

In re Devon C.

(April 7, 2000) __ Cal.App.4th __

ISSUE

Is it a violation of California's bicycle helmet law for a juvenile to ride a bicycle without a helmet on a sidewalk?

FACTS

At about 2:00 P.M., an LAPD officer spotted Devon C., a minor, riding a bicycle without a helmet on a sidewalk. When the officer turned on his red light, Devon stopped, got off his bicycle, and put his hands on top of his head. As the officer approached him, Devon said "I've got something to tell you." The officer then grabbed Devon's hands because, according to the court, "he was about to search [Devon C.] because [the officer testified] 'we search everybody for weapons.'" But before the officer began the search, Devon told him, "I have a gun, I just found it." The officer then recovered a loaded .25 caliber semiautomatic pistol in Devon's jacket pocket.

Devon was subsequently declared a ward of the court for possessing a firearm.

DISCUSSION

Devon contended the gun should have been suppressed because the officer did not have legal grounds for detaining him. Although he acknowledged that the California Vehicle Code prohibits a minor from riding a bicycle on a "street" without a helmet,⁽¹⁾ he argued that a sidewalk is not a "street" and, therefore, he was not in violation of the statute and that his detention was, therefore, unlawful.

The court pointed out that the Vehicle Code defines "sidewalk" as "that portion of a highway, other than a roadway, set apart by curbs, barriers, markings or other delineation for pedestrian travel."⁽²⁾ The court also noted that, according to the Vehicle Code's definitions of "street" and "highway," the two terms are essentially synonymous; i.e., a highway is a street and a street is a highway.⁽³⁾

Consequently, because a "sidewalk" is a "portion of a *highway*," it is also a portion of a *street*. Thus, by riding his bicycle on a sidewalk, Devon was necessarily riding it on a "street," which means Devon was lawfully detained.

DA's COMMENT

As noted, the officer was about to search Devon when Devon told him he had a gun in his possession. If Devon had not spontaneously admitted he was carrying a gun, this would probably have been an unlawful search because the court's opinion contains no facts that would make it reasonable to believe Devon was armed or dangerous.

It appears the officer sought to justify the search on grounds that "we search everybody for weapons." As we noted in *California Criminal Investigation 2000*, "Because specific facts are required, a pat

search may not be conducted as a matter of routine or "standard procedure."⁽⁴⁾ Nor is a pat search justified merely because the officer testified he conducted the search "for officer safety."⁽⁵⁾

1. See Vehicle Code § 21212(a).
2. See Vehicle Code § 555.
3. See Vehicle Code §§ 590, 360.
4. See *People v. Lawler* (1973) 9 Cal.3d 156, 162; *People v. Hubbard* (1970) 9 Cal.App.3d 827, 830; *People v. Adam* (1969) 1 Cal.App.3d 486, 490-1; *Santos v. Superior Court* (1984) 154 Cal.App.3d 1178, 1185; *In re Marcellus L.* (1991) 229 Cal.App.3d 134, 138; *People v. Griffith* (1971) 19 Cal.App.3d 948, 952.
5. See *People v. Dickey* (1994) 21 Cal.App.4th 952, 956.