



SAN DIEGO COUNTY SHERIFF'S DEPARTMENT

LEGAL AFFAIRS

UPDATE

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BY: AMANDA LOMNICKY

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Unprovoked flight in a high crime area upon seeing police, without additional indication of criminality, does not provide legal cause for an investigatory detention.

Huntington Beach police officers went to a residential alleyway as part of an ongoing investigation into the "Looney Tunes Crew" (LTK) street gang. There had been multiple complaints regarding gang activity in the area over several months, however, there were no reports of a specific crime or of gang activity on this day and time. As the officers approached on foot from opposite ends, they observed people running from the alley. Officer Quidort, who did not know anything about Flores, made eye contact with Flores, who slowed and walked directly towards the officers. Quidort made contact with Flores when he was five to ten feet away, and told him to sit down. Flores was not a suspect in a particular crime, or in the process of committing a crime.

After detaining Flores, Quidort noticed a bulge in Flores' sock. Flores admitted that it was methamphetamine. Officers conducted an additional search of Flores' apartment, without a warrant or consent, and he was arrested for possession of a controlled substance with the intent to sell. The trial court found that the initial contact with Flores was supported by reasonable suspicion and did not suppress the drugs in Flores' sock and any statements. On appeal, the California Court of Appeal reversed, holding that the curbside detention was not supported by sufficient reasonable suspicion of criminal activity, and the evidence should have been suppressed. *People v. Flores*, August 12, 2019.

A Fourth Amendment seizure occurs if "in view of all the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave." Here, the government conceded that Flores was detained when Quidort ordered him to sit down. Thus, the court focused its analysis on whether the officers had legal cause to detain Flores.

An investigatory detention is legally justified when the detaining officer has reasonable suspicion of criminal activity. The officer must be able to point to specific articulable facts that were known to the officer at the moment of detention, that caused the officer to believe that "(1) some activity out of the ordinary had taken place or was occurring or about to occur; (2) the activity was related to crime; and (3) the individual under suspicion was connected to the activity."

The California Court of Appeal concluded that the United States "Supreme Court has never endorsed a per se rule that flight establishes reasonable suspicion to detain. Instead, flight is but one relevant factor in the reasonable suspicion analysis." There must be "flight plus" other indication of criminality. An area's reputation for criminal activity is a consideration; however, presence alone is not enough to support a reasonable, particularized suspicion that the person is committing a crime. Further, without more, it is not a crime to associate with a criminal street gang.

Here, the government did not provide evidence to support suspicion of criminal activity. The government's sole justification for Flores' initial detention was based on his flight from officers at one end of the "high-crime area."

The suspected LTK group was gathering in their own neighborhood at 1:00 p.m. on a weekday, and most of the citizen complaints of criminal activity came over the weekend, at night. Additionally, neither officer had a reason to suspect Flores of a particular crime. Also, Flores did not flee after making eye contact with Quidort, nor was there evidence regarding what, if anything, Flores did before he fled from the alley. Ultimately, the court held that the government did not establish that Flores fled from officers, and even if his pace was characterized as flight, it did not justify detention.

WHAT THIS MEANS:

Reasonable suspicion to detain require specific, articulable facts, known to the deputy at the time of detention, that cause the deputy to believe that an individual is committing or about to commit a crime. Look for facts that evidence additional criminality on top of unprovoked flight in a high-crime area, for example time of night.