

Social Contacts/Terry Stops

Police contacts with citizens are very dynamic. The courts have stressed the inherent coerciveness by the police (badge and gun) command a certain level of respect and sometimes fear by the community we serve. Officers will make many different contacts of people in their daily work shifts and they have to know the rules/laws associated with those types of contacts. We are going to discuss the two most common, and difficult, types of contacts the police will have with citizens. Think of these contacts as a sandbox that you function in. Remember when you were a child and you had, or knew someone who had, a sandbox in the yard. There were rules associated with playing in that sandbox and those rules were typically set by the person in charge of the sandbox. Think of the courts as the owners of the sandboxes we operate in, and case law as the rules set forth on how we are expected to behave, or function while in that sandbox.

Every contact begins with either a citizen's phone call or an officer's observation, and a decision to act by the police. The officer must make a decision on how to contact potential suspects based on the information they have gathered. Figure out the sandbox to operate in. Officers must be aware of the rules or case law associated with each sandbox in order to protect that citizen's constitutional rights, and effectively bring criminals to justice.

SOCIAL CONTACTS:

This type of contact is probably one of the most difficult contacts by the police. A social contact rises from a hunch or suspicion of wrongdoing; however it is **not** based on facts that would allow the officer to compel the suspect to stay and answer questions. Everything the officer does or says has to be of a nature that a reasonable person doesn't feel compelled to stay and speak to the police if they choose not to. Phrases like "stop right there, come over here, wait a minute..." are phrases not associated with a social contact because they can equal a seizure. Actions such as backing a subject against a wall, too many officers around, holding on to a subject's property are tactics not associated with a social contact because those actions may imply the subject is not free to walk away.

The courts have said that simply questioning a subject in the field does not rise to the level of requiring constitutional protections, as long as the contact is of a nature that the subject is free to not speak to the police and feel free to walk away at any time. This sandbox is where the police must really be aware of the inherent coerciveness they possess as defined by the courts. There are Washington State Supreme court justices that believe no reasonable person would decline a request from a person carrying a badge and a gun and who possess the authority of our office with the ability to take away freedoms of citizens. Typically officers will try to avoid these situations because they can't control the encounter to their liking and they find themselves in a "contempt of cop" situation causing the encounter to go from bad to worse.

If social contacts had to be summed up in one word that word would be consent. Consent is considered to be lawful in the eyes of the court as long as three core principles are met, the consent was given;

- 1) Knowingly
- 2) Intelligently
- 3) Voluntarily

This has to be shown by the police through clear and convincing evidence. So how do we accomplish this? This is where we review many Washington State Supreme Court cases dealing with social contacts that the courts have deemed a seizure. The courts have ruled even asking a contact for permission for a frisk or search of their person constitutes a “seizure” (State v Harrington, 167 Wn.2d 656). Part of the analysis of this case stated, *“Requesting to frisk is inconsistent with a mere social contact. If (the Officer) felt jittery about the bulges in Harrington’s pockets, he should have terminated the encounter--which (the Officer) initiated--and walked back to his patrol car. Instead (the Officer) requested a frisk.”* Telling a contact to “wait right here” or taking ID and walking away while checking for warrants is a seizure (State v. Elwood, 52 Wn. App. 70). Requesting ID and holding it for several minutes, while standing with subject, and checking by hand-held radio for outstanding warrants is a seizure...(State v. Crane, 105 Wn. App. 301). When the allegation by a subject is brought forward that they did not feel free to leave the contact, the burden of proof to show why they felt that way lies with the subject. Some case law, on whether a seizure has occurred from a social contact, has come down to how a question was asked by the police. In State v. Thorn, 129 Wn. 2d 347, an officer patrolling a public park parking lot observed a flicker of light inside a parked vehicle, he approached the vehicle and asked “where’s the pipe” the driver handed over a marijuana pipe. Thorn attempted to argue that he felt seized by the request. Judges at the Washington State Supreme court level ruled that the mere request did not equal a seizure, however when rendering their decision they wrote in the majority opinion that they would have liked to have known how the question was posed to Thorn by the officer.

Another reason officers stay away from social contacts is officer safety related. Police are constantly operating at a higher level of awareness than the average citizen. They are continually taking threat assessments on every contact and adjusting their behavior to provide themselves with the most ideal officer safety situation to accomplish the task. Social contacts present many officers with a challenge regarding what they are willing to potentially sacrifice, officer safety wise, in the interest of conducting a social contact with a citizen. The courts recognize the dangers officers face on any type of citizen contact and they support the police when they have articulation, based on well founded beliefs, that there is a safety concern. In a social situation if officer safety concerns arise remember consent. “Could you remove your hands from your pockets,” or “Can you step over here to speak to me” are ways to assist us with safety concerns during a social contact, but what if the subject doesn’t comply with our request? Walk away! Remember the reason for the contact. It is social meaning you do not have enough information to compel that subject to stay and answer questions. If there is a concern for your officer safety then walk away. There have been cases where the officer safety concern was to a level that walking away was not a safe option for the police and the contact was elevated to a Terry stop with

the suspected crime assault on a police officer. The key word here is articulation. In cases where the police have been successful with this, the offender was the one to initiate the contact, and followed the officer when they attempt to break the contact because of officer safety concerns.

Remember to think smart, be creative when conducting social contacts. Convince the subject they want to voluntarily stay and speak to the police and cooperate fully. Stay away from comments and tactics that may infer a seizure. Apply the reasonable standard.

Social Sandbox

Between 0 and 25% belief of criminal activity

Cannot compel anything

Subject does not have to identify themselves

Stay away from phrases and tactics which would lead a reasonable person to believe they are no longer free to walk away.