

## People v. Garcia

(2016) \_\_ Cal.App.4th \_\_ [2016 WL 693138]

### Issue

Was a showup of three robbery suspects unduly suggestive because officers had detained them about six hours after the holdup and had told the victims beforehand that they “had caught the guys?”

### Facts

Two minors, Daniel and Abraham, were skateboarding in a parking lot in Escondido when they were robbed by three men who stole a cellphone, headphones, and a skateboard. One of the robbers threatened the victims with a hammer. The victims immediately reported the robbery and informed officers that the perpetrators fled in an old gray Honda with a broken back window. They also provided the license number of the Honda. About five hours later, officers spotted four men in the same car near the crime scene, so they attempted to make a car stop. The men led the officers on a short pursuit which ended when all four bailed out in the parking lot of an apartment complex. Three of the men were captured following a foot chase. Inside the car, officers found property that had just been stolen in the robbery of six skateboarders that occurred about two miles away.

At the scene of the car stop, officers phoned Daniel and Abraham and arranged to have them driven to the scene for a showup. During the phone call, Abraham was informed that officers “had caught the guys,” and Daniel was told that the officers “had stopped some people they thought might be involved in the robbery.” Abraham identified all three detainees but Daniel identified none of them. Both Abraham and Daniel positively ID’d the Honda.

After being charged with robbery, among other things, the defendants filed a motion to suppress the showup IDs by Abraham and also the identification of the Honda by Abraham and Daniel. The motion was denied and all three were convicted and sentenced to lengthy prison terms.

### Discussion

The law pertaining to showups is fairly straightforward. As the court explained, “The law permits the use of in-field identifications arising from single-person show-ups so long as the procedures used are not so impermissibly suggestive as to give rise to a substantial likelihood of misidentification.” On appeal, the defendants argued that the showup was impermissibly suggestive because Daniel and Abraham were told beforehand that officers believed that the detainees were, in fact, the robbers.

It has been argued that, prior to showups, officers must never inform a witness that they have detained one of the perpetrators, or that one of the detainees is a “suspect”; e.g., “Which one of these guys did it?”<sup>1</sup> Although such comments should be avoided, it will not ordinarily result in an unfair showup because witnesses who are asked to view a

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<sup>1</sup> See *People v. Vanbuskirk* (1976) 61 Cal.App.3d 395, 400.

lineup will naturally assume that officers did not pick a detainee at random in hopes he was the perpetrator.<sup>2</sup>

In any event, the court in *Garcia* ruled that, even if the comments were suggestive, there were other circumstances that would have reduced the chances of misidentification. Specifically, Abraham was told beforehand that “he should not infer any guilt just because someone had been detained, that he did not have to identify anyone and that it was just as important to free an innocent person as identify someone involved in the crime.” And in his testimony at the motion to suppress, Abraham testified he understood the warning to mean that the officers wanted to know “if those were the correct guys.” Furthermore, Abraham’s ID of the defendants was based on several circumstances, such as their clothing, height, and hair style. As additional proof that the showup was not unduly suggestive, the court noted that, because Daniel did not identify any of the defendants, it appeared that he “felt no suggestion or pressure.” For these reasons, the court ruled the lineup was not unduly suggestive, and it affirmed the defendants’ convictions. POV

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<sup>2</sup> See *People v. Carpenter* (1997) 15 Cal.4th 312, 368 [“Anyone asked to view a lineup would naturally assume the police had a suspect.”].