

U.S. v. Howard

(7th Cir. 2013) 729 F.3d 655

Issues

(1) Did an officer have grounds to detain the defendant in order to safely arrest one of his companion? (2) Was the detention unnecessarily intrusive?

Facts

A police detective in Wisconsin had been attempting to locate a man named Marcus Johnson who was wanted for pistol-whipping a man in a bar one week earlier. Johnson was also a suspect in a recent shooting. While staking out a parking lot, the detective saw a van pull up and park; the van was “known to be associated with Johnson.” After requesting backup, the detective saw Johnson and another man exit the van and start walking toward an apartment building. The detective drew his gun and started to follow them on foot when he suddenly realized that two other men had just exited the van and were walking behind him. At that point, as he testified, it was “a bad situation because I was in between two groups of individuals and I was outnumbered.” The detective then pointed his gun at the men behind him, identified himself, and ordered everyone to the ground while waiting for backup.

The first backup officer was handcuffing Johnson when his companion fled. Rather than chase him, the officer searched Johnson and, in addition to finding crack cocaine, noticed bloodstains on his pants and shoes. The officer then locked Johnson in his patrol car and walked over to the detective who was still detaining the other two men at gunpoint. One of the men was Darius Howard.

Almost immediately, the officer noticed bloodstains on the clothing of Howard and the other man. Both were then handcuffed and the detective searched the van in which he found a baseball bat and a gun wrapped in a bloody shirt. He was then informed that the four men were suspects in an armed robbery that had occurred about one hour earlier. Howard subsequently confessed to the robbery, saying “he used the shirt to wipe the robbery victim’s blood off the gun at Johnson’s request.”

The appeal in this case pertains only to the federal charges filed against Howard for being a felon in possession of the firearm in the van and possession of cocaine that was found during a search incident to arrest. Howard filed a motion to suppress the evidence but it was denied. He then pled guilty and appealed the suppression ruling to the Seventh Circuit.

Discussion

According to Howard, the evidence was seized illegally because the detective lacked grounds to detain him. Specifically, Howard pointed out that he was not suspected of having committed any crime, that he was “not acting suspiciously in any way,” and that he made no furtive movements.

Although most detentions are based on reasonable suspicion to believe that the detainee had committed a crime,¹ there is another type of detention—commonly known as a “special needs” detention—which is permitted if the strength of the need for a

¹ See *Terry v. Ohio* (1968) 392 U.S. 1.

temporary seizure outweighed its intrusiveness.² Consequently, the lawfulness of Howard's detention depended on whether the facts satisfied this test.

Starting with the need for the detention, the court pointed out that the detective "was alone and was attempting to arrest Johnson for a violent crime involving a gun. He was surprised when Johnson's associates exited the same van. He reasonably concluded that they presented a potential threat to his ability to arrest Johnson safely." The court then considered the intrusiveness of the detention and noted that Howard was seized "for only a few minutes until Johnson was arrested. Then [the officer] came over and almost immediately noticed facts [the bloody clothing] that gave the police particularized suspicion to continue to keep Howard on the scene." Thus, it was apparent that the need for the detention outweighed its intrusiveness and it was therefore a lawful "special needs" detention. Howard's conviction was affirmed. POV

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² See *Illinois v. Lidster* (2004) 540 U.S. 419, 427 ["[I]n judging reasonableness, we look to the gravity of the public concerns served by the seizure, the degree to which the seizure advances the public interest, and the severity of the interference with individual liberty."]; *In re Randy G.* (2001) 26 Cal.4th 556, 566 ["there is no ready test for determining reasonableness other than by balancing the need to search or seize against the invasion which the search or seizure entails"]; *People v. Profit* (1986) 183 Cal.App.3d 849, 883 [the seriousness of the offense under investigation is a "highly determinative factor in any evaluation of police conduct"]; *Mueller v. Aufer* (9th Cir. 2012) 694 F.3d 989, 997 ["but neither probable cause nor a warrant is required when special needs, beyond the normal need for law enforcement, make the warrant and probable-cause requirement impracticable"].