

Non-Custodial Arrest Suppress-ed!

By: Lance M.Hester; March 2004

Hot off the Division III presses is a case that went as follows:

Defendant Radka was stopped for a traffic violation;

Arresting officer subsequently arrested Mr. Radka for driving with a suspended license;

Radka's car was searched – drugs and paraphernalia found;

Charged with felony charge of possession with intent to deliver methamphetamine;

At a suppression hearing, the arresting officer, “admitted that he had intended to release Mr. Radka with a citation until he found the drug paraphernalia.” This resulted in the trial court suppressing the evidence and dismissing the case. And Division III held that a reasonable person would not consider the arrest “custodial” and thus affirmed the trial court.

Interestingly, the appellate court stated that the trial court erred when it considered the arresting officer's subjective intent to only cite and release Mr. Radka. However, the rest of the factors were important to its decisions. The ultimate affirmation held that it is not the subjective intent of the arresting officer that matters. Rather, it concluded that the more important evidence relates to what a reasonable detainee would consider to be the extent of the detention.

Here's how the court weighed the evidence in Mr. Radka's appeal:

He was arrested for driving with a suspended license. The officer could have made a custodial arrest but did not do so. The officer had no safety concern and specifically articulated he intended to cite and release the defendant. The circumstances surrounding the situation showed that the arrest was not custodial: he was not handcuffed, he was not frisked, and, he was allowed to use his cell phone while in the back of the patrol car. While the officer had probable cause for a custodial arrest (he was arrested for a criminal offense, mind you), the officer did not place him under *custodial arrest*.

End

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