



El Segundo Police Department
Training Section
348 Main Street, El Segundo, CA 90245
Phone (310) 524-2200

TRAINING BULLETIN

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Training Bulletin: Legal Update

Something Smells Fishy...Reasonable Suspicion?

by Johnene Stebbins

Probable cause is necessary for arrest, but only reasonable suspicion is required for a detention. So, what is reasonable suspicion and how does an officer articulate it? Reasonable suspicion is a concept that is very fact specific and will always be based on a totality of the circumstances, including the experience of the officer. The rationale behind this standard "is that an officer of the law, employed to maintain the peace and to prevent crime... has both the right and the duty to make reasonable investigation of all suspicious activities even though the nature thereof may fall short of grounds sufficient to justify an arrest or a search of the persons or the effects of the suspects. Experienced police officers naturally develop an ability to perceive the unusual and suspicious which is of enormous value in the difficult task of protecting the security and safety of law-abiding citizens." [i] Clearly, what is "suspicious" will depend on the individual officer's training and experience. "Reasonable suspicion,'... lies in an area between probable cause and a mere hunch. Its existence is discovered by common sense." [ii] The flip side of this rule is that a detention cannot be predicated on mere curiosity, rumor, or hunch, even if the officer is acting in good faith. [iii]

Context is everything. In a missing person's investigation (likely homicide investigation), the fact that the defendant lied about the length of time the victim had been missing, his lack of concern, and that his "neck started to visibly throb" when the officer was questioning him all gave rise to reasonable suspicion. [iv] Numerous cases have held that Defendant's display of nervous behavior, such as looking shocked, perspiring and shaking, looking nervous and hesitant to answer questions, are all factors that can support reasonable suspicion. Time of day or night, location known as high crime area or location of recent burglaries, anonymous or informant tips, and of course the officer's observations of the

suspect all play into whether reasonable suspicion exists. Flight alone, does not specifically give rise to a lawful detention, but flight with an additional circumstance should be enough to detain. Courts have held that flight in a high crime area, flight when the suspect matches the description of a wanted suspect, flight after an officer finds a suspect in place of hiding, and flight from near a crime scene have all been deemed appropriate factors to consider giving rise to a lawful detention based on reasonable suspicion that criminal activity is afoot.[v] Simply walking away from an approaching officer alone does not amount to flight. However, if other factors exist, like it occurred after a hand to hand exchange and the area is known for drug sales, then this is certainly a factor giving rise to reasonable suspicion considering the totality of the circumstances.

In addition to flight, attempting to hide or avoid officers can also rise to the level of reasonable suspicion when viewed with the totality of the circumstances. It is reasonable to detain a suspect who, upon seeing officers, hides behind a dumpster and rotates around the dumpster to remain out of the view of the officers.[vi] A passenger and driver who duck down to the floorboards of the car when officers shine their light into the parked car are acting suspicious.[vii] Similarly, a defendant that broke away from a group after seeing the marked patrol car gave rise to reasonable suspicion when officers received a tip that the defendant was armed, parked in the high school parking lot, and had threatened the football coach, telling the coach he would carry out the threat in the parking lot after the game.[viii]

However, if the facts are too vague or stale, then the courts may find the detention unlawful. For example, in *People v. Thomas*,[ix] police received a call in the middle of the day that an adult black male wearing a sweatshirt and dark pants was "harassing" customers at their business. The reporting party said it appeared that the black male had mental health problems and had "set up camp." The area was a high-crime area, high foot-traffic area and had a significant homeless population. Police responded two and a half hours later and found defendant sitting on the sidewalk about 80 yards from the business. He was a black male wearing a windbreaker, sweatshirt, and dark pants. No one else was in the area. Officers made a consensual contact. When Defendant refused to identify himself and began to walk away, officers put him in a hold, handcuffed him, and searched him for weapons - finding a knife and drugs. The court suppressed the knife and drugs. The court opined that the description was too vague, combined with the temporal and geographical connection, and the Defendant showed no signs of mental illness. Had any one of these factors been different, the outcome could have been different, as well. The court noted if height, weight, age or other more specific identifiers been provided, then the time lapse may not have been a significant factor. Or, the vague description may not have been as significant if the police had arrived shortly after the call. Further, the reported conduct, "harassment" was not criminal. Without actual criminal conduct having been described, how could officers have a reasonable suspicion that defendant, as he sat on the sidewalk, had been engaged in or was about to engage in criminal conduct. Lastly, the fact that the Defendant refused to provide information and walked away, without any other suspicious factors, does not give

rise to reasonable suspicion. "A person approached by police for questioning "need not answer any question put to him; indeed, he may decline to listen to the questions at all and may go on his way. He may not be detained even momentarily without reasonable, objective grounds for doing so; and his refusal to listen or answer does not, without more, furnish those grounds." [x] More information from the reporting party about the description of the defendant and the conduct may have saved the day.

What does this mean for you?

The courts absolutely consider your personal knowledge, training and experience, so learn to turn that into articulable facts when testifying.

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- [i] *In re Elisabeth H.*, (1971) 20 Cal. App. 3d 323, citing *People v. Mickelson* (1963) 59 Cal.2d 448 and *People v. Horton* (1971) 14 Cal.App.3d 930.
 - [ii] *United States v. Fiasche*, 520 F.3d 694, 697 (7th Cir. 2008).
 - [iii] *People v. Walker*, (2012) 210 Cal. App. 4th 1372, 1382.
 - [iv] *People v. Rogers* (2009) 46 Cal.4th 1136, 1159.
 - [v] *People v. Magee* (2011) 194 Cal.App.4th 178, 191 fn.12; *People v. Rodriguez* (2012) 207 Cal.App.4th 1540, 1544; *People v. Superior Court (Johnson)* (1971) 15 Cal.App.3d 146; *People v. Souza* (1994) 9 Cal.4th 224, 235-36.
 - [vi] *In re Michael S.* (1983) 141 Cal.App.3d 814, 816.
 - [vii] *Souza* at 240.
 - [viii] *People v. Turner* (2013) 219 Cal.App.4th 151.
 - [ix] *People v. Thomas* (2018) 29 Cal.App.5th 1107, 1116-1117.
 - [x] *Florida v. Royer* (1983) 460 U.S. 491, 498; see also *Illinois v. Wardlow* (2000) 528 U.S. 119, 125
People v. Thomas, (2018) 29 Cal. App. 5th 1107, 1117, as modified on denial of reh'g (Dec. 27, 2018)