

U.S. v. Dykes  
(D.C. Cir. May 6, 2005) \_\_ F.3d \_\_ [2005 WL 1047808]

## ISSUES

(1) Did officers have grounds to detain a suspected drug dealer? (2) Did they use reasonable force in doing so?

## FACTS

In response to “numerous complaints of illegal narcotics sales” in a certain parking lot, officers with the Metropolitan Police Department in Washington D.C. went there one night in three unmarked cars. As they pulled in, they saw several people just standing around, among them were Dykes and Duncan who were standing together. When Duncan saw the cars, he tossed something to the ground and ran. Dykes also fled. At first, he walked but, when he looked back and saw the officers getting out of their cars, he too started running.

One of the officers chased Dykes and tackled him. As Dykes hit the ground, he rolled onto his stomach “with his hands positioned underneath him, near his waistband.” Officers ordered him to show his hands but he refused. So they forced his arms up until they were able to handcuff him. As the officers rolled him over, it became apparent why Dykes would not show his hands: there was a handgun in his waistband.

After seizing the gun, the officers searched Dykes incident to the arrest and found cocaine and marijuana, both packaged for sale.

## DISCUSSION

Dykes contended the drugs and gun should have been suppressed because he was detained unlawfully. Specifically, he argued, (1) the officers did not have grounds to detain him, and (2) they used unnecessary force in doing so.

**GROUND TO DETAIN:** Officers may detain a suspect if they have “reasonable suspicion,” which essentially means there were circumstances that reasonably indicated the suspect was committing, had committed or was about to commit a crime.<sup>1</sup>

One very suspicious circumstance is flight from officers. In fact, running from officers is one of the strongest nonverbal admissions of guilt a suspect can make.<sup>2</sup> As the Court of Appeal explained, “An inference that an individual is engaging or has just engaged in criminal conduct may be drawn where that individual, knowing that police are approaching, flees or engages in other activity indicative of an effort to avoid apprehension or police contact.”<sup>3</sup>

Nevertheless, the United States Supreme Court has ruled that flight from officers does not, in and of itself, constitute reasonable suspicion—something more is required. In fact,

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<sup>1</sup> See *United States v. Cortez* (1981) 449 U.S. 411, 417-8; *United States v. Hensley* (1985) 469 U.S. 221, 229; *People v. Ramirez* (1996) 41 Cal.App.4<sup>th</sup> 1608, 1613; *People v. Bell* (1996) 43 Cal.App.4<sup>th</sup> 754, 761; *People v. Castellon* (1999) 76 Cal.App.4<sup>th</sup> 1369, 1373.

<sup>2</sup> See *People v. Souza* (1994) 9 Cal.4<sup>th</sup> 224, 235; *People v. Mims* (1992) 9 Cal.App.4<sup>th</sup> 1244, 1249 [“An inference that an individual is engaging or has just engaged in criminal conduct may be drawn where that individual, knowing that police are approaching, flees or engages in other activity indicative of an effort to avoid apprehension or police contact.”]; *Illinois v. Wardlow* (2000) 528 U.S. 119, 124 [“Headlong flight—wherever it occurs—is the consummate act of evasion; it is not necessarily indicative of wrongdoing, but it is certainly suggestive of such.”]; *California v. Hodari* (1991) 499 U.S. 621, 623, fn.1 [“The wicked flee when no man pursueth.” Quoting Proverbs 28:1].

<sup>3</sup> *People v. Mims* (1992) 9 Cal.App.4<sup>th</sup> 1244, 1249.

the courts have coined the term “flight plus” to express the idea that grounds to detain exist if there was flight *plus* at least one additional suspicious circumstance.<sup>4</sup>

Before we discuss how the court resolved this issue, it is necessary to address a related matter. A suspect’s flight becomes a suspicious circumstance only if there was reason to believe he was running from officers; i.e., that he saw them and knew who they were. This is seldom an issue when the officers were wearing uniforms and were in marked cars. But in situations such as *Dykes*, where the officers were in unmarked cars and were wearing non-standard uniforms, the prosecution must present some evidence on this point.

As for unmarked and semi-marked cars, the courts are aware that the criminal element, especially drug dealers, can spot them a mile away. For example, in *U.S. v. Nash* the court noted, “Officer Drozd’s car clearly was identifiable as a police car. It was a dark blue Dodge equipped with several antennae and police lights on the rear shelf.”<sup>5</sup> And in *Flores v Superior Court*, the California Court of Appeal observed, “[T]o the person involved in the narcotics traffic, three men in plain clothes, riding in an unmarked car, cruising at a slow speed in an area of high narcotic activity are about as inconspicuous as three bull elephants in a backyard swimming pool. Any normal person in the narcotics culture would assume them to be ‘narks.’”<sup>6</sup>

It is not clear whether the prosecution in *Dykes* presented testimony as to the appearance of the cars. In any event, the court noted that Dykes and everyone else in the parking lot would have known the cars’ occupants were officers when they stepped out of their cars because they were wearing “multiple items of identification—either MPD raid jackets and medallions, or badges and orange MPD emblems.” In addition, it was apparent that Dykes knew they were officers because he immediately ran.

Consequently, Dykes’ act of running was a legitimate suspicious circumstance. The question, then, was whether there was something more; i.e., “flight *plus*.” Actually the court found two additional suspicious circumstances. First, Dykes was in an area “known for the sales of cocaine and marijuana.” Second, upon seeing the officers, Dykes’ companion also ran from the officers after throwing something (probably drugs) to the ground.

Consequently, the court ruled the officers had grounds to detain Dykes.

**REASONABLE FORCE:** As noted, the other issue was whether the officers used excessive force in detaining Dykes. The U.S. Supreme Court has ruled that officers may use force to detain a suspect if the force was reasonably necessary. “[T]he right to make an arrest or investigatory stop,” said the Court, “necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it.”<sup>7</sup> The question, then, was whether it was reasonably necessary to tackle Dykes and pry his hands from under his waistband? The answer was, obviously, yes:

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<sup>4</sup> See *People v. Souza* (1994) 9 Cal.4<sup>th</sup> 224, 236.

<sup>5</sup> *U.S. v. Nash* (7<sup>th</sup> Cir. 1989) 876 F.2d 1359, 1360.

<sup>6</sup> (1971) 17 Cal.App.3d 219, 224.

<sup>7</sup> *Graham v. Connor* (1989) 490 U.S. 386, 396. ALSO SEE *In re Gregory S.* (1980) 112 Cal.App.3d 764, 778 [“It is implicit in a lawful detention that the person detained is not free to leave at will and may be kept in the officer’s presence by physical restraint, threat of force or assertion of authority.”]; *People v. Taylor* (1986) 178 Cal.App.3d 217, 227, fn.7 [“The weight of recent authority holds that police officers have a right to use force, including the blocking of a vehicle and the display of a weapon, to accomplish an otherwise lawful investigatory stop or detention provided the force is reasonable in the circumstances to protect the officers or members of the public.”].

First, because Dykes was in full flight from officers who were justified in stopping him, tackling him was a reasonable method of effectuating the stop. Second, once they had brought him to the ground, it was also reasonable for the officers to remove Dykes' hands from underneath his body and to place him in handcuffs. [I]t was reasonable for the officers to fear that Dykes had a weapon in his waistband, and to take the necessary steps to ensure that he could not use it.

Accordingly, the court ruled the detention was lawful, and that the gun and drugs were seized lawfully.