

THIRD DEGREE COMMUNICATIONS, INC.

TRAINING BULLETIN: LEGAL UPDATE

Detentions and Arrests

By Charles Gillingham

When you drive down the street in a marked patrol car, or a silver crown victoria that may as well be marked, criminals tend to get jumpy. Some tend to get nervous. Some may attempt to hide or even run from you. In these situations your training and experience may lead you to conclude the suspect needs to be detained or even arrested. Your actions may be completely justified, but know it is likely that you will be testifying about your decisions in a motion to suppress. Your training bulletin wants to go through a couple of scenarios to remind you of the legality of stopping people based on things you see. But also to remind you to write down all the important facts in your police report to help sustain your reasonable suspicion or probable cause at that suppression hearing.

Unusual Response to Seeing Officers

Let's face it, the average law abiding citizen can get nervous or jumpy when they see a marked patrol car. You know the difference and must articulate that difference when you stop a suspect for reacting to your presence. You may use a nervous or jumpy reaction as a suspicious circumstance to investigate---but you must be able to articulate a couple of things. First, that the suspect clearly saw you and second, that the suspicious activity took place just after, but more importantly that you were easily identifiable as a police officer. Driving in a marked patrol car, in uniform, or in an unmarked car that had obvious lights or markings are all factors the court will consider in determining whether your stop was justified.

Running

When someone sees you and runs, it is difficult to articulate a reason for that flight that is law abiding. Courts, however, have made it very clear that mere flight is NOT sufficient to justify a stop. The appellate courts and U.S. Supreme Court have said flight, plus some other evidence of wrong doing is required.

How Much Evidence is Required? What is That Other Evidence?

First, not much. Second, courts have used some of the following illustrations: suspect was standing next to a building in a high drug area and then fled when he saw officers; suspects were walking down the street with stuffed backpacks in the early morning hours and fled when they saw officers; at 4 a.m. a man walked out of an alley between a home and business and fled when he saw officers; suspect was talking to two men in a car in a dark area, when the officers shined

their spotlight the suspect fled.

Hiding/Avoiding

Suspects who attempt to hide from you or avoid you when you approach provide you reasonable suspicion to detain. Some examples: hiding behind a tree when you drive up; a car is lit up and the occupants duck down; suspect crouched down in a doorway when officers drove up. It really doesn't matter how ridiculous or incompetent the attempt to hide, just the act suffices to provide reasonable suspicion to detain.

Some other examples that courts have said provide reasonable suspicion to detain; driving up to a residence where officers are conducting a search and backing up and attempting to drive away; in the early morning hours a suspect was standing next to a building and began walking away when officers approached; suspect was headed to a pawnshop when he spotted officers and turned and changed direction.

Actions that are nervous, jumpy, avoiding---are all activities our courts have said are the basis to detain a suspect. You must be able to differentiate those activities from that of a law abiding citizen, and then justify your activities in a motion to suppress.

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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