

U.S. v. Gorman

(9th Cir. 2017) 859 F.3d 706

Issue

Under what circumstances is a pretext traffic stop unlawful?

Facts

A Nevada Highway Patrol trooper made a traffic stop on a motorhome because the driver, while attempting unsuccessfully to pass a truck, caused traffic behind him to back up. In response to the trooper's inquiries, the driver, Straughn Gorman, said several things that the trooper believed were indications that Gorman was transporting drugs or drug money. It was apparent, however, that none of these things, individually or in combination, supported this conclusion.¹

After determining that Gorman was not wanted on an arrest warrant and that a drug-detecting K9 was not available, the trooper checked a database that compared Gorman's home address with residences that have been connected to drug trafficking by the DEA. The result was negative, so the trooper released Gorman without a citation. However, he immediately telephoned a K9 officer in a city located along Gorman's travel route and told him about his suspicions.

Less than an hour later, the officer, who had been watching for Gorman along the highway, spotted the motorhome and stopped it because Gorman had driven across the fog line three times. While waiting for the results of another records check (again, negative), the officer asked Gorman if he was "opposed to a canine assessment" of his motorhome. Gorman replied that he *was* opposed to it "if that *means* anything." It didn't, so the officer then walked his K9 around the motorhome, and the dog alerted to the right rear fender and cargo area. Based on the alert, the officer obtained a warrant to search the motorhome and found \$167,000 in cash, plus pay/owe sheets.

Prosecutors declined to file charges against Gorman, but they did file a motion to seize the money. The District Court, however, denied the motion ruling that, even if the second stop was lawful, it was "inextricably connected" to the first stop which was not. The District Court also ordered the government to return Gorman's money and pay his attorney fees. The government appealed to the Ninth Circuit.

Discussion

A traffic stop, like any other detention, becomes an illegal de facto arrest if officers do not carry out their duties promptly and in a reasonable manner.² This means that, unless there was some legal justification for investigating another matter, officers must

¹ NOTE: Specifically, Gorman referred to his girlfriend as a "chick" which the trooper thought was suspicious because Gorman was not a young man; Gorman said he was moving to Northern California but had also said he was going to live there; Northern California is a place "known for marijuana cultivation"; he said he sold paddleboards for a living but this sounded "rehearsed" plus it was "puzzling" that a paddleboard salesman could afford to drive cross-country in a motorhome.

² See *Hayes v. Florida* (1985) 470 U.S. 811, 815-16 ["at some point in the investigative process, police procedures can qualitatively and quantitatively become intrusive with respect to a suspect's freedom of movement and privacy interests as to [require probable cause]"]; *People v. Russell* (2000) 81 Cal.App.4th 96, 101 [detention is unlawful "when extended beyond what is reasonably necessary under the circumstances that made its initiation permissible"].

terminate the traffic stop within a reasonable time after completing their duties pertaining to the violation. As the Supreme Court put it, traffic stops must be “carefully tailored” to this objective.³

For these reasons, it was obvious that the first traffic stop of Gorman was unlawful almost from the start because, as noted, most of the trooper’s questions were unrelated to the traffic violation, and the detention lasted much too long. Nevertheless, the government argued that the money seized during the second stop was subject to forfeiture because, unlike the first stop, the second one was not quite so lengthy and unfocused. The court said that it did not share the government’s view, especially because most the officer’s questions duplicated those of the trooper and were therefore unnecessary.

In any event, the court was not required to decide the validity of the second stop because it ruled that, even if it was carried out in a reasonable manner, it was so closely related to the first (illegal) stop that it was essentially a mere continuation of it. In the law, this is known as the “fruit of the poisonous tree” rule by which evidence may be suppressed if it was the product or “fruit” of an illegal search or seizure. On the other hand, evidence will not be suppressed if the link between it and the officer’s misconduct was sufficiently weakened or attenuated so as “to remove the ‘taint’ imposed upon that evidence by the original illegality.”⁴ Applying this test, the court observed that first and second stops were separated by less than an hour and “there were no intervening circumstances that might purge the taint.” Consequently, it upheld the District Court’s ruling that the money was seized illegally.

Comment

The government had argued that Gorman’s commission of a second traffic violation did, in fact, constitute an independent intervening circumstance that broke the chain of causation between the first and second stops. This was a logical argument because many courts have ruled that a defendant’s commission of a new crime between the Fourth Amendment violation and the discovery of evidence does, in fact, constitute an independent intervening act.⁵ But the court rejected it because, unlike the commission of a felony or a misdemeanor, Gorman’s brief fog line violation was “trivial.” Moreover, the court was not in the mood to be so forgiving, as indicated by its conclusion that the conduct of the officers constituted “a single integrated effort by police to circumvent the Constitution by making two coordinated stops.” POV

Date posted: November 29, 2017

³ See *Florida v. Royer* (1983) 460 U.S. 491, 500 [must be “carefully tailored”]; *People v. Gentry* (1992) 7 Cal.App.4th 1225, 1267 [must be “focused”].

⁴ *United States v. Crews* (1980) 445 U.S. 463, 471. Also see *People v. Richards* (1977) 72 Cal.App.3d 510, 514 [“An illegal arrest, alone, is utterly irrelevant. All that matters is whether the illegal arrest resulted in tainted evidence.”].

⁵ See *In re Richard G.* (2009) 173 Cal.App.4th 1252, 1262 [“An individual’s decision to commit a new and distinct crime, even if made during or immediately after an unlawful detention, is an intervening act”]; *People v. Cox* (2008) 168 Cal.App.4th 702, 712 [“[D]efendant chose of his own free will to resist and impede [the officer’s] search, and then chose to flee. Both of these choices were independent, intervening acts”].