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# ONE MINUTE BRIEF

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## **ISSUE: May police lawfully detain a potential witness to a crime to seek information?**

Law enforcement officers at the scene of a recent crime routinely seek to learn if bystanders there might have seen or heard something that could help explain what happened, and who did what. **Well-trained officers will attempt consensual encounters with individuals, wherever possible.** *Florida v. Rodriguez* (1984) 469 US 1, 5-6. See 1MB 2014-02.

But what if the bystander turns to walk away when the officer approaches? May the person be briefly detained to see if s/he was a witness? And if during a non-consensual contact the officer develops grounds to frisk or arrest the bystander, is evidence resulting from a witness-detention subject to suppression?

- The general rule is that investigative detentions must be supported by **reasonable suspicion** that the person stopped is involved in criminal activity. *Terry v. Ohio* (1968) 392 US 1, 22. See 1MB 2015-12. But “*Terry does not authorize stopping and examining every person present where an officer believes a crime may have occurred.*” *Guillory v. Hill* (2015) 233 Cal.App.4<sup>th</sup> 240, 254. There are, however, several **exceptions** to the general rule requiring reasonable suspicion, where the detention is made for a purpose **other than** to investigate the detainee as a **suspect**. See 1MB 2017-11, listing 9 recognized exceptions.

- One of these exceptions where **no suspicion is required** is for **brief detentions to seek information about a recent, serious crime from potential witnesses.** “[A]n information-seeking stop is **not** the kind of event that involves **suspicion**, or lack of suspicion, of the relevant individual. ... And the stop’s objective was to help find the perpetrator of a

*specific and known crime....” Illinois v. Lidster (2004) 540 US 419, 425, 427 (upholding a vehicle checkpoint stop to locate witnesses to a serious crime, where the stop incidentally resulted in the arrest of one of the drivers stopped); and see Maxwell v. San Diego County (9<sup>th</sup> Cir. 2013) 708 F.3d 1075, 1084 (describing Lidster as “authorizing detentions solely for the purpose of obtaining information” from potential witnesses).*

Although *Lidster* involved a **vehicle** checkpoint detention, a **pedestrian** detention, being considered even less intrusive, should also fall within *Lidster*’s rationale:

*“Even if we assume that the stop of a **car** on a public street or highway involves a **greater intrusion** on privacy than the stop of an **individual** when the individual is on foot ... ‘the constitutional validity of such a stop turns upon the reasonableness of the procedure, taking into account the **gravity** of the public concerns served by the seizure, the **degree** to which the seizure advances the public interest, and the **severity** of the interference with individual liberty.’”*

*People v. Maikhio (2011) 51 Cal.4<sup>th</sup> 1074, 1098, 1090 (quoting Lidster).*

- Of course, the potential witness “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 ... and his refusal to listen or answer does not, without more, furnish grounds” for further detention or arrest. *Florida v. Royer (1983) 460 US 491, 498.* An uncooperative witness may **not** be further “detained for questioning.” See *Maxwell, supra*, and *Guillory, supra*, both ruling that officers were subject to potential civil liability for **unlawfully-prolonged** detention of witnesses.

- To satisfy the standard laid out in *Lidster*, reports and testimony of witness-detentions should detail (1) the **seriousness** of the crime being investigated, (2) the **urgency and necessity** for obtaining witness information in order to identify and apprehend the perpetrator, and (3) the **brevity** of the detention and questioning.

**BOTTOM LINE: Where needed to assist in the apprehension of a suspect, a momentary detention of a possible witness to a recent, serious crime to ask if s/he can provide information does not require any suspicion that s/he was personally involved.**

(Emphases added and citations omitted in quoted material.)

This information was current as of publication date. It is not intended as legal advice. It is recommended that readers check for subsequent developments, and consult legal advisors to ensure currency after publication. Local policies and procedures regarding application should be observed.