



A FEDERAL DISTRICT COURT EXPLAINS WHEN A “SEIZURE” OCCURS FOR PURPOSES OF THE FOURTH AMENDMENT



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When does a “seizure” occur for purposes of the Fourth Amendment? A federal district court was recently confronted with this United States v. Thorne, 2014 WL 3129500 (E.D. Mo. July 8, 2014). After conducting an evidentiary hearing on Defendant Jason D. Thorne’s motion to suppress, the District Court held that, although a seizure of Thorne occurred, the momentary seizure of Thorne by the police officer did not violate the Fourth Amendment because it was based upon reasonable suspicion.

The District Court stated that Officer Richard Altice is a patrolman with the police department in Steele, Missouri. Officer Altice began his career in law enforcement in 2010. On January 17, 2014, at around 1:10 a.m., Officer Altice and another Steele police officer, Logan Pritchett, were conducting surveillance on a house in the City of Steele in connection with an investigation unrelated to this case. Officer Pritchett was parked in an unmarked police car, and Officer Altice was parked about one city block away in a marked police car. Officer Altice received a call from Officer Pritchett who reported that a white male was approaching the front of Officer Pritchett’s car at a pretty decent rate and that Officer Altice should head that way.

Officer Altice drove to the area where Officer Pritchett was parked. Officer Altice parked his marked patrol car to within 125 feet of Officer Pritchett’s unmarked car. Officer Altice saw a subject walking, and the subject was wearing a coat with a hood over his head. When Officer Altice parked his marked patrol car, the subject immediately turned and started walking towards Officer Altice’s patrol car and took his hood off. Officer Altice recognized the man as Defendant Jason Thorne. Officer Altice was able to recognize Thorne because the area was sufficiently lit by Officer Altice’s headlights and streetlights and because Officer Altice had encountered Thorne approximately one month earlier when he investigated the possible theft of some stereo equipment by Thorne’s brother, Israel Whitnut. Officer Altice had heard from other officers in the Steele Police Department that Thorne was involved in the drug trade and had been convicted of a felony.

After recognizing Thorne, Officer Altice exited his patrol car. Thorne walked over to him and stated that he had received a phone call that there was a vehicle parked on the street outside his shop. Officer Altice replied that the vehicle next to the shop was a patrol car and that there was an on-duty

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officer in the vehicle. During this conversation, Officer Altice noticed that Thorne was using his right hand to manipulate an object in his coat pocket, and there was what appeared to be a white rag or cloth hanging from the pocket. Officer Altice asked Thorne to keep his hands out of his pocket while they talked. Thorne replied: "Why are you doing this to me out here on the streets where everybody can see?" Officer Altice interpreted Thorne's statement to mean that Thorne did not want to be seen talking to a police officer. Officer Altice told Thorne that it would make him feel more comfortable if he didn't place his hands in his pocket while they talked.

During this exchange, Officer Pritchett walked over and stayed just long enough to identify Thorne and to make sure that everything was okay. Officer Pritchett, then, returned to his unmarked car. After Officer Pritchett left, Thorne continued manipulating the item in his pocket. Thorne did so by manipulating the item from both the outside and inside of the pocket. At that point, Officer Altice asked Thorne if he was concealing anything he should not have in his possession. Thorne replied that he wanted to talk to the officer at the police department and said that he would be willing to get in the car and talk to the police officer. Officer Altice replied that Thorne could get in the car, but he would have to pat Thorne down for weapons first.

Officer Altice requested Thorne to place both of his hands on top of his head and interlace his fingers. Officer Altice explained during the suppression hearing that asking Thorne (or any other subject) to interlace his fingers on top of his head is a standard safety procedure that allows the officer to control the subject's movements during the pat down. Thorne raised his hands, but he did not place them on his head, nor did he interlace his fingers. Officer Altice grabbed or touched Thorne with his left hand to try to move Thorne's hands to the top of Thorne's head to interlace his fingers. However, Thorne twisted away from Officer Altice and started running away. Officer Altice shouted for him to stop and, then, chased Thorne.

After chasing Thorne for about 20 feet, Officer Altice deployed his Taser. Although Thorne fell to the ground, Officer Altice did not believe the Taser had taken full effect because Thorne continued to fight back and flee. The men struggled and wound up falling onto a fence, and Thorne got up and continued to run. At that point, Officer Altice, who was only about four feet away, saw Thorne remove the white rag from his pocket and "chuck" the item that Officer Altice could see was a pistol concealed in the rag. The men continued to struggle for a short while before Officer Pritchett arrived to assist Officer Altice. After the arrival of Officer Pritchett, Thorne stopped resisting and allowed himself to be handcuffed. Thorne was placed under arrest and taken to Steele Police Department for booking and, then, to Pemiscot County Sheriff's Office. The officers searched the area where Thorne had thrown the gun and recovered a Ruger .357 magnum revolver.

In his motion to suppress and at the suppression hearing, Thorne argued that he was seized under the Fourth Amendment, without justification, when Officer Altice required him to submit to a pat-down search and, then, grabbed his arm to force him to place his hands on top of his head. The Government responded by arguing that Thorne was not seized for purposes of the Fourth Amendment when Officer Altice grabbed Thorne's arm to attempt a pat-down and, therefore, asserted that the District Court should deny Thorne's motion to suppress the evidence of the gun found by the Steele police officers.

At the conclusion of the suppression hearing, the District Court denied Thorne's motion to suppress but did so for a different reason than that argued by the Government. The District Court began its

analysis by noting that, for purposes of the Fourth Amendment, the seizure of a person occurs when a reasonable person would not feel “free to leave,” or free to “decline the officers’ requests,” or “otherwise terminate the encounter.” *Florida v. Bostick*, 501 U.S. 429, 436 (1991). An encounter with an officer does not constitute a seizure unless the officer restrains the individual’s liberty by means of physical force or a show of authority to which the individual submits. The word “seizure” in the Fourth Amendment “readily bears the meaning of a laying on of hands or application of physical force to restrain movement, even when it is ultimately unsuccessful.” *California v. Hodari D.*, 499 U.S. 621, 626 (1991).

Here, District Court concluded that there was no question that, up until the point at which Officer Altice attempted to get Defendant to place his hands on top of his head, the encounter between Thorne and the officer was consensual and did not trigger the Fourth Amendment. However, once Thorne told Officer Altice that he wanted to get into the patrol car and go down to the station to talk, Officer Altice indicated that he would need to first pat down Thorne before allowing him into the car. Officer Altice then told Thorne that he would need to place his hands on top of his head and interlace his fingers. When Thorne did not fully comply, Officer Altice grabbed Thorne’s partially raised arm to attempt to move his hands to the top of his head. Regardless of whether Officer Altice “grabbed” or “touched” Thorne’s arm, he “effected the slightest application of physical force” to restrain Thorne’s movement and, thus, seized Thorne for purposes of the Fourth Amendment.

Nevertheless, the District Court held that the seizure did not violate Thorne’s Fourth Amendment rights because the seizure was lawful because it was based on reasonable suspicion. The District Court explained that brief seizures by police officers that fall short of traditional arrests are lawful when justified by reasonable, articulable suspicion that criminal activity is afoot or, in the case of a pat-down, if the officer has a reasonable belief that the detainee poses a threat to the officer’s safety or to the safety of others. *Terry v. Ohio*, 392 U.S. 1, 27 (1968).

In this case, the District Court concluded that Officer Altice had enough reasonable suspicion to justify his request to Thorne to submit to a pat-down search to ensure his safety. Officer Altice observed unusual conduct that led him reasonably to conclude in light of his experience that criminal activity may be afoot and that Thorne might be armed. Thorne was walking to confront an unknown car at around 1 a.m. and was fidgeting with an object in his pocket. Thorne was evading the officer’s question about the object in his pocket, and after Thorne requested that Officer Altice take him to the station in his patrol car, Officer Altice told Thorne that it was police custom to conduct a weapons pat-down for anyone who rides in his patrol car to ensure his own safety.

In addition, Officer Altice was familiar with Thorne and believed him to be a convicted felon. Therefore, Officer Altice had reasonable suspicion to believe criminal activity was afoot and was entitled for the protection of himself and others in the area to conduct a carefully limited search Thorne’s outer clothing in an attempt to discover weapons which might be used to assault him. In short, Thorne was seized by Officer Altice, but the seizure did not violate the Fourth Amendment because the officer had a reasonable, articulable suspicion for the pat-down.

Finally, the District Court determined that Thorne’s decision to flee provided an independent ground for an arrest and for a search incident to that arrest. Accordingly, the District Court held that the officers did not violate Thorne’s Fourth Amendment rights at any time during their encounter with Thorne, and so, the District Court denied Thorne’s motion to suppress the gun evidence against him.

Note: *Court holdings can vary significantly between jurisdictions. As such, it is advisable to seek the advice of a local prosecutor or legal adviser regarding questions on specific cases. This article is not intended to constitute legal advice on a specific case.*

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