THIRD DEGREE COMMUNICATIONS, INC.

TRAINING BULLETIN: LEGAL UPDATE

Spotlight on Detentions: The Shining Light—May Be Illegal

By Charles Gillingham

THE CONTACT

Officer Brian Crutcher was in full uniform and in a marked patrol car in Vallejo. He was patrolling a high crime, high narcotics area known as "The Crest." The inhabitants of The Crest were known to be combative during arrest and to assault police officers.

The officer noticed subject Garry standing on a street corner. The officer watched him for three to five seconds. Officer Crutcher testified that he had never made an arrest on that corner, but that he had made approximately forty arrests in that vicinity. Crutcher also noted that he had been assaulted in that area on more than one occasion.

Officer Crutcher stopped his car and turned his patrol car spotlight on the suspect. He testified that the defendant was around 35 feet away. Crutcher said it took two to three seconds to reach the suspect. Crutcher also testified that the defendant looked "nervous." Officer Crutcher got out of his car and "briskly" approached the suspect. The suspect looked nervous and agitated. The suspect backed up three to four steps and said he lived at the house next to their location. Crutcher asked the suspect whether he was on probation or parole. The suspect said that he was on parole. The officer also asked the defendant whether he had any weapons. The suspect replied that he did not. The defendant paused and the officer grabbed him. The suspect then "violently" resisted. After the officer had taken physical control of the suspect, he searched the suspect and searched him. Officer Cruthcher found cocaine packaged for sale.

THE CHALLENGE

The defendant moved to suppress the evidence against him. The motion was denied at the trial court level. The defendant went to trial and was found guilty. He appealed the denial of his motion to suppress, alleging that he was detained without reasonable suspicion when the spotlight was shined upon him.

THE LAW

Every officer who reads the legal update SHOULD know that a consensual encounter does not trigger Fourth Amendment protections for an individual. A consensual encounter by definition would make a reasonable person feel free to ignore officers and go on about his business. By virtue of their being consensual, the individual waives those protections by voluntarily coming into contact with a law enforcement officer. Every officer SHOULD ALSO know that a detention sparks the protection of the Fourth Amendment.

The court must determine whether a contact with a subject is consensual or a detention. The determining factor is whether the officer has, by means of force or show of authority, restrained the liberty of the individual contacted. The action of the officer must be such that a reasonable person would not have felt free to leave. The court evaluates both the verbal and non-verbal conduct of the officer.

The court reviewed numerous cases and noted repeatedly that the manner in which an officer approaches an individual is critical to determining whether a detention occurred. The court also noted that the use of a spotlight alone does not necessarily indicate that a detention occurred.

The court stated, however, that the combination of a spotlight on a suspect and the approach by the officer may elevate a consensual encounter to a detention. In this case, the court even agreed that the spotlight was probably being used for officer safety purposes only.

The biggest problem with this case for you is that an excellent argument can be made that there was no detention. The court noted that the officer parked his car about 35 feet away from the defendant. Did not use emergency lights, did not draw a weapon, made no verbal commands, went to defendant rather than asking defendant to come to him, did nothing to prevent the defendant from leaving, and did not touch defendant prior to learning that he was on parole.

The court stated, however, that the actions taken as a whole would not leave a reasonable person with the belief that s/he was free to leave. The court stated that the officer "bathed" the suspect in light, exited his police car, and, armed and in uniform, "briskly walked 35 feet in "two and one half to three seconds" direct at him while questioning the suspect. The court also found that the questions about parole or probation status to be key to their determination. Those questions indicated that the officer did not believe the suspect's statement that he was merely standing outside his home. Those questions, to the court, would indicate that an investigation was underway.

What then to take away from this case? While the case is fact specific it is important to take into consideration the totality of your actions and the impression they would give to a reasonable person.

P.S. Another interesting case was handed down last week by the 6th district court that you all should know about. In that case an officer made a car stop based on obstructed view. The obstruction was a tree car freshener. The officer testified that he hung one in his car and knew that it could obstruct objects outside the car much larger than the freshener. The court held that the testimony was sufficient to uphold the car stop based upon obstructed view. Hang a tree freshener, test to insure that you see the same thing, and carry on.

People v. *Garry* (2007)156 Cal.App.4th 1100

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