

In re Humberto O.

(April 26, 2000) __ Cal.App.4th __

ISSUES

(1) Did officers have grounds to detain a juvenile for truancy? (2) Before transporting a truant to school, may officers search him incident to an "arrest?" (3) If so, what is the permissible scope of such a search?

FACTS

At about 9:15 A.M., LAPD officers on "juvenile patrol" saw Humberto walking down a street several miles from Hollywood High School. The officers suspected Humberto was a truant mainly because of his youthful appearance, the fact he was carrying a backpack, and he was not walking near a school.

The officers detained Humberto who admitted he was a student at Hollywood High. Officers then checked with the Los Angeles Unified School District's "track system" and determined Humberto was "on track," which meant he was supposed to be in school at the time he was detained.

Pursuant to LAPD procedure, the officers were required to transport Humberto to his school. Before doing so, however, they pat searched him and searched the backpack he was carrying. Inside the backpack, they found a dagger. Humberto was subsequently charged with possession of a dagger. ⁽¹⁾

DISCUSSION

Humberto contended the dagger was seized illegally because, (1) the officers did not have grounds to detain him, (2) officers who are about to transport a truant to school may not search the juvenile or his property, and (3) even if such a search were permissible, they could not lawfully search his backpack. The court disagreed with all three contentions.

Grounds to detain

As noted, Humberto was detained because the officers suspected he was a truant. Under California law, all children between the ages of six to 18 must attend school full time unless they are exempt or have a valid excuse. ⁽²⁾ Although truancy is not a "crime," ⁽³⁾ officers may nevertheless detain a person who is reasonably believed to be a truant. ⁽⁴⁾

Grounds to detain a suspected truant exist if the suspect was not in school during school hours and reasonably appeared to be between the ages of six and 18. ⁽⁵⁾

In determining whether a suspect appeared to be between six and 18, officers must necessarily rely largely on the suspect's physical appearance. Although this may be a very subjective determination, the California Supreme Court has ruled it is a "highly relevant and objectively verifiable factor in determining the propriety of a truancy detention." ⁽⁶⁾ Another relevant circumstance is the fact that the suspect was carrying a backpack. ⁽⁷⁾

Applying these principles to the facts, the court in *Humberto* ruled the officers did, in fact, have adequate grounds to detain Humberto. Said the court, "Here, defendant was found several miles from school, during school hours. Defendant was youthful looking and was carrying a backpack."

Search incident to arrest

As noted, after the officers determined Humberto was a truant, they searched his backpack. The People contended the search of the backpack was permitted as a search incident to arrest. The court agreed.

Officers may conduct a search incident to an arrest whenever the following three circumstances exist: (1) there was probable cause to arrest the suspect; (2) the suspect would be taken into custody, not cited and released; and (3) the search was contemporaneous with the arrest. Although the purpose of a search incident to arrest is to locate and seize weapons and destructible evidence, officers are not required to show there was reason to believe they may find such things.⁽⁸⁾ Instead, the search is permitted as a matter of routine whenever these three circumstances existed.

In *Humberto*, it was apparent the search met all criteria. First, Humberto was detained during school hours, he admitted he was a high school student, and he did not claim to be excused or exempt from attendance. Although truancy is not technically a "crime," under California law the act of taking a truant into custody is deemed an "arrest."⁽⁹⁾ Consequently, Humberto was lawfully arrested. Said the court, "If the minor is in fact a truant, and fails to provide an excuse or note for his or her absence from school during school hours, the police have probable cause to make a [truancy] arrest."

Second, under California law, an officer who arrests or takes a truant into temporary custody must transport the truant to a parent, guardian, other person having lawful control, to the truant's school, to a school counselor or counseling center.⁽¹⁰⁾ In the context of searches incident to arrest, this act of transporting the truant from the detention site constitutes taking him into "custody."⁽¹¹⁾

Third, the search was contemporaneous with the arrest because it occurred at or near the time and place of the arrest.

Accordingly, the officers had a legal right to search Humberto incident to the arrest.

Scope of search

Finally, Humberto argued that even if the officers had a legal right to conduct a search incident to his arrest, they could not lawfully search his backpack.

It is settled that officers who are conducting a search incident to an arrest may search the arrestee's person and the area within the arrestee's "immediate control."⁽¹²⁾ This includes all personal property and containers that were in the arrestee's possession at the time of arrest,⁽¹³⁾ such as the arrestee's wallet,⁽¹⁴⁾ purse,⁽¹⁵⁾ and shoulder bag.⁽¹⁶⁾

That being the case, the search of Humberto's backpack was clearly lawful because, as the court noted, "The property searched was a backpack that defendant was wearing at the time of his arrest."

Consequently, the court ruled the search of Humberto's backpack was lawful.

(1) See Penal Code §12020(a).

(2) See Education Code §§ 48200, 48264.

(3) See *In re James D.* (1987) 43 Cal.3d 903, 916, fn.7.

(4) See *In re James D.* (1987) 43 Cal.3d 903, 916.

(5) See *In re James D.* (1987) 43 Cal.3d 903, 917.

(6) *In re James D.* (1987) 43 Cal.3d 903, 917.

(7) See *In re James D.* (1987) 43 Cal.3d 903, 917.

(8) See *United States v. Robinson* (1973) 414 US 218, 234-5; *Preston v. United States* (1964) 376 US 364, 367; *New York v. Belton* (1981) 453 US 454, 457; *United States v. Chadwick* (1977) 433 US 1, 14; *People v. Gutierrez* (1984) 163 Cal.App.3d 332, 334-5.

(9) See Education Code § 48264.

(10) See Education Code § 48265.

(11) See *In re Demetrius A.* (1989) 208 Cal.App.3d 1245, 1248; *People v. Breault* (1990) 223 Cal.App.3d 125, 132; *United States v. Robinson* (1973) 414 US 218, 235; *Gustafson v. Florida* (1973) 414 US 260, 265; *Knowles v. Iowa* (1998) 525 US __ [142 L.Ed.2d 492]. **NOTE:** The reason the arrest must be "custodial" was explained by the United States Supreme Court when it said, "It is scarcely open to doubt that the danger to an officer is far greater in the case of the extended exposure which follows the taking of a suspect into custody and transporting him to the police station . . ." *United States v. Robinson* (1973) 414 US 218, 234-5. "The danger to the police officer flows from the fact of the arrest, and its attendant proximity, stress and uncertainty . . ." *Ibid.*

(12) See *Chimel v. California* (1969) 395 US 752, 763; *United States v. Chadwick* (1977) 433 US 1, 14-5; *Preston v. United States* (1964) 376 US 364, 367. **NOTE:** In addition, if the arrestee was an occupant of a vehicle, officers may search the passenger compartment incident to the arrest. See *New York v. Belton* (1981) 453 US 454, 460.

(13) See *People v. Limon* (1993) 17 Cal.App.4th 524, 538 ["This court has determined that an officer with probable cause to arrest can also open any container found on the arrestee in the course of a full body search."].

(14) *People v. Aguilar* (1985) 165 Cal.App.3d 221, 225; *People v. Methey* (1991) 227 Cal.App.3d 349, 358-9; *People v. Loudermilk* (1987) 195 Cal.App.3d 996, 1005-6.

(15) See *People v. Baker* (1970) 12 Cal.App.3d 826, 841; *People v. Ingham* (1992) 5 Cal.App.4th 326, 331; *People v. Nagdeman* (1980) 110 Cal.App.3d 404, 412; *People v. Garcia* (1981) 115 Cal.App.3d 85, 103; *People v. Belvin* (1969) 275 Cal.App.2d 955, 957-9; *People v. Harris* (1980) 105 Cal.App.3d 204, 216; *People v. Superior Court (Irwin)* (1973) 33 Cal.App.3d 475, 479.

(16) See *People v. Flores* (1979) 100 Cal.App.3d 221, 230.