

# Recent Case Report

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## **People v. Rodriguez**

(2012) 207 Cal.App.4th 1540

### **Issue**

Did an officer have grounds to detain a suspect because he ran from him? If not, were there sufficient additional circumstances to warrant the stop?

### **Facts**

When a Santa Paula police officer attempted to make a traffic stop on a car, the driver took off. There were two men in the car and, at some point during the pursuit, the driver slowed down and the passenger bailed out and ran. The pursuing officer continued to chase the driver but broadcast a description of the passenger to the backup officers. About a minute later, Officer Joash Rothermel saw a man walking alone about a half block away. The man matched the description of the bailing passenger, although the court did not say whether the description was general or specific. In any event, Officer Rothermel stopped, shined his spotlight on the man, and stepped out of his car. As he did so, the man sprinted across the street and continued to run. During the chase, he threw something over a fence.

Officer Rothermel eventually grabbed him, at which point the man “tugged” at the officer’s gun holster and attempted to remove the weapon. He did not succeed and was eventually taken into custody. It turned out the item he had tossed was a digital scale with methamphetamine residue.

The man, later identified as Jose Rodriguez, was convicted of violently resisting an officer in the lawful performance of his duties;<sup>1</sup> and because he had served two previous prison terms, he was sentenced to four years in prison.

### **Discussion**

On appeal, Rodriguez argued that he could not be found guilty of resisting an officer in the lawful performance of his duties because Officer Rothermel did not have grounds to detain him and, thus, he was acting unlawfully. As the court explained, “The crime of deterring, preventing, or resisting an officer by force and violence requires that the officer be engaged in the lawful performance of his duties.” Consequently, said the court, “it was necessary to prove that Officer Rothermel had legal cause, i.e., a reasonable suspicion to detain appellant.”

At the outset it should be noted that, even though Officer Rothermel apparently had probable cause to believe that Rodriguez was the passenger in the car, he did not initially have probable cause to arrest him as the result of the pursuit. That was because the only person who had committed a crime at that point was the driver. Thus, Officer Rothermel would have been acting in the lawful performance of his duties only if he had some independent reason to detain Rodriguez.

One such reason, or so it would seem, was that Rodriguez ran from the officer after he shined his spotlight on him and stepped from his patrol car. However, the United

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<sup>1</sup> Pen. Code § 69.

States Supreme Court has ruled that flight, while very suspicious, will not automatically provide grounds to detain. Said the court, “Headlong flight—wherever it occurs—is the consummate act of evasion; it is not necessarily indicative of wrongdoing, but it is certainly suggestive of such.”<sup>2</sup> The Court also ruled, however, that while flight will not automatically justify a detention, not much more is required. In fact, the courts have coined the term “flight plus” to express the rule that grounds to detain will exist if, in addition to flight, there was some additional suspicious circumstance. As the California Supreme Court explained, “[A]n inference of guilt from flight” may be found “only in those instances in which there is other indication of criminality, such as evidence that the defendant fled from a crime scene or after being accused of a crime. To put it succinctly, these authorities rely on ‘flight plus.’”<sup>3</sup>

Was Officer Rothermel aware of such an additional suspicious circumstance? Actually, he was aware of three: (1) Rodriguez bailed out of a vehicle that was being pursued by police; (2) after he bailed, he continued to run; and (3), as he ran, he tossed something away. Said the court, “Officer Rothermel did not know why appellant fled from the first officer or why he took flight again. It was his job to find out why. He would have been derelict in his duties had he not attempted to detain appellant.”

Accordingly, the court ruled that Rodriguez’s “penchant for flight, coupled with the toss of an item during a police pursuit [was] certainly suggestive of wrong doing. It supports the reasonable suspicion requirement for a lawful detention.”

The court also made the following point:

The movies glorify instances of suspected criminals attempting to avoid detention and arrest. In the movies, they often succeed in the wake of inept police officers. But in real life, the suspects rarely succeed. Their conduct poses a danger to the police, the suspect, and innocent bystanders. Here, appellant’s attempt to avoid apprehension did not succeed and resulted in injury to the officer. It could have easily been worse. Any attempt by a suspect to gain control of an officer’s firearm is the acme of foolishness. Had appellant succeeded, responding officers would have had justifiable concern for the own safety and a gun battle could have easily erupted. POV

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<sup>2</sup> *Illinois v. Wardlow* (2000) 528 U.S. 119, 124. ALSO SEE *California v. Hodari* (1991) 499 U.S. 621, 623, fn.1 [“The wicked flee when no man pursueth.” Quoting Proverbs 28:1].

<sup>3</sup> *People v. Souza* (1994) 9 Cal.4th 224, 235-36. ALSO SEE *Illinois v. Wardlow* (2000) 528 U.S. 119, 124 [flight plus “presence in an area of heavy narcotics trafficking”]; *People v. Britton* (2001) 91 Cal.App.4th 1112, 1118 [“More than simple unprovoked flight occurred here. Rather, Lipton testified to what might be dubbed ‘flight plus.’”]; *U.S. v. Smith* (9th Cir. 2011) 633 F.3d 889, 894 [flight in “high-crime neighborhood”].