

THIRD DEGREE COMMUNICATIONS, INC.

TRAINING BULLETIN: LEGAL UPDATE

Consensual Encounters

By Charles Gillingham

Recently, the California Supreme Court had occasion to consider whether officers need some suspicion to conduct a “knock and talk.” The question presented to the court was whether an anonymous tip could provide that suspicion. The court squarely held what we at the training bulletin have always believed and taught, a consensual encounter is just that, consensual. Officers need no reason at all to talk to a citizen, no matter where that citizen is located.

ANONYMOUS TIP

Officers received an anonymous tip that a “Juan Rivera,” who may have had an outstanding warrant, was at a particular location. The officers did not run a record check or otherwise confirm the tip. Officers went to the location and spoke with a woman who identified herself as the homeowner. The officer asked whether she knew Juan Rivera. The woman replied that she did, and told the officers to “come inside.” The officers then asked the woman for consent to a search of her residence. Not shockingly, they found the suspect, Juan Rivera, in the backyard sitting in a shed. The officers asked him whether he had any weapons. When the suspect said he had a knife, he was ordered out of the shed and arrested. He had a knife under his shirt. The officers then confirmed he had an outstanding arrest warrant and was a parolee.

MOTION TO SUPPRESS

In *People v. Rivera* (2007) 41 Cal.4th 304, the defendant moved to suppress the evidence against him arguing that the anonymous, uncorroborated tip was insufficient to justify his detention and search.

The United States Supreme Court, in *Florida v. J.L.* (200) 529 U.S. 266, held that a detention based on an anonymous, uncorroborated tip violates the Fourth Amendment. In that case, an unidentified caller told police that a young African-American man in a plaid shirt standing at a particular bus stop was carrying a gun. The officers knew nothing other than that. They knew nothing more about either the suspect or the tipster. The court held that because a detention is based upon reasonable suspicion, an anonymous tip cannot support a detention without some other corroboration.

Moreover, the California Supreme Court, in *People v. Sanders* (2003) 31 Cal.4th 318, held that officers must be aware of a defendant's parole search condition to justify a warrantless search on that basis.

Defendant argued that because the officers used an uncorroborated tip to go to that location and did not know he was a parolee, the evidence should be suppressed.

KNOCK AND TALK

A "knock and talk" is a well accepted investigatory procedure where officers go to the door of a residence or hotel/motel, and make contact with the residents. It is settled that a knock and talk does not implicate the Fourth Amendment.¹

So do officers need to substantiate or corroborate an anonymous tip before contacting a resident or citizen and seeking consent? The answer is no.

A knock and talk is a consensual encounter. A consensual encounter does not require any type of suspicion or cause. An officer may approach someone on the street or any other public place and contact that person and talk with them if they are willing to do so. There is no Fourth Amendment violation as long as that person would feel free to leave or end the encounter.² It is also well-settled that a consensual encounter may also take place at the doorway of a home.³ Consensual encounters require no articulable suspicion of criminal activity.⁴ It is clear then that officers need no suspicion to knock on anyone's door and seek permission to enter. Therefore the reliability of the tip that led the officers to that location is irrelevant.

Officers in this case used a knock and talk and valid consent by the homeowner to gain entry to the backyard. The court correctly drew a distinction between the entry to the yard and what took place there. It was clear that the officers were at the location lawfully and that they gained valid consent to enter. At that point the court remanded for further hearings to determine whether the detention of the defendant was lawful.

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¹ *People v. Jenkins* (2004) 119 Cal.App.4th 368; *U.S. v. Thomas* (6th Cir.2005) 430 F.3d 274; *U.S. v. Cormier* (9th Cir.2000) 220 F.3d 1103.

² *Florida v. Bostick* (1991) 501 U.S. 429.

³ *U.S. v. Crapser* (9th Cir. 2007) 472 F.3d 1141

⁴ *In re Manual G.* (1997) 16 Cal.4th 805