

POLICE "CONTACTS"

"Street encounters between citizens and police officers are incredibly rich in diversity. They range from wholly friendly exchanges of pleasantries or mutually useful information to hostile confrontations of armed men involving arrests, or injuries, or loss of life."¹

Located somewhere between "friendly exchanges" and "hostile confrontations" is a unique type of police-citizen encounter known as a "contact." A contact is a device by which an officer who has a "hunch" or some minimal information that a person may be violating the law engages the person in a brief conversation for the purpose of confirming or dispelling the officer's suspicions.

What makes contacts unique is that officers, because they have neither reasonable suspicion to detain nor probable cause to arrest, cannot prevent the suspect from just walking away. So they must seek the suspect's cooperation, which means force, threats, and intimidation are out of the question.² Instead, they must rely on a combination of their persuasive ability, restraint, common sense, and a good working knowledge of the law of contacts.

Of course, some officers are better suited than others at engaging in contacts. Some officers, by virtue of their personalities, temperament, and social skills, are just naturally adept at engaging a suspect in a courteous but businesslike conversation without resorting to the trappings of police authority.³ Others find it difficult. Nevertheless, it is a skill that can be learned. And it is well worth the effort because without grounds to detain or arrest, the only alternative to contacting a suspect is, in most cases, to do nothing.

The question arises: Why would a suspect who is, in fact, guilty of the crime under investigation voluntarily agree to talk with officers? Actually, there are several reasons. The suspect may think that if he appears cooperative the officers will figure he is innocent. The suspect may be confident he can lie his way out of it. Or, he may have concluded the officers have enough information to arrest him, so he might as well cooperate and hope he will be rewarded for his cooperation with a lighter sentence.⁵

There is, of course, one other possibility: the suspect may not be very bright. If so, it does not matter. As the Court of Appeal observed, "An individual's decision to cooperate must merely be consensual; it need not be intelligent [or] wise from the criminal's point of view. . . . It is consonant with good morals, and the Constitution to exploit a criminal's ignorance or stupidity in the detectional process. This must be so if Government is to succeed in its primary mission to live free from criminal attack."⁶

WHAT IS A "CONTACT?"

A "contact" is an encounter between an officer and a suspect in which the suspect voluntarily agrees to stop and speak with the officer.⁷ Also known as "consensual encounters," "walk and talks," and "knock and talks," contacts take place on streets and sidewalks, in cars, on busses, in airports, homes, and businesses.

Contacts are similar to detentions in that their purposes are essentially the same: to determine whether the suspect has committed or is committing a crime, whether the officer's suspicions were unfounded, or whether further investigation is necessary.⁸

There is, however, a big difference between contacts and detentions. Contacts are consensual; detentions are not. An officer who detains a suspect may issue commands and, if necessary, use force to keep the suspect from leaving.⁹ But an officer who "contacts" a suspect can do neither of these things. In fact, the officer cannot say or do anything that would convey the impression that the suspect is not at liberty to ignore the officer and walk away. As the Court of Appeal pointed out, "Implicit in the notion of a consensual encounter is a choice on the part of the citizen not to consent but to decline to listen to the questions at all and go on his way."¹⁰

Another important difference between detentions and contacts is that detentions are "seizures" under the Fourth Amendment. This means that officers cannot detain a suspect unless they have reasonable suspicion to believe the suspect has committed or is committing a crime.¹¹ It also means that if officers violate any of the procedural rules for detaining suspects, any evidence and statements obtained as the result of the detention may be suppressed.

Contacts, on the other hand, are by definition entirely consensual and, therefore, do not constitute "seizures."¹² This means officers will not be required to justify their decision to contact the suspect.¹³ As the California Supreme Court explained, "[Contacts] do not trigger Fourth Amendment scrutiny. Unlike detentions, they require no articulable suspicion that the person has committed or is about to commit a crime."¹⁴

THE TEST:

"Free to terminate"

The test for determining whether an encounter was a contact is as follows: An encounter is a contact if a reasonable person in the suspect's position would have believed he was free to decline the officer's requests or otherwise terminate the encounter.¹⁵ The same idea has been expressed in a variety of other ways. For example, some courts have said the test is whether the reasonable person would feel free to leave¹⁶, feel free to disregard the officer and go about his business,¹⁷ feel free to break off the contact,¹⁸ feel free not to submit,¹⁹ or feel free to disregard the officer's request for information.²⁰

Although there is no significant difference between any of these tests, there are certain situations in which the "free to leave" or "free to go" tests must not be used. For details, see the box entitled "The 'Free to go' test" at the end of this article.

If the suspect flees

There is an exception to the rule that a contact becomes a detention if a reasonable person in the suspect's position would have believed he was not free to terminate the encounter. That exception is as follows: If the suspect flees from officers who are attempting to contact or detain him, a detention does not occur unless and until officers physically restrain the suspect or he gives up the chase.²¹ In other

words, although a fleeing suspect is obviously not free to terminate the encounter, he is not considered "detained" until he is actually apprehended.

This exception has some practical application in two situations. First, if the suspect drops evidence such as drugs or a weapon while he is fleeing, the evidence cannot be suppressed on grounds the officer lacked grounds to detain.²²

Second, the suspect's act of fleeing from officers who are attempting to contact him may provide grounds to detain. Earlier this year, the United States Supreme Court noted that flight is a very suspicious circumstance that may result in reasonable suspicion to detain if coupled with some other suspicious circumstance. As the Court pointed out, "Headlong flight—wherever it occurs—is the consummate act of evasion; it is not necessarily indicative of wrongdoing, but it is certainly suggestive of such."²³ For example, a suspect's flight from officers who are attempting to contact him in a high-drug area ought to furnish grounds to detain.²⁴

If the suspect refuses to cooperate

When officers attempt to contact a suspect for whom grounds to detain do not exist, the suspect has a right to refuse to cooperate, in which case the officers can legally do nothing.²⁵ As the U.S. Court of Appeals observed, "[F]reedom to leave means fundamentally the freedom to break off contact, in which case officers must, in the absence of objective justification, leave the [suspect] alone."²⁶ Or, as the court put it in *Morgan v. Woessner*,²⁷ "When a citizen expresses his or her desire not to cooperate, continued questioning cannot be deemed consensual."

For example, officers cannot require the suspect to stay and talk with them, or require the suspect to identify himself.²⁸ Furthermore, a refusal to cooperate cannot be considered "suspicious" for determining whether reasonable suspicion to detain exists.²⁹ Nor would it constitute a violation of Penal Code § 148 which makes it unlawful for a person to willfully resist, delay, or obstruct an officer in the performance of his or her duties.³⁰

Although a suspect's refusal to cooperate cannot be considered in determining whether reasonable suspicion to detain exists, officers may consider any false or conflicting statements he made concerning his suspicious behavior.³¹ They may also consider the suspect's extreme or unusual nervousness upon seeing them or their patrol car.³²

Officers may also take into account any furtive gestures by the suspect, such as a sudden movement in apparent reaction to seeing an officer or patrol car if it reasonably appeared the suspect was attempting to hide, discard, retrieve, or distance himself from an object (e.g., drugs, weapon) or was attempting to hide from or avoid officers.³³

Furthermore, although a suspect's act of asserting his right not to consent to a search may not be considered,³⁴ officers may consider a suspect's consent to search some property while refusing to permit a search of other property.³⁵ Finally, as noted earlier, the suspect's flight from officers may furnish grounds to detain when coupled with some other suspicious circumstance.

Accidentally converting a contact into a detention

An encounter that starts off as a contact may inadvertently develop into a detention if the officer's words or conduct reasonably communicated to the suspect that the situation had changed, that he was no longer free to terminate the encounter.³⁶ In the words of the U.S. Supreme Court, "[A]n initially consensual encounter between a police officer and a citizen can be transformed into a seizure or detention within the meaning of the Fourth Amendment, if, in view of all the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave."³⁷

One of the dangers, here, is that the officer may be unaware such a transformation has occurred. This is because the transition between detention and a contact "can be so seamless that the untrained eye may not notice that it has occurred."³⁸ In fact, even a "trained" eye may fail to notice the transition if it does not stay focused on the issue.

General principles

In determining whether a reasonable person in the suspect's position would have felt free to decline the officer's requests or otherwise terminate the encounter, the following principles should be kept in mind:

"Must," not "should" cooperate: The test for determining whether an encounter was a contact or detention is whether a reasonable person would have believed he must stay or is otherwise required to cooperate with officers.³⁹ A detention does not result merely because a reasonable person would have believed he should do so.⁴⁰ As the Court of Appeal observed, "Cooperative citizens may ordinarily feel they should respond when approached by an officer on the street but this does not, by itself, mean that they do not have a right to leave if they so desire."⁴¹

Reasonable innocent person: The various circumstances surrounding the encounter are viewed through the eyes of a reasonable person in the suspect's position who is innocent of the crime under investigation.⁴² This is important because a person who is guilty of the crime will naturally view things quite differently—much more ominously—than someone who is innocent.

For example, if an officer happened to approach a suspect who had just committed a crime or who was carrying drugs and said, "How're you doing?" the suspect might truly believe he was not free to leave. But to the average "innocent" person, the question would appear innocuous.

Suspect's state of mind: Just as the courts are not interested in how the circumstances would have appeared to a reasonable but "guilty" suspect, they have no interest in how the circumstances appeared to the real-life suspect who was contacted.⁴³

For example, if the objective circumstances do not reasonably indicate the suspect was detained, it is immaterial that the suspect, as the result of paranoia or prior experience with police officers, believed "he would be restrained or even tortured should he try to leave."⁴⁴

Officer's state of mind: It is immaterial that the officer had decided to detain the suspect if he attempted to leave, so long as the officer's intent was not communicated to the suspect.⁴⁵ As the court stated in *People v. Bennett*,⁴⁶ "The mere fact [the officer] might and probably would have stopped Bennett from leaving had he chosen to do so is legally irrelevant. That did not happen. And, of course, any uncommunicated subjective motivation entertained by [the officer] has no bearing on our analysis."

For the same reason it is also irrelevant that the officer requested backup prior to contacting the suspect. As the court noted in *U.S. v. Anderson*,⁴⁷ "The fact that Trooper Heim may have already called for back-up because he intended to search the vehicle is irrelevant, unless he communicated that intent to Mr. Anderson in some way that made Mr. Anderson feel compelled to consent."

As the California Supreme Court noted in the case of *In re Manuel G.*, "Even if [the officer] stated in his radio broadcast that he was making a pedestrian stop, that statement does not contradict [the officer's] testimony that the encounter remained consensual until the minor threatened him. The broadcast was made before [the officer] got out of his patrol car and thus could not establish the nature of an encounter that had not yet occurred."⁴⁸

SIGNIFICANT CIRCUMSTANCES

Over the years, the courts have analyzed a large number of police-suspect encounters to determine whether the encounter was a contact or detention. As the result, there are now some fairly clear indications of what circumstances are considered significant. Consequently, officers who are familiar with these circumstances and how they are viewed by the courts will usually be able to prevent a contact from becoming a detention, at least until they develop grounds to detain or arrest.

As we will discuss, although the courts take into account the totality of circumstances in determining whether an encounter was a contact or a detention, some circumstances are considered so coercive that the existence of just one of them will automatically convert a contact into a seizure.

Commands

As a general rule, any unambiguous command to a suspect automatically converts the encounter into a detention.⁴⁹ This is because a command constitutes an unequivocal assertion of police authority that reasonably indicates that compliance might be compelled.⁵⁰ For example, the courts have ruled the following commands to a suspect rendered the subsequent encounter a detention:

Come over here. I want to talk to you.⁵¹

Stop.⁵² Stay there.⁵³ Step away from your car.⁵⁴

Hold it. Police.⁵⁵ Sit on the curb.⁵⁶

Put your hands on the dashboard.⁵⁷

Get off your bicycle, lay it down, and step away from it.⁵⁸

Put your hands up and get out of the car.⁵⁹

In determining whether an officer's words constituted a command, the courts will consider, in addition to the words themselves, the manner or tone in which the officer addressed the suspect. For example, in *People v. King* ⁶⁰ an officer attempted to contact a suspect who was walking away from him. The officer, who knew the suspect by name, called out to him, "Danny, stop. I want to talk to you." In ruling the officer's words did not constitute a command, the court said, "The conduct of the police officer . . . was, in our opinion, ambiguous. From the apparent command, 'stop,' an inference of an intended and

actual detention might reasonably have been drawn by the trial court. But just as reasonable in our opinion, would be an inference of no intention to detain, but rather of an appropriate means under the circumstances of advising King of the officer's desire to talk to him."

Exception: Commands to a vehicle passenger: Although a command to a suspect will generally result in a detention, there is an exception to this rule when the command is directed at a passenger in a car stopped for a traffic violation or for some other purpose. Because car stops present a greater danger to officers when the driver is accompanied by one or more passengers,⁶¹ the courts have ruled that officers may issue certain commands to the passenger without converting the encounter with the passenger into a detention.⁶² Specifically, officers may order the passenger to exit the car ⁶³ or remain in the car.⁶⁴ Officers may also order a passenger to remove his hands from his pockets or otherwise keep his hands in sight.⁶⁵

Requests

A request by an officer, unlike a command, usually communicates to the suspect that he is free to choose whether or not to comply. For this reason, requests will not transform an encounter into a detention so long as it is clear the officer is requesting cooperation, not demanding it. For example, the courts have ruled a detention did not occur as the result of an officer's request to speak with the suspect,⁶⁶ a request that the suspect take his hands out of his pockets,⁶⁷ or a request that the suspects come over, so I wouldn't have to yell across the parking lot.⁶⁸

Although an officer's exact words may technically constitute a request, the overall force of the words—their "manner or mode"⁶⁹—may effectively communicate to the suspect that the officer will not take "no" for an answer. If this happens, the "request" is deemed a "command," and the encounter becomes a detention.⁷⁰ As the Court of Appeal explained, "[I]f the manner in which the request was made constituted a show of authority such that [the suspect] reasonably might believe he had to comply, then the encounter was transformed into a detention." For example, in *People v. Bennett*⁷¹ the court, in ruling an officer's request did not elevate an encounter into a detention, noted the officer "spoke in a polite, conversational tone and applied no physical or verbal force that might have caused a reasonable person to feel compelled to respond." Following are the most common types of officer requests and a brief discussion of how they are viewed by the courts:

Request for identification: Merely asking a suspect to identify himself or asking to see the suspect's ID will not convert the encounter into a detention.⁷² In the words of the United States Supreme Court, "[I]nterrogation relating one's identity or a request for identification by the police does not, by itself, constitute a Fourth Amendment seizure."⁷³ The suspect may, of course, refuse the officer's request.⁷⁴ Note that if the suspect allows the officer to inspect his driver's license or other ID, the officer's act of taking temporary possession of the ID will not transform the encounter into a detention.⁷⁵ A detention will, however, result if the officer refuses the suspect's request to return his ID.⁷⁶

A detention may also result if the officer retains possession of the ID after he has examined it. This is mainly because the officer's stated purpose for requesting ID—to examine it—has been satisfied. Thus, the officer's continued possession of the ID may be reasonably interpreted as an act intended to exercise control over the suspect, thereby converting the encounter into a detention.⁷⁷ As the U.S. Court of Appeals explained, "[W]hen law enforcement officials retain an individual's driver's license in the

course of questioning him, that individual, as a general rule, will not reasonably feel free to terminate the encounter.⁷⁸

For example in *U.S. Chan-Jimenez* ⁷⁹ an officer contacted a suspected drug smuggler whose truck was parked along the side of the road. The officer asked to see the suspect's driver's license and registration which the suspect handed to the officer. Although the officer confirmed the documents were "in order," he did not return them to the suspect. Instead, he asked for consent to search the suspect's truck which the suspect granted. During the search, the officer found 245 pounds of marijuana.

The court ruled, however, the search was unlawful because the contact had been converted into an illegal detention when the officer retained the suspect's ID after determining it was in order. Said the court:

"We find that [the suspect] was seized within the meaning of the Fourth Amendment when [the officer] obtained and failed to return his driver's license and registration, and proceeded with an investigation. When a law enforcement official retains control of a person's identification papers, such as vehicle registration documents or a driver's license, longer than necessary to ascertain that everything is in order, and initiates further inquiry while holding on to the needed papers, a reasonable person would not feel free to depart."

Request to run warrant check: A detention does not occur merely because officers ran a warrant check or DMV check on the suspect, so long as the suspect freely agreed to wait for the results.⁸⁰ Instead, an officer's act of running a warrant check is considered just one of the circumstances that may be considered.⁸¹

Officers must, however, be careful in such a situation because running a warrant or DMV check on a suspect may implicate two circumstances that would be of concern to the courts. First, if there is an unusual delay in obtaining the results because the computer is down or for some other reason a court might find the encounter became a detention at the point the delay became unreasonable. Officers may, however, prevent this from happening by confirming with the suspect that, despite the delay, he is still willing to wait.

Second, in most cases the officer will request the suspect's ID to confirm his identity before running the check. If so, and if the suspect voluntarily gives his ID to the officer, a detention may inadvertently result if the officer takes the ID to his patrol car to run the check on his radio or computer. This is because the suspect, although technically free to leave, cannot be expected to do so without his ID.

Consequently, in such a situation officers usually have three alternatives: seek the suspect's consent to wait in the officer's patrol car while the warrant check is conducted,⁸² seek the suspect's consent to take his ID to the patrol car, or run the warrant check on a portable radio while standing near the suspect.

For example, in *U.S. v. Analla* ⁸³ the court, in ruling a warrant check did not transform a contact into a detention, noted the officer "did not take the license into his squad car, but instead stood beside the car, near where Analla was standing, and used his walkie-talkie. Analla was free at this point to request that his license and registration be returned and to leave the scene."

Request to complete field contact card: Officers who contact a suspect will often want to complete a field contact card or field interview card containing certain information about the suspect, such as his name, address, and vehicle.⁸⁴ The legal issues that may arise here are essentially the same as those pertaining to warrant checks. Specifically, the suspect must voluntarily agree to wait while the officer fills out the card, the officer must do so diligently and must not take the suspect's ID to his patrol car or other location away from the suspect without the suspect's express authorization.

Request for consent to search: An encounter does not become a detention merely because officers sought the suspect's consent to conduct a search so long as the officers "do not convey a message that compliance with their requests is required."⁸⁵ In other words, the officer must make it clear he is requesting permission to search—not demanding it.⁸⁶ Although officers are not required to advise the suspect that he has a right to refuse consent,⁸⁷ the fact that officers did so is a factor that helps establish the consent was voluntary.⁸⁸

Request to go to police station: Officers will sometimes want a suspect who is contacted to accompany them to the police station for questioning, for fingerprinting, to appear in a lineup, or for some other reason. In such cases, officers must keep two things in mind.

First, the suspect's consent to accompany them must be voluntary, otherwise the encounter will be deemed a detention or arrest.⁸⁹ To help establish that the consent was voluntary officers should consider informing the suspect that he can choose not to go with them.⁹⁰

Second, officers must make sure nothing happens during the trip or after arrival at the station that would reasonably indicate to the suspect that he was no longer free to leave, at least until grounds to detain or arrest are established. Indications that the suspect was not free to leave include the following: suspect was handcuffed during the trip; suspect was seated in the locked or caged section of a patrol car; the interview took place in a locked interview room; officers accused the suspect of committing the crime under investigation or implied there was reason to believe he had done so; the interview was prolonged and the suspect was not reminded that he could leave at any time.

The following two cases illustrate some of the things officers should do, and should not do, when they want the suspect to accompany them to the police station for further investigation.

In *In re Gilbert R.*⁹¹ LAPD detectives went to Gilbert's home in Fontana to question him about an assault with a deadly weapon case in which he was a suspect. When they arrived, they spoke with Gilbert's mother and "advised her that we would like to talk to her son at Hollenbeck station regarding an incident that happened in the Hollenbeck area, and asked if she and her son didn't mind we'd like to interview her son at Hollenbeck station." She asked if the officers would take Gilbert to his grandmother's home after the interview. They said they would "if nothing occurs after the interview." Both Gilbert and his mother then gave their consent.

Gilbert was interviewed in the office of the station commander, not in an interview room. According to the court, when Gilbert indicated he was hungry, "the detectives went to a nearby fast food establishment and purchased some breakfast." In addition, while the detectives went to get the breakfast they left Gilbert "in the commander's office with the door open." The court ruled Gilbert's subsequent

confession was obtained during a contact, not an illegal detention because a reasonable person in Gilbert's position would have believed he was free to leave.

In contrast, in *People v. Boyer*⁹² four officers went to Boyer's home at about 5:30 p.m. to question him about a murder in which he was considered a "long shot" suspect. Two of the officers were instructed to "cover the rear of the house" while the other two knocked on the front door. As were knocking, Boyer emerged from the back door and was ordered to "freeze" or "halt" by the officers covering the rear. He complied and was escorted to the front of the house where, according to the officers, he consented to go with them to the police station for an interview. Before leaving, he asked if he could go inside to get a shirt; officers said okay but followed him inside because they wanted to keep him in sight. Although Boyer was not handcuffed during the trip, he was pat searched before getting into unmarked car.

At the police station, Boyer was advised of his Miranda rights and interviewed in a "small interrogation room." During the interview, which was quite accusatory, Boyer asked several times if he were under arrest. The officers refused to answer. Boyer subsequently made an incriminating statement.

Not surprisingly, the court ruled Boyer was illegally seized when he made the statement. The court noted that the "manner in which the police arrived at defendant's home, accosted him, and secured his 'consent' to accompany them suggested they did not intend to take 'no' for an answer." Furthermore, the court ruled that the various circumstances at the police station reinforced the impression that Boyer was not free to leave.

Questioning the suspect

A detention does not result merely because officers asked questions of a suspect, even "potentially incriminating" questions pertaining to a crime.⁹³ As the U.S. Court of Appeals observed, "Law enforcement officers are more than mute observers. They do not violate the Constitution by merely approaching an individual on the street or in another public place, by asking him if he is willing to answer some questions, or by putting questions to him if the person is willing to listen."⁹⁴

For example, in *In re Manuel G.*,⁹⁵ Orange County sheriff's deputies were attempting to locate gang members in order to question them about a gang-related shooting. One of the deputies spotted Manuel, a known gang member, walking down the street. The deputy got out of his patrol car and told Manuel he wanted to speak with him about a shooting. Manuel said he had no information. The deputy continued to Manuel, responded by saying he was going to call Internal Affairs, presumably to file a complaint against the deputy. Then Manuel said, "Me and my home boys are going to start killing you and your friends. . . . Hey, you better be watching your back."

As the result of Manuel's threats, he was charged with using threats in an attempt to deter an officer from performing a lawful duty.⁹⁶ On appeal, Manuel contended he was being illegally detained when he made the threat and, therefore, the deputy was not acting in the performance of a "lawful" duty. The court disagreed, ruling the encounter was merely a contact until Manuel made his threat. Said the court, "Approaching the minor in a public place and asking him questions were not actions in themselves constituting coercive police conduct that would lead a reasonable person to believe that he or she was not free to leave. . . . Nothing in the record suggests that before that point [the deputy] had, by words, gestures, or other coercive conduct, restrained the minor in any manner."

Persistent questioning after a rejection: A detention may result, however, if officers persist in questioning the suspect after he clearly stated he did not want to talk to them. For example, in *U.S. v. Wilson*⁹⁷ a member of the DEA's drug interdiction task force approached Wilson at National Airport in Washington D.C. and asked to speak with him. first, search a coat Wilson was carrying, Wilson angrily refused and began walking away. The agent followed him for quite some distance, continually urging him to consent to the search and repeatedly asking why he was refusing. As they walked outside the terminal, Wilson suddenly fled but was apprehended. Wilson's coat, agents found 110 grams of cocaine base.

The court ruled Wilson was "detained" before he ran from them; and because grounds to detain did not exist, the detention was unlawful and the cocaine was suppressed. The court acknowledged that Wilson was not physically restrained by the agent from moving through the airport terminal. But the court went on to say, "[T]he persistence of [the agent] would clearly convey to a reasonable person that he was not free to leave the questioning by the police." In other words, said the court, "Such persistence may be the functional equivalent of physical restraint."

Accusations: A detention may also result if the officer accuses the suspect of committing a crime, asks questions that are accusatory or otherwise conveys the idea that the officer has evidence or some other reason to believe the suspect has committed a crime. As the Court of Appeal observed, "[Q]uestions of a sufficiently accusatory nature may by themselves be cause to view an encounter as a nonconsensual detention . . . [T]he degree of suspicion expressed by the police is an important factor in determining whether a consensual encounter has ripened into a detention."⁹⁸

For example, in *Wilson v. Superior Court*⁹⁹ an LAPD narcotics officer at Los Angeles International Airport became somewhat suspicious of comedian Flip Wilson who had just arrived on a flight from Florida. So the officer walked up to Wilson and, after identifying himself, told Wilson "that I was conducting a narcotics investigation, and that we had received information that he would be arriving today from Florida carrying a lot of drugs." The officer then obtained permission from Wilson to search his luggage which contained some drugs. The California Supreme Court ordered the drugs suppressed because the initial contact with Wilson was converted into an illegal detention when the officer told Wilson he had reason to believe he was carrying drugs. Said the court, "Common sense suggests to us that in such a situation, an ordinary citizen, confronted by a narcotics agent who has just told him that he has information that the citizen is carrying a lot of drugs, would not feel at liberty simply to walk away from the officer."

Manner of questioning: The officer's manner and tone of voice while questioning the suspect may also communicate to the suspect that he is not free to terminate the encounter. In the words of the Court of Appeal, "It is not the nature of the question or request made by the authorities, but rather the manner or mode in which it is put to the citizen that guides us in deciding whether compliance was voluntary or not." ¹⁰⁰ In other words, questioning may result in a detention if it was conducted in a manner "so intimidating, threatening or coercive that a reasonable person would not have believed himself free to leave."¹⁰¹

Retaining suspect's ID: If officers obtained ID from the suspect, a detention may result if, after examining the ID, they fail to return it to him while he is being questioned. This is because, as noted

earlier, the officer's continued possession of the ID may be reasonably interpreted as an act intended to exercise control over the suspect, thereby converting the encounter into a detention.¹⁰²

Manner of approaching the suspect

Merely approaching a suspect on a sidewalk, street, or any other place open to the public does not reasonably convey the message that the suspect is not free to leave and, therefore, does not constitute a detention.¹⁰³ That message may, however, be conveyed by the manner by which the officer approached.

Demonstrating urgent interest: A officer's demonstration of urgent interest in the suspect is a factor that may indicate the suspect is being detained. For example, in *People v. Jones* ¹⁰⁴ an Oakland police officer on patrol car saw three men standing on a street corner. When one of the men handed money to another, the officer suspected a drug transaction had just occurred and decided to contact the men. According to the court, the officer approached them by pulling his patrol car to the wrong side of the road and parking diagonally against the traffic about 10 feet behind the suspects. As the officer stepped out of his car, the "seller," later identified as Jones, started to walk away. The officer said to him something like, "Stop. Would you please stop." When Jones stopped, the officer saw a baggie containing cocaine in his pocket. In ruling Jones was detained—not contacted—when the officer saw the baggie, the court said, "A reasonable man does not believe he is free to leave when directed to stop by a police officer who has arrived suddenly and parked his car in such a way as to obstruct traffic."

On the other hand, in another Oakland case, *In re Kemonte H.*,¹⁰⁵ two officers saw Kemonte leaning into a car in a high narcotics area. Suspecting drug sales, the officers, who had been driving 10 to 15 miles per hour, "pulled the [patrol] car over, stopped the car approximately 15 to 20 feet away from Kemonte and walked toward him at a 'semi-quick' pace." In ruling Kemonte was not detained at that point, the court noted, among other things, "A reasonable person of Kemonte's age would not have felt restrained by two police officers approaching him on a public street. From the officers' conduct in the instant case, a reasonable person could only conclude that the officers wanted to talk to him. No detention occurred."

Arrival of backup: The manner in which backup officers arrive may be a factor in determining whether a detention occurred. For example, in *U.S. v. Buchanon* ¹⁰⁶ an Ohio State trooper stopped on the side of a highway to assist a motorist whose truck had broken down. As the officer talked with the driver and his companions, he began to suspect they might be transporting drugs. So he requested one backup officer. As things turned out, three backup officers quickly arrived in three patrol cars, "all with lights flashing." When a drug-sniffing dog alerted to the truck, the men were detained and the car was searched. Inside, officers found crack cocaine hidden in aerosol cans with false bottoms.

In ruling the men were detained before the dog alerted to the drugs, the court noted, "The number of officers that arrived, the swiftness with which they arrived, and the manner in which they arrived (all with pursuit lights flashing) would cause a reasonable person to feel intimidated or threatened by this type of police presence." The court added that although this circumstance would not, in and of itself, transform the contact into the detention, it was a significant factor.

Physical contact

Any physical touching of the suspect is a circumstance that will be considered in determining whether an encounter was a contact.¹⁰⁷ For example, an officer's act of pat searching a suspect without the suspect's consent will automatically convert an encounter into a detention.¹⁰⁸

On the other hand, if the touching was slight and was merely necessary to get the suspect's attention, it will probably not be viewed as particularly significant. For example, in *State v. Reid*,¹⁰⁹ a DEA agent in an airport tapped a suspected drug smuggler on the shoulder to get his attention. In ruling the initial encounter with the suspect was merely a contact, the court noted, among other things, "Assuming the agent did tap the defendant on the shoulder at the outset to get his attention, he simultaneously said excuse me or something similar; in view of all the circumstances this physical contact alone does not constitute a seizure . . ."

Red lights, spotlights

Activating red lights or a siren to stop the suspect or get his attention is essentially a command to stop and, therefore, results in a detention if the suspect stops. This typically occurs when the officer is attempting to make a car stop and is directly behind the suspect's car. As the Court of Appeal observed, "A reasonable person to whom the red light from a vehicle is directed would be expected to recognize the signal to stop or otherwise be available to the officer."¹¹⁰ A detention would also result if an officer pulled directly behind a parked car and activated a red light.¹¹¹

Officer's intent is irrelevant: Because an officer's subjective intent is irrelevant in determining whether a detention occurred, it is immaterial that the officer's purpose in activating the red light or siren was simply to talk to the suspect or give him a warning.¹¹² For the same reason, a detention would not result merely because the officer intended to turn on his red lights as soon as he was able to get behind the suspect's vehicle but, before the officer could do so, the suspect stopped for some other reason.¹¹³

Suspect did not see red light: A detention would not occur if the officer activated his red light for the purpose of stopping the suspect but the suspect did not see the light and stopped for some other reason.¹¹⁴

Red light is not a command to everyone: The use of red lights or other emergency equipment constitutes a detention of only those people to whom it reasonably appears the signal was directed.¹¹⁵ For example, any number of motorists and pedestrians may see an officer's red light and hear his siren, but they would not be deemed detained unless it reasonably appeared the officer was specifically directing them to stop.

Amber and white lights: A detention would not ordinarily result merely because officers activated a rear amber light for the safety of other motorists.¹¹⁶ Nor would a detention occur if officers briefly activated a white spot light or high beams to get the suspect's attention.¹¹⁷ As the court explained in *People v. Perez*,¹¹⁸ "While the use of high beams and spotlights might cause a reasonable person to feel himself the object of official scrutiny, such directed scrutiny does not amount to a detention."

For example, in *People v. Franklin* ¹¹⁹ an officer spotlighted a pedestrian who was walking in a high crime area around midnight. It appears the officer used the light to get a better look at the man because he was wearing a full-length camouflage jacket on a warm summer night. When the officer stopped his car behind him, the man walked up to the officer and was quite agitated, repeatedly asking, "What's going on?" The officer then noticed blood on the man's hands and saw a vial containing drugs in the

man's pocket. These two discoveries were subsequently used to connect the man to a murder that had just occurred in the nearby motel room.

In ruling the officer's use of a spotlight did not convert the encounter into a detention, the court said, "[T]he spotlighting of appellant alone fairly can be said not to represent a sufficient show of authority so that appellant did not feel free to leave."

Blocking suspect in

A detention automatically occurs if officers physically block the suspect's path under circumstances in which it reasonably appears the officers' purpose is to stop the suspect or, if already stopped, to prevent him from leaving. This is true whether the suspect was on foot or in a vehicle. For example, in *People v. Wilkins* 120 an officer who was driving through the parking lot of a convenience store noticed two men in a parked station wagon. As the officer drove past them, the men "seemed to lower themselves to conceal themselves in a crouched down position." The officer decided to talk to the men "just to find out what they were doing." So he stopped and "parked diagonally behind the station wagon so that he was essentially blocking that exit of the station wagon."

The court ruled the men were detained when the officer stopped behind them "in such a way that the exit of the parked vehicle was prevented. Under these circumstances," said the court, "a reasonable person would have believed that he was not free to leave."

On the other hand, stopping a patrol car behind or to the side of a suspect would not ordinarily convert an encounter into a detention so long as the suspect's path is not blocked. As the court explained in *People v. Franklin*,¹²¹ "Certainly, an officer's parking behind an ordinary pedestrian reasonably would not be construed as a detention. No attempt is made to block the way."

Walking with the suspect

In some cases a suspect who is walking on a sidewalk or in an airport or some other place will tell officers he is willing to speak with them but, for some reason, does not want to stop walking. Under such circumstances, officers are free to walk along with the suspect and question him so long as the suspect does not object.¹²²

For example, in *People v. Juarez* 123 a Monterey Park police officer was responding at 2:35 p.m. to a report that a burglary had just occurred at a certain residence. About five blocks from the scene, the officer spotted Juarez walking along the sidewalk. The officer was a little suspicious because Juarez was the only person walking in the neighborhood, and he twice "looked over his shoulder at the police car." So the officer pulled his car alongside Juarez and, while both were in motion, asked him if he lived in the area. Juarez said no and continued walking. The officer asked him where he was coming from, and Juarez said he had been visiting a friend in the area. The officer asked Juarez where he lived, and he replied "Rosemead." At this point, the officer stopped his car and approached Juarez to ask him why he was walking away from Rosemead. During the subsequent encounter, Juarez was found to be in possession of drugs.

In rejecting the argument that the officer had illegally detained Juarez when the drugs were found, the court noted, "No illegality taints the initial conduct of [the officer] in pulling his police car alongside

appellant to ask him questions as he was walking. Such a routine inquiry of a citizen is not a detention in the sense that the term is used as a limitation on police activity."

Number of officers

The number of officers on the scene and their proximity to the suspect are both relevant circumstances.¹²⁴ For example, in *People v. Profit* ¹²⁵ the court noted that initially "there were three defendants and only two officers. Only later did the third officer even the numbers. This does not constitute a show of force, but instead indicates a reasonable exercise of precaution for the officers' own safety." In *U.S. v. Kim* ¹²⁶ the court pointed out the suspect was questioned by a single officer with "back-up posted in the background." And in *U.S. v. White* ¹²⁷ the court observed that "Although there were three officers present at the scene of the stop, the record indicates [two of the officers] were little more than passive observers prior to the commencement of the search."

"Free to go"

There is one thing officers can do to help prevent a contact from becoming a detention: tell the suspect he is not required to cooperate and is free to leave.¹²⁸ Although such a advisement is not an absolute requirement,¹²⁹ it is a good idea whenever officers are unsure whether the circumstances may have transformed a contact into a detention.

For example, in *People v. Profit* ¹³⁰ an officer who was attempting to contact a suspect at Los Angeles International Airport told the suspect "you are not under arrest, I am not detaining you, you are free to leave and not speak to me if you don't want to." In ruling the encounter was initially a contact, the court noted, among other things, "[T]he delivery of such a warning weighs heavily in favor of finding voluntariness and consent."

When notifying a suspect he is free to go, officers must be careful not place any conditions on the suspect's freedom to leave. The freedom must be absolute. For example, in *U.S. v. Sandoval* ¹³¹ an officer made a traffic stop, issued a warning to the driver, and returned the driver's license and registration. As he did so, the driver said, "That's it?" The officer replied, "No, wait a minute." The officer then sought and obtained consent to search the car, in which he found cocaine. In ruling the consent was obtained while the driver was being detained, the court observed, "No one who is seated in a law enforcement officer's vehicle after having been stopped by the officer for a perfectly legitimate reason, and who then asks whether the stop is at an end ('That's it?') and is immediately told 'No' and to 'wait a minute,' can reasonably view himself or herself as free to leave the patrol car."

Officer's attitude, candor

The officer's general attitude and manner of speaking to the suspect are both relevant factors.¹³² Similarly, an officer's openness and honesty with the suspect is a circumstance that may help prevent a contact from becoming a detention. It is, therefore, often a good idea for officers to explain to the suspect why they want to talk to him, what they are attempting to accomplish, or otherwise just letting the suspect know what the encounter is all about.

For example, in *U.S. v. Thompson*¹³³ an officer who had just issued a written warning to a driver and had returned her license and registration told her she was free to go when she signed the warning. After she signed, the officer "asked if she would mind answering a few more questions." When she said okay,

the officer "explained that part of his duty was to investigate the transport of illegal drugs and guns." He then sought consent to search the car, which she granted. Inside the car, the officer found bundles of compressed marijuana. In ruling the encounter was consensual, the court noted that the officer "explained both what he was doing and why he was doing it."

Length of time

Although there are no time limits on when an encounter becomes a detention, at some point an encounter may take too long to be considered consensual, at least if the suspect was not asked whether he would be willing to stay longer.¹³⁴

Other circumstances

The following circumstances have also been noted in determining whether an encounter was a contact or a detention:

Location of encounter: The location of the encounter is another circumstance that is sometimes noted, although it is seldom significant. ¹³⁵ Generally speaking, location has a slight tendency to indicate a contact when the encounter occurs in a public place, in the suspect's workplace, or home,¹³⁶ while it may tend to indicate a detention when it occurs in a confined space such as a police car, a bus or the suspect's car.¹³⁷

Weapon displayed: An officer's act of drawing a weapon at some point during the encounter is a strong indication the encounter was a seizure.¹³⁸

Following a suspect: Merely following a suspect does not constitute a seizure.¹³⁹

Miranda warnings: The act of informing a suspect of his Miranda rights is a factor that may tend to indicate the suspect had been detained or arrested.¹⁴⁰ (It should be noted there is absolutely no reason to Mirandize a person who is being contacted, and it is seldom necessary to do so when the suspect is being detained.¹⁴¹)

How to convert a detention into a contact

Officers who have lawfully detained a suspect will sometimes want to convert the detention into a contact. This typically occurs when the detention started out as a traffic stop or a detention for a relatively minor offense but, as things developed, officers began to believe the suspect may have committed a more serious crime. Or, the initial detention may have been a pretext stop to investigate the more serious crime.

In any event, unless officers develop grounds to detain the suspect for the more serious crime, they must release him when they have completed their duties relating to the initial stop; e.g., after they have written a citation or issued a warning.¹⁴² If they fail to release the suspect at that point, the detention becomes unlawful and any statements or evidence obtained thereafter will likely be suppressed.

For this reason, officers will sometimes want to convert the detention into a contact so that they can continue to question the suspect, seek consent to search, or take other action to determine whether the suspect has committed the more serious crime. As the U.S. Court of Appeals explained, "[I]f the

encounter between the officer and the driver ceases to be a detention, but becomes consensual, and the driver voluntarily consents to additional questioning, no further Fourth Amendment seizure or detention occurs."143

The question, then, is what must officers do to transform a detention into a contact? The answer is they must take steps to make it reasonably apparent that the suspect is now free to leave, that he can either stay and talk to the officer or he can leave. It is up to him. Although the courts have not established a fixed list of things officers must do to communicate this to the suspect, there are certain things that are considered important, maybe essential. They are as follows:

(1) Return documents: All ID and other documents obtained from the suspect.144 As a practical matter, this should be considered an absolute requirement because, as the court noted in *U.S. v. Sandoval*," no reasonable person would feel free to leave without such documentation."145

(2) "Free to go": Officers should tell the suspect he is free to go. Although this is not technically an absolute requirement, 146 it is a very strong indication that a detention has become a contact.147 As the court explained in *Morgan v. Woessner*,148"Although an officer's failure to advise a citizen of his freedom to walk away is not dispositive of the question of whether the citizen knew he was free to go, it is another significant indicator of what the citizen reasonably believed."

(3) No objective circumstances indicate suspect was not free to leave: Although a suspect may have been told he was free to go, there must not be any other circumstances that reasonably indicate he could not leave.149 For example, in *U.S. v. Beck* 150 the court ruled the suspect was detained because, although he was told he was free to go, he was also told he could not leave unless he consented to a search or waited for a canine unit to arrive. And in *U.S. v. Ramos*,151 the court's conclusion that a detention resulting from a traffic violation had not been converted into a contact was based in part on the fact the driver and passenger remained separated.

On the other hand, a detention will not necessarily result merely because officers asked the suspect a few questions after his ID was returned. For example, in *U.S. v. Sullivan* 152 an officer made a routine traffic stop, issued a warning to the driver, and returned his ID. At this point, the officer asked Sullivan "if he had anything illegal in the vehicle." When Sullivan did not answer and appeared to become quite nervous, the officer told him "if he had anything illegal in the vehicle, it's better to tell me now." When Sullivan still did not answer, the officer asked him again what he had in the car. At this point, Sullivan replied, "I have a gun under the seat."

In ruling the initial detention had become a contact at the point the officer questioned Sullivan, the court noted, among other things, "[T]he repetition of questions, interspersed with coaxing, was prompted solely because Sullivan had not responded. They encouraged an answer, but did not demand one. We cannot conclude that this limited coaxing with the repetition of questions amounts to a Fourth Amendment seizure."

(4) Officer explains why he is seeking the suspect's cooperation: The courts have sometimes noted whether or not officers explained to the suspect why they want to talk with them after they were free to go, why they were seeking consent to search, or why they wanted to run a warrant check. A brief explanation of the officer's purpose may help turn the detention into a contact because such openness is

more consistent with a contact than a detention, and it tends to communicate the idea that the officer is seeking the suspect's voluntary cooperation.

For example, in ruling that a detention had been converted into a contact the court in *U.S. v. Thompson* 153 said, "[T]he trooper explicitly told Thompson that she was free to leave. He then justified his desire to ask Thompson more questions by explaining that part of his job was to prevent the transport of illegal guns and drugs. Moreover, the trooper told Thompson that she did not have to sign the consent to search form. In other words, the trooper did everything that the law requires him to do: he returned the defendant's identification to her, informed her of her rights, and explained both what he was doing and why he was doing it."

The importance of such a brief explanation was also noted in the case of *People v. Spicer* 154. Here, the court ruled that a passenger in a stopped car was detained when the officer asked to see her ID. In explaining the reasons for its ruling, the court noted, "Had [the officer] informed Ms. Spicer he wanted to see her driver's license because [the driver] might be arrested and the car turned over to her, Ms. Spicer would have understood she had a choice. She could produce the license or not depending on whether she desired to take charge of the automobile. Had the officer made his purpose known to Ms. Spicer, it would have substantially lessened the probability his conduct could reasonably have appeared to her to be coercive."

The "free to leave" test

It is worth noting that in the past the "free to leave" test was the only test for determining whether an encounter was a contact. And it is still the most commonly cited test, although it has technically been superseded by the "free to terminate" test. 155

The reason the "free to leave" test was jettisoned is that it can lead to bizarre results if the suspect happens to be contacted while he is on a bus, in an airplane, at his workplace, at his home, or in any other location in which it is impossible or impractical for the suspect to leave, or where the suspect does not want to leave. In these situations, the suspect may not be "free to leave" but that does not mean he is being detained.

This problem with the "free to leave" test came to a head in the case of *Florida v. Bostick* 156. In *Bostick*, drug-interdiction officers boarded a bus during a scheduled stop in Fort Lauderdale and asked passengers for consent to search their luggage. One of the passengers who consented was Bostick who, as it turned out, was carrying cocaine in his suitcase. Bostick later claimed he was being "detained" when he consented to the search and, therefore, the cocaine should be suppressed because the officers lacked grounds to detain him. The question, then, was whether Bostick was, in fact, detained.

Under the "free to leave" test he was arguably detained, but only because he, like all the other passengers on the bus, did not want to leave; he wanted to remain on the bus and continue his trip. As the Court pointed out, "He would not have felt free to leave the bus even if the police had not been

present. Bostick's movements were 'confined' in a sense, but this was the natural result of his decision to take the bus; it says nothing about whether or not the police conduct at issue was coercive."

So the Court decided to limit application of the "free to leave" test. It ruled that when a suspect is contacted in a place in which he is somewhat confined as the result of circumstances not caused by officers, the "free to leave" test is inapplicable. Instead, said the Court, "the appropriate inquiry is whether a reasonable person would feel free to decline the officers' requests or otherwise terminate the encounter."

Although the Court's ruling could be interpreted to mean the "free to leave" test should be used when the suspect is not confined while the "free to terminate" test should be used in all other cases¹⁵⁷, the courts seem to have recognized that the "free to terminate" test is appropriate in both situations and yields the same result. After all, it is hard to imagine a situation in which a suspect feels perfectly free to decline the officers's requests and terminate the encounter but would not feel free to leave.

So, it is fairly safe to say the "free to terminate" test is now the principal test for determining whether an encounter is a contact or a detention.

CONTACT OR DETENTION?

The following scenarios were taken from appellate court cases. Can you tell whether the encounter was a contact or detention? More importantly, can you spot the circumstances that would be relevant in making this determination? The answers are on the next page.

1. A Vallejo police officer was driving by an apartment complex where trespassers had been causing problems.

The officer saw a woman standing in front of the apartment complex. Because the officer did not recognize the woman as a tenant of the apartment, he stopped his patrol car and asked her to come over and talk to him. As the woman was walking toward the officer, she kept her hands in her pockets. The officer asked her to identify herself, then asked her to keep her hands in sight.

2. A San Jose police officer was driving through a motel parking lot known for drug dealing and prostitution activities.

When the officer saw two people in a parked car, he "positioned his patrol car head on" with the car although he left "plenty of room" for the car to drive away. As he turned on his high beams and white spot light to get a better look at the occupants and gauge their reactions, he saw a man and a woman "slouched over in the front seat."

The officer walked to the driver's side and knocked on the window with his flashlight, identified himself, and asked the driver to roll down the window. As the driver did so, the officer smelled a strong odor of marijuana coming from inside the car.

3. An Iowa state trooper made a traffic stop on a truck after he noticed a passenger was not wearing a seat belt.

The trooper obtained licenses from the driver and the passenger, then asked the driver to come back to his patrol car while he ran checks on both licenses. When both licenses were reported "clear," the trooper returned the license to the driver and "asked him to remain in the patrol car while he gave [the passenger] a warning." After warning the passenger, the trooper asked him several questions, such as their destination and the purpose of their trip. The passenger's answers were consistent with answers given by the driver. The trooper then asked the driver for consent to search the truck. The driver consented. The search turned up 150 pounds of marijuana.

4. An officer was on patrol at 12:30 a.m. in a residential area.

The officer saw two people inside a parked car. He decided to contact the driver because there had been drug and burglary problems in the area.

The officer asked to see the driver's ID. The driver said he had none. When asked his name, the driver gave a name he could neither pronounce nor spell. The officer then ran a DMV check on the car. It had been reported stolen.

5. Two Oakland police officers were dispatched to investigate a report of streetcorner drug dealing.

When the officers arrived, they saw a juvenile leaning into a car stopped in a lane of traffic. The officers stopped their patrol car about 15 feet from the juvenile and walked toward him at a "semi-quick" pace. When one of the officers was about ten feet away, the juvenile dropped a bag containing marijuana. 6. An officer was working with a special drug enforcement unit in a high narcotics neighborhood. The officer received a radio report from a member of the unit that two men were seen leaving a certain apartment. The report included a description of the men. Shortly thereafter, the officer saw two men who matched the descriptions. As the men approached the officer, he said, "Hold it. Police." At that point, one of the men dropped some heroin.

7. Two DEA agents were on duty near an airline ticket counter at Los Angeles International Airport.

The agents saw three men who appeared "extremely nervous"; the men carried very little luggage and separated as they approached the ticket counter. The agents approached the men because they suspected they might be transporting drugs.

One of the agents identified himself, explained he was conducting a narcotics investigation, and said "he would like to talk to them; and that if they did not wish to talk with him they were free to leave at any time."

The agent asked the men if they had any ID. They said no. However, one of the men gave the agent three airline tickets. After examining the tickets, the agent returned them to the man. He then asked the men if they were carrying drugs in their luggage. All said no.

The agent asked one of the men if he could look inside his briefcase. The man said okay. Inside the briefcase, the agent saw what appeared to be a "pay-and-owe" sheet. The agent returned the briefcase to the man.

The agent asked the man if he would like to continue the conversation in the agent's office. He agreed. While walking to the office, the man asked if he were under arrest. The agent said no, he was free to leave. The man then struck the agent and fled.

8. The time: 10:50 p.m. The location: "One of the dreariest downtown sections of Los Angeles."

An LAPD officer on patrol saw a man walking down the street "clutching a handful of fishing rods." This intrigued the officer because he happened to be an avid fisherman. For these reasons, and also in order to "break the monotony of patrol," the officer greeted his fellow fisherman:

Officer: How is fishing?

Man: Pretty good.

Officer: What type of fishing do you do?

Man: Well, mostly trout and salmon.

Officer: Where do you fish?

Man: I fish on lakes around here.

Officer: What kind of fish do you catch?

Man: Well, mostly trout and salmon.

At this point, the officer was thinking, "We don't have too many lakes around here, especially any with any salmon in them." Mildly suspicious, the officer asked the man about his fishing poles. The man said they were just cheap poles. Suspicion mounted because it was obvious to the officer—who also happened to own a fishing tackle store—that the poles were high-quality, and some even appeared to be custom-made. The officer asked the man where he had obtained the poles. He said he bought them and still had the receipts in his hotel room. He even offered to show the receipts to the officer in the unlikely event the officer wanted to look at them. The officer said he had plenty of time and accepted the man's invitation. When the man was unable to find any receipts in his hotel room, the officer arrested him for possession of stolen property.

Court Rulings

1. Contact. "The officer's request for identification to verify the information given did not transform the encounter into a detention. Thereafter, while waiting for her to produce identification, the record reveals that [the officer] 'asked' but did not demand that appellant remove her hands from her pockets. We

conclude that such a request cannot transform the encounter into a detention." *People v. Ross* (1990) 217 Cal.App.3d 879.

2. Contact. The court noted the officer's patrol car did not block the suspect's car, and the officer "did not activate the vehicle's emergency lights; rather, he turned on the high beams and spotlights only." *People v. Perez* (1989) 211 Cal.App.3d 1492.

3. Illegal detention. Although the trooper returned the driver's license to him before requesting consent to search, the trooper did not make it clear to him that he was free to go. In fact, he had asked the driver to remain in the patrol car. Thus, the encounter was not converted into a contact when the trooper returned the driver's license; and it became an illegal detention because the trooper had no legal grounds for requiring him to stay. *U.S. v. Ramos* (8th Cir. 1994) 42 F.3d 1160.

4. Contact. Stopping the patrol car and walking up to the driver's window was only a contact. Asking the driver for his license and other identification was not a sufficient show of authority to convert the contact into a detention. *People v. Gonzales* (1985) 164 Cal.App.3d 1194.

5. Contact. The court noted, among other things, "The officers did not summon [the juvenile] over to them. Neither did they order him to stop. . . . Nothing about the officers' conduct represented a show of authority signifying that [the juvenile] was restrained." *In re Kemonte H.* (1990) 223 Cal.App.3d 1507.

6. Illegal detention. Said the court, "We find [the officer] clearly manifested his intent to detain appellant when he explicitly, unambiguously and authoratively demanded that appellant and his companion "Hold it." Significantly, [the officer] commanded, not requested, appellant to follow his order." *People v. Verin* (1990) 220 Cal.App.3d 551.

7. Contact. Said the court, "The events took place in a public area and the officers were in civilian clothes; there was no putting on of hands or touching; no display of weapons or show of force; no demands or orders—only permissible investigative questions and requests; no retention of [the defendant's] briefcase, luggage or the three airline tickets; and no statement that would lead the defendants to believe that they were not free to leave." *People v. Profit* (1986) 183 Cal.App.3d 849.

8. Contact. "The continuing conversation [between the officer and the defendant] was typical banter between two anglers. It was not until the strange and incredible answers supplied by defendant that [the officer] became suspicious." *People v. Warren* (1984) 152 Cal.App.3d 991.

1. *Terry v. Ohio* (1968) 392 US 1, 13.

2. See *Florida v. Bostick* (1991) 501 US 429, 438 [a contact occurs "only if the cooperation is voluntary. 'Consent' that is the product of official intimidation or harassment is not consent at all."]

3. See *In re Manuel G.* (1997) 16 Cal.4th 805, 821 [the test for determining whether an encounter is a contact or a seizure "assesses the coercive effect of police conduct"].

4. See *People v. Profit* (1986) 183 Cal.App.3d 849, 877 ["(I)t is obvious that Agent Wood was carefully schooled in such cases as *Mendenhall*, *Royer* and *Wilson*. The facts show that Wood scrupulously observed the guidelines discussed in those cases."].

5. NOTE: The reasons a guilty suspect would consent to a contact are essentially the same reasons a suspect would consent to a search of an item knowing the item contains contraband or other evidence of a crime. See *People v.*

See *People v. James* (1977) 19 Cal.3d 99, 114.

6. *People v. Bennett* (1998) 68 Cal.App.4th 396, 403, fn.7 [quoting from *State v. McKnight* (1968) 52 N.J. 35].

7. See *U.S. v. Werking* (10th Cir. 1990) 915 F.2d 1404, 1408 ["A consensual encounter is simply the voluntary cooperation of a private citizen in response to non-coercive questioning by a law enforcement official."].

8. See *People v. Manis* (1969) 268 Cal.App.2d 653, 661.

9. See *People v. Johnson* (1991) 231 Cal.App.3d 1, 13-4; *People v. Soun* (1995) 34 Cal.App.4th 1499.

10. *People v. Spicer* (1984) 157 Cal.App.3d 213, 220. ALSO SEE *Florida v. Royer* (1983) 460 US 491, 497-8 ["The person approached 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."]; *United States v. Mendenhall* (1980) 446 US 544, 554; *Morgan v. Woessner* (9th Cir. 1992) 997 F.2d 1244, 1253 ["By definition, 'consensual' exchange between police and citizens cannot take place in the absence of consent."].

11. See *Alabama v. White* (1990) 496 US 325, 329-30; *United States v. Sokolow* (1989) 490 US 1, 7.

12. See *In re Manuel G.* (1997) 16 Cal.4th 805, 821 ["Police contacts with individuals may be placed into three broad categories ranging from the least to the most intrusive: consensual encounters that result in no restraint of liberty whatsoever; detentions, which are seizures of an individual that are strictly limited in duration, scope, and purpose; and formal arrests or comparable restraints on an individual's liberty."]; *Wilson v. Superior Court* (1983) 34 Cal.3d 777, 784; *In re Frank V.* (1991) 233 Cal.App.3d 1232, 1237.

13. See *Florida v. Bostick* (1991) 501 US 429, 434; *Florida v. Royer* (1983) 460 US 491, 497-8; *People v. Sanchez* (1987) 195 Cal.App.3d 42, 47; *U.S. v. Werking* (1990) 915 F.2d 1404, 1407-8; *U.S. v. Kim* (1994) 25 F.3d 1426, 1431; *People v. Bennett* (1998) 68 Cal.App.4th 396, 402-3; *People v. Terrell* (1999) 69 Cal.App.4th 1246, 1253.

14. *In re Manuel G.* (1997) 16 Cal.4th 804, 821. ALSO SEE *Florida v. Bostick* (1991) 501 US 429, 439 ["The Fourth Amendment proscribes unreasonable searches and seizures; it does not proscribe voluntary cooperation."].

15. See *Florida v. Bostick* (1991) 501 US 429, 438; *People v. Bouser* (1994) 26 Cal.App.4th 1280, 1283; *U.S. v. Sullivan* (4th Cir. 1998) 138 F.3d 126, 132; *U.S. v. Lambert* (10th Cir. 1995) 46 F.3d 1064, 1067; *U.S. v. Werking* (10th Cir. 1990) 915 F.2d 1404, 1408; *U.S. v. Buchanon* (6th Cir. 1995) 72 F.3d 1217, 1224.

16. See *United States v. Mendenhall* (1980) 446 US 544, 554; *Florida v. Royer* (1983) 460 US 491; *INS v. Delgado* (1984) 466 US 210, 215; *People v. Ross* (1990) 217 Cal.App.3d 879, 884; *People v. Lopez* (1989) 212 Cal.App.3d 289, 292; *People v. Epperson* (1986) 187 Cal.App.3d 115, 120; *In re Gilbert R.* (1994) 25 Cal.App.4th 1121, 1125; *People v. Gonzalez* (1992) 7 Cal.App.4th 381, 383; *People v. Boyer* (1989) 48 Cal.3d 247, 267; *People v. Castaneda* (1995) 35 Cal.App.4th 1222, 1227; *People v. Daugherty* (1996) 50 Cal.App.4th 275, 283; *People v. Wilkins* (1986) 186 Cal.App.3d 804, 809; *People v. Profit* (1986) 183 Cal.App.3d 849, 864; *People v. Franklin* (1987) 192 Cal.App.3d 935, 940; *People v. Bailey* (1985) 176 Cal.App.3d 402, 405; *People v. Brueckner* (1990) 223 Cal.App.3d 1500, 1505; *People v. Verin* (1990) 220 Cal.App.3d 551, 556; *In re Kenmonte H.* (1990) 223 Cal.App.3d 1507, 1511.

17. See *In re Manuel G.* (1997) 16 Cal.4th 805, 821; *United States v. Mendenhall* (1980) 446 US 544, 554; *People v. Terrell* (1999) 69 Cal.App.4th 1246, 1253; *U.S. v. Gonzales* (5th Cir. 1996) 79 F.3d 413, 420.
18. See *U.S. v. Wilson* (4th Cir. 1991) 953 F.2d 116, 122.
19. See *People v. Cartwright* (1999) 72 Cal.App.4th 1362, 1367.
20. See *U.S. v. Werking* (10th Cir. 1990) 915 F.2d 1404, 1408.
21. See *California v. Hodari D.* (1991) 499 US 621; *County of Sacramento v. Lewis* (1998) 523 US ___ [140 L.Ed.2d 1043, 1056; *People v. Arangure* (1991) 230 Cal.App.3d 1302, 1307; *People v. Turner* (1994) 8 Cal.4th 137, 180; *People v. Foranyic* (1998) 64 Cal.App.4th 186, 188; *U.S. v. Wilson* (4th Cir. 1991) 953 F.2d 116, 122-3. ALSO SEE *Brower v. County of Inyo* (1989) 489 US 593, 596-7 [seizure occurs only when the suspect is actually stopped by the means utilized by officers].
22. See *California v. Hodari D.* (1991) 499 US 621.
23. *Illinois v. Wardlow* (2000) 528 US ___ [145 L.Ed.2d 570, 576].
24. See *Illinois v. Wardlow* (2000) 528 US ___ [145 L.Ed.2d 570].
25. NOTE: Some courts have questioned the extent to which a suspect would reasonably believe he could refuse to cooperate with officers. See *People v. Lopez* (1989) 212 Cal.App.3d 289, 291 ["Of course, in theory the citizen can refuse and simply walk away. Whether this is an accurate assessment of street reality\ is not for us to decide."]; *People v. Spicer* (1984) 157 Cal.App.3d 213, 218 [the idea that a person who has been contacted is free to leave may be, said the court, "the greatest legal fiction of the late 20th century."].
26. *U.S. v. Wilson* (1991) 953 F.2d 116, 122.
27. (9th Cir. 1993) 997 F.2d 1244, 1253-4.
28. See *Florida v. Royer* (1983) 460 US 491, 497-8; *Brown v. Texas* (1979) 443 US 47; *Illinois v. Wardlow* (2000) 528 US ___ [145 L.Ed.2d 570, 577]; *People v. Spicer* (1984) 157 Cal.App.3d 213, 220.
29. See *Illinois v. Wardlow* (2000) 528 US ___ [145 L.Ed.2d 570, 577]; *Florida v. Bostick* (1991) 501 US 429 ["We have consistently held that a refusal to cooperate, without more, does not furnish the minimal level of objective justification needed for a detention or seizure."]; *INS v. Delgado* (1984) 466 US 210, 216-7.
30. COMPARE *People v. Johnson* (1991) 231 Cal.App.3d 1, 13, fn.2; *People v. Allen* (1980) 109 Cal.App.3d 981; *U.S. v. Campbell* (5th Cir. 1999) 178 F.3d 345.
31. See *People v. Carrillo* (1995) 37 Cal.App.4th 1662, 1668-71 ["When a suspect makes false statements for the purpose of misleading or warding off suspicion, though these acts are by no means conclusive of guilt, they may strengthen the inference arising from other facts."]; *People v. Daugherty* (1996) 50 Cal.App.4th 275, 286 [detainee apparently lied about not having ID]; *People v. Superior Court (Price)* (1982) 137 Cal.App.3d 90, 97 ["The fact that at least two of the four suspects gave false names to the officer connoted consciousness of guilt."]; *People v. Memro* (1995) 11 Cal.4th 786, 843; *People v. Gravatt* (1971) 22 Cal.App.3d 133, 137; *People v. Warren* (1984) 152 Cal.App.3d 991, 997; *People v. Juarez* (1973) 35 Cal.App.3d 631, 635. ALSO SEE *Florida v. Royer* (1983) 460 US 491, 502 [traveling under assumed name was properly considered].
32. See *People v. Garcia* (1981) 121 Cal.App.3d 239, 245; *Flores v. Superior Court* (1971) 17 Cal.App.3d 219, 224; *People v. Brown* (1985) 169 Cal.App.3d 159, 164-5; *People v. Moore* (1968) 69 Cal.2d 674, 683; *People v. One 1960 Cadillac* (1964) 62 Cal.2d 92, 96; *People v. Valenzuela* (1994) 28 Cal.App.4th 817, 828; *People v. Daugherty* (1996) 50 Cal.App.4th 275, 288; *U.S. v. Withers* (7th Cir. 1992) 972 F.2d 837, 843.

33. See *Sibron v. New York* (1968) 392 US 40, 66-7; *People v. Gravatt* (1971) 22 Cal.App.3d 133, 137; *People v. Garcia* (1981) 121 Cal.App.3d 239, 245; *People v. Rosales* (1989) 211 Cal.App.3d 325, 330; *People v. Souza* (1994).

9 Cal.4th 224, 240-2; *People v. Manis* (1969) 268 Cal.App.2d 653, 660; *People v. Loewen* (1983) 35 Cal.3d 117, 126-7; *People v. Bower* (1979) 24 Cal.3d 638, 647-9; *People v. Aldridge* (1984) 35 Cal.3d 473, 479; *People v. Overten* (1994) 28 Cal.App.4th 1497, 1504-5; *In re Eduardo G.* (1980) 108 Cal.App.3d 745, 754-5; *People v. Guy* (1980) 107 Cal.App.3d 593, 598 ["Furtive action like flight from the scene of a crime may well be an expression of consciousness of guilt providing probable cause to search."]; *People v. Koelzer* (1963) 222 Cal.App.2d 20, 26 ["(D)efendants' starting to walk away from the window as the police car's lights were turned on would have impelled such questioning as a matter of a policeman's duty."]; *People v. Green* (1994) 25 Cal.App.4th 1107, 1111.

34. See *People v. Miller* (1972) 7 Cal.3d 219, 225.

35. See *People v. Daugherty* (1996) 50 Cal.App.4th 275, 287. ALSO SEE *U.S. v. Wilson* (9th Cir. 1991) 953 F.2d 116, 126 [court indicates the manner in which consent was denied might possibly be a factor].

36. See *Florida v. Royer* (1983) 460 US 491, 503; *U.S. v. Withers* (1992) 972 F.2d 837, 842 ["A consensual encounter can develop into an investigatory detention as a consequence of police behavior."]; *U.S. v. Wilson* (1991) 953 F.2d 116, 123; *U.S. v. Analla* (1992) 975 F.2d 119, 124.

37. *INS v. Delgado* (1984) 466 US 210, 215.

38. See *Ohio v. Robinette* (1996) 519 US 33 [136 L.Ed.2d 347, 356] [conc. opn. by Ginsburg, J.]. ALSO SEE *People v. Spicer* (1984) 157 Cal.App.3d 213, 217 ["Finding the line between [contacts, detentions, and arrests] has proved to be a difficult task and it is not unusual to find different courts reaching conflicting decisions on the same set of facts."].

39. See *Florida v. Bostick* (1991) 501 US 429, 435; *United States v. Mendenhall* (1980) 446 US 544, 554.

40. See *In re Kemonte H.* (1990) 223 Cal.App.3d 1507, 1512 ["Neither do the protections under the Fourth Amendment come into play where the average citizen feels he should remain."]. ALSO SEE *People v. Bouser* (1994) 26 Cal.App.4th 1280, 1287 [court indicated that a detention does not result merely because the suspect reasonably believed he was the "subject of general suspicion," so long as a reasonable person in his position would have believed he was free to leave].

41. *In re Kemonte H.* (1990) 223 Cal.App.3d 1507, 1512. ALSO SEE *INS v. Delgado* (1984) 466 US 210, 216 ["While most citizens will respond to a police request, the fact that people do so, and do so without being told they are free not to respond, hardly eliminates the consensual nature of the response."].

42. See *In re Kemonte H.* (1990) 223 Cal.App.3d 1507, 1512; *People v. Holloway* (1985) 176 Cal.App.3d 150, 156; *U.S. v. Sanchez* (10th Cir. 1996) 89 F.3d 715, 718.

43. See *Michigan v. Chesternut* (1988) 486 US 567, 574 ["(The reasonable person test) calls for consistent application from one police encounter to the next, regardless of the particular individual's response to the actions of the police. The test's objective standard—looking to the reasonable man's interpretation of the conduct in question—allows the police to determine in advance whether the conduct contemplated will implicate the Fourth Amendment."]; *People v. Franklin* (1987) 192 Cal.App.3d 935, 940 ["The line between a consensual encounter . . . and a detention . . . is drawn upon objective grounds."]; *People v. Terrell* (1999) 69 Cal.App.4th 1246, 1254; *In re Manuel G.* (1997) 16 Cal.4th 805, 821; *People v. Castaneda* (1995) 35 Cal.App.4th 1222, 1227; *In re Christopher B.* (1990) 219

Cal.App.3d 455, 460; U.S. v. Sanchez (10th Cir. 1996) 89 F.3d 715, 718; U.S. v. Thompson (7th Cir. 1997) 106 F.3d 794, 798 ["That Thompson subjectively perceived [the officer's] actions as coercive does not render them objectively unreasonable . . . "].

44. See U.S. v. Analla (4th Cir. 1992) 975 F.2d 119, 124.

45. See United States v. Mendenhall (1980) 446 US 544, 554, fn.6 ["(T)he subjective intention of the DEA agent in this case to detain the respondent, had she attempted to leave, is irrelevant except insofar as that may have been conveyed to the respondent."]; In re Manuel G. (1997) 16 Cal.4th 804, 821 ["The officer's uncommunicated state of mind . . . [is] irrelevant in assessing whether a seizure triggering Fourth Amendment scrutiny has occurred."]; People v. Franklin (1987) 192 Cal.App.3d 935, 940 ["The officer's state of mind is not relevant for resolution of this question except insofar as his overt actions would communicate that state of mind."]; People v. Epperson (1986) 187 Cal.App.3d 115, 120 ["That the officer became suspicious of the vial defendant transferred to another pocket is not enough to establish a seizure"]; People v. Ross (1990) 217 Cal.App.3d 879, 884 ["The officer's state of mind is not relevant for resolution of this question except insofar as his overt actions would communicate that state of mind."]; People v. Bailey (1985) 176 Cal.App.3d 402, 406; People v. Divito (1984) 152 Cal.App.3d 11, 14 ["While the officer's reason for approaching respondent was the inchoate suspicion that he might be involved in illegal narcotics activity, the officer did not convey this suspicion to respondent"]; Morgan v. Woessner (9th Cir. 1993) 997 F.2d 1244, 1254 ["Although an officer's subjective belief is ordinarily irrelevant to the question whether a citizen believes that he or she is free to go, it becomes relevant if there is reason to believe that the officer's belief was conveyed to the detainee."]; In re Kemonte H. (1990) 223 Cal.App.3d 1507, 1512; People v. Terrell (1999) 69 Cal.App.4th 1246, 1254; People v. Verin (1990) 220 Cal.App.3d 551, 556.

46. (1998) 68 Cal.App.4th 396, 402, fn.5. ALSO SEE People v. Cartwright (1999) 72 Cal.App.4th 1362, 1371.

47. (10th Cir. 1997) 114 F.3d 1059, 1064.

48. (1997) 16 Cal.4th 805, 823. ALSO SEE People v. Franklin (1987) 192 Cal.App.3d 935, 940 [officer notified his dispatcher he was making a "pedestrian stop," at p. 938].

49. See Florida v. Bostick (1991) 501 US 429, 439; Michigan v. Chesternut (1988) 486 US 567, 573; In re Manuel G. (1997) 16 Cal.4th 805, 821; People v. Bouser (1994) 26 Cal.App.4th 1280, 1283; People v. Verin (1990) 220 Cal.App.3d 551, 556; In re Kemonte H. (1990) 223 Cal.App.3d 1507, 1511.

50. See United States v. Mendenhall (1980) 446 US 544, 554.

51. People v. Roth (1990) 219 Cal.App.3d 211, 215, fn.3. ALSO SEE People v. Johnson (1991) 231 Cal.App.3d 1, 10 ["Come down towards me. Step down off that landing."]

52. People v. Brown (1990) 216 Cal.App.3d 1442, 1448.

53. People v. Rodriguez (1993) 21 Cal.App.4th 232, 238.

54. See U.S. v. Buchanan (1995) 72 F.3d 1217, 1225. Paraphrased. ALSO SEE People v. Castellon (1999) 76 Cal.App.4th 1369, 1374; U.S. v. Beck (8th Cir. 1998) 140 F.3d 1129, 1136.

55. People v. Verin (1990) 220 Cal.App.3d 551, 557.

56. See People v. Cartwright (1999) 72 Cal.App.4th 1362, 1371.

57. See People v. Brueckner (1990) 223 Cal.App.3d 1500, 1505. Paraphrased

58. People v. Foranyic (1998) 64 Cal.App.4th 186. Paraphrased.

59. U.S. v. Pajari (8th Cir. 1983) 715 F.2d 1378, 1381 (Paraphrased); People v. Rico (1979) 97 Cal.App.3d 124, 130-1.

60. (1977) 72 Cal.App.3d 346.

61. See Maryland v. Wilson (1997) 519 US 408 [137 L.Ed.2d 41, 48].

62. NOTE: In the past it was unclear whether a passenger in a car stopped for a routine traffic violation was automatically detained as the result of the stop. Based on opinions of the United States Supreme Court it appears likely a detention does not automatically result. See *Maryland v. Wilson* (1997) ___ US ___ [137 L.Ed. 2d 41, 48, fn.3]; *Florida v. Bostick* (1991) 501 US 429; *People v. Cartwright* (1999) 72 Cal.App.4th 1362, 1367-9; *People v. Castellon* (1999) 76 Cal.App.4th 1369, 1374; *People v. Fisher* (1995) 38 Cal.App.4th 338, 343-4, fn.2. Although the courts in *People v. Grant* (1990) 217 Cal.App.3d 1451 and *People v. Bell* (1996) 43 Cal.App.4th 754, 765, fn2 ruled a detention automatically resulted, *Grant* was decided before *Wilson* and *Bostick*, while *Bell* was decided before *Wilson* and did not consider the ruling in *Bostick*. Consequently, officers may contact the passenger in order to question him, seek consent to search, obtain ID, or for some other reason. However, unless officers have legal grounds for detaining or arresting the passenger, he is, as a general rule, free to leave and is under no obligation to talk or cooperate with officers.

63. See *Maryland v. Wilson* (1997) 519 US 408; *People v. Maxwell* (1988) 206 Cal.App.3d 1004.

64. See *People v. Castellon* (1999) 76 Cal.App.4th 1369, 1374 ["(W)hether the passenger is ordered to stay in the car or exit the vehicle is a distinction without a difference. Further, the inconvenience and intrusion are certainly less when the passenger is simply ordered to remain seated in the car than when he or she is ordered out of the vehicle."]

65. See *In re Frank V.* (1991) 233 Cal.App.3d 1232, 1238. NOTE: The court in *People v. Franklin* (1987) 192 Cal.App.3d 935, 941 suggested that a command to order a person to remove his hands from his pockets might result in a detention. This should not be interpreted as a split of authority on the issue. First, the court's comment in *Franklin* was clearly dicta because the officer in that case did not issue a command. Second, unlike *Frank V.*, *Franklin* did not involve a car stop. Third, the reasoning behind the U.S. Supreme Court's opinion in *Maryland v. Wilson* (1997) 519 US 408 [137 L.Ed.2d 41] strongly supports the ruling in *Frank V.* In *Wilson*, the Court ruled that officers who have made a traffic stop may order a passenger in the car to exit without converting the encounter between the officer and passenger into a detention.

66. See *People v. Bennett* (1998) 68 Cal.App.4th 396, 402 ["By now, it is generally understood that there is nothing in the Constitution which prevents a police officer from addressing questions to anyone on the streets. Police officers enjoy the liberty possessed by every citizen to address questions to other persons. . . ."] [quoting from *United States v. Mendenhall* (1980) 446 US 544, 553]; *Florida v. Royer* (1983) 460 US 491, 497; *People v. Epperson* (1986) 187 Cal.App.3d 115, 120; *People v. Derello* (1989) 211 Cal.App.3d 414, 426-7 ["(T)his was at most a consensual encounter where the officers were doing exactly what they were lawfully entitled to do, which is to approach and talk if the subject is willing."]; *U.S. v. Ayon-Meza* (1999) 177 F.3d 1130, 1133 ["(W)e must recognize that there is an element of psychological inducement when a representative of the police initiates a conversation. But it is not the kind of psychological pressure that leads, without more, to an involuntary stop."]; *Wilson v. Superior Court* (1983) 34 Cal.3d 777, 790; *People v. Profit* (1986) 183 Cal.App.3d 849, 877.

67. See *People v. Franklin* (1987) 192 Cal.App.3d 935, 941-2; *People v. Ross* (1990) 217 Cal.App.3d 879, 885.

68. See *U.S. v. Sanchez* (10th Cir. 1996) 89 F.3d 715, 718. ALSO SEE *U.S. v. Moreno* (2nd Cir. 1990) 897 F.2d 26, 30-1; *People v. Ross* (1990) 217 Cal.App.3d 879, 883.

69. See *People v. Franklin* (1987) 192 Cal.App.3d 935, 941; *People v. Ross* (1990) 217 Cal.App.3d 879, 884.

70. *People v. Franklin* (1987) 192 Cal.App.3d 935, 941. ALSO SEE *United States v. Mendenhall* (1980) 446 US 544, 555; *People v. Ross* (1990) 217 Cal.App.3d 879, 884-5; *In re Manuel G.* (1997) 16 Cal.4th 805, 821; *People v. Spicer* (1984) 157 Cal.App.3d 213, 220; *U.S. v. Buchanon* (6th Cir. 1995)

72 F.3d 1217, 1225. COMPARE *People v. Epperson* (1986) 187 Cal.App.3d 115, 120 ["There was nothing in the officer's attitude or the nature of the inquiry which would indicate to a reasonable person that compliance with the officer's request might be compelled or that defendant was not free to leave."].

71. (1998) 68 Cal.App.4th 396, 402

72. See *Florida v. Royer* (1983) 460 US 491, 501 ["Asking for and examining Royer's [plane] ticket and his driver's license were no doubt permissible . . ."]; *Florida v. Bostick* (1991) 501 US 429, 437; *United States v. Mendenhall* (1980) 446 US 544, 555; *People v. Castaneda* (1995) 35 Cal.App.4th 1222, 1227; *People v. Bouser* (1994) 26 Cal.App.4th 1280, 1284; *People v. Clark* (1989) 212 Cal.App.3d 1233, 1237; *People v. Ross* (1990) 217 Cal.App.3d 879, 885; *People v. Gonzales* (1985) 164 Cal.App.3d 1194, 1197; *People v. Derello* (1989) 211 Cal.App.3d 414; *People v. Sanchez* (1987) 195 Cal.App.3d 42, 46; *People v. Lopez* (1989) 212 Cal.App.3d 289, 292; *U.S. v. Analla* (4th Cir. 1992) 975 F.2d 119, 124; *U.S. v. Gonzales* (5th Cir. 1996) 79 F.3d 413, 420; *U.S. v. \$25,000* (9th Cir. 1988) 853 F.2d 1501, 1505. NOTE: In *People v. Spicer* (1984) 157 Cal.App.3d 213, 218-9 the court ruled an officer's request for ID from a passenger in a stopped car at 1:30 a.m. converted the encounter into a detention. This ruling was based largely on the fact that the suspect's "freedom of movement was practically nil" because she was a passenger in a car stopped by police. This is no longer a significant circumstance because the restriction on her freedom was merely an incident to the traffic stop. See *Florida v. Bostick* (1991) 501 US 429, 436. Because the other reason for the court's decision was that the officer requested ID from the suspect (which, as noted, is also a rather insignificant circumstance), the court's ruling in *Spicer* is of doubtful validity.

73. *INS v. Delgado* (1984) 466 US 210, 216.

74. See *INS v. Delgado* (1984) 466 US 210, 216-7; *Brown v. Texas* (1979) 443 US 47.

75. See *U.S. v. Analla* (4th Cir. 1992) 975 F.2d 119, 124. NOTE: In *People v. Castaneda* (1995) 35 Cal.App.4th 1222, 1227 the court made this observation: "Although Castaneda was not restrained by the officer asking for identification, once Castaneda complied with his request and submitted his identification card to the officers, a reasonable person would not have felt free to leave." This appears to be an unfortunate lapse by the court. It is unimaginable that an officer without grounds to detain is free to request ID from the suspect but violates the Fourth Amendment if the suspect grants the officer's request. It is also contrary to settled Fourth Amendment jurisprudence. See *United States v. Mendenhall* (1980) 446 US 544; 555; *Florida v. Royer* (1983) 460 US 491, 501; *INS v. Delgado* (1984) 466 US 210, 216; *U.S. v. \$25,000* (9th Cir. 1988) 853 F.2d 1501, 1505; *U.S. v. Analla* (4th Cir. 1992) 975 F.2d 119, 124 ["(The officer) necessarily had to keep Analla's license and registration for a short time in order to check it with the dispatcher."].

76. See *U.S. v. Analla* (4th Cir. 1992) 975 F.2d 119, 124.

77. See *Florida v. Royer* (1983) 460 US 491, 501 [detention resulted when officers asked the suspect "to accompany them to the police room, while retaining his [airline] ticket and driver's license . . ."]; *People v. Castaneda*

(1995) 35 Cal.App.4th 1222, 1227 [court notes that an officer's retention of a suspect's ID while writing a parking citation would convert the encounter into a detention]; *People v. Daugherty* (1996) 50 Cal.App.4th 275, 285 ["(The officer) did not retain Daugherty's airline ticket or her bags."].

78. *U.S. v. Lambert* (10th Cir. 1995) 46 F.3d 1064, 1068.

79. (9th Cir. 1997) 125 F.3d 1324.

80. See *People v. Bouser* (1994) 26 Cal.App.4th 1280, 1286-7.

81. See *People v. Bouser* (1994) 26 Cal.App.4th 1280, 1287.

82. See *People v. Bennett* (1998) 68 Cal.App.4th 396, 402 ["When asked whether he would mind waiting in the back of the police car while [the officer] ran him for warrants, Bennett again agreed and, according to the testimony, was 'very cooperative.'"].

83. (4th Cir. 1992) 975 F.2d 119. ALSO SEE *People v. Bouser* (1994) 26 Cal.App.4th 1280, 1282.

84. See *People v. Bouser* (1994) 26 Cal.App.4th 1280, 1282. ALSO SEE *People v. Harness* (1983) 139 Cal.App.3d 226, 230 ["All that is required [to complete a field interrogation card] is identification and description of the detainee (which may be taken from the driver's license and visually observed), the location and time of the stop, and the interviewee's explanation of what he was doing."].

85. See *Florida v. Bostick* (1991) 501 US 429, 437. ALSO SEE *People v. Derello* (1989) 211 Cal.App.3d 414, 427; *U.S. v. Analla* (1992) 975 F.2d 119; *U.S. v. Beck* (8th Cir. 1998) 140 F.3d 1129, 1135 [contact became a detention when, after the suspect refused to consent to a search, an officer told him he would have to wait for a canine unit to arrive to check out his car].

86. See *People v. James* (1977) 19 Cal.3d 99, 116; *People v. Linke* (1968) 265 Cal.App.2d 297, 306-7; *People v. Fields* (1979) 95 Cal.App.3d 972, 976; *People v. Parker* (1975) 45 Cal.App.3d 24, 31; *People v. Ratliff* (1986) 41 Cal.3d 675, 686.

87. See *Schneckloth v. Bustamonte* (1973) 412 US 218, 227, 232-4; *United States v. Mendenhall* (1980) 446 US 544, 558-9; *People v. James* (1977) 19 Cal.3d 99, 118; *People v. Gravatt* (1971) 22 Cal.App.3d 133, 137; *People v. Ramirez* (1997) 59 Cal.App.4th 1548, 1559; *People v. Chaddock* (1967) 249 Cal.App.2d 483, 485-6 ["The mere asking of permission to enter and make a search carries with it the implication that the person can withhold permission for such an entry or search."].

88. See *Florida v. Bostick* (1991) 501 US 429, 432, 437; *U.S. v. Thompson* (7th Cir. 1997) 106 F.3d 794, 798.

89. See *United States v. Mendenhall* (1980) 446 US 544, 557-8; *In re Gilbert R.* (1994) 25 Cal.App.4th 1121, 1125 ["In a thoroughly motley array of circumstances, appellate courts have held that when a person agrees to accompany the police to a station for interrogation or some other purpose, the Fourth Amendment is not violated."]; *People v. Singer* (1990) 226 Cal.App.3d 23, 46-7.

90. See *People v. Profit* (1986) 183 Cal.App.3d 849, 858, 866.

91. (1994) 25 Cal.App.4th 1121.

92. (1989) 48 Cal.3d 247.

93. See *Florida v. Bostick* (1991) 501 US 429, 439 [(T)he proposition that police officers can approach individuals as to whom they have no reasonable suspicion and ask them potentially incriminating questions . . . is by no means novel; it has been endorsed by the Court any number of times."]; *Florida v. Royer* (1983) 460 US 491, 498; *United States v. Mendenhall* (1980) 446 US 544, 555; *INS v. Delgado* (1984) 466 US 210, 216 ["(P)olice questioning, by itself, is unlikely to result in a Fourth Amendment violation."]; *In re Kemonte H.* (1990) 223 Cal.App.3d 1507, 1512 ["Officers may investigate activities taking place on a public street by making a reasonable inquiry of the participants without it being a detention."]; *People v. King* (1977) 72 Cal.App.3d 346, 349 ["(S)o long as his conduct does not constitute a 'detention,' a police officer may talk to anyone in a public place, something that any person would lawfully be permitted to do, or try to do."]; *People v. Rosales* (1989) 211 Cal.App.3d 325, 330; *People v. Bouser* (1994) 26 Cal.App.4th 1280, 1284; *People v. Lopez* (1989) 212 Cal.App.3d 289, 291.

94. *U.S. v. Flowers* (4th Cir. 1990) 912 F.2d 707, 710. ALSO SEE *Florida v. Bostick* (1991) 501 US 429, 434 ["(W)e have held repeatedly that mere police questioning does not constitute a seizure."].

95. (1997) 16 Cal.4th 805.

96. See Penal Code § 69.

97. (1991) 953 F.2d 116.

98. *People v. Lopez* (1989) 212 Cal.App.3d 289, 292. ALSO SEE *People v. Daugherty* (1996) 50 Cal.App.4th 275, 285 ["[The officer] did not directly accuse Daugherty of transporting narcotics, which may have been sufficient to convert the encounter into a detention."]; *Morgan v. Woessner* (9th Cir. 1993) 997 F.2d 1244, 1254; *U.S. v. Gonzales* (5th Cir. 1996) 79 F.3d 413, 420 ["There is one troubling element: the officers informed Gonzales that the car he was driving was suspected of being used to transport drugs. This may have pushed the encounter, which was initially consensual, to being a [detention]."].

99. (1983) 34 Cal.3d 777.

100. *People v. Franklin* (1987) 192 Cal.App.3d 935, 941. ALSO SEE *People v. Lopez* (1989) 212 Cal.App.3d 289, 293.

101. See *U.S. v. Beck* (8th Cir. 1998) 140 F.3d 1129, 1135. ALSO SEE *INS v. Delgado* (1984) 466 US 210, 216 ["Unless the circumstances of the encounter are so intimidating as to demonstrate that a reasonable person would have believed he was not free to leave if he had not responded, one cannot say that the questioning resulted in a detention under the Fourth Amendment."]; *People v. Sanchez* (1987) 195 Cal.App.3d 42, 47 ["The record lacks any indication their dialogue was coercive . . . [there was] nothing apparent in [the officer's] attitude or the nature of his inquiry to reflect compulsory compliance. . . ."].

102. See *Florida v. Royer* (1983) 460 US 491, 501 [detention resulted when officers asked the suspect "to accompany them to the police room, while retaining his [airline] ticket and driver's license . . ."]; *People v. Castaneda* (1995) 35 Cal.App.4th 1222, 1227 [court notes that an officer's retention of a suspect's ID while writing a parking citation would convert the encounter into a detention]; *People v. Daugherty* (1996) 50 Cal.App.4th 275, 285 ["(The officer) did not retain Daugherty's airline ticket or her bags."]; *U.S. v. Werking* (10th Cir. 1990) 915 F.2d 1404, 1409 ["Before [the officer] asked Werking any further questions, he returned Werking's driver's license and registration papers and gave him the contact sheet."]; *U.S. v. Lambert* (10th Cir. 1995) 46 F.3d 1064, 1068.

103. See *In re Kemonte H.* (1990) 223 Cal.App.3d 1507, 1511 ["The Fourth Amendment has not been violated where an officer approaches an individual on a public street."].

104. (1991) 228 Cal.App.3d 519.

105. (1990) 223 Cal.App.3d 1507.

106. (1995) 72 F.3d 1217.

107. See *United States v. Mendenhall* (1980) 446 US 544, 554; *In re Manuel G.* (1997) 16 Cal.4th 805, 821.

108. See *In re Frank V.* (1991) 233 Cal.App.3d 1232, 1237; *People v. Rosales* (1989) 211 Cal.App.3d 325, 330; *People v. Fisher* (1995) 38 Cal.App.4th 338, 343. BUT ALSO SEE *People v. Singer* (1990) 226 Cal.App.3d 23, 46-7 [routine pat searching of unarrested suspect before he voluntary got into a police car for a ride to the station did not convert the encounter into an arrest].

109. (1981) 247 Ga. 445. ALSO SEE *Martinez v. Nygaard* (9th Cir. 1987) 831 F.2d 822, 826-7.

110. *People v. Bailey* (1985) 176 Cal.App.3d 402, 405-6. ALSO SEE Vehicle Code § 21806(a); *Berkemer v. McCarty* (1984) 468 US 420, 436 ["Certainly few motorists would feel free either to disobey a directive to pull over or to leave the scene of a traffic stop without being told they might do so."]; *U.S. v. Kerr* (9th Cir. 1987) 817 F.2d 1384, 1386 ["The vast majority of automobile stops are initiated by police officers using flashing lights or a siren and are clearly fourth amendment seizures."].

111. See *People v. Bailey* (1985) 176 Cal.App.3d 402.

112. See *People v. Ellis* (1993) 14 Cal.App.4th 1198, 1202, fn.3.

113. See *In re Frank V.* (1991) 233 Cal.App.3d 1232, 1237[suspect pulled over before the officer activated his red light].

114. See *U.S. v. Perez-Sosa* (8th Cir. 1998) 164 F.3d 1082.
115. See *Brower v. County of Inyo* (1989) 489 US 593, 596-7; *Lawrence v. United States* (1986) 509 A.2d 614, 616, fn.2 ["A pedestrian, however, who notices a patrol wagon's emergency equipment ordinarily is not likely to know that an officer is signaling for a stop until the officer communicates in a more direct manner to the pedestrian the officer's intention to stop the pedestrian."].
116. See *U.S. v. Dockter* (8th Cir. 1995) 58 F.3d 1284, 1287.
117. See *People v. Rico* (1979) 97 Cal.App.3d 124, 130; *People v. Brueckner* (1990) 223 Cal.App.3d 1500, 1505 ["The fact he shined his spotlight on the vehicle as he parked in the unlit area would not, by itself, lead a reasonable person to conclude he or she was not free to leave."].
118. (1989) 211 Cal.App.3d 1492, 1496.
119. (1987) 192 Cal.App.3d 935.
120. (1986) 186 Cal.App.3d 804. BUT ALSO SEE *U.S. v. Kim* (9th Cir. 1994) 25 F.3d 1426, 1431 [no detention when officer stopped behind parked vehicle, partially blocking it]; *U.S. v. Pajari* (8th Cir. 1983) 715 F.2d 1378 [no detention when officer "parked behind" suspect's car].
121. (1987) 192 Cal.App.3d 935, 940. ALSO SEE *People v. Brueckner* (1990) 223 Cal.App.3d 1500, 1505 [officer parked "next to" suspect's car]; *People v. Perez* (1989) 211 Cal.App.3d 1492, 1496 [officer "parked his patrol vehicle in front of defendant's vehicle and left room for defendant's car to leave."]; *People v. Juarez* (1973) 35 Cal.App.3d 631 [officer pulled patrol car alongside suspect]; *INS v. Delgado* (1984) 466 US 210, 219 [Court noted the "presence of agents by the exits posed no reasonable threat of detention to these workers while they walked throughout the factories on job assignments."]; *U.S. v. Analla* (4th Cir. 1992) 975 F.2d 119 [no detention occurred when officers parked their cars at 45 degree angles to the suspect's car, not blocking it in]; *U.S. v. Dockter* (8th Cir. 1995) 58 F.3d 1284, 1287.
122. See *U.S. v. McFarley* (4th Cir. 1993) 991 F.2d 1188, 1192 ["(T)he evidence tended to show that the movement of McFarley and the officers together was voluntary—as the officers slowed down so too did McFarley and Stitt."]; *U.S. v. Gray* (4th Cir. 1989) 883 F.2d 320, 323 ["(T)he agents never made any attempt to restrain Gray's movement, but instead walked with him as he moved through the airport towards the exit."].
123. (1973) 35 Cal.App.3d 631. ALSO SEE *U.S. v. Gray* (4th Cir. 1989) 883 F.2d 320, 323 ["(T)he agents never made any attempt to restrain Gray's movement, but instead walked with him as he moved through the airport towards the exit."]
124. See *U.S. v. Buchanon* (6th Cir. 1995) 72 F.3d 1217, 1224 [court notes that three backup officers in three cars arrived quickly after the encounter began].
125. (1986) 183 Cal.App.3d 849, 877. ALSO SEE *In re Manuel G.* (1997) 16 Cal.4th 805, 821 [court notes the "presence of several officers" is a factor]; *U.S. v. \$25,000* (9th Cir. 1988) 853 F.2d 1501, 1504-5; *INS v. Delgado* (1984) 466 US 210, 219 [Court noted the "presence of agents by the exits posed no reasonable threat of detention to these workers while they walked throughout the factories on job assignments."]
126. (9th Cir. 1994) 25 F.3d 1426, 1431, fn.3.
127. (8th Cir. 1996) 81 F.3d 775, 779.
128. See *Florida v. Royer* (1983) 460 US 491, 504 ["First, by returning his [airline] ticket and driver's license, and informing him that he was free to go if he so desired, the officers might have obviated any claim that the encounter was anything but a consensual matter from start to finish."]; *People v. Daugherty* (1996) 50 Cal.App.4th 275, 280 [officer "advised Daugherty she was not under arrest, she was free to go at any time, and she did not have to speak with him.]; *Morgan v. Woessner* (9th Cir. 1993) 997 F.2d 1244, 1254 ["Although an officer's failure to advise a citizen of his freedom to walk away is not dispositive of the question of whether the citizen knew he was free to go, it is another

significant indicator of what the citizen reasonably believed."]. NOTE: Telling a suspect he is free to go has about the same affect as telling a suspect he has the right to remain silent; i.e., "Indeed, it seems self-evident that one who is told he is free to refuse to answer questions is in a curious posture to later complain that his answers were compelled." *United States v. Washington* (1977) 431 US 181, 188.

129. See *United States v. Mendenhall* (1980) 446 US 544, 555.

130. (1986) 183 Cal.App.3d 849.

131. (10th Cir. 1994) 29 F.3d 537. ALSO SEE *U.S. v. Beck* (8th Cir. 1998) 140 F.3d 1129, 1136-7 [although suspect was told he was free to go, a detention occurred when he was told he would have to consent to a search or wait for a canine unit to arrive]; *U.S. v. Thompson* (7th Cir. 1997) 106 F.3d 794, 798.

132. See *In re Manuel G.* (1997) 16 Cal.4th 805, 821; *People v. Epperson* (1996) 187 Cal.App.3d 115, 120.

133. (7th Cir. 1997) 106 F.3d 794. COMPARE *People v. Spicer* (1984) 157 Cal.App.3d 213, 220 ["Had the officer made his purpose known to Ms. Spicer, it would have substantially lessened the probability his conduct could reasonably have appeared to her to be coercive."].

134. See *People v. Bouser* (1994) 26 Cal.App.4th 1280, 1283 [court notes the "whole incident took around 10 minutes"]; *People v. Cartwright* (1999) 72 Cal.App.4th 1362, 1365; *People v. Castaneda* (1995) 35 Cal.App.4th 1222, 1226 ["The whole incident took about eight minutes. . . ."]; *People v. Terrell* (1999) 69 Cal.App.4th 1246, 1254 [about three minutes].

135. See *Florida v. Bostick* (1991) 501 US 429, 437.

136. See *INS v. Delgado* (1984) 46 US 210, 218 [workplace]; *People v. Epperson* (1986) 187 Cal.App.3d 115, 120 ["The conversation occurred in a public place in the [hallway of the] California Lodge [hotel]]. BUT ALSO SEE *U.S. v. Jerez* (7th Cir. 1997) 108 F.3d 684, 690 [a seizure resulted when officers attempted a "knock and talk" at suspect's home at about 11 p.m.].

137. See *Florida v. Bostick* (1991) 501 US 429, 439 ["The cramped confines of a bus are one relevant factor . . ."]; *People v. Spicer* (1984) 157 Cal.App.3d 213, 218. BUT ALSO SEE *U.S. v. Thompson* (7th Cir. 1997) 106 F.3d 794 [an encounter in a police car was a contact after the suspect was free to go].

138. See *In re Manuel G.* (1997) 16 Cal.4th 805, 821.

139. See *People v. Turner* (1994) 8 Cal.4th 137, 180.

140. See *People v. Boyer* (1989) 48 Cal.3d 247, 268.

141. See *People v. Manis* (1969) 268 Cal.App.2d 653, 667 ["Temporary detention only slightly resembles custody, 'as the mist resembles the rain.'"]; *Berkemer v. McCarty* (1984) 468 US 420, 439-40.

142. See *People v. Bello* (1975) 45 Cal.App.3d 970, 973; *People v. Grace* (1973) 32 Cal.App.3d 447, 451; *People v. McGaughran* (1979) 25 Cal.3d 577, 586; *U.S. v. Sandoval* (10th Cir. 1994) 29 F.3d 537, 539-40 ["When the driver [who has been stopped for a minor traffic violation] has produced a valid license and proof that he is entitled to operate the car, he must be allowed to proceed on his way, without being subject to further delay by police for additional questioning."].

143. *U.S. v. Anderson* (10th Cir. 1997) 114 F.3d 1059, 1064.

144. See *Florida v. Royer* (1983) 460 US 491 504 ["(W)hen the officers identified themselves as narcotics agents, told Royer that he was suspected of transporting narcotics, and asked him to accompany them to the police room, while retaining his ticket and driver's license and without indicated in any way that he was free to depart, Royer was effectively seized for the purposes of the Fourth Amendment." At p. 501]["(B)y returning his ticket and driver's license, and informing him that he was free to go if he so desired, the officers might have obviated any claim that the encounter was anything but a consensual matter from start to finish." At p. 504]; *United States v. Mendenhall* (1980) 446 US 544, 555; *U.S. v. Beck* (8th Cir. 1998) 140 F.3d 1129,1135; *U.S. v. Sullivan* (4th Cir. 1998) 138 F.3d

126, 133 ["(The officer) did not question Sullivan until after he had returned Sullivan's license and registration, thus ending the traffic stop and affording Sullivan the right to depart."]; U.S. v. White (8th Cir. 1996) 81 F.3d 775, 779; U.S. v. Anderson (10th Cir. 1997) 114 F.3d 1059, 1064; U.S. v. Werking (10th Cir. 1990) 915 F.2d 1404, 1409.

145. (10th Cir. 1994) 29 F.3d 537, 540.

146. See United States v. Mendenhall (1980) 446 US 544, 555; People v. Profit (1986) 183 Cal.App.3d 849, 877; U.S. v. Anderson (10th Cir. 1997) 114 F.3d 1059, 1064.

147. See Berkemer v. McCarty (1984) 468 US 420, 436 ["Certainly few motorists would feel free [to] leave the scene of a traffic stop without being told they might do so."]; People v. Profit (1986) 183 Cal.App.3d 849, 877 ["(D)elivery of such a warning weighs heavily in favor of finding voluntariness and consent."]; People v. Daugherty (1996) 50 Cal.App.4th 275, 280 [officer "advised Daugherty she was not under arrest, she was free to go at any time, and she did not have to speak with him.]; U.S. v. Beck (8th Cir. 1998) 140 F.3d 1129, 1135.

148. (9th Cir. 1993) 997 F.2d 1244, 1254.

149. See U.S. v. Sandoval (10th Cir. 1994) 29 F.3d 537, 540 ["After the point at which the driver has his or her other documentation back, the touchstone of our analysis is simply whether . . . the driver has an objective reason to believe that he was not free to end his conversation with the law enforcement officer and proceed on his way."].

150. (8th Cir. 1998) 140 F.3d 1129, 1136-7.

151. (8th Cir. 1994) 42 F.3d 1160, 1162-4. ALSO SEE U.S. v. Galvan-Muro (8th Cir. 1998) 141 F.3d 904, 906 [in discussing Ramos, the court noted, "[W]hen the officer in Ramos asked for permission to search the vehicle, the brothers were separated. Even though the officer had returned the driver's license, the separation of the driver and passenger prevented the driver from terminating the encounter such that a reasonable person would not feel free to leave."].

152. (4th Cir. 1998) 138 F.3d 126. ALSO SEE U.S. v. White (8th Cir. 1996) 81 F.3d 775, 779.

153. (7th Cir. 1997) 106 F.3d 794, 798.

154. (1984) 157 Cal.App.3d 213, 220,

155. NOTE: In Florida v. Bostick (1991) 501 US 429 the U.S. Supreme Court stated its "free to terminate" test "applies equally to police encounters that take place on trains, planes, and city streets." At p. 438. Emphasis added.

156. (1991) 501 US 429.

157. NOTE: This dual testing procedure has been noted by at least two courts. See U.S. v. Jerez (7th Cir. 1997) 108 F.3d 684, 689; People v. Fisher (1995) 38 Cal.App.4th 338, 343, fn