



**LGIT'S ROLL CALL REPORTER
MAY 2012**

The mere positioning of a police car may be sufficient to convert what was intended to be a consensual encounter to a seizure under the Fourth Amendment.

QUESTION: Can the mere positioning of an officer's patrol car be sufficient to convert a consensual encounter between an officer and a citizen into a detention?

ANSWER: Yes. When an officer blocks a person's car from leaving the scene, he/she demonstrates a greater show of authority than what is needed for a truly consensual encounter, and the act will generally be viewed by the courts as a detention under the Fourth Amendment.

**CASE: *United States v. Frederick A. Jones*, U.S. Court of Appeals (Fourth Circuit)
Decided May 10, 2012**

During the early evening of August 13, 2008, Detective Edward Aeschlimann and partner, Officer Adrienne Rice, were patrolling in uniform and in a marked patrol car in the 2100 block of Afton Avenue in Richmond. Afton Avenue is lined with apartment complexes. Det. Aeschlimann patrolled this area as part of the Focus Mission Team to interdict illegal drugs and firearms and deter robberies and burglaries. He had been on this assignment for six months and had been with the Richmond Police Department for five years. At approximately 7:00 p.m., Det. Aeschlimann saw a dark blue Dodge Avenger, which he did not recognize, traveling on Afton Avenue. The car had New York tags and the Detective knew that drugs were frequently trafficked between Richmond, Florida, and New York on Interstate 95. Detective Aeschlimann felt that neither the car nor its occupants belonged in the area. Four African American men occupied the vehicle.

Det. Aeshlimann, who initially had been driving in front of the car, turned around and pulled in behind it. His intention was to follow the car. He observed no traffic/equipment violations as he followed the car. After a short distance, the car turned into a driveway of the Graystone Apartments. The driveway is marked with a "No Trespassing" sign. Det. Aeschlimann followed the car into the driveway. The Detective routinely followed cars with out of state tags onto private property to determine if the occupants were trespassing and he did so here. He did not activate his lights or siren but he did stay close to the Dodge Avenger. His intention was to question the occupants to see if they were, in fact, trespassing. The Dodge pulled into one of the diagonal parking spaces and the four men got out. Two of them walked away and one of them entered a nearby apartment. Det.

Aeschlimann stopped his car in the driveway's through traffic lane, just past the Dodge, leaving enough room so the Dodge could have backed out if the driver had wanted to. Since the driveway was one way, however, even if the driver of the Dodge had backed out, he could not have exited the parking area.

The officers got out of their car and approached the driver, Frederick Jones, who was standing by the driver's door, next to the passenger. He had a slice of pizza in his hand. The officers stood at the rear of the Dodge and did not unholster their weapons. Det. Aeschlimann asked Jones and the other man if they lived in the area. Jones said that he did. He then asked the officers, "Why are you stopping us?" Detective Aeschlimann said, "Because it's a drug area." From that point on, Jones felt that he was not free to leave. The Detective then asked the men to "do him a favor" by lifting their shirts so that he could see that they didn't have guns. This was his common practice in high crime areas. The men lifted their shirts, revealing that they weren't concealing weapons. The Detective then asked the men if they would "mind" if he patted them down for weapons. The men allowed the Detective to pat them down. He felt no weapons. Next, the Detective asked the men for their identification. Jones said that he left his license at home. He also gave Detective Aeschlimann a false name, date of birth, and Social Security number. When a database search revealed that Jones' information was false, Detective Aeschlimann confronted Jones and the other officer placed him in handcuffs. Jones then gave correct information. The other officer then performed another pat down for weapons and found a gun concealed in the crotch area of Jones' pants. A check of Jones' correct information showed that his license had been revoked. Jones was told that he was under arrest. A search of his person incident to arrest revealed a small bag of marijuana in Jones' front pants pocket.

Jones was indicted for the federal offense of possession of a firearm by an unlawful user of controlled substances. He moved to suppress the evidence against him, but his motion was denied on the basis that the initial contact with the officers was a "consensual encounter," and, after the officers learned Jones' license was suspended, they had reasonable suspicion to detain him. Jones was convicted and sentenced to prison. He appealed.

The U.S. Court of Appeals in Richmond reversed the conviction on grounds that the officers had violated Jones' rights under the Fourth Amendment. Looking at the "totality of the circumstances," the court concluded that the initial encounter with the officers was anything but consensual. Instead, the encounter began with a citizen *knowing* that officers were following him; he was not approached at random. He was followed from public onto private property even though no traffic violation had been observed. The officers then *positioned their car in a way that prevented Jones from exiting the driveway*. In short, since there was nothing "routine" or "random" about the initial encounter, it was not consensual; it was a "targeted" encounter and Jones reasonably felt he was not free to leave. Even though two of the occupants had walked away, Jones reasonably believed that this showed even more that the officers were targeting him, especially as they moved to the driver's side of the car where Jones was standing. Since the officer's at that point had no reasonable suspicion to detain Jones, everything that occurred afterward was in violation of the Fourth Amendment.

NOTE: For consensual encounters, it is a better practice to approach *and ask the person if you can speak with him/her*. You can even explain your reason for approaching, such as **“I’m on routine patrol in this area.”** A command or order to the suspect will automatically convert a consensual encounter to a detention that must be supported by at least reasonable suspicion. “Stop,” “Stay where you are,” “I need to talk to you,” or “Lift your shirt” will certainly end any supposed consensual encounter. Even requests made back to back (Will you lift your shirt? Can I pat you down?) may be problematic.

By John F. Breads, Jr., Director of Legal Services, Local Government Insurance Trust

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