

Recent Case Report

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People v. Walker

(2012) 210 Cal.App.4th 165

Issue

Was the physical description of a perpetrator of a sexual battery sufficiently similar to the appearance of the defendant to warrant a detention?

Facts

Santa Clara County sheriff's deputies were notified to be on the lookout for two men who were wanted for committing a sexual battery about one week earlier at the VTA train station in downtown San Jose. The perpetrators were described as follows:

Perpetrator number one: Black male, 20's, approximately 6' 1", approximately 195 pounds, short afro, clean shaven, light complected, appeared unkempt.

Perpetrator number two: Black male, 30's, approximately 5' 5", 195 pounds, unkempt with a body odor, wearing a black sweatshirt jacket with a hood and black pants.

Included in the email were several surveillance photos of the perpetrators. The quality of the photos was, however, poor.

A few hours after receiving the notification, a deputy who was patrolling the same train station noticed that a passenger who had just disembarked from a train "resembled" one of the perpetrators in "height, weight, age, hairline from the photographs and the shape of his nose." So the deputy approached him and asked for identification. The passenger claimed he wasn't carrying any. Because the man kept looking around, the deputy was thinking he might run, so he told him to sit on a bench. He complied and the deputy again asked for some ID. This time the passenger handed him a San Jose State University student body card in the name of Aalim Moor.

The deputy handed the card to another deputy and asked him to run a records check on Moor. The records check revealed that the real Aalim Moor was about four inches taller than the passenger and he had a different date of birth. Consequently, the deputy arrested him for providing false identification. During a search incident to the arrest, the deputy found a California driver's license that showed the passenger was actually Everett Walker.

Walker was charged with falsely representing his identity to a peace officer.¹ He filed a motion to suppress the deputy's observations, contending that the deputy lacked grounds to detain him. The trial court, however, that the similarity between Walker and perpetrator number one was sufficient to justify the detention. Walker subsequently pled guilty and subsequently appealed.

Discussion

The United States Supreme Court has ruled that grounds to detain a suspect exist if officers were aware of facts that constituted "reasonable suspicion" that the suspect had committed or was committing a crime.² In cases such as this, where the detention was based mainly on a similarity between the physical characteristics of the detainee and the

perpetrator, the most important circumstances are the number of shared characteristics and whether any of them were distinctive or unusual.³

In this case, however, there were no distinctive or unusual characteristics, and the only similarity between Walker and perpetrator number one was that both were black males whose ages and weights were not unlike. Moreover, there were several dissimilarities. Specifically, while perpetrator number one was described as “clean shaven, light complected, and appeared unkempt,” Walker was of “medium to dark complexion and, at the time of the detention, was well-groomed and had a mustache and slight goatee.” In addition, Walker was “significantly shorter” than perpetrator number one.

As noted, the detention was also based on a similarity between Walker and the surveillance photo of perpetrator number one. But the court concluded that the photographs were of such “poor quality” that they were virtually useless.

The court acknowledged that, while detentions are frequently upheld when the suspect matched a general description of the perpetrator, and was detained at or near the crime scene shortly after the crime occurred,⁴ Walker was detained for a crime that had occurred one week earlier. It also pointed out that, because the crime scene was “an area in which one would expect a high volume of foot traffic and ridership, the fact that defendant, among other people, was seen at the station is inconsequential.”⁵

Finally, the court rejected the argument that the deputy had lawfully detained Walker to make sure that he had paid his fare. It is true, said the court (although it cited no authority for the proposition), that “an authorized officer may randomly check passengers to determine whether they have paid their fare without evidence supporting a reasonable suspicion of fare evasion.” But the court ruled that Walker was not stopped at random but because the officer “wanted to investigate whether defendant had been involved in a one-week-old sexual battery.”

Accordingly, the court ruled that, because the detention was unlawful, the evidence resulting from the detention (i.e., Walker’s act of falsely identifying himself) should have been suppressed.⁶ POV

¹ Pen. Code § 148.9.

² See *Terry v. Ohio* (1968) 392 US 1; *Safford Unified School District v. Redding* (2009) 557 U.S. 364, 371.

³ See *In re Brian A.*, (1985) 173 Cal.App.3d 1168, 1174 [“Uniqueness of the points of comparison must also be considered in testing whether the description would be inapplicable to a great many others.”]; *U.S. v. Jackson* (2nd Cir. 2004) 368 F.3d 59, 64 [“[W]hen the points of similarity are less unique or distinctive, more similarities are required before the probability of identity between the two becomes convincing.”].

⁴ See, for example, *People v. Fry* (1969) 271 Cal.App.2d 350, 354-55; *People v. Atmore* (1970) 13 Cal.App.3d 244, 246; *People v. Lindsey* (2007) 148 Cal.App.4th 1390.

⁵ **NOTE:** Despite the time lapse, Walker’s arrival at the train station would have had some relevance if it had occurred at about the time the crime occurred, as this would indicate that, per his work or class schedule, he regularly arrived then. But this was not the case here, as the crime had occurred at 12:20 p.m., and Walker arrived at the station in the evening hours.

⁶ **NOTE:** Although the court in *Walker* closely examined the various circumstances upon which the detention was based, it appears that its analysis was not inconsistent with the rule that courts must evaluate the circumstances in light of common sense, not hypertechnical analysis. See *Illinois v. Gates* (1983) 462 U.S. 213, 231; *Illinois v. Rodriguez* (1990) 497 U.S. 177, 184.