

Consensual Encounters

Vampire Squad Training Bulletin

Written by Officer C. Mason



Introduction

- ◆ Consensual Encounters are contacts that you can make on a daily basis. Knowing the limits of this type of encounter will allow you to be more effective when you are speaking to the general public, developing informants, or conducting criminal investigations.

What is a Consensual Encounter?

- ◆ A consensual encounter is a contact that is not coerced, is not a detention, and it is not an arrest or a seizure.
- ◆ The citizen is consenting “willing” to speak with the officer.

Is a Consensual Encounter a violation of the 4th Amendment? (illegal Search and Seizure)

- ◆ It is not a violation of the fourth amendment for an officer to approach a citizen.

An officer can approach and speak to a citizen in the following situations.

- ◆ On a street, or in a public place.
- ◆ The officer can ask the person if they would answer some questions.
- ◆ The officer can continue to ask the person questions if they choose to listen.
- ◆ The officer can use the persons voluntary answers as evidence against them.

The objective question is:

- ◆ Would a reasonable person believe he or she was free to leave?

Reasonable Questions to ask during a Consensual Encounter:

- ◆ Can I talk to you?
- ◆ May I talk to you?
- ◆ Would you mind talking to me for a second?
- ◆ Do you have any weapons on you?
- ◆ Do you mind if I check?
- ◆ Can I search you for drugs or weapons?

Reasonable Questions to ask during a Consensual Encounter: (Cont'd)

- ◆ You can use these openings or just start a conversation with the individual.

What is unique about these questions?

- ◆ These questions ask the individual to participate in the encounter.
- ◆ The individual could say “no” and walk away.
- ◆ If it is a consensual encounter the person should feel like they are free to leave.
- ◆ If they don't want to speak to you, you should tell the person to have a nice day and let them leave.

More Questions to Ask:

- ◆ Do you mind if I see your ID?
- ◆ Would you mind not putting your hands in your pockets?
- ◆ Do you have any weapons or drugs on you?
- ◆ Do you mind if I check?
- ◆ Or just ask what the citizen is up to and try to start a conversation and develop a rapport.

What elements could change the consensual encounter into a detention?

- ◆ The officer displays a weapon.
- ◆ The officer uses a harsh accusatorial tone of voice.
- ◆ The officer orders the person to do something. Like: stop, open your hands, don't move, or come over here.
- ◆ The officer blocks the individual's path with a police vehicle, himself, or other officers.
- ◆ The individual is told they are a suspect.

What elements could change the consensual encounter into a detention? (Cont'd)

- ◆ The individual is physically touched by the Officer.
- ◆ The individual's property is retained by law enforcement: DL, ID card, plane ticket, or any other type of property belonging to the individual.

Notable Information and Examples of an Encounter vs. Arrest or Seizure

- ◆ A person is seized only when his freedom of movement is restrained. *U.S. v. Mendenhall*
- ◆ A seizure occurs only when by means of physical force or show of authority, one's freedom of movement has been restrained and when in light all the circumstances, it may be said that a reasonable person would have believed that he or she was not free to leave. *J.C.W. v. State*

Notable Information and Examples of an Encounter vs. Arrest or Seizure (Cont'd)

- ◆ When a police officer turns on his or her emergency and takedown lights, a seizure has taken place. *Hrezo v. State*
- ◆ The defendant was seized when an officer pulled behind him, blocking his driveway's exit, and activated his patrol car's emergency lights. *Young v. State*

Notable Information and Examples of an Encounter vs. Arrest or Seizure (Cont'd)

- ◆ The defendant was seized when the officer activated his overhead lights (emergency lights) and put his spotlight on the defendant, to see if he was armed and disorient him. *Errickson v. State*
- ◆ However, in *Hrezo*, the Court emphasized that an officer's use of a spotlight alone is not the same as the use of emergency lights.

Notable Information and Examples of an Encounter vs. Arrest or Seizure (Cont'd)

- ◆ The defendant was seized when officers ordered him to lie on the ground so they could check him for weapons. *Wooden v. State*
- ◆ The defendant was seized when officers grabbed him from behind the collar, held a flashlight to his face, and ordered him to open his mouth. *State v. Newton*

Notable Information and Examples of an Encounter vs. Arrest or Seizure (Cont'd)

- ◆ There was no seizure when two officers approached the defendant, who was sitting on a milk crate against a wall on a street corner at 1:10 P.M., identified themselves as police officers and asked her if she had any narcotics. The officers did not display their weapon, and their language and actions in no way restricted the defendant's ability to leave. *State v. Poole*.

Notable Information and Examples of an Encounter vs. Arrest or Seizure (Cont'd)

- ◆ A person cannot be arrested nor even detained for providing a false name to an officer during a consensual encounter. *Belsky v. State* 831 So.2d 803 (Fla. 4th DCA 2002)
- ◆ It is important for the officer to remember that in a consensual encounter the officer does not have to give the citizen Miranda Warnings.

Sources

- ◆ Florida Legal Guidelines