

THIRD DEGREE COMMUNICATIONS, INC.

TRAINING BULLETIN: LEGAL UPDATE

Photographing in the Field

By Charles Gillingham

AT YOUR REQUEST

The legal update page is always happy to take requests. If you have questions about issues that arise out in the field shoot us an email. This is your page. There are times that I address issues that I find interesting but I endeavor to make the update useful for you. Realize that it serves two purposes, it makes your life easier and it makes prosecutor's lives easier. With that in mind, let me urge you to keep this cross examination question in mind when you are out in the field or doing investigations: "If you had it to do over again officer, what would you have done differently?" At your request, "what is the applicable law covering photographing people in the field?"

DETENTIONS

"[I]n order to justify an investigative stop or detention the circumstances known or apparent to the officer must include specific and articulable facts causing him to suspect that (1) some activity relating to crime has taken place or is occurring or about to occur, and (2) the person he intends to stop or detain is involved in that activity." *Terry v. Ohio* (1968) 392 U.S. 1, 21.

FACTS

People v. Rodriguez 21 Cal.App.4th 232, is instructive on this question. Rodriguez appealed his murder conviction arguing that he was identified as the suspect from a photograph obtained during an illegal "gang sweep" field interrogation.

The victim, Gonzalez, was confronted with the age old gang question-- to which there is no correct answer---“where are you from?” When Gonzalez failed to answer, Rodriguez said “Puro South Side,” hit Gonzalez in the face, then pulled a small pistol from his pants and shot the victim in the chest.

Gonzalez’s three friends (Sanchez, De Paz, and Martinez) were interviewed by the police and each gave a description of the shooter, whom they did not know. Later that day, the three were shown a “gang book” consisting of photographs of known members and associates of local gangs. Sanchez identified a picture of Rodriguez, taken three days before, as that of the shooter; De Paz selected the photograph of another youth, and Martinez did not identify anyone from the book. After interviewing Rodriguez's father and uncle, police then went to the home of Angela Jackson, Rodriguez's girlfriend, and interviewed her. She told them Rodriguez had come by her house with a friend earlier that day and asked her to keep a chrome bicycle for him. He told her he had been present during a shooting and he was afraid the police might think he did it. He also changed his clothes and gave the ones he had been wearing to his friend. Rodriguez was arrested later that night. Later, the police showed Gonzalez’s three friends “photo lineups,” consisting of three folders of six photographs each, one of which included a photograph legally taken of Rodriguez at the time of his arrest. All three identified Rodriguez as the shooter.

At trial, the defense made a motion to suppress the "gang book" photograph as illegally taken and the subsequent identifications as "fruit of the poisonous tree." The argument being that the "gang book" photographs were taken as the result of illegal detentions. The testimony at the hearing revealed that police detectives assigned to the gang unit maintained a photographic file of known gang members and associates. Three days before Gonzalez was shot, detectives saw Rodriguez at a common gathering place for gang members. The testimony revealed defendant was doing nothing more than socializing with other gang members.

DETENTION

Detectives testified that he and his partner, both in uniforms, approached the group intending to get the youths' identification, take their pictures and find out what gang they claimed. As he approached them, he told them to "stay there." Detectives patted the youths down and ordered them to sit on the curb and the sidewalk. The officers then interviewed them one at a time, asking each about his name, address, date of birth, and so forth, and took a photograph of each one. The entire process took 15 to 20 minutes.

HOLDING

The court held that mere membership in a street gang is not a crime. And that there was no legal justification to detain the suspect; rather it was departmental policy to stop gang members and take their information, photograph and field identification information. That information was to be placed in files for potential later use to investigate criminal activity. While laudable, the court held that a detention based upon no articulable facts must be suppressed. Bottom line, if you have legal reason to detain, you may photograph as part of your field identification process.

P.S.

Fortunately, the court held that other identifications of the defendant were not illegal and the defendant was convicted.

Chuck Gillingham is a veteran prosecutor and regular instructor for the California District Attorney's Association and the Federal Internet Crimes Against Children Task Force. Chuck also teaches Multidisciplinary Child Interviewing and Child Exploitation Investigation for Third Degree Communications, Inc.

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