

## **People v. Reyes**

(August 15, 2000) \_\_ Cal.App.4th \_\_

### **ISSUE**

Did a ruse utilized by narcotics officers render a subsequent encounter with a suspect an unlawful detention, thus invalidating the suspect's consent to search?

### **FACTS**

One afternoon, five narcotics officers with the Anaheim Police Department went to Leathers' apartment for the purpose of conducting a narcotics investigation. Specifically, the officers wanted to see if they could obtain consent to search from any occupant who came outside. When they arrived, the only occupant was Reyes. In order to get Reyes out of the apartment, the officers utilized a ruse, as follows.

After determining that a truck parked behind the apartment building was registered to Reyes, an officer in plain clothes walked up to the apartment and, speaking through a screen door, asked Reyes if he owned the truck. When Reyes said yes, the officer told him he had collided with his truck. According to the court, Reyes "swallowed the bait" and walked with the officer to inspect the truck.

When they arrived, Reyes was approached by three officers, "two attired in full 'ninja-style' raid gear, including black masks and bullet-proof vests emblazoned with 'POLICE' markings." One of the officers asked Reyes if he could speak to him. Reyes said okay. The officer asked if he was on parole or probation; Reyes said no. The officer asked if he had any drugs on his person; Reyes said, "I don't think so." The officer later testified he then sought and obtained Reyes' consent to search his person. Reyes denied he had consented; that his response to the officer's request was, "What difference does it make, you've already done it."

In any event, the officers conducted the search and found methamphetamine.

### **DISCUSSION**

Reyes contended he had been effectively "detained" at the point the officer sought consent. And because grounds to detain did not exist, it was an illegal detention which rendered his consent invalid. Consequently, the court had to determine two things: (1) Was Reyes "detained" when he consented to the search? (2) If so, did officers have grounds to detain him?

#### **Detention?**

A detention occurs when an officer's words or actions would have communicated to a reasonable person—a reasonable *innocent* person—that he was not free to leave or ignore the officer's questions or instructions. <sup>(1)</sup> In other words, a detention results if a reasonable person in the suspect's position would have believed he *must* stay or is otherwise *required* to cooperate with officers. <sup>(2)</sup>

Although it was true the officers did not tell Reyes he was not free to leave, the court concluded this was implied by the surrounding circumstances. The court was obviously troubled by the fact that Reyes was

confronted by masked officers wearing "ninja-style raid gear"-unquestionably a "highly intimidating situation." Said the court, "An officer concealing his identity employed a ruse to lure Reyes into the clutches of a formidable narcotics unit," placed him in "a highly intimidating situation and asked accusatory questions concerning parole, probation, and whether he possessed narcotics."

Accordingly, the court ruled Reyes was detained when he consented to the search.

### **Grounds to detain?**

Having determined Reyes was detained, the court had to rule on whether the detention was lawful.<sup>(3)</sup> Clearly not-there were simply no circumstances from which the officers could reasonably infer that Reyes was in possession of drugs or was otherwise involved in criminal activity.

Furthermore, the ruse employed by the officers did not result in any incriminating or suspicious conduct that would have helped establish grounds to detain. The court pointed out "the police lure was one that almost no one, crooked or not, would refuse." The court added, however, "We would not find that to have been the case had the undercover officer invited Reyes to step outside to engage in some sort of criminal activity. The law tolerates that type of deception, so long as it is not accompanied by inappropriate inducements or pressure, because it poses no threat to the honest citizen, only to those predisposed to criminal behavior."

The court acknowledged that the legal issue in this case is a "difficult and unsettled" one in which courts must balance the "undoubted necessity of allowing the police a free hand in undercover operations to fight crime on its own turf" against "the privacy rights of the public." Nevertheless, the court ruled that because grounds to detain Reyes did not exist, the detention was illegal and, therefore, the methamphetamine must be suppressed.

(1) See *Florida v. Bostick* (1991) 501 US 429, 438; *People v. Cartwright* (1999) 72 Cal.App.4th 1362, 1374.

(2) See *Florida v. Bostick* (1991) 501 US 429, 435; *United States v. Mendenhall* (1980) 446 US 544, 554.

(3) **NOTE:** Grounds to detain exist when officers were aware of specific facts that reasonably indicated the detainee, (1) was in the process of committing a felony, misdemeanor, or infraction; (2) had just committed a crime; (3) was about to commit a crime; or (4) was wanted for a completed crime. See *United States v. Cortez* (1981) 449 US 411, 417-8; *Delaware v. Prouse* (1979) 440 US 648, 663; *United States v. Hensley* (1985) 469 US 221, 229; *Whren v. United States* (1996) 517 US 806, 810; *In re Tony C.* (1978) 21 Cal.3d 888, 893; *People v. Conway* (1990) 222 Cal.App.3d 806, 812; *People v. Conway* (1994) 25 Cal.App.4th 385, 389; *People v. Ramirez* (1996) 41 Cal.App.4th 1608, 1613; *People v. Bell* (1996) 43 Cal.App.4th 754, 761; *People v. Castellon* (1999) 76 Cal.App.4th 1369, 1373.