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“DETENTION FOR INVESTIGATION” HOW LONG IS TOO LONG?

NICHOLSON v. GUTIERREZ

9TH CIRCUIT COURT OF APPEALS NO. 17-56648

By Michael D. Williamson, Esq.

The 9th Circuit Court of Appeals recently held that a five-hour detention, even assuming a legitimate reason to detain initially existed, but then dissipated, was too long under the circumstances. The court rejected a claim of **qualified immunity** related to the detention, meaning that **the five-hour detention violated clearly established 4th Amendment rights against unlawful arrest.**^{1 2}

Facts - At about 7:15 a.m., on February 10, 2015, Los Angeles Police Department officers Amaral and Gutierrez were on patrol, in plain clothes, in an unmarked police car, when Gutierrez saw a person pointing, what he believed, was a “blue steel” handgun. The gun was pointed at another person, and there were approximately four young males in the group, including the person holding the gun.

Gutierrez believed a robbery, or perhaps a murder, was in progress and shouted to Amaral, “gun, gun, gun.” Amaral immediately stopped the police vehicle and Gutierrez jumped from the vehicle. Gutierrez ran into an alley and Amaral parked the police vehicle. Gutierrez claimed he identified himself as a police officer, the witness claimed he did not. Within seconds, Gutierrez fired three rounds from his service pistol, striking one person in the back. Amaral entered the alley shortly after the shooting. Amaral and Gutierrez detained the group at gunpoint, face down on the ground, and when additional officers arrived at the location, the group was handcuffed. Medical personnel were summoned to treat the wounded person. The detained group, including the wounded person, remained in handcuffs for more than

¹ Qualified immunity attaches when an official’s conduct **does not violate clearly established statutory or constitutional rights**, which a reasonable person would have known. Qualified immunity shields an official from a lawsuit related to their conduct.

² In this case, the court also held that qualified immunity related to an officer-involved shooting that preceded the prolonged

detention was proper because no analogous case existed at the time of the shooting and therefore, the requirement that rights must be clearly established was not met.

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five-hours, including during the medical examination and interrogation.

The court ruled that detaining the group immediately following the shooting, was justified as an investigatory stop (detention), while the officers assessed the situation. It is important to note that an investigatory detention must be based on a reasonable suspicion to believe criminal activity is afoot. Once it is determined that criminal activity was not occurring, the detention must end.

At some point, the initial, lawful detention, evolved into a full-fledged arrest that required probable cause to believe that (1) a crime was committed and (2) the persons arrested committed the crime. It is well-established law that (1) a person may not be arrested if there is no probable cause, and (2) must be released from custody if previously established probable cause to arrest dissipated (no longer existed).

There is no bright-line rule that defines when an investigatory detention moves into an arrest.³ The facts of each detention will determine whether a detention became an arrest, even when the detaining officer did not intend to make an arrest. For example, a court will consider the number of involved officers when compared to the number of detainees, the use of handcuffs or other restraints, the display of weapons by officers, the location of the detention, i.e. in a police car or standing on the sidewalk, involuntarily transporting a detainee from the place of detention, and the length of the detention.

In this case, it was apparent, very soon into the investigation, that (1) the group was unarmed, (2) the group posed no threat, and (3) the group was not engaged in criminal activity. Therefore, continued detention of anyone in the group was unlawful. Officer Gutierrez himself established that the wounded person was not a criminal suspect but was indeed a victim of Gutierrez’s shooting. In other words, not only did probable cause to arrest not exist, facts that would justify an investigatory detention also dissipated. Despite these facts, the entire group,

including the wounded person, were detained, in handcuffs, for more than five hours. According to the court, the action violated their clearly established right to be free from unlawful arrest.

The bottom line is:

You must have facts that lead you to believe criminal activity is afoot when you choose to engage in an investigatory detention. You may continue the detention long enough to verify your suspicions, and if probable cause to arrest is developed, you may arrest the violator(s). If probable cause is not developed and the initial suspicion of criminal activity cannot be confirmed, or is in fact dispelled, the detainee(s) must be released; you may never detain a witness or victim.

Every action you take while detaining a person, beyond simply talking with them, will be judged in the totality of the circumstances to determine if interference with the detainee’s personal liberty was significant enough to amount to an arrest. If so, probable cause to arrest must exist. Failure to establish probable cause would likely result in liability based on a 4th Amendment violation and **clearly established law**.

Stay Safe!

Michael Williamson is Stone Busailah, LLP’s criminal law and family law specialist. He has been practicing law for more than 14 years. He is a retired LAPD Sergeant, with other law enforcement service as a Riverside County Deputy Sheriff, and Orange County Deputy Marshal (30 years law enforcement service). He is also a criminal justice instructor, internal affairs instructor, and family law instructor.

³ Numerous prior cases provide guidance and factors that would be considered.