution must prove the arresting officer actually possessed the information or, at least, it was reasonable to infer he did.

The courts will usually infer that an arresting officer was aware of information known to another officer if the officers were "generally communicating" as to developments in the investigation.⁵

Was such "general communication" taking place in *Gomez*? Yes, said the court, mainly because the narcotics investigators and patrol officer were in direct communication and were working closely together. Although the court did not elaborate, the facts support this inference. The narcotics officers must have thoroughly briefed the patrol officer on what they had learned to date because he needed to know that he would be making traffic stops on drivers who were suspected drug dealers. Moreover, he needed to know that the drivers might take desperate measures because they might be transporting large quantities of cocaine. In addition, the officer had, just a few hours earlier, personally

² See *Florida v. Royer* (1983) 460 US 491, 500; *U.S. v. Sharpe* (1985) 470 US 675, 686; *U.S. v. Place* (1983) 462 US 696, 709.

³ *Hayes v. Florida* (1985) 470 U.S. 811, 815-6; *People v. Gorrostieta* (1993) 19 Cal.App.4th 71, 83.

⁴ *People v. Coleman* (1968) 258 Cal.App.2d 560, 563, fn.2; *People v. Ford* (1984) 150 Cal.App.3d 687, 698; *Giannis v. San Francisco* (1978) 78 Cal.App.3d 219, 224.

⁵ See *Illinois v. Andreas* (1983) 463 U.S. 765, 771, fn.5; *U.S. v. Del Vizo* (9th Cir. 1990) 918 F.2d 821, 826; *People v. Rodgers* (1976) 54 Cal.App.3d 508, 518. ALSO SEE *Bailey v. Newland* (9th Cir. 2001) 263 F.3d 1022, 1031-2 ["(T)he Supreme Court has not addressed whether there must be a communication between the officers to support this presumption. Similarly, the lower federal courts have not adopted a uniform rule whether a stop or arrest can be justified by looking to the collective knowledge of the officers, in the absence of evidence of a communication between the officers. Some courts that have considered this issue have held the knowledge of officers working closely together to be mutually imputed without requiring proof of actual communication. At least two courts have allowed knowledge to be imputed between officers upon evidence of some communication between them, although without evidence that the specific facts necessary to establish probable cause were communicated. Still other courts have rejected the idea of imputed knowledge when the district court found that the information at issue had not been shared."].

discovered a large quantity of cocaine in another vehicle that had just left the same residence. Thus, the court concluded: Here, probable cause for an investigatory detention was based on a combination of information, some of which was supplied to [the patrol officer] by [a narcotics officer], and some of which stemmed from [the patrol officer's] own experience and training relating to narcotics enforcement along with the seizure of the 14 kilogram-size packages of cocaine from codefendant Melendrez's vehicle just a few hours earlier.

Consequently, the court ruled the *de facto* arrest was supported by probable cause and, therefore, the cocaine was properly admitted into evidence. POV