CREXAC Lesson Plan: Independent Work

There are two types of situations in which police request consent to search – those in which the police-citizen encounter begins consensually, and those in which the police-citizen encounter begins by an assertion of legal authority. When police-citizen encounters begin consensually, courts will find the consent request valid if there was nothing in the record to suggest “that the [citizen] had any objective reason to believe that she was not free to end the conversation [with the officers]…and proceed on her way,” *United States v. Mendenhall*, 446 U.S. 544, 555 (1980) (emphasis added). On the other hand, when police request consent to search after a police-citizen encounter that began with an assertion of legal authority, the court should use a different test, and should analyze when the defendant would have an objective reason to believe that he or she became free to end the conversation and proceed on his or her way. Because Newsome and Robinette’s[[1]](#footnote-1) encounter began with an assertion of legal authority and because there was no clear end to this assertion of legal authority despite Newsome’s return of Robinette’s license, this Court should apply the totality of the circumstances test to this case.

Courts use the totality of the circumstances test to ascertain when police behavior rises to the level of a detention. *See Florida v. Bostic*, 501 U.S. 429, 434 (1991) (“[t]he encounter [between an officer and a citizen] will not trigger Fourth Amendment scrutiny unless it loses its consensual nature”) (emphasis added). Courts have failed to note, however, that when a police-citizen encounter already involves legitimate force over that citizen, an inquiry as to when the encounter already involves legitimate force over that citizen, an inquiry as to when the encounter “rises” to the level of a detention is inapposite...

…Thus, when a police-citizen encounter begins with the police officer’s assertion of legal authority over the citizen, a subsequent request to search is part of a “consensual encounter” only if the citizen has objective knowledge either (a) that the legal detention has ended, or (b) that he or she is free to refuse consent to search.

1. In this case, Newsome is the police officer, and Robinette is the individual Newsome searched [↑](#footnote-ref-1)