When Does a Seizure Occur When an Officer's Vehicle Displays Emergency Lights That Directs a Vehicle to Stop?

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Jeff Welty wrote a post in 2010 on when a seizure occurs after an officer operates emergency lights to order a driver to stop his or her vehicle. This post updates his post by summarizing the relatively recent North Carolina Court of Appeals case of State v. Mangum, ___ N.C. App. ___, 795 S.E.2d 106 (Dec. 6, 2016), *review denied*, ___ N.C. ___, 2017 WL 1086917 (March 16, 2017), which ruled on this issue and provides a useful summary of the case law in North Carolina and other jurisdictions.

The most relevant United States Supreme Court case concerning this post is *California v. Hodari D.*, 499 U.S. 621 (1991), which reformulated the definition of a seizure of a person under the Fourth Amendment. *Hodari D.* and *Mangum* are discussed below.

Facts in Hodari D. A group of youths, including the defendant, fled at the approach of an unmarked police car with two officers inside. One of the officers, who was dressed in street clothes but was wearing a jacket with the word "Police" embossed on both front and back, left the car and chased them. Eventually, the officer and the defendant were face-to-face running toward each other. The defendant tossed away what appeared to be a small rock (which later was determined to be rock cocaine), and then the officer tackled him.

Because the State of California conceded before the United States Supreme Court that the officer did not have reasonable suspicion to make an investigative stop until after the defendant tossed the rock cocaine, the Court was required to determine when Hodari D. was seized. If he was seized before the cocaine was tossed, its discovery was the fruit of the poisonous tree (the illegal seizure) and inadmissible at trial. If the cocaine was tossed before Hodari D. was seized, its discovery, seizure, and admission at trial would be justified as abandoned property not subject to the Fourth Amendment.

Ruling in Hodari D. The Court ruled that the officer did not seize the defendant under the Fourth Amendment until he tackled him. The Court ruled that a seizure of a person occurs only when (1) an officer has applied actual physical force to the person (for example, touching or tackling), or (2) absent physical force, the defendant submits to an officer's "show of authority." While the Court's definition of seizure in prior cases had been that a person is seized if, in view of all the circumstances surrounding the incident, a reasonable person would have believed that he or she was not free to leave, in Hodari D. it clarified that definition by stating that facts satisfying the definition do not establish that a seizure occurs when a person simply interacts with an officer's show of authority. For example, the Court noted that a seizure does not occur when an officer shouts, "Stop, in the name of the law," and the person continues to flee. To constitute a seizure, there must be, in addition, a submission to the officer's show of authority—for example, the person stops as a result of the officer's command. The Court concluded in this case that the defendant had not been seized when he tossed the rock cocaine, because the officer did not apply physical force until he tackled the defendant, and the defendant did not submit to a show of authority until he was tackled (the Court assumed, without deciding, that an officer chasing a suspect is a show of authority).

State v. Mangum. At about 6:55 p.m. an officer received an anonymous phone call about an intoxicated person driving a black, four-door Hyundai leaving a Dollar General Store and traveling north on Highland Boulevard in Grifton, North

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Carolina. Shortly thereafter, the officer saw a black Hyundai drive north on that road. The car was traveling about 20 mph in a 35 mph zone. After following a short distance, he saw the vehicle stop at an intersection where there was no stop sign, light, or traffic control device—for "longer than usual." After the car resumed motion and turned right, it continued at 20 mph in a 35 mph zone and then stopped at a railroad crossing for 15 to 20 seconds—even though there was no train coming and no signal to stop. After the car crossed the tracks, the officer activated his vehicle's emergency lights and signaled the car to pull over. However, it did not do so for another two to three blocks. The failure to yield, which lasted for about two minutes, prompted the officer to "bump" his siren a number of times. The car turned onto another street and continued for about 100 yards and stopped in the middle of the road. The officer eventually arrested the driver (the defendant) for impaired driving.

The trial court denied the defendant's motion to suppress, ruling that there was reasonable suspicion to make the stop of the defendant's vehicle. The court of appeals affirmed that ruling.

The court of appeals stated that the case presents the questions of (1) when the stop occurred, and (2) when during the process of the stop was the officer required to have reasonable suspicion. The court discussed *Hodari D.*, North Carolina appellate court cases, and the Fourth Circuit case of *United States v. Holley*, 602 Fed. Appx. 104 (4th Cir. 2015) (determination of reasonable suspicion includes facts that occurred after the siren on the officer's vehicle was activated but before the suspect's eventual submission to the officer's authority). The court noted that when confronted with situations when a suspect had refused or failed to comply with an officer's show of authority, North Carolina appellate cases have consistently applied *Hodari D.*'s standard for determining when a seizure occurs under the Fourth Amendment.

The court of appeals ruled that the defendant was not seized under the Fourth Amendment when he chose to continue driving. He did not submit to the officer's authority until he stopped his vehicle in the road.

The court then addressed whether reasonable suspicion existed to support the stop and ruled that it did. The court set out the following factors (among others) to support its ruling: (1) the anonymous citizen's report; (2) the vehicle traveling 20 mph in a 35 mph zone; (3) stopping at an intersection with no stop sign or signal and for longer than usual, and continuing well below the speed limit; (4) stopping again at a railroad crossing with no train coming and no stop signal, with the vehicle remaining motionless for 15-20 seconds; (5) continuing to drive for two minutes after the blue lights and bumping of the siren; and (6) stopping in the middle of the road. The court stated that although there are plenty of innocent explanations for each of these factors, they may combine to establish reasonable suspicion, citing *United States v. Arvizu*, 534 U.S. 266 (2002).

Comments. *Mangum* was a comprehensive and well-written opinion that I believe will be cited often in future cases in which the issues are relevant.

My advice to law enforcement officers is to have a firm belief that reasonable suspicion exists before stopping a vehicle, and not expect a fortuitous event that a vehicle does not stop to supply the additional facts necessary to justify the stop.

Related blog post. See "Understanding Whether a Seizure Occurs When an Officer's Vehicle Blocks Another Vehicle" here.

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