

CASE ALERT

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CASE BRIEF

All About Pretext Stops, Unduly Long Detentions And Weapons Pat Downs: What's Legal, From A New Ruling

COURT CASE REFERENCE: People v. Esparza (Aug. 28, 2023) __ Cal.App.5th __ [2023 Cal.App. LEXIS 741]

CASE LAW

During a lawful pretextual traffic stop, patting down a gang member for weapons is not illegal when other factors (being in a gang area, another gang member found to be armed) provide a reasonable suspicion to believe that he may be armed. Time taken to ensure officers' safety does not result in an unduly prolonged detention.

- Detentions for investigation
- Prolonged detentions
- Pretextual traffic stops
- Pat downs for weapons

RULES

Pretextual traffic stops are legal. When in an area that opposing violent street gangs both claim as their territory, and after a gun has already been found on one gang member, patting down a second gang member for weapons is lawful. Absent the discovery of other criminal activity, prolonging a traffic stop beyond the time it would reasonably take to complete the mission of the traffic stop is an "unlawfully prolonged" detention and in violation of the Fourth Amendment. An officer taking the time to ensure officers' safety during a traffic stop does not illegally prolong the traffic stop.

FACTS

San Diego Police Department officers Arreola and Vina were working with detectives from the department's street gang unit early one September evening when they were directed by Detective Patrick from the gang unit to pull over a vehicle that was in violation of Vehicle Code § 26708(a),

illegally tinted windows. Although the vehicle's windows were in fact illegally tinted, the detective's true interest was to investigate the vehicle's occupants for any possible gang affiliation. The detective's motives were prompted by the fact that they were in an area known by the detective to be contested gang territory claimed by both the City Heights Juniors and Eastside San Diego, both known to be criminal street gangs with a history of violence. Doing as directed, Arreola flashed his lights and activated his siren, signaling to the driver that he was to pull over and stop. The driver complied, pulling into an alleyway where he stopped and rolled down his window. Arreola got out of the police vehicle but held back behind a wooden utility pole as he asked the other occupants to roll down all the vehicle's (tinted) windows, front and back. The occupants did as requested, revealing four people in the car: defendant Christopher Esparza, driving; Eduardo Yescas, in the right front passenger seat; Delfino Osnaya, in the left back seat behind the defendant; and Lorena Davila, in the right back seat behind Yescas. Arreola approached Esparza and stood back behind him, immediately adjacent to Osnaya in the left rear passenger seat, from where he had an unobstructed view of most of the car's interior. Noting four people inside, Arreola called for backup as Officer Vina approached the passenger side of the car. Arreola asked Osnaya for identification while telling Esparza to turn off the engine and produce his driver's license. As Esparza was looking for his license, Arreola questioned Osnaya, who apparently didn't have any ID, and wrote his identifying information on a notepad. Osnaya admitted to having been arrested in Nevada for possession of a controlled substance. As this was going on, the first cover unit, apparently containing a gang unit detective, arrived at the scene. Arreola gave the detective Esparza's license and the notepad containing Osnaya's information, asking him to run a warrant check on both of them. Moments later, Detective Hansel from the gang unit arrived. Hansel had been monitoring several local gangs, including the City Heights Juniors, identifying new members, locating social media accounts and staying up to date on each individual's parole and probation status. As the detective walked up to the car, he immediately recognized Osnaya, commenting on the fact that he was "always strapped." (This term is not defined in the court ruling. I'm guessing it means Osnaya was always armed, thus the need for a pat down.) Hansel told Arreola that they needed to pat down Osnaya for weapons. Hansel also recognized the defendant, referring to him as "Christian Esparza," which defendant immediately corrected to "Christopher." The detective also recognized Yescas as a gangster, although he couldn't remember his name. Hansel told the other officers that the male occupants of the vehicle were members of the City Heights gang. (Davila, the sole female in the car, was pretty much ignored.) As more backup units arrived, Osnaya was asked to step out of the car and was patted down for weapons. A loaded "ghost gun," one without a serial number, was recovered from his waistband. This led to the pat down of everyone else in the car. When Esparza was patted down, he was found to be in possession of another loaded pistol. Osnaya and Esparza were arrested. The total time between when officers Arreola and Vina initially approached the car and Esparza's arrest was about seven minutes, as recorded by the officers' bodycams. Esparza and Osnaya were charged together in state court with various weapons-related offenses. The defendants' joint motion to suppress the respective firearms discoveries at the preliminary examination (pursuant to P.C. § 1538.5) and at the subsequent motion to dismiss in the trial court (per P.C. § 995) were both denied. Esparza appealed.

HELD

The Fourth District Court of Appeal (Div. 1) affirmed the trial court rulings. Two issues were litigated on appeal: the legality of the pat down of defendant for weapons whether Esparza's detention during this traffic stop was unlawfully prolonged Esparza conceded that a "pretextual traffic stop" — stopping a vehicle for an observed traffic offense when the officer's true motivation

is to investigate other, more serious criminal offenses — was lawful. See *Whren v. United States*? (1996) 517 U.S. 806.) Discussion As for the legality of the pat down of Esparza and the right to detain suspects, there's a pile of relevant case law discussing both issues, beginning with the U.S. Supreme Court's decision in *Terry v. Ohio* (1968) 392 U.S. 1. In *Terry* (at pg. 10), the Supreme Court held that when a police officer develops a reasonable suspicion that "criminal activity may be afoot and that the persons with whom he is dealing may be armed and presently dangerous," both (1) an investigatory detention and (2) a pat-down search for weapons are constitutionally permissible under the Fourth Amendment. Additional case law tells us that "reasonable suspicion" is less than probable cause (*United States v. Arvizu*?(2002) 534 U.S. 266, 274.), but more than a mere "hunch." (*People v. Silveria and Travis* (2020) 10 Cal.5th 195, 236; and *Kansas v. Glover*.) Further, the suspicion must be based on "specific reasonable inferences which [officers are] entitled to draw from the facts in light of [their] experience[s]." (*Terry*, at p. 27). Whether reasonable suspicion exists depends on an evaluation of the "totality of the circumstances." (*United States v. Cortez*?(1981) 449 U.S. 411, 417.) Given that Esparza conceded that the traffic stop itself was lawful, the court moved onto the question of whether he had been lawfully patted down for weapons. Pat Down for Weapons Esparza argued that given his "calm conduct and agreeable demeanor" during the traffic stop, there was insufficient reasonable suspicion to justify his pat down. The court disagreed. First, the fact that a defendant might have been calm, cool and cooperative is irrelevant. And second, when determining the existence or non-existence of a reasonable suspicion that a person may be armed, a court is to look at the "totality of the circumstances." The fact that each such suspicious circumstance in isolation (such as defendant's membership in a violent street gang, his presence in a contested gang area or that another individual in the car was found with an illegal firearm) may be insufficient to justify a pat down, is also irrelevant. As noted by the court, by the time officers conducted the pat down of Esparza, they had already gathered a considerable amount of specific information. First, they had determined Esparza had been identified by a veteran gang detective as an established gang member who was driving a car in the company of at least two other gang members. Second, it was noted that the defendant was driving through territory claimed by both his gang and a rival group, both of which were known for violent activity. Third, a firearm (moreover, a ghost gun) with a magazine of ammunition had just been found on one of his passengers. "Given that 'consideration of the modes or patterns of operation of certain kinds of lawbreakers' is a permissible point of reference from which a 'trained officer [can] draw inferences and make deductions" (*United States v. Cortez*, supra, at p. 418), there was enough here to reasonably infer that (Esparza) may have been armed and dangerous in that moment," the appellate court ruled. That's all it takes to establish the necessary reasonable suspicion that he might be armed, justifying a pat down for weapons. Unduly Prolonged Detention Esparza's second argument focused on the length of his detention, asserting it was "unduly prolonged" because it went beyond the officers' necessary tasks, including running his license and issuing him a citation for tinted windows. "(M)ost vehicle stops are 'analogous to a so-called "Terry" stop" (*Berkemer v. McCarty*) to accomplish the "mission" of the traffic stop. (*Rodriguez v. United States* (2015) 575 U.S. 348, 354.) The "mission of a traffic stop" typically includes checking the validity of the driver's license, the vehicle's registration, for outstanding warrants and then writing a citation. (See *United States v. Gorman* (9th Cir. 2017) 859 F.3rd 706, 714.) In its analysis, the court agreed with the defendant in that "the initial detention seems to have been motivated by something other than the Vehicle Code violation." In other words, what we have here is known as a "pretextual stop." As conceded by Esparza and as noted above, stopping a vehicle for an observed traffic offense when the officer's true motivation was to investigate other more serious

criminal offenses for which there is not yet reasonable suspicion, is lawful. (*Whren v. United States*, supra.) Still, unless the traffic stop is limited to the time it should have taken to complete the mission of the traffic stop (absent other reasonable suspicion of further criminal activity being developed during that time), the stop itself will be labeled as “unduly prolonged.” Although difficult to discern here due to the way the court words it, it appears that the issue in this case was whether delays during the traffic stop precipitated by officer-safety concerns rendered the stop illegally prolonged. Citing *Arreola*’s repeated tactics to ensure his safety and the safety of others during this potentially dangerous traffic stop, the court ultimately ruled that reasonable delays prompted by an officer’s safety concerns do not unlawfully prolong a traffic stop. In this case, for instance, *Arreola* took his time in making direct contact with *Esparza*, using a nearby pole to shield him from the vehicle’s occupants until he could get everyone to roll down their tinted windows. He called for backup as soon as it became apparent that he and *Vina* were outnumbered, waiting approximately two minutes for that backup to arrive. He then moved up only as far as the left rear passenger seat, from where he could see as much of the inside of the vehicle as possible. He held onto *Esparza*’s driver’s license and *Osnaya*’s hand-written information until there was another officer available to do a warrant check. When told the occupants were indeed gang members and that *Osnaya* was “always strapped,” he immediately brought *Osnaya* out of the car so he could be patted down for weapons. Upon discovering a concealed weapon on *Osnaya*, he initiated the pat down of all the other vehicle occupants, including *Esparza*, for officer-safety purposes. The bottom line is, *Arreola* did indeed take his time, but only because he was justifiably concerned for the safety of everyone present. Thus, the court ultimately ruled, he did not unduly prolong the detention beyond what was necessary under the circumstances.

AUTHOR NOTES

In its legal analysis, the court never mentions that the time from when the stop was initiated until the pistol was recovered from *Esparza* was only seven minutes. I typically advise cops that around 10 minutes or so is what courts generally expect for an officer to complete the mission of a traffic stop, absent the discovery of some other illegal activity justifying an extension of the detention. But in reality, that’s not always true. Every case depends upon its own unique circumstances. If in this case, for instance, the officers hadn’t dedicated some time for safety purposes, but instead prolonged the detention for an extra two or three minutes so that they could sit around and all take on a joint (that’s legal, in California, is it not?), then the detention would have no doubt been held to be illegally prolonged despite only being seven minutes. Ultimately, you need to move a stop along expeditiously, but not unsafely, without any unjustifiable dillydallying. By the way, California’s attempt to outlaw — or at least restrict — pretextual vehicle stops (SB 50, adding new V.C. § 2804.5) failed to pass the Senate. But it appears that certain law enforcement agencies in California have taken it upon themselves to prohibit their officers from conducting pretextual traffic stops anyway (LAPD, for one). As a result, the number of traffic stops in Los Angeles has plummeted. The reasoning behind this policy, at least in L.A., is that tactics such as pretextual traffic stops were being used disproportionately against people of color, according to its own statistics. This may very well be true in certain jurisdictions. All I know is that in my training as a former San Diego Police Department cop, my first patrol lieutenant required the patrol officers on his watch to make more traffic stops and get out of the car more often, contacting as many individuals (regardless of color) in their cars and on the streets as possible. That’s the only way you are going to prevent crime, as opposed to merely reacting after the fact. Made sense to me, and still does. It seems to me that if such a proactive policy is inappropriately being used to discriminate against certain minorities — never an acceptable practice — better training, closer

supervision and disciplinary measures (up to and including termination) would be a better and more effective way to address the problem.

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