

THIRD DEGREE COMMUNICATIONS, INC.

TRAINING BULLETIN: LEGAL UPDATE

“Routine” Pat Searches

By Charles Gillingham

THERE IS NO SUCH THING!

If you get on the stand and testify that “in my training and experience...for officer safety reasons...pat down everyone I contact...everytime” any evidence found during a “routine” pat search is going to be suppressed.

Officers are in the habit of pat searching everyone they contact. This habit is illegal. You must have independent articulable facts that justify your actions. While most pat searches are justified, officer’s testimony frequently provides flimsy evidentiary support. You have to know what the standard is to conduct a pat search. As important, is your knowledge of facts that justify a pat search.

PAT SEARCH STANDARD SPECIFIC FACTS

The pat search must be based on specific facts that a suspect was armed or dangerous. A standard procedure, feeling, hunch, or guess are grounds for suppression. The test to determine whether an officer believes that a detained suspect is armed and dangerous is that of the “reasonable officer.” The court looks at whether it was reasonable for an officer to believe that the suspect is armed or dangerous.

The court can consider the totality of the circumstances. The court will look at your training and experience. What were you taught? What has happened to you on the street? What did you believe was going on based on all of the facts known to you at the time of the stop?

FACTS THAT JUSTIFY A PAT SEARCH

If you want to avoid coming to court and testifying in a suppression motion, document in your offense report those facts which you believe support your decision to pat search a suspect. The crime being investigated is crucial. Courts repeatedly have stated that investigation of the following offenses almost always justify a pat search: narcotics offenses; an investigation of a detainee for a violent crime will warrant a pat search; burglary, because burglary tools can often be used as weapons; and a pursuit will justify the pat down of all occupants of the car. Known gang affiliation and known criminal history for violence or weapons offenses will almost always justify a pat search.

Problems arise, of course, when you choose to pat a detainee down when you make contact on the street or during a car stop for a vehicle code violation. Those situations require articulable facts that justify a pat down.

A BULGE AND OTHER RATIONALE

A bulge in the suspect's clothes will justify a pat down especially if you recognize it to be consistent with the size and shape of a weapon. The location of the bulge will also be taken into consideration, especially if the detainee could easily access the location. If the suspect is taking pains to hide the bulge, you may also pat search that individual. Obviously, if the suspect tries to retrieve the item, a pat search is justifiable. The refusal of the detainee to comply with commands also justifies a pat search.

The detainee's mental state, whether she is agitated, hostile or excessively nervous may provide cause to pat search. Realize however, that the exact nature of your observations should be documented.

The location of your contact and the environmental conditions will also be important in a determination of your ability to pat search, but location alone does not provide sufficient justification to pat search. The court will also evaluate whether the area was well traveled or desolate and whether the stop took place at night. The court will also consider how many detainees there were, particularly if they outnumber the officers, which if the case, will help justify a pat search.

It is crucial that officers understand that they cannot legally pat search everyone they come into contact with. Prosecutors cringe when they here or read, "I pat searched the suspect for officer safety purposes." While that may be the reason to pat search, it does not provide the factual basis for doing so. Common sense, thorough documentation and observation, will provide the basis to pat search and insure officer safety.

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