

## **U.S. v. Knights**

(11th Cir. 2021) \_\_ F.3d \_\_ [2021 WL 908278]

### **Issue**

Was the defendant “detained” when officers approached him to investigate suspicious circumstances?

### **Facts**

At about 1 A.M., two officers in Tampa, Florida noticed two men leaning into a car that was parked in the front yard of a home. Two of the doors on the car were open. As the officers drove by, the men looked at them with a “blank stare” and “seemed nervous.” Thinking that the men might be trying to steal the car, the officers stopped and parked their car next to the vehicle, but did not block it in.

By the time the officers parked their car, one of the men, Anthony Knights, had entered the vehicle and was trying unsuccessfully to start it. An officer knocked on the driver’s window with his flashlight and Knights opened the door, at which point the officer was “overwhelmed with an odor of burnt marijuana.” The officer asked Knights if there was any marijuana in the vehicle and Knights responded, “I’ll be honest with you. It’s all gone.”

The officers then searched the car for marijuana and found, among other things, a handgun, a rifle, and two firearm cartridges. Knights was subsequently charged with possession of a firearm and ammunition by a felon. He filed a motion to suppress which was denied, and he was found guilty.

### **Discussion**

On appeal, Knights argued that the evidence should have been suppressed because the officers’ initial contact with him constituted a detention, and that it was an illegal detention because the officers lacked reasonable suspicion. It was, however, unnecessary for the court to determine whether there was reasonable suspicion because, as we will explain, it ruled that Knights was not detained until the officers smelled the marijuana, at which point they clearly had reasonable suspicion. (Recreational marijuana is illegal in Florida.)

It is settled that a person becomes a detainee if a reasonable person under the circumstances would have believed he was not free to leave.<sup>1</sup> Applying this test, the court ruled that Knights was not initially detained because the officers “did not make a show of authority communicating that Knights was not free to leave, and they did not park their patrol car so as to prevent Knights from driving off. It is also settled that, in determining whether a reasonable person would have believed he was free to leave, the courts examine only the objective circumstances; i.e., the officers’ words and actions. As the court pointed out, “The circumstances of the *situation* are key to this inquiry—in particular the police officer’s objective behavior.”

Knights, however, urged the court to implement a new test by which officers and courts must consider how the circumstances would have appeared to the suspect—not the fictitious reasonable person. Specifically, he contended that officers must take into

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<sup>1</sup> See *Brendlin v. California* (2007) 551 U.S. 249, 256-57; *People v. Brown* (2015) 61 Cal.4th 968, 977.

account the suspect's race because young African-American men, like Knights, "feel that they cannot walk away from police without risking arrest or bodily harm."

The court responded that, "even if we could derive uniform—or at least predominant—attitudes from a characteristic like race, we have no workable method to translate general attitudes towards the police into rigorous analysis of how a reasonable person would understand his freedom of action in a particular situation." Consequently, the court ruled that, because none of the objective circumstances would have caused a reasonable person in Knights' position to believe he was not free to leave, Knights was not detained before the officers smelled the marijuana.

## Comment

One of the judges on the panel, Robin Rosenbaum, wrote a thoughtful concurring opinion in which she urged the Supreme Court to abandon the "free to leave" test because it had become "unworkable and dangerous."<sup>2</sup> It's unworkable, she said, because it requires that officers and judges guess as to what the various surrounding circumstances would have communicated to a reasonable person. It also requires that suspects guess as to whether they are free to leave. As she explained, "Perhaps the most troubling aspect of this [objective] 'free to leave' standard is the Russian Roulette nature of it. [The test] foists on the citizen the complete responsibility for ascertaining whether the officer is detaining him." She also noted that if the suspect erroneously concluded that he was free to leave, might try to do so, and this would be dangerous to the suspect and the officers.

Consequently, she said "it is worth considering" what can be done "to improve the ability of people of all races to feel equally able to exercise their Fourth Amendment rights to leave." One idea, she said, is to require that officers inform contacted suspects that they are free to leave. Although the Supreme Court has consistently rejected this idea, she said that it is "ripe for change," especially in light of recent events. Furthermore, she said that such a rule "would provide a clear framework for citizens, officers, and courts to determine when a seizure has occurred." She acknowledged that this was not a "perfect solution" to the problem, but "it would take a big step towards reflecting the realities of police-citizen interactions and making them safer for both officers and citizens." <sup>[POV]</sup>

**Date posted:** March 17, 2021

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<sup>2</sup> Also see *People v. Linn* (2015) 241 Cal.App.4th 46, 68, fn.10 ["recent empirical research suggesting that a significant number of people do not feel free to leave when approached by police, and even less so when police assert even mild forms of authority"]; *People v. Spicer* (1984) 157 Cal.App.3d 213, 218 [the notion that a contacted suspect would ever feel perfectly free to disregard an officer's requests may be "the greatest legal fiction of the late 20th century"].