

## ISSUE

Did a sheriff's deputy have grounds to detain a suspected drug dealer?

## FACTS

At 6:30 P.M. a woman phoned the Los Angeles County Sheriff's Department and reported that an African-American man appeared to be selling drugs out of a gray Ford Explorer parked at a certain location in Palmdale. The woman refused to give her name. The first deputy to arrive spotted a gray Ford Explorer parked on the street about 30 inches from the curb. An African-American man, later identified as Butler, was sitting behind the wheel talking with a woman who was standing outside the driver's window. As the deputy pulled up, he saw Butler hand something to the woman, and the woman hand something to Butler.

The deputy walked up to the car and told Butler that "somebody had said he was doing something he wasn't supposed to be doing." As the deputy spoke with Butler he noticed that Butler was holding his left hand down by his side, his arm was "tensed," and his left hand was clenched into a fist "as if he were holding something." When asked for his driver's license, Butler kept his left hand at his side, fumbled around in the center console with his right hand, and brought out a California ID card.

Butler now became "argumentative," repeatedly asking if he was under arrest, all the while, keeping his left hand hidden at his side. Then, for no apparent reason, he reached back into the console—again with his right hand—and started "fumbling" for something. The deputy, fearing that Butler was reaching for a weapon, drew his gun and ordered Butler to "show both hands." Butler eventually complied but he continued to keep his left hand closed. When Butler heard the deputy call for backup, he said "Yeah, go ahead and call them; tell them to hurry up and get here."

When backup arrived, Butler pulled the deputy's arm into the Explorer and started rolling up the window. The deputy was able to pull his arm out as Butler reached for the ignition. Another deputy then sprayed Butler's face with pepper spray, at which point Butler bent down, put something inside his mouth, and swallowed. Butler then forced open the driver's door and assaulted one of the deputies. He was eventually handcuffed. Butler was convicted of battery on a peace officer with injuries as a second strike.

## DISCUSSION

Butler contended that when he assaulted the deputies he was being unlawfully detained and, therefore, all the evidence and testimony pertaining to the assaults must be suppressed. This contention was based on the rule—most recently discussed by the U.S. Supreme Court in *Florida v. J.L.*<sup>1</sup>—that officers may not detain a suspect based solely on uncorroborated information from an anonymous caller. However, as the Supreme Court pointed out in *Alabama v. White*,<sup>2</sup> not much corroboration is required.

The issue in *Butler* was whether anything the deputy saw or heard tended to corroborate the caller's tip. There was—in fact there were two things. First, the hand-to-hand transaction between Butler and the woman, a classic indicator of street sales of

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<sup>1</sup> (2000) 529 U.S. 266. ALSO SEE *People v. Saldana* (2002) 101 Cal.App.4<sup>th</sup> 170, 174; *People v. Johnson* (1987) 189 Cal.App.3d 1315; *People v. Ramirez* (1996) 41 Cal.App.4<sup>th</sup> 1608, 1616-20; *People v. Avalos* (1996) 47 Cal.App.4<sup>th</sup> 1569, 1580.

<sup>2</sup> (1990) 496 US 325.

drugs. Second, Butler kept his left hand hidden from the deputy, an act that reasonably indicated he was holding drugs or a weapon.<sup>3</sup>

Accordingly, the court ruled the detention was lawful. Butler's conviction was affirmed.

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<sup>3</sup> See *People v. Guy* (1980) 107 Cal.App.3d 593, 598 [“Furtive action like flight from the scene of a crime may well be an expression of consciousness of guilt providing probable cause to search.”]; *People v. Guajardo* (1994) 23 Cal.App.4<sup>th</sup> 1738, 1742; *People v. Moore* (1970) 13 Cal.App.3d 424, 435 [“Acts which may appear innocent to an uninformed bystander nevertheless can take on a sinister significance when viewed in the light of information leading one to believe that the acts are in furtherance of a criminal enterprise.”]; *People v. Souza* (1994) 9 Cal.4<sup>th</sup> 224, 240-2; *People v. Green* (1994) 25 Cal.App.4<sup>th</sup> 1107, 1111; *U.S. v. Deeney* (7<sup>th</sup> Cir. 1985) 771 F.2d 318, 322 [“The defendant’s furtive gesture in moving or leaning toward the right side of the truck—a motion which the officers reasonably interpreted was consistent with reaching for a weapon . . . ”].