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ISSUE: 23-30

TRAINING BULLETIN

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LAWS OF ARREST

ISSUE:

The reinforcement of reasonable suspicion stops (Terry v. Ohio) and searches of a possible suspect (s).

Terry v. Ohio (1968) 392 US 1. the U.S. Supreme Court differentiated “detentions” from “arrests,” and held that whereas an arrest must be justified by probable cause, a detention is constitutionally appropriate under reasonable suspicion. A pedestrian stop or a vehicle stop is a detention; the proper level of justification for either type of stop is reasonable suspicion- not probable cause. Probable cause is not needed to justify the stop of a vehicle or pedestrian.

A seizure of an individual is normally characterized as either a detention or an arrest. The distinction can be significant, in so much as the constitutional standard for a permissible detention of lesser degrees than that applicable to arrest. People v. Soun (1995) 34 Cal App 4th 1499.1515.

A Terry stop in the United States allows the police to briefly detain a person based on reasonable suspicion of involvement in criminal activity. Reasonable suspicion is a lower standard than probable cause which is needed for arrest. When police stop, and search a pedestrian, this is commonly known as a stop and frisk. When police stop an automobile, this is known as a traffic stop.

PEDESTRIAN STOPS:

In Terry v. Ohio, courts held that Police can stop and briefly detain a person “if the officer has a reasonable suspicion.” The level required for a Terry Stop is obviously less demanding than probable cause. U.S. v. Sokolow (1989) 490 US 1,7. Also see, Kansas v Glover (2020) U.S. {140 S. Ct. 1183}.

In Terry v. Ohio, courts held that an officer may conduct a brief investigatory stop when the officer has reasonable articulable suspicion. Reasonable suspicion is a less demanding standard than probable cause, Illinois v. Wardlow (2000) 528 US 119, 123. Also see, United States v. Arvizu (2002) 534 U.S. 266, 274.

In *Terry v. Ohio*, the court has recognized that a law enforcement officer's reasonable suspicion that a person may be involved in a criminal activity permits the officer to stop the person for a brief period and take additional steps to further investigate. *Hibel v. Humboldt County* (2004) 542 US 177, 185.

VEHICLE STOPS:

A traffic stop for a suspected violation of a law is defined as a seizure of the occupants of the vehicle. To justify this type of seizure, officers only need reasonable suspicion. *Helen v. North Carolina* (2014) 135 S. Ct. 530, 536. A traffic stop is lawful at its inception if it is based on a reasonable suspicion that a traffic violation has occurred. *Breirton v. DMV* (2005) 130 Cal. App. 4th 499, 510. Reasonable suspicion of a vehicle code violation or other criminal activity justifies a traffic stop; probable cause is not needed. *People v. Watkins* (2009) 170 Cal, App. 4th 1403, 1408.

It's to a suspect's advantage to have police, prosecutors, and judges make the mistake of analyzing a stop under the higher probable cause standard; it's to the advantage of those seeking justice to apply the appropriate level of justification to the appropriate level of conduct: Probable cause for the arrest; reasonable suspicion for the stop.

REASONABLE SUSPICION:

Reasonable suspicion means an officer can explain why a crime has likely occurred, and clearly articulate the reasons for that conclusion. For a detention to be lawful, those reasons must be convincing to another person looking at the facts and conclusions at a later time, which is typically a judge reviewing a detention at a suppression hearing. Reasonable suspicion allows an officer to stop a vehicle, and to stop a person walking down the street. If the officer can articulate specific facts that imply a person possibly has a weapon, the officer may pat down the person for weapons, or search through the passenger compartment of a vehicle where a weapon might be hidden. Reasonable suspicion does not allow an officer to search an entire vehicle or a person. Probable cause is required for a full search, or an arrest, of a suspect.

PROBABLE CAUSE:

Probable Cause is the standard that is required for warrants, and is defined in the Fourth Amendment of the United States Constitution. It has also become standard to arrest a person without a warrant in most cases. If an officer has probable cause to believe that a person has committed a felony, the officer may arrest. Though for most misdemeanor arrests, the officer must have witnessed the crime occur before an arrest can be made. A search of a residence requires not only probable cause, but for a judge to review the probable cause, and to sign a warrant. Due to reduced expectations of privacy and mobility, an officer may search a pedestrian or a vehicle with probable cause alone, without the judicial review and signed warrant.

The definition of probable cause is similar to reasonable suspicion, and the two are often confused. Probable cause is the higher standard, for which more facts and clearer evidence of criminal activity must exist. Probable cause can only exist where there are facts that would lead a reasonable person to conclude that a crime has occurred. It does not have to lead to certainty that a crime occurred, but to a strong inference that a crime probably occurred.

EXAMPLES OF REASONABLE SUSPICION:

Some common examples drawn from various state and federal cases include the following:

- Furtive action concealing suspected weapons or contraband.
- Standing lookout for others preparing to commit a suspected crime.
- Casing a retail shop or other potential crime location.
- Standing watch for and observing potential crime victims.
- The suspect's flight or evasive action attempting to elude police.
- Commission of crime nearby from which the suspect may have fled.
- Other witness descriptions matching the suspect.
- Erratic behavior suggesting the suspect is under the influence.
- Exchange of money suggesting drug crime or solicitation to prostitution.
- Exchange of items that may be drugs or other contraband.

TYPES OF POLICE-CIVILIAN ENCOUNTERS:

- Consensual Encounter: Requires neither probable cause nor reasonable suspicion.
- Terry Stop (Investigative Detention): Requires reasonable suspicion.
- Arrest: Requires probable cause.

OFFICER SAFETY:

Questions to ask when conducting a Terry Stop:

1. What is the nature of the crime I am investigating? If you believe you are contacting a suspect (s) in a crime of violence, the threat to you is elevated. Your justification for a weapon frisk is much greater.
 2. Do I believe the suspect is armed, or do I KNOW the suspect is armed? If you believe a suspect you are detaining may be armed, then a pat-down for weapons is prudent. If you KNOW a suspect is armed, then the interaction has morphed into a high-risk contact. There is a big difference between believing and knowing; when you know, recognize the elevated risk to your life and act accordingly.
 3. What are the objective hazards of the contact? Meaning hazards that are concrete (known) and measurable. Is the ratio of deputies to suspect (s) acceptable? Is
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there adequate illumination to see threats to your safety? Are you in a location in which there are additional people unfriendly to the police? Is there a crime of violence being investigated?

4. What are the subjective hazards of the contact? Hazards brought to the situation by the individual deputy. This type of hazard varies from deputy to deputy. Chronic injuries, poor marksmanship, poor control and defensive tactics skills, poor communication skills, damaged or inoperative equipment, lack of physical fitness and poor geographical orientation are all examples of subjective hazards brought to a given incident by an officer.
5. What type of behavior does the suspect exhibit upon contact? Deputies should make an assessment of potential resistance upon contact. Is the suspect preparing to flee? Are they taking a bladed stance (or some type of stance indicating hostile intent)? Is the suspect crowding your personal space? If you are seeing problematic behavior, you should confront the behavior immediately with the appropriate response.

A Terry Stop is a versatile law enforcement tool that can be used to great effect by deputies, but we must be aware of the inherent hazards in these contacts and use tactics to mitigate them. Make a threat assessment and take steps to mitigate the objective and subjective hazards.
