

THIRD DEGREE COMMUNICATIONS, INC.

TRAINING BULLETIN: LEGAL UPDATE

Handcuffing During a Detention

By Charles Gillingham

I just read a court of appeals decision that illustrates some of the things that the legal update has been trying to emphasize in recent months. Officers must justify the reasons for detentions and reasons for pat searches; and in this case, handcuffing a suspect during a detention.

ARTICULABLE FACTS

Articulate facts are just that, facts that you can articulate to justify your actions. You must put those facts in your offense report and testify to them at suppression hearings. A pat search cannot be “routine,” for “officer safety,” or because you do it “every time.” You have to provide justification to pat search someone just as you must have facts the subject is armed or could be a threat to you; thus justifying putting handcuffs on someone during a detention.¹

In *People v. Stier*, 2008 DJDAR 16561, two local officers were working with information from the Drug Enforcement Agency. Before the stop, the officers were informed that a vehicle had been involved in a narcotics transaction. The officers noticed vehicle code violations and made a car stop. The car matched the description given by the DEA, the occupants matched the description, and the location of the car matched the information provided by the DEA.

PASSENGER

The officers stopped the vehicle and the female passenger immediately got out and started walking away. One of the officers stopped and detained her. The officer’s testimony was that he stopped and detained the passenger because it is his standard practice, for officer safety reasons to detain all passengers in a vehicle during a traffic stop. ***If that were the only testimony, due to the recent cases from the U.S. Supreme Court about passengers in cars being free to leave, there could have been a problem.***² The officer testified, however, that the car stop took place in a high gang and high narcotics area. After detaining the passenger, the officer asked for consent to search the

¹ See TDC legal update, February, 2008.

² See TDC legal update, October, 2007.

female. The female told the officer she had narcotics in her pockets. The officer relayed this information to his partner. *So far, so good.*

The other officer approached the driver and while so doing was told of the narcotics found on the passenger. This officer asked the driver to get out of the car. The officer testified that the driver was “very docile,” “very cooperative,” “very mellow,” “very polite,” “very easygoing,” and “did not appear nervous at all.” When the driver got out of the car, the officer was taken aback by the defendant being 6’6” tall. The officer is 6’1” or 6’2”. The officer testified that he felt “uncomfortable” with the defendant’s height and because he knew narcotics users and dealers sometimes carry weapons, he placed the defendant in handcuffs. *The court of appeals goes to great lengths to emphasize that at the time the officer placed the defendant in handcuffs there were no specific articulable facts to suggest that the defendant was armed or a threat to the officer.*

Circumstances in which handcuffing has been determined to be reasonably necessary for the detention of a suspect include the following:

1. the suspect is uncooperative;
2. the officer has information that the suspect is currently armed;
3. the officer has information the suspect is about to commit a violent crime;
4. the detention closely follows a violent crime by a person matching the suspect’s description and/or vehicle;
5. the suspect acts in a manner raising a reasonable possibility of danger or flight;
6. the suspects outnumber the officers;

The officer did not testify that the suspect posed a present safety or flight risk at the time he was handcuffed. Further, although it was a narcotics investigation, the officer testified that he did not believe that the suspect possessed narcotics. Instead, the officer handcuffed the suspect because there was a height difference between the officer and the suspect. There was NO testimony that the officer was concerned about the relative bulk or size of the suspect, as the suspect was thin.

The court stated that height may be an appropriate consideration in determining whether a suspect poses a safety or flight risk---**but height by itself is not sufficient.**

WHAT TO TAKE AWAY FROM THIS CASE

The court was quite clear that the officer had cause to pat search this suspect. The court emphasized that with the demeanor of the suspect, the lack of concern that the suspect was armed or a threat to the officer the officer had no cause to put handcuffs on the suspect. The court made clear that the officer could and should have pat searched the suspect BEFORE handcuffing the suspect. Had that occurred, the methamphetamine found on the suspect would not have been suppressed and his conviction not been reversed.

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