

Monjaras v. State, No. PD-0582-21 (Tex. Crim. App. Nov. 23, 2022)

Attorneys. Jani Maselli Wood (Appeal). Nicholas Mensch (Appeal). Timothy Donahue (Trial).

Issue & Answer. When officers give orders to keep hands where they can be seen, closely flank a suspect, and ultimately place their hands on a person, have they converted their consensual encounter into an investigatory detention requiring proof of reasonable suspicion? **Yes, at least here they did.**

Facts. Officers saw the defendant walking around an apartment complex with a backpack. He seemed overdressed for the weather. He looked down as they passed by. When officers circled back to harass the defendant, he was gone. Officers assumed the defendant ran away but they later encountered him on the other side of the apartment complex. Officers pulled in front of the defendant without activating their lights or sirens. With their patrol vehicle blocking his path, two officers stood closely on either side of the defendant. The defendant appeared nervous as officers interrogated him. Officers asked defendant for consent to search his person. When the defendant began emptying his pockets officers placed hands on him. After the defendant finally consented officers positioned the defendant against a squad car and searched him. Officers ultimately found a gun on the defendant's person. The State charged the defendant with unlawful possession of a firearm by a felon. The defendant filed a motion to suppress, but the trial court and the First District Court of Appeals in Houston found law enforcement's interaction with the defendant to be a mere "encounter" not subject to the requirement of reasonable suspicion triggered by an investigatory detention.

Analysis. Officers may briefly detain an individual based on reasonable suspicion for so long as is necessary to confirm or dispel that suspicion. Alternatively, officers may interact with a citizen consensually without detaining the citizen for any reason whatsoever (without reasonable suspicion). "An encounter is a detention if an officer, through a showing of force or authority, restrains a citizen to the point that an objectively reasonable person would not feel free to decline the officer's requests or terminate the encounter." Here the encounter was initially consensual. Officers approached the defendant in the middle of the day in a public location and were not overtly hostile. Additionally, officers initially kept their distance, did not place their hands on the defendant, and only asked basic questions necessary for identification. However, the consensual encounter escalated into an investigative detention. Officers eventually flanked the defendant closely, gave orders, and placed hands on the defendant. These actions demonstrated that the defendant should not feel free to disregard the requests of the officers. The court of appeals erred by taking these circumstances piecemeal in a divide-and-conquer fashion instead of considering their totality-of-circumstances impact.

Comment. Justice Goodman's dissent from the First Court prevails: "[w]hen Monjaras hesitated to consent, the officers detained him by compelling his compliance through a show of their official authority, which included instructing Monjaras as to how he was to behave, flanking him, intruding his personal space, and touching his person."