Recent Case Report

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People v. Stier

(2008) __ Cal.App.4th __ [2008 WL 4684231]

Issue: Did an officer have sufficient grounds to handcuff a detainee?

Facts

After witnessing a narcotics transaction involving the occupants of a pickup truck, DEA agents asked two San Diego police officers to make a traffic stop on the truck if they observed a Vehicle Code violation. The officers located the truck in a "high gang, high narcotics" area and, having noticed an equipment violation, they signaled the driver to stop.

As the car pulled over, the front passenger got out and started walking away. One of the officers detained her and asked if she was carrying anything illegal. She said she was carrying drugs. The officer seized the drugs and notified his partner who asked the driver, Todd Stier, to step out. As he did so, the officer was "taken aback" by Stier's height, 6'6". The officer, who was about 6'1", testified that he "felt uncomfortable" with the height differential because, even though Stier was "very easygoing," he knew that drug users and dealers sometimes carry weapons. So he handcuffed him.

The officer then obtained Stier's consent to search his person. In the course of the search, the officer found a "large amount" of methamphetamine in his pant's pocket. After Stier's motion to suppress the methamphetamine was denied, he was convicted of transporting the drug.

Discussion

Stier argued that the methamphetamine should have been suppressed because, although the traffic stop was lawful, and although he had consented to the search, the detention became an illegal de facto arrest when the officer handcuffed him. The court agreed.

Officers who have detained a person may, of course, take reasonable precautions for their safety.[1] But if a court finds that their precautions were not reasonably necessary, the detention may be deemed a de facto arrest, which is an illegal arrest unless probable cause existed. Thus, the Eighth Circuit observed, "[A] de facto arrest occurs when the officers' conduct is more intrusive than necessary."[2]

Consequently, handcuffing a detainee will not convert a detention into a de facto arrest unless it was unnecessary under the circumstances. As the court in *Stier* noted, "[B]ecause a police officer may take reasonable precautions to ensure safe completion of

[1] See *Terry* v. *Ohio* (1968) 392 U.S. 1, 23 ["The officers were authorized to take such steps as were reasonably necessary to protect their personal safety and to maintain the status quo during the course of the stop."].

[2] *U.S.* v. *Bloomfield* (8th Cir. 1994) 40 F.3d 910, 916-17. ALSO SEE *Dunaway* v. *New York* (1979) 442 U.S. 200, 212.

the officer's investigation, handcuffing a suspect during a detention does not necessarily transform the detention into a de facto arrest. The issue is whether the handcuffing was reasonably necessary for the detention."

The court then ruled that the handcuffing of Stier was not reasonably necessary because, according to the court, the officer did so "primarily because Stier was four to five inches taller than [the officer] and [the officer] 'felt uncomfortable' about the height differential." Consequently, it ruled the methamphetamine in Stier's possession should have been suppressed.

Comment

The court in *Stier* began its discussion by saying that a lawful detention will become an unlawful de facto arrest unless, in the words of the court, the officers utilized the "least intrusive means available under the circumstances." It appears the court was unaware that the United States Supreme Court abandoned the "least intrusive means" test almost 25 years ago. As the Court explained in *United States* v. *Sharpe,* "The question is not simply whether some other alternative was available, but whether the police acted unreasonably in failing to recognize or to pursue it."[3] More recently, the Court explained that the "least-restrictive-alternative limitation" is "generally thought inappropriate in working out Fourth Amendment protection."[4] Similarly, the California Court of Appeal observed that the U.S. Supreme Court has "repudiated any 'least intrusive means' test for commencing or conducting an investigative stop."[5]

Because the court in *Stier* was apparently unaware of this rule, it concluded that the detention was unlawful because it had discovered a less intrusive means by which the officer could have protected himself from Stier—*he could have pat searched him*. Said the court, "[The officer] did not pat Stier down for weapons before deciding whether to use handcuffs during the detention. A pat down, while also intrusive, would have been less intrusive than handcuffing . . . ." (The court did not, however, provide any authority or analysis for its pronouncement that temporarily handcuffing a detainee is more intrusive than pat searching him.)

It appears the court in *Stier* was also unaware of the principle that, in assessing the dangerousness of a detention, the courts should view the circumstances through the eyes of the officer who was actually facing the danger—not through the eyes of someone who is reading about it in a transcript. As the United States Supreme Court pointed out, "A court making this assessment should take care to consider whether the police are acting in a swiftly developing situation, and in such cases the court should not indulge in unrealistic second-guessing. A creative judge engaged in post hoc evaluation of police conduct can almost always imagine some alternative means by which the objectives of the police might have been accomplished."[6]

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[3] (1985) 470 U.S. 675, 687.

[4] *Atwater* v. *City of Lago Vista* (2001) 532 U.S. 318, 350. ALSO SEE *United States* v. *Sokolow* (1989) 490 U.S. 1, 11 ["The reasonableness of the officer's decision to stop a suspect does not turn on the availability of less intrusive investigatory techniques. Such a rule would unduly hamper the police's ability to make swift, on-the-spot decisions"]; *U.S.* v. *Brigham* (5th Cir. en banc 2004) 382 F.3d 500, 511 [the "least intrusive means test" is "contrary to express statements of the Supreme Court"].

[5] *People* v. *Bell* (1996) 43 Cal.App.4th 754, 761, fn.1.

[6] *United States* v. *Sharpe* (1985) 470 U.S. 675, 686-67.

Having also been unfamiliar with this principle, the court thoughtlessly dismissed the officer's testimony that, in this "swiftly developing situation," he "felt uncomfortable" about the height differential.[7] Instead, it focused on the officer's testimony that Stier appeared to be "very easygoing" and "very mellow" which, in the eyes of the court, rendered him harmless. Even more absurd than the court's conclusion that easygoing and mellow suspects are unlikely to pose a threat to the officers who are detaining them, the court failed to comprehend that Stier's "mellowness" was nothing but an act. After all, he was carrying a "large amount" of methamphetamine which, if discovered, could land him in prison. Thus, while Stier was a harmless and "easygoing" fellow in the eyes of the court, in reality he was a panic-stricken felon who would have viewed the officer as threat to his freedom.

There's more. In its analysis, the court considered only the officer's stated reason for handcuffing Stier; i.e., "Because of the driver's height." Yet, the United States Supreme Court has repeatedly instructed the lower courts that the reasonableness of an officer's conduct must be based on all of the objective circumstances confronting the officer—not just the circumstances cited by the officer at a hearing on a motion to suppress. As the Court observed in *Brigham City* v. *Stuart*, "Our cases have repeatedly rejected this [subjective] approach. An action is 'reasonable' under the Fourth Amendment, regardless of the individual officer's state of mind, as long as the circumstances, viewed *objectively,* justify the action."[8] Or, as the Second Circuit recently noted in *U.S.* v. *Klump*, "Thus, even if the agents' subjective motives in entering the warehouse could be so neatly unraveled, they simply do not matter."[9]

If the court in *Stier* had examined the various objective circumstances surrounding the detention, it might have been more understanding of the officer's predicament: there were three people in the truck, they had just taken part in a drug transaction witnessed by DEA agents, and one of them had just attempted to flee with a quantity of illegal drugs. The court might even have taken note that drug users and dealers are often violent, often armed, and often unpredictable. As the California Supreme Court pointed out, "In the narcotics business, firearms are as much 'tools of the trade' as are most commonly recognized articles of narcotics paraphernalia."[10]

We can only hope the California Supreme Court sees fit to review this dreadful opinion. POV

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[7] **NOTE**: The court even made a snide comment in a footnote that Stier was "thin" and that "[n]othing in the record indicates [the officer] was concerned about Stier's weight or bulk."

[8] (2006) 547 U.S. 398, 404. ALSO SEE *Terry* v. *Ohio* (1968) 392 U.S. 1, 21-22 ["[I]t is imperative that the facts be judged against an objective standard: would the facts available to the officer at the moment of the seizure or search warrant a man of reasonable caution in the belief that the action taken was appropriate?"]; *Maryland* v. *Macon* (1985) 472 U.S. 463, 470-1 ["Whether a Fourth Amendment violation has occurred turns on an objective assessment of the officer's actions in light of the facts and circumstances confronting him at the time, and not on the officer's actual state of mind at the time the challenged action was taken."].

[9] (2nd Cir. 2008) 536 F.3d 113, 119.

[10] *People* v. *Glaser* (1995) 11 Cal.4th 354, 367. ALSO SEE *People* v. *Thurman* (1989) 209 Cal.App.3d 817, 822 ["Rare is the day which passes without fresh reports of drug related homicides, open street warfare between armed gangs over disputed 'drug turf,' and police seizures of illicit drug and weapon caches in warranted searches of private residences and other locales."]