

Recent Case Report

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People v. Mendoza

(2011) 52 Cal.4th 1056

Issue

May officers pat search a person who is being contacted—not detained?

Facts

A Pomona police officer, Daniel Fraembs, contacted Mendoza, Cesena, and a woman as they were walking along a “lonely industrial street” at 1:30 A.M. Although it seems likely that Officer Fraembs had grounds to detain them,¹ the court apparently assumed for the sake of argument that he did not. In any event, the officer decided to pat search Mendoza and Cesena for the following reasons: they were wearing clothing loose enough to conceal a weapon, Mendoza was hostile and much taller than the officer, and Cesena had a knife sheath attached to his belt. While Officer Fraembs was pat searching Cesena, Mendoza shot and killed him.

Mendoza was arrested, convicted, and sentenced to death. One of the grounds for the death sentence was that he had murdered an officer who had been acting in the performance of his duties. On appeal, Mendoza argued that the officer was acting outside the law because he lacked grounds to detain anyone.

Discussion

Officers are ordinarily permitted to pat search suspects only if they had lawfully detained them and had reasonably believed they were armed or dangerous. In *Mendoza*, the California Supreme Court ruled that officers who do not have reasonable suspicion to detain a person may nevertheless pat search him if they reasonably believed (1) he was armed with a weapon, even though the weapon was not illegal to possess; and (2) he presented a threat to them. Said the court, “A consensual encounter may turn into a lawful detention when an individual’s actions give the appearance of potential danger to the officer.” And, for the reasons cited above, the court ruled that the actions of Mendoza and Cesena “amply” satisfied this requirement, and that Officer Fraembs was, in fact, acting in the performance of his duties when he was murdered. Consequently, the court ruled the trial court correctly denied Mendoza’s motion to strike the special circumstances enhancement. POV

¹ **NOTE:** As the prosecutor argued in his closing argument, “It is 1:30 in the morning and [Fraembs] elected to find out what is going on with these three people Are these three motorists that have been stranded and are looking for help? Is this female who is in the presence of the two males, is she involuntarily in their company? Are these three people who are lost? Are these three people suspects who are looking for a vehicle to burglarize or perhaps a business to burglarize because, remember, this is an industrial street. [¶] Officer Fraembs doesn't know.”