TYPES OF SEIZURES: STOPS & ARRESTS

Professor Thomas K. Clancy

OBJECTIVES:

After this session, you will be able to:

1. Identify the two types of seizure: arrests and stops;
2. Determine when a seizure occurs within the meaning of the Fourth Amendment;
3. Determine whether the length of a stop is justified; and
4. Determine when a property seizure occurs.

REQUIRED READING:

Thomas K. Clancy, *Types of Seizures: Stops and Arrests; Property Seizures* (May 2011) [NCJRL Outline] ..........................................................................................................................1

RECOMMENDED READING:

TYPES OF SEIZURES:
stops and arrests; property seizures ©

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I. INTRODUCTION.

IMPORTANCE OF FINDING THAT A "SEIZURE" HAS OCCURRED.

A seizure triggers the applicability of the Fourth Amendment's protections. See, e.g., *Florida v. Royer*, 460 U.S. 491, 498 (1983) (plurality opinion) (if no detention, then no seizure within the meaning of the Fourth Amendment).

If a seizure has not occurred, there is no violation of the suspect's right under the Fourth Amendment to be free from an unreasonable seizure. If there has been NO SEIZURE, then the EXCLUSIONARY RULE, which usually prevents the introduction of unlawfully seized objects into evidence at trial, is NOT APPLICABLE. If a SEIZURE HAS OCCURRED, and that seizure was not justified, then the evidence usually will NOT be admissible in the State's case-in-chief.

Given the countless number of daily encounters between citizens and the police, Fourth Amendment search and seizure questions are often litigated in criminal cases. If it is determined that the police have unlawfully seized a person, then important evidence obtained during or after the seizure may not be admissible against the defendant. Therefore, knowledge of when a seizure occurs and when a seizure is permitted are of crucial importance to deciding cases in court and in guiding police officers in determining how they may permissibly interact with citizens.

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slides #2 & #3
II. TYPES OF SEIZURES.

A seizure occurs during a meeting between police officers and citizens at the point where there is some "meaningful interference, however brief, with an individual's freedom of movement."


THERE ARE TWO TYPES OF SEIZURES: STOPS AND ARRESTS.

STOPS:

The most minimal seizure triggering the applicability of the Fourth Amendment is a stop. A stop, requiring less justification than an arrest, is an intermediate step between an investigation not implicating the Fourth Amendment and an arrest of a suspect based on probable cause.


A stop is a brief detention of the individual. A stop is justified if there is a reasonable belief that the person is committing, has committed, or is about to commit a crime.

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ARRESTS:

Arrests are prolonged seizures, usually—but not always—involving a trip to the police station and subsequent prosecution for a crime. 

*Kaupp v. Texas*, 538 U.S. 626 (2003) (arrest occurred when police officers investigating murder went to home of 17 year old boy at 3:00 a.m., told him “we need to go and talk” and took him in his underwear to police station).

Any seizure that exceeds a stop is considered the functional equivalent of an arrest.

*Hayes v. Florida*, 470 U.S. 811, 816 (1985) (forcible removals from home and transportation to police station for investigative purposes are "sufficiently like arrests to invoke the traditional rule that arrests may constitutionally be made only on probable cause"); *Dunaway v. New York*, 442 U.S. 200, 215-16 (1979) (rejecting as "exalt[ing] form over substance" distinction between a "technical formal arrest" and prolonged detentions for investigatory purposes and concluding that forced transportation to police station for questioning "intrudes so severely on interests protected by the Fourth Amendment as necessarily to trigger the traditional safeguards against illegal arrest"). *See also Kolender v. Lawson*, 461 U.S. 352, 365-66 (1983) (Brennan, J., concurring) (failure to observe stop limitations can only be justified by probable cause).

Arrests are permissible if the police have **probable cause** to believe that the person has committed, is about to commit, or is committing a crime.

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TYPES OF ARREST: only matters for SEARCHES INCIDENT TO ARREST.

The police have a *per se* right to search incident to arrest.

Can the police search when a detention exceeds the scope of a stop but they do not take the suspect to the police station?

There are many views. For example, the Supreme Court has sometimes required a “custodial” or “formal” arrest, resulting in a trip to a police station, before permitting a search incident to arrest. See generally Thomas K. Clancy, *What Constitutes an “Arrest” within the Meaning of the Fourth Amendment*, 48 Vill. L. Rev. 129 (2003) (discussing various meanings of “arrest”).

Examples:

1. **Traffic citations:**

   *Knowles v. Iowa*, 525 U.S. 113 (1998) (cannot search incident to traffic citation issued at the scene and speeder not taken to police station).

   *United States v. Robinson*, 414 U.S. 218 (1973) (can search incident to arrest for traffic violation when violator “arrested” and taken to police station for booking).
2. **Detentions exceeding scope of stop but not taken to police station.**

*State v. Greenslit*, 559 A.2d 672 (Vt. 1989) (search incident to arrest proper when suspect issued citation for possession of marijuana).

*Evans v. State*, 723 A.2d 423 (Md. 1999) (search incident to prolonged detention at the scene proper; suspect was photographed, fingerprinted, searched, and released to protect integrity of undercover operation), *limited by Belote v. State*, 981 A.2d 1247 (Md. 2009) (rejecting view that an arrest is any probable cause based detention and finding no arrest occurred when officer approached defendant, smelled pot, frisked him, then searched his pocket, and let him go; taken into custody two months later).

III. WHEN DOES A SEIZURE OCCUR?

THERE ARE ONLY TWO WAYS A SEIZURE CAN OCCUR:

PHYSICAL seizures AND SHOW OF AUTHORITY seizures.

Regardless of whether the seizure is an arrest or a stop, it can only occur in one of two ways. 


1. Physical:

This type of seizure requires TWO ELEMENTS:

1. The officer PHYSICALLY TOUCHES the suspect or applies physical force

2. with the intent to seize the person.

The officer does NOT have to gain control over the suspect; the mere physical contact, combined with an intent to seize, is a seizure. Intent is measured objectively.


EXAMPLES of a seizure:

* grabbing a person

* shooting a person


* placing a hand on the person's shoulder and saying "hold it"
2. **Show of Authority:**

There is no physical contact between the officer and the suspect. Instead, through a **SHOW OF AUTHORITY**, the officer demonstrates that the person is not free to leave and the person SUBMITS to the officer's show of authority.


This type of seizure requires **TWO ELEMENTS:**

1. A show of authority by the officer.

2. Submission to that show of authority by the suspect.
A. WHAT CONSTITUTES A SHOW OF AUTHORITY?

The more assertive the officer is and the more the officer conveys the message -- by words, conduct, tone of voice, or in other ways -- that the suspect must comply with what the officer wants the suspect to do, the more likely it is that a court will find that the officer has sought, by a show of authority, to demonstrate that the person is not free to leave.

TEST FOR A SHOW OF AUTHORITY:

Based on all of the circumstances surrounding the encounter, did the police officer's conduct communicate to a reasonable person that the person was not free to decline the officer's requests or otherwise terminate the encounter?

United States v. Drayton, 536 U.S. 194 (2002);
EXAMPLES of shows of authority:

• ordering a person to "halt", to "freeze", or to "stop";
• ordering a person to answer questions;
• turning on a police's car's siren or emergency lights;
• displaying a weapon pointed at the person;
• roadblock.

EXAMPLES of actions that are NOT shows of authority without more:

• merely approaching a person in a public place;
• identifying oneself as a police officer;
• asking a person if he or she would be willing to answer questions;
• merely asking questions.

*Florida v. Bostick*, 501 U.S. 429 (1991); *Florida v. Rodriguez*, 469 U.S. 1, 5-6 (1983) (per curiam) (officers "simply ask[ing] if[defendant] would step aside and talk with them . . . was clearly the sort of consensual encounter that implicates no Fourth Amendment interest"); *INS v. Delgado*, 466 U.S. 210, 226-17 (1984) ("While most citizens will respond to a police request, the fact that people do so, and do so without being told they are free to not respond, hardly eliminates the consensual nature of the response.").
B. WHAT CONSTITUTES SUBMISSION?

A submission is compliance with the officer's show of authority. Submission occurs when the suspect gives in to the power of the officer asserting authority over that person.

EXAMPLE of submission:

A police officer turns on the siren or flashing lights of his police car, pulls behind a motorist, and the motorist sees the flashing lights or hears the siren and stops her car.

EXAMPLES of NO submission:

* An officer orders a suspect to "halt" but instead, the suspect runs away.

* Active resistance, such as the use of physical force by the suspect, is also not a submission.
C. SPECIAL PROBLEM: THE SUSPECT WHO THROWS EVIDENCE

1. The problem:

Discarding incriminating evidence by suspects who are faced with the presence of the police is a very common reaction. Whether or not the evidence thrown away by the suspect can be used to justify the stop depends on whether the stop occurred before or after the evidence was discarded.

2. Analysis:

If the stop occurs before the evidence is thrown, then the evidence cannot be used to justify the stop. THEREFORE, IT IS IMPORTANT TO DETERMINE WHEN THE STOP OCCURS.

If the officer sees a suspect throw away evidence before the officer stops the suspect, the officer can seize the object and that object can be used to justify a stop of the person.

*See, e.g., Joyner v. State, 589 A.2d 1330 (Md. App. 1991)* (fact that person dropped bag and fled when the officers approached was indication that he and his companion were committing a crime).

HYPO:

Officers are driving their unmarked police car in a high crime area. When some youths observe the officers approaching, they run. The officers chase them and order them to halt. (This is a show of authority). One youth continues to run and throws away cocaine.

ANALYSIS:

This example is based on *California v. Hodari D.*, 499 U.S. 621 (1991). Because the youth continued to run, there was no submission and, therefore, no seizure. Police observations of the youth throwing drugs can be used to justify the subsequent stop. The drugs can be recovered from the ground and used to justify the arrest of the youth. If the youth had stopped when officer said to HALT, he submitted to the show of authority. Only information known to the officers before the youth stopped can be used to justify the stop.

If a lawful stop has already occurred, and the suspect discards evidence during that stop, an officer may lawfully seize that evidence. The evidence may then be used to arrest the suspect.

D. Rejection of Hodari D. on Independent State Constitutional Grounds:
* No requirement of submission

* Adherence to the *Chesternut-Mendenhall* view of a seizure

Courts rejecting *Hodari D.:

CONN – State v. Oquendo, 613 A.2d 1300, 1310 (Conn. 1992)


MINN – Welfare of E.D.J., 502 N.W.2d 779, 781-83 (Minn. 1993)

MONT – State v. Clayton, 45 P.3d 30 (Mont. 2002)


NM – State v. Garcia, 217 P.3d 1032 (N.M. 2009)


PA – Commonwealth v. Matos, 672 A.2d 769, 776 (Pa. 1996)

TENN – State v. Randolph, 74 S.W.3d 330 (Tenn. 2002)

WASH – State v. Young, 957 P.2d 681, 686-87 (Wash. 1998)
IV. THE SCOPE OF A PERMISSIBLE STOP.

A. In general.

Stops are brief detentions and can only last as long as necessary to investigate the officer's suspicions.

Stops must be REASONABLY RELATED IN SCOPE TO THE CIRCUMSTANCES WHICH JUSTIFIED THE STOP IN THE FIRST PLACE.


The SCOPE OF THE STOP usually refers to the LENGTH OF TIME the suspect is detained. There is NO RIGID TIME LIMIT but stops are TEMPORARY IN NATURE.


**THE KEY INQUIRY:** Is the length of time reasonable in light of the purpose of the stop?

There are several factors in assessing the reasonableness of the length of time. Those factors include:

- nature of the criminal activity being investigated.
- actions of the suspect contributing to any delay.  
  (ex) Refusal to provide driver’s license during traffic stop.
- actions of the police unrelated to the purpose of the stop contributing to any delay.  
  (ex) Waiting for a drug dog to arrive when stop was for speeding.

Once the purpose of the original stop has been satisfied, then the subject can no longer be detained unless there is another valid reason for the detention.
B. “Two stop” scenarios during traffic stops.

Once the purpose of the original stop has been satisfied, then the subject can no longer be detained unless there is another valid reason for the detention.

*See, e.g., Munafo v. State, 660 A.2d 1068 (Md. App. 1995).*

**EXAMPLE:**
An officer stops a car for a speeding violation. While speaking with the driver, the officer suspects that the driver is a drug courier. The officer gives the driver a ticket but continues to detain the driver until a drug-sniffing dog arrives.

**ANALYSIS:**
The original purpose of the stop was to give the driver a ticket. Once the ticket was given to the driver, the purpose for the stop has been satisfied. The officer could not continue to detain the driver based on the speeding violation. The officer could only continue to detain the driver if the officer has reasonable suspicion that the driver has illegal drugs in his vehicle.

*Snow v. State, 578 A.2d 816 (Md. App. 1990).*
V. seizures of property

The seizure of property implicates the individual’s possessory interest in an object.

_Horton v. California_, 496 U.S. 128, 134 (1990) (holding that a seizure of an article in plain view does not involve an invasion of privacy but does invade the owner’s possessory interest).

_Segura v. United States_, 468 U.S. 796, 807 (1984) (agreeing that the warrantless seizure of a footlocker interfered with the owner’s possessory interest but not his privacy expectations)

A “‘seizure’ of property occurs when there is some meaningful interference with an individual’s possessory interests in that property.”

_Soldal v. Cook County_, 506 U.S. 56 (1992)

Example:


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