

ISSUES

Did officers have grounds to detain and pat search the defendant? Did the defendant violate Penal Code § 148 when he refused to allow an officer to pat search him, and when he refused to comply with an officer's commands?

FACTS

At about 7 P.M., two men approached a woman "in a threatening manner." The woman saw that one of the men had a handgun. The woman got away and asked her daughter to phone the police. When officers arrived, the woman pointed to two men who were standing nearby and said they were the ones who threatened her. Because it was dark, she could not say which of the two had the gun. As one of the officers approached the men, one of them, Lopez, split off from the group and walked toward the officer.

Lopez was wearing baggy pants, and the officer could tell there was a "large heavy object" in the front pocket. When the officer asked him to identify himself, Lopez responded, "Fuck you. I don't have to tell you my name." The officer told Lopez that he had received a report of a man with a gun, and that he would have to pat search him. Lopez replied, "You're fucking not going to pat me down."

The officers noticed that Lopez had "reached towards the front of his pants several times." So they ordered him to sit down and keep his hands visible. Lopez initially complied, but when an officer tried to pat search him he "rolled on his side to kick the officer and slid away."

Lopez was warned that if he did not submit to a pat search he would be shot with a nonlethal beanbag. Lopez responded, "Fuck that," at which point he was shot in the chest with a nonlethal beanbag. He still wouldn't comply, so he was shot again. Momentarily disabled, Lopez was handcuffed. Officers then searched his pants and found a loaded 9-millimeter handgun in his pocket. The safety was off, a bullet chambered, and seven more bullets were in the magazine.

Lopez was convicted of being a felon in possession of a firearm.

DISCUSSION

Lopez contended the gun should have been suppressed. Specifically, he argued that it was obtained during a search incident to his arrest for violating Penal Code § 148 [resisting, delaying or obstructing an officer in the performance of his duties], but the officers did not have grounds to detain or pat search him and, therefore, the arrest was unlawful. The court disagreed.

Officers may detain a suspect if they have "reasonable suspicion," which exists if they were aware of facts that reasonably indicated the suspect was committing a crime, had committed a crime, was about to commit a crime, or was a fugitive.¹ And, officers may pat search a detainee if they reasonably believe he, (1) is armed with a conventional weapon or an object that could be used as a weapon, or (2) constituted a danger to officers or others.²

¹ See *United States v. Cortez* (1981) 449 US 411, 417-8; *Delaware v. Prouse* (1979) 440 US 648, 663; *United States v. Hensley* (1985) 469 US 221, 229; *In re Tony C.* (1978) 21 Cal.3d 888, 893; *People v. Conway* (1990) 222 Cal.App.3d 806, 812; *People v. Conway* (1994) 25 Cal.App.4th 385, 389; *People v. Ramirez* (1996) 41 Cal.App.4th 1608, 1613; *People v. Bell* (1996) 43 Cal.App.4th 754, 761; *People v. Castellon* (1999) 76 Cal.App.4th 1369, 1373.

² See *Terry v. Ohio* (1968) 392 US 1, 27-8; *Ybarra v. Illinois* (1979) 444 US 85, 93-4; *Adams v. Williams* (1972) 407 US 143; *In re Richard C.* (1979) 89 Cal.App.3d 477, 488; *People v. Suennen*

With these requirements in mind, the court ruled both the detention and the pat search were lawful. Although there was only a one-in-two chance that Lopez was the one with the gun, that was sufficient. Said the court:

[The officer] had a reasonable suspicion to make an investigatory stop and conduct a protective pat-down for weapons. Appellant was belligerent, refused to give his name, refused to keep his hands visible, and refused to submit to a pat-down. After he was ordered to sit down, he popped back up. And it was the same “fuck that, you’re not touching me, you’re not patting me down. . . .”

This conduct, said the court, “interfered with the officers’ duty to perform a pat-down search” and, therefore, constituted a violation of Penal Code § 148. Consequently, both the arrest and the search incident to the arrest were lawful.

(1980) 114 Cal.App.3d 192, 199; *People v. Williams* (1992) 3 Cal.App.4th 1100, 1104; *In re Frank V.* (1991) 233 Cal.App.3d 1232, 1240; *People v. Dickey* (1994) 21 Cal.App.4th 952, 956; *People v. Franklin* (1985) 171 Cal.App.3d 627, 635. ALSO SEE *New York v. Class* (1986) 475 US 106, 117 [only reasonable suspicion—not probable cause—is required].