

## **U.S. v. Reedy**

(7th Cir. 2021) \_\_ F.3d \_\_ [2021 WL 777768]

### **Issue**

Was the detention of a burglary suspect unduly prolonged?

### **Facts**

At about 8:30 A.M., police in Eau Claire, Wisconsin responded to a report from an employee of a Goodwill store that a homeless person appeared to be living in a white SUV parked behind the store. Upon arriving, an officer saw a beat-up white Kia SUV that matched the vehicle description given by the employee. Inside the car, sitting on the passenger seat, was Joshua Reedy, a known felon with approximately 27 prior arrests. The officer noticed that Reedy was wearing a bulletproof vest, and there was a walkie-talkie tuned to “channel 13” on the floor next to Reedy’s feet.

Reedy claimed he had driven to the Goodwill store with a friend, Jason Harding, who had walked off to visit a friend who lived nearby. A second officer, who had just arrived, went looking for Harding. A third officer arrived and, on the floorboard of the Kia, he noticed a crowbar and an open hunting style knife. The third officer ordered Reedy out of the car and conducted a pat search with negative results. Reedy and the two officers remained at the scene while the third also went looking for Harding whom he spotted in the backyard of a nearby home.

When asked what he was doing there, Harding said he was doing landscaping. That explanation made “no sense” to the officer because he was wearing dress pants and dress shoes. During a consensual pat search, the officer found a walkie-talkie which was also tuned to channel 13. The officer also noticed a backpack in the yard and, after obtaining Harding’s consent, searched it and found several credit cards in the names of various people, shotgun shells, knives, latex gloves, bolt cutters, and a syringe containing methamphetamine. Harding was arrested for possession of drugs. The detention lasted for about 90 minutes.

Having returned to the parking lot, the third officer searched the Kia and found a shotgun and arrested Reedy for possession of a firearm by a felon. Reedy confessed that the shotgun was his. When his motion to suppress the evidence was denied, Reedy pled guilty to the firearm charge.

### **Discussion**

Reedy argued that the shotgun should have been suppressed because the detention had been unduly prolonged while the officers were looking for Harding. The court disagreed.

It is settled that officers who are detaining a person must carry out their duties diligently.<sup>1</sup> And if they fail to do so, the detention becomes a de facto arrest which, like any arrest, is illegal unless officers developed probable cause. This issue often arises when a detention is prolonged because officers suspected that the person was up to something,

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<sup>1</sup> See *United States v. Sharpe* (1985) 470 U.S. 675, 686 [“In assessing whether a detention is too long in duration to be justified as an investigative stop, we consider it appropriate to examine whether the police diligently pursued a means of investigation that was likely to confirm or dispel their suspicions quickly.”]; *In re Carlos M.* (1990) 220 Cal.App.3d 372, 382, fn.4 [“[N]othing suggests [the officer] dallied.”].

but lacked reasonable suspicion to investigate it. In this case, the officer reasonably suspected that Reedy and Harding were committing or scouting a burglary

For many years, it was fairly easy for officers and judges to determine whether a detention had been unduly prolonged because the test was simply whether the officers carried out their duties diligently. But then, in 2005, the Supreme Court ruled in the case of *Illinois v. Caballes*<sup>2</sup> that the test was whether the detention was conducted “beyond the time reasonably required to complete that mission. Then, in 2009, the Court in *Arizona v. Johnson*<sup>3</sup> seemingly changed the test again, ruling that the issue was whether the detention had been “measurably extended.” Then, in 2015, came the most nonsensical of all three tests. In *Rodriguez v. United States*,<sup>4</sup> the Court ruled that a detention is unlawful if it was prolonged for any amount of time. Said the Court the “critical question” is whether “the investigation added time to the stop.” This test makes no sense because everything officers say or does during a detention necessarily “adds time” to it, including making some small talk to soften the mood. Thus, their dissenting opinions from the ruling in *Rodriguez*, Justices Kennedy, Thomas, and Alito called it “impractical” and “arbitrary,” and said it “cannot be reconciled with our decision in *Caballes* or a number of common police practices.” Similarly, the Third Circuit observed the decision was “impractical in light of the factual complexity inherent in [detentions].”<sup>5</sup>

This brings up back to *Reedy*. How could the Seventh Circuit make sense of these seemingly contrary tests? The answer: *It ignored them*. Nowhere in its opinion does the Court even mention *Caballes*, *Johnson*, or *Rodriguez*. Instead, it essentially went back to the original—and most sensible—test: Did the officers carry out their duties diligently. Thus, in ruling that the detention of Reedy was not unduly prolonged, the court said, “Nothing about the timeline or sequence of events suggests delay by the police. To the contrary, the facts make clear that the police diligently pursued a means of investigation that was likely to confirm or dispel their suspicions quickly that a burglary may be underway.” Accordingly the court ruled that Reedy’s motion to suppress was properly denied. (Kudos to the Seventh Circuit.) POV

**Date posted:**

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<sup>2</sup> (2005) 543 U.S. 405, 407.

<sup>3</sup> (2009) 555 U.S. 323, 333.

<sup>4</sup> (2015) 575 U.S. 348.

<sup>5</sup> *U.S. v. Green* (3rd Cir. 2018) 897 F.3d 173, 180.