Recent Cases

People v. Jimenez

(2021) __ Cal.App.5th __ [2021 WL 5905719]

Issue

Did an officer coerce a murder suspect into confessing?

Facts

At about midnight, a San Bernardino County sheriff's deputy spotted Enrique Jimenez two young men standing in an open field near some trash cans. When the men saw the deputy, they all ran to a Chevy Suburban parked nearby and sped off. Thinking that the men were illegally dumping garbage, the deputy gave chase. In a bizarre twist, Jimenez took a brief detour back to the lot where he stopped next to the trash can, opened the lid, and used a lighter to set fire to the contents—one of which was the dead body of Morris Barnes.

Jimenez sped off again but later stopped briefly to let his two accomplices out. They ran, and Jimenez sped off, but all were quickly apprehended. It turned out that the two other people in the Suburban were Jimenez's teenage boys, aged 14 and 17.

Back at the lot, deputies determined that Barnes had been stabbed several times and that the fire in the trash can started so quickly because Jimenez or one of his sons had poured gasoline over the body.

At the sheriff's office, Jimenez waived his *Miranda* rights and was interviewed by a detective.[12] Although he claimed that his sons "didn't know nothin" about the dead body, the detective informed him that his sons "told me everything that they were asked to do." He also said that they would be charged unless there was reason to believe they were not involved. And he pointed out that Jimenez was in a position to "help them" because, otherwise, "I'm gonna have to charge them with the death of this guy." Jimenez then confessed and was convicted of murder.

Discussion

On appeal, Jimenez argued that his confession should have been suppressed because the detective essentially threatened to charge his sons with murder if he refused. In a split decision, the court agreed.

A statement is deemed coerced if there was "police overreaching," meaning "coercive police activity" that generated the kind of stress that compelled the suspect to confess or make a damaging admission—the kind of pressure that has "drained [his] capacity for freedom of choice."[13] The question, then, was whether it was inherently coercive to inform Jimenez that his sons might not be charged if he explained what they had done.

Officers may not, of course, threaten to punish a suspect's friends or relatives if he refused to give a statement. If, however, they reasonably believed that the friend or relative participated in the crime or was an accessory they may inform him that he might be able to reduce or eliminate their legal problems by making a statement. As the First Circuit observed, "An officer's truthful description of the family member's predicament is permissible since it merely constitutes an attempt to both accurately depict the situation to the suspect and to elicit more information about the family member's culpability."[14]

Accordingly, the main issue in the case was whether the detective had reason to believe that Jimenez's sons were involved in the murder. Here's what he knew:

(1) When the deputy arrived at the lot, Jimenez's sons were standing at or near a trash can that contained the body of a man who had been stabbed to death.

(2) As the deputy arrived, Jimenez and his sons ran to the SUV.

(3) With his sons still inside the SUV, Jimenez led deputies on a high-speed chase.

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[1] *Pennsylvania v. Mimms* (1977) 434 U.S. 106, 110.

[2] *U.S. v. Meza-Corrales* (9th Cir. 1999) 183 F.3d 1116, 1123.

(4) A few minutes later, Jimenez and his sons returned to the lot, at which point Jimenez "leaned out the window, lifted the lid the trash can and used a lighter to set fire to the victim's body.

(5) While Jimenez was doing this, his sons could have jumped out and surrendered but they remained inside. Jimenez then sped off.

(6) A few minutes later, he stopped the SUV at which point his sons bailed out and fled on foot.

(7) After deputies apprehended the sons, they said that they were aware that there were "some things" in the garbage can.

Obviously, the detective had good reason to believe that the sons participated in the murder or, at the least, the attempt to dispose of the body. As the dissenting justice pointed out, "There was ample suspicion to investigate whether any, or all, of the three might have committed, or assisted or conspired with each other in committing, the murder itself." In fact, Jimenez admitted as much when, during the interview, he said "I shouldn't have involved any of them." But he *did* involve them, and it was the detective's responsibility to determine the extent of their involvement. The majority thought this was unreasonable.

Finally, the majority alleged that the detective "knew defendant's sons were not guilty of murder, but he intended to charge them with murder anyway, unless defendant confessed." Accusing an officer of corruption is a serious allegation that most judges would not make in the absence of direct evidence. So, what proof did the majority present other than mere inference? None. What's more, Jimenez's attorney demolished the majority's allegation when, during the trial, he told the jury, "I think you will agree with me that [the detective is] an exemplary officer who did not do anything improper in this case, and certainly didn't do anything to force anybody to say what they said." Enough said. POV

[3] *Kansas v. Glover* (2020) __ U.S. __ [140 S.Ct. 1183].
[4] *Illinois v. Wardlow* (2000) 528 U.S. 119, 123.
[5] (2018) __ U.S. __ [138 S.Ct. 577, 588].

French v. Merrill

(1st Cir. 2021) 9 F.4th 129

Issue

Did officers violate the Fourth Amendment while conducting a "knock and talk"?

Facts

Christopher French and Samantha Nardone, both students at the University of Maine, had a stormy on-and-off relationship that resulted in several 911 calls to the police. In one of those cases, officers arrested French for domestic violence, but the charges were eventually dropped for "insufficient evidence."

About seven months later, at about 3 a.m., officers responded to a report that French had broken into Nardone's home and stole a cellphone while she and her roommate were sleeping. When they arrived, they spoke with Nardone, but French had already left. So, they decided to go over to his home and conduct a "knock and talk."

French did not respond when the officers knocked on the door, so they continued knocking and yelling for him to come to the front door. He ventually did so, and admitted that he had visited Nardone's home earlier that evening." But he denied that he stole anything. Having concluded that French's story was "not credible," the officers arrested him for burglary. The charge was later dismissed because Nardone refused to cooperate.

French then sued the officers, contending that their "knock and talk" violated the Fourth Amendment. The trial court ruled the officers were entitled to qualified immunity on grounds that their conduct did not violate "clearly established" law. French appealed to the First Circuit.

Discussion

A "knock and talk" is simply a visit by officers to a suspect's home, usually for the purpose talking with the suspect to confirm or dispel their suspicion that he had committed a crime under investigation. Knock and talks have been described as "an accepted investigatory tactic,"[15] and a "legitimate investigative technique."[16] There are, however, a few restrictions. The main one is that officers must conduct themselves in a manner that is consistent with that of uninvited guests.[17]

Was this the type of conduct that people expect from visitors? Hardly. As the court pointed out, "police officers not armed with a warrant engaged in conduct in pursuit of a criminal investigation within the curtilage that was inconsistent with the implied social license pursuant to which an officer may enter the curtilage of a home." Consequently, the court ruled that "any reasonable officer would have understood that their actions on the curtilage of French's property exceeded the limited scope of the customary social license," and it ruled the officers were not entitled to qualified immunity.

rt noted that the first panel had ruled that the officer actually began the pat search when he ordered Weaver to exit. This was patently absurd and the court summarily ruled that the search did not begin until the officer "physically patted him down."

[6] (2007) 551 U.S. 249, 254.
[7] (1991) 499 U.S. 621, 628. Also see *Morgan v. Woessner* (9th Cir. 1993) 997 F.2d 1244, 1254.
[8] (1980) 446 U.S. 554, fn.6.
[9] (1997) 16 Cal.4th 805, 821. Also see *People v. Ross* (1990) 217 Cal.App.3d 879, 884.

The question, then, was whether the officer had sufficient grounds to believe that Weaver was armed or dangerous. One circumstance that is commonly cited is that the suspect made a "furtive gesture," meaning a movement by the suspect, usually of the hands or arms, that was secretive in nature. A furtive gesture may be a legitimate concern if it reasonably appeared that the detainee might be attempting to hide or retrieve a weapon.

In this case, the furtive gesture obviously appeared to be an attempt to secrete or retrieve a weapon that this circumstance, in and of itself, would have warranted a pat search. Of particular importance, said the court, was the officer's observation of Weaver pushing down on his pelvic area and squirming left and right and "shifting his hips."

In addition, the officer recognized Weaver as the man who, after staring at the police car, had hitched his pants up. This was also significant because, said the court, "It is a reasonable inference that an 'upward tug' may be needed to counteract the downward pull of something else, and it takes no specialized expertise to understand that a firearm would be weighty enough to do just that." It was also suspicious that the backseat passenger suddenly had opened the door as it to flee.

For mainly these reasons, the court reversed the earlier panel's decision and ruled that the officer did, in fact, have sufficient grounds to patsearch Weaver, and it affirmed his conviction.

[10] *US v. Narvaez-Gomez* (9th Cir. 2007) 489 F.3d 970, 973.
[11] (2004) 542 U.S. 600. Also see *People v. Krebs* (2019) 8 Cal.5th 265.

[12] Note: The court did not say if Jimenez had been *Mirandized*; but because he did not allege that the detective violated *Miranda*, he presumably did so.

[13] *Colorado v. Connelly* (1986) 479 U.S. 157, 167, 169.

[14] *U.S. v. Hufstetler* (1st Cir. 2015) 782 F.3d 19, 24. Also see *Peoplev. McWhorter* (2009) 47 Cal.4th 318, 350 [defendant's comments about his wife, mother, and brother made them legitimate subjects of conversation]; *People v. Daniels* (1991) 52 Cal.3d 815, 863 ["Both had apparently helped defendant escape and hide from the police, and could in fact have been charged as accessories"]; *People v. Howard* (1988) 44 Cal.3d 375, 398 [officers "did not imply that the fate of defendant's son and of Stevens depended upon defendant stating what they wanted to hear."].

POV

[15] *U.S. v. Roberts* (5th Cir. 2010) 612 F.3d 306, 310. Also see *U.S. v. Jones* (5th Cir. 2001) 239 F.3d 716, 720.
[16] *U.S. v. Lucas* (6C 2011) 640 F.3d 168, 174.
[17] *Florida v. Jardines* (2013) 569 U.S. 1, 8.

[4] (2007) 551 U.S. 249, 254. Also see *California v. Hodari D.* (1991) 499 U.S. 621, 626.
[5] *California v. Hodari D.* (1991) 499 U.S. 621, 628. Also see *Morgan v. Woessner* (9C 1993) 997 F.2d 1244, 1254 ["an officer's subjective belief is ordinarily irrelevant to the question whether a citizen believes that he or she is free to go." Edited.]; *U.S. v. Thompson* (7th Cir. 1997) 106 F.3d 794, 798 ["That Thompson subjectively perceived [the officer's] actions as coercive does not render them objectively unreasonable"]; *U.S. v. Analla* (4th Cir. 1992) 975 F.2d 119, 124 [an encounter does not become a seizure because the suspect testified that, based on his prior experience with officers, he thought he would be arrested if he tried to leave].
[6] (1997) 16 Cal.4th 805, 821. Also see *People v. Ross* (1990) 217 Cal.App.3d 879, 884 ["The officer's state of mind is not relevant for resolution of this question except insofar as his overt actions would communicate that state of mind."]; *People v. Bailey* (1985) 176 Cal.App.3d 402, 406 ["The officer's statement as to his state of mind at the time he turned on his emergency equipment, that the driver was not free to leave, is not relevant. His communication of that state of mind by energizing the signal to stop or to stay is relevant."].
[7] See *Maryland v. Wilson* (1997) 519 U.S. 408, 415 [officers "may order passengers to get out of the car pending completion of the stop"]; *People v. Lomax* (2010) 49 Cal.4th 530, 564 ["officers may order the driver and passengers out of the car pending completion of the [traffic] stop"].
[8] See U.S. v. Williams (9th Cir. 2005) 419 F.3d 1029, 1032, 1033 ["We think the difference in ordering the passenger back inside the car is immaterial."].
[9] *U.S. v. Narvaez-Gomez* (9th Cir. 2007) 489 F.3d 970, 973. Also see *Missouri v. Seibert* (2004) 542 U.S. 600.
[10] See *People v. Krebs* (2019) 8 Cal.5th 265; *U.S. v. Williams* (9th Cir. 2006) 435 F.3d 1148, 1158.
[11] *U.S. v. Roberts* (5th Cir. 2010) 612 F.3d 306, 310; *U.S. v. Jones* (5th Cir. 2001) 239 F.3d 716, 720 ["Federal courts have recognized the 'knock and talk' strategy as a reasonable investigative tool"]
[12] *U.S. v. Lucas* (6th Cir. 2011) 640 F.3d 168, 174.
[13] *Florida v. Jardines* (2013) 569 U.S. 1, 8.
[14] See *U.S. v. Cormier* (9th Cir. 2000) 220 F.3d 1103, 1110 [the courts "have recognized that nocturnal encounters with the police in a residence (or a hotel or motel room) should be examined with the greatest of caution."]. Compare *U.S. v. Crapser* (9th Cir. 2007) 472 F.3d 1141, 1146 ["The encounter occurred in the middle of the day"].
[15] See *Bailey v. Newland* (9th Cir. 2001) 263 F.3d 1022, 1026 [although the time was 2:15 a.m., "the lights were on in the room"].
[16] *Florida v. Jardines* (2013) 569 U.S. 1, 8.

Endnotes