

## **People v. Russell**

(June 1, 2000) \_\_ Cal.App.4th \_\_ [C031844]

### **ISSUE**

Did a traffic stop become unlawful when an officer asked the occupants questions that did not pertain to the suspected traffic violation?

### **FACTS**

At about 7 a.m. a CHP officer patrolling Interstate 5 in Shasta County made a traffic stop on a car that had been drifting within and sometimes outside its lane of traffic. As the officer approached the car he smelled an “overwhelmingly strong” odor. Having received extensive training in drug interdiction, the officer was aware that drug runners frequently use air fresheners to mask the odor of drugs.

As the officer approached the driver, later identified as Louis Burks, Burks immediately said, without being asked, that the odor was coming from a Vicks cold tablet he was taking for a cold. The officer noted, however, the odor did not smell like a Vicks tablet. When asked for ID, Burks produced a driver’s license in the name of Larry Johnson. Burks said he did not have the vehicle’s registration because the car did not belong to him; it belonged to his passenger’s niece.

While talking with Burks, the officer concluded his poor driving was probably caused by a lack of sleep and a cold, rather than drugs or alcohol. But by this time, the officer suspected the men were transporting drugs. This suspicion was based on the following:

- The strong odor which was consistent with an attempt to mask the odor of drugs. Burks’ unsolicited and apparently false claim that the odor was coming from a cough drop.
- The registered owner was not present in the vehicle, “a ploy used by drug traffickers to try to create confusion as to who is responsible for drugs found in the car.”
- One of the occupants was wearing a pager and there was a cell phone in the car.
- There were worn screws on the dash, indicating the dashboard may have been removed.
- The upholstery did not appear to be original, “suggesting the vehicle may have been disassembled.”
- The occupants were two men from Los Angeles “where large quantities of drugs are brought into the country.”

At this point, the officer asked Burks to step back to the patrol car. The reason for doing this was to investigate whether Burks was fit to drive and determine whether he was transporting drugs. Burks, who appeared nervous and was hesitant in giving answers, said he and Russell were heading to Portland for a short vacation, that they were *not* going to be visiting friends of family. Burks also said he was cold and sick, so the officer asked if he wanted to sit in the patrol car. Presumably, Burks said yes because, according to the court, Burks “sat in the back seat of the patrol car, and the officer closed the door (which could not be opened from the inside).”

The officer then spoke with the passenger, later identified as Robert Russell, who produced a driver’s license in the name of Robert Bangston. According to Russell, he and Burks were going to Portland to

visit Russell's niece. This was suspicious because Burks specifically said they would not be visiting friends or relatives. In addition, Russell could not provide his niece's address or phone number. He did, however, say that because the car belonged to his niece, he was responsible for the car and its contents. So, the officer asked him for consent to search the car. Russell said okay.

After asking Russell to sit in the patrol car with Burks, the officer searched the car and discovered a secret compartment between the rear seat and trunk wall. As the result, both men were arrested for possession of a false compartment to transport drugs.<sup>(1)</sup> Officers later broke open the compartment and found two large bricks of cocaine, guns, and numerous Glade air fresheners.

## DISCUSSION

Burks and Russell contended the search of the car was unlawful because Russell's consent was obtained after the traffic stop had become illegally prolonged. This contention was based on the settled rule that officers who have detained a suspect may do only those things that are reasonably necessary to carry out their duties pertaining to the stop.<sup>(2)</sup> After that, they must release the suspect.

The court pointed out that in this case the legal basis for the stop was to investigate the possibility the driver was impaired. And when the officer determined that Burks was not under the influence of alcohol or drugs, the officer would ordinarily have been required to release him.

There is, however, another settled rule pertaining to traffic stops: If, during the course of a stop, officers develop reasonable suspicion to believe an occupant is committing or has committed some other crime, the officers may prolong the detention for a reasonable period of time for the purpose of investigating that crime. As the court explained, "Circumstances which develop during a detention may provide reasonable suspicion to prolong the detention. There is no set time limit for a permissible investigative stop; the question is whether the police diligently pursued a means of investigation reasonably designed to confirm or dispel their suspicions quickly."

The question, then, was whether the circumstances that developed after the stop gave the officer reasonable suspicion to detain the men to investigate drug trafficking. The answer, said the court, was yes. What were the suspicious circumstances? First, there was the overwhelming odor of air freshener. The court noted that while many innocent people use air fresheners, "here the odor was overwhelming." And there were several other suspicious circumstances: absence of the car's owner, Russell's inability to provide the owner's address or phone number, the presence of pager and cell phone, dashboard screw indicating possible removal, Burks' nervousness and hesitancy in answering questions, their pair's inconsistent answers.

Consequently, the court ruled there were sufficient grounds to convert the initial traffic stop into a detention to investigate drug trafficking. Consequently, the evidence was obtained lawfully.

(1) See Health & Safety Code § 11366.8.

(2) See *Berkemer v. McCarty* (1984) 468 US 420, 439; *People v. Manis* (1969) 268 Cal.App.2d 653, 661-2; *People v. Brown* (1998) 62 Cal.App.4th 493, 499-500.