

Open Container, Open Trailer: Fifth Circuit Confirms Reasonable Suspicion and Voluntary Consent

Description

The United States Court of Appeals for the Fifth Circuit recently issued a ruling in *United States v. Larremore*, a case that highlights the importance of Fourth Amendment rights in the context of consent and reasonable suspicion.

Fact Summary

In July 2023, Deputy Christopher Colona was stationed near a border patrol checkpoint close to Marathon, Texas, during a shift change. Deputy Colona knew that shift changes typically lead to an increase in smuggling activity and that Marathon is not constantly surveilled. During his shift, Deputy Colona saw and recognized James Larremore driving a white truck towing a metal horse trailer with an enclosed compartment large enough to hide people. Colona knew that Larremore worked on the opposite end of the county and had prior information from a fellow officer suggesting that he might be involved in smuggling drugs or people.

Deputy Colona pursued Larremore for over a minute but did not activate his lights or siren. Larremore eventually pulled over to the side of the road without direction from Deputy Colona. Deputy Colona parked his patrol car behind the trailer and approached Larremore's truck.

Upon approaching, Deputy Colona greeted Larremore politely and extended a handshake. He asked some routine questions about his well-being, work, travel, and the trailer. Larremore stated that he was driving to Odessa to sell the horse trailer. While speaking with Larremore, Deputy Colona rested his arm on the windowsill and saw an open container of alcohol in plain view. Deputy Colona told Larremore to "hang on a sec" and radioed dispatch. Larremore did not wait in the car and instead approached the trailer. Colona noticed a padlock on the enclosed compartment and asked about the key and its contents. Larremore claimed that there were saddles inside, his girlfriend had locked the padlock, and he did not have a key.

Deputy Colona told Larremore that he was suspicious of drug smuggling and wanted to inspect the trailer, to which Larremore initially told him to get bolt cutters. Larremore then changed his mind and asserted his rights multiple times. He mentioned that there was something embarrassing in the trailer and repeatedly asked about the consequences of refusing a search. Deputy Colona informed Larremore that he had observed an open container of alcohol in plain view, which gave him probable cause to search the truck. Larremore then admitted that he had three cousins in the trailer. He retrieved the key and opened the trailer door, revealing three undocumented immigrants hidden inside.

Larremore was charged with two counts of human trafficking. He moved to suppress the evidence from the stop, arguing that the initial pursuit and detention violated his Fourth Amendment rights and that his consent to the search was involuntary. The district court denied the motion, finding that there was reasonable suspicion for the seizure.

United States Court of Appeals for the Fifth Circuit

The Fifth Circuit upheld the district court's decision, finding that the stop, detention, and subsequent search were lawful.

The court first considered Larremore's argument that the initial stop was an unconstitutional seizure. He argued that a seizure occurred when Deputy Colona followed him to the shoulder, rested his arm on the windowsill of the truck, and told him to "hold on a sec." The court looked to *United States v. Mendenhall*, where the Supreme Court held that a seizure occurs "only if, in view of all circumstances surrounding the incident, a reasonable person would have believed that they were not free to leave." Simply following a car and observing it does not constitute a seizure. Here, Deputy Colona did not activate his siren or emergency lights, and since he did not direct Larremore to pull over, the court found that Larremore stopped of his own volition. The court also cited *Michigan v. Chesternut*, where the Supreme Court found that "a brief acceleration to catch up with [an individual], followed by a short drive alongside him," does not constitute a seizure. Therefore, the Fifth Circuit held that the initial observation and following of Larremore was a voluntary stop rather than a seizure.

The Fifth Circuit also rejected Larremore's argument that Deputy Colona resting his arm on the truck constituted a seizure or a trespassory search. Footage from Colona's body camera and dash camera showed that the contact lasted only twenty seconds. Furthermore, the conversation between Larremore and Colona was friendly. The contact did not show any intent to restrain Larremore by physical force or to discover information. Therefore, the contact was deemed *de minimis* and did not constitute either a seizure or trespassory search.

The court next evaluated whether Deputy Colona's statement, "hang on one sec," constituted a seizure. Police questioning itself does not necessarily amount to a seizure. If oral directives are delivered in a way—through tone or language—that compels compliance, then it does. To determine this, *Mendenhall* outlines four factors:

1. Whether several police officers are present in an intimidating manner.
2. Whether an officer displays a weapon.
3. Whether an officer physically touches a person.
4. Whether an officer uses a tone or language that makes a person feel they must comply.

Here, Deputy Colona was the only officer present and did not touch Larremore other than through a handshake. Although he carried a firearm, he did not brandish it in a coercive way. The conversation remained friendly, and Colona did not use an authoritative tone. Moreover, the Fifth Circuit found that "hang on a sec" was not directive in nature since Larremore did not comply. The phrase was used casually, and no seizure occurred.

The court also found that the initial stop was justified by reasonable suspicion based on Deputy Colona's knowledge and observations. Larremore's own evasive, contradictory statements and delay tactics contributed to the extension of the stop. Additionally, the discovery of the open container of alcohol gave the deputy reasonable suspicion and probable cause to search. Larremore's eventual consent to open the trailer was deemed voluntary. Accordingly, the court held that the evidence obtained was lawful and affirmed the district court's denial of Larremore's motion.

Key Takeaways

This case underscores the importance for law enforcement officers to understand how reasonable suspicion can evolve during a traffic stop and justify expanding the scope and duration of the encounter, especially when confronted with evasive or suspicious conduct. As illustrated here, physical demeanor, positioning, and even word choice during a stop can influence whether a suspect reasonably feels free to leave. Subtle or overt displays of authority, combined with physical proximity, can indicate a seizure rather than a consensual encounter.

It is also critical to remember that obtaining consent to search requires careful consideration of the totality of the circumstances, including any prior detention or show of authority. Consent must be given voluntarily, and a suspect's actions, such as delay or equivocation, are weighed heavily when evaluating voluntariness. Finally, both video and body camera evidence provide invaluable support for law enforcement testimony and are crucial in validating the legitimacy of stops and searches.

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