

Recent Case Report

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U.S. v. Smith

(8th Cir. 2011) __ F.3d __ [2011 WL 3366393]

Issues

(1) Did the use of felony car stop procedures on a detainee render the detention a de facto arrest? (2) When the detainee fled on foot, did he effectively abandon his vehicle so as to eliminate his privacy interest in its contents?

Facts

At about 5:30 P.M., a man wearing a mask and armed with a handgun robbed a bank in St. Louis County, Missouri. He fled on foot and left a trail of money leading to a nearby apartment complex. Officers obtained a video from one of the complex's surveillance cameras, and it showed the following: shortly before the holdup, the robber arrived at the complex in a burgundy Buick which was followed by a white Cadillac.¹ The robber exited the Buick and got into the Cadillac; the driver of the Cadillac then drove in the direction of the bank. A few minutes after the holdup, the robber jumped a fence surrounding the complex, got into the Buick, changed his clothing, and walked off.

The registered owner of the Cadillac told officers that the actual owner was Mario Smith; officers confirmed that Smith had received several traffic tickets while driving the car. Investigators did not, however, believe they had probable cause to arrest Smith. In any event, he had disappeared, so investigators requested that all law enforcement agencies in the area instruct their officers to be on the lookout for the Cadillac, detain the driver for questioning if they located the vehicle, and hold it for prints.

At about 1 A.M. the next morning, an officer in a nearby city spotted the car on an interstate highway and, after requesting assistance, followed it as it left the highway and eventually pulled into the parking lot of a Taco Bell. By this time, several backup officers had arrived, so they made a felony car stop. The driver was Mario Smith.

The officers ordered Smith to turn off the engine and throw the keys out the window, but he refused. Instead, he stuck his head out the window and said "What do you want?" He then opened the door, quickly closed it, put the car in gear, and tried to escape via the drive-thru lane. But one of the officers had blocked the exit, so Smith got out and ran. He was apprehended a few minutes later after fighting with several officers.

Officers then searched the Cadillac and found \$72,900 in cash and a handgun. As the result, Smith was charged in federal court with being a felon in possession of a firearm. When his motion to suppress the gun was denied, he pled guilty.

Discussion

Although it was apparent that the officers had grounds to detain Smith, he argued that (1) their use of felony car stop procedures transformed the detention into a de facto arrest, and (2) the arrest was unlawful because the officers lacked probable cause.

¹ NOTE: Although the court does not refer to this man as the bank robber, it is apparent he was. In addition to the other circumstances, he matched the physical and clothing description of the robber.

Before going further, it should be noted that it is likely that the officers did, in fact, have probable cause to arrest Smith for being an accessory to bank robbery when they stopped him.² But it didn't matter because it is settled that officers who have only reasonable suspicion to detain a suspect may utilize felony stop procedures if they reasonably believed the suspect was armed or otherwise presented a substantial threat.³ As the Ninth Circuit explained, "The use of force during a stop does not convert the stop into an arrest if it occurs under circumstances justifying fears for personal safety."⁴ And because it is apparent that the detention of a suspected armed robber is such a circumstance,⁵ the court in *Smith* ruled that "[t]he reasonable safety measures officers took in effecting an inherently dangerous investigative stop in connection with an armed robbery did not transform the encounter with Smith into an arrest."

Smith also argued that the search of his Cadillac was unlawful because the officers lacked a warrant. Because Smith's flight from the officers would have eliminated any uncertainty as to whether they had probable cause to arrest him for the robbery, the search of the car could have been justified as a probable cause search for the fruits and instrumentalities of the crime. It was, however, unnecessary for the court to address this issue because it concluded that no justification for the search was necessary inasmuch as Smith abandoned the vehicle when he fled. To put it another way, his act of running off—especially considering that he left "the car open, with the keys in the ignition, the motor running"—extinguished whatever expectation of privacy he might have had in the contents of the vehicle, including the handgun and cash.

It is noteworthy that this same issue arose just a few months ago in the case of *U.S. v. Vasquez*, and the Seventh Circuit appropriately disposed of it in the following manner: "The search issue is a dead-bang loser. For one thing, the Bonneville was abandoned, and it's hard to see, under the circumstances here, how Vasquez could argue with a straight face that he maintained an expectation of privacy in it after he ditched it and bolted off on the run."⁶

For these reasons, the court ruled that Smith's motion to suppress the gun was properly denied. (The court did not indicate why neither Smith nor the owner of the Buick, Sahid Lewis, were charged with the bank robbery.) POV

² **NOTE:** Probable cause to arrest merely requires a "fair probability" or "substantial chance" that the suspect committed a crime. See *Illinois v. Gates* (1983) 462 U.S. 213, 244; *Tatum v. City of San Francisco* (9th Cir. 2006) 441 F.3d 1090, 1094 [probable cause to arrest exists "if the available facts suggest a 'fair probability' that the suspect has committed a crime"].

³ See, for example, *People v. Soun* (1995) 34 Cal.App.4th 1499 [robbery-murder]; *People v. Celis* (2004) 33 Cal.4th 667, 676 [drug trafficking]; *Gallegos v. Los Angeles* (9th Cir. 2002) 308 F.3d 987, 991 [burglary]; *U.S. v. Alvarez* (9th Cir. 1990) 899 F.2d 833, 838 [possession of explosives].

⁴ *U.S. v. Buffington* (9th Cir. 1987) 815 F.2d 1292, 1300.

⁵ See *People v. Anthony* (1970) 7 Cal.App.3d 751, 761.

⁶ (7th Cir. 2011) 635 F.3d 889, 894. ALSO SEE *People v. Daggs*, (2005) 133 Cal.App.4th 361, 365 ["no one has a reasonable expectation of privacy in property that has been abandoned."]; *People v. Parson* (2008) 44 Cal.4th 332, 345 ["a person has no reasonable expectation of privacy in [abandoned] property"].