

Clarifying Consensual Encounters and the Attenuation Doctrine: Analyzing Evidence Admissibility in *United States v. Cade*

Description

The Seventh Circuit Court of Appeals recently considered *United States v. Cade*, a case that considers the Attenuation Doctrine in the context of a vehicle search and incriminatory statements. This case arose after the defendant, Brandon Cade, and a friend, T.J., caught the attention of two Chicago police officers while on patrol in a marked squad car. This interaction led officers to search the vehicle where they found a firearm. The defendant admitted to owning the firearm and disclosed to the officers that he lacked a proper license to carry. After the defendant was arrested and charged with possession of a firearm by a felon, he unsuccessfully sought to suppress the evidence of the gun and his incriminating statements before the district court. On appeal, the Seventh Circuit affirmed the decision of the lower court, denying suppression of Cade's incriminating statements.

During the Fall of 2020, two Chicago Police, Officers Myers and Pacheo, were on routine patrol in the city streets, when they noticed two individuals standing next to a parked vehicle. As officers drove past the couple, they noticed that the male, later to be identified as the Defendant –Cade, had a bag slung over his shoulder. The officers made a U-turn and stopped their vehicle in front of the white sedan, activating their emergency lights. As the two officers approached the couple, they immediately noticed that the shoulder-bag seen on the defendant just seconds before this, was nowhere in sight. They also observed that the female, T.J., had a red solo cup in hand. When the officers approached, they asked T.J. what was in her cup, which she admitted contained alcohol. Officer Pacheo escorted Cade to the back of the car while Officer Myers questioned T.J. about the ownership of the car and requested her identification. T.J. explained that the car was owned by her grandmother and continued searching for her identification. The officers began to question Cade about the bag they had just previously seen over his shoulder, but the defendant was adamant in denying possession or knowledge of any bag. During the brief conversation, officer Myers noticed in plain view, an open bottle on the floor of the vehicle near the back passenger seat. He asked T.J. whether the bottle was Don Julio tequila, to which she admitted, "yes." Both T.J. and Cade were then positioned at the vehicle's rear while Officer Myers searched the car.

Inside, Myers found the "missing" bag on the driver's seat and discovered that the bag contained a firearm. At this point, Officer Pacheo handcuffed Cade and T.J. together, each having one free-hand remaining. As a result of the discovery, Officer Myers asked if they were licensed to carry a firearm, to which both responded negatively, leading the officer to unload the magazine onto the roof of the sedan. Officer Pacheo read them their Miranda rights, which they acknowledged understanding. He then asked the couple, "whose gun is it?" Cade confessed it was his and disclosed that he lacked the proper license to carry. Following this admission, Cade was arrested.

In a subsequent interaction at the police station, Cade was read his Miranda rights once again, and agreed to answer the officer's questions. During this interaction, Cade confirmed that the gun was his and also shared that he had possessed the bag containing the gun before the police stop. The defendant, facing one count of possession of a firearm after a felony conviction, moved to suppress the gun and the statements he made to police. The district court denied Cade's motion to suppress both

the evidence of the firearm and the incriminating statements made to the officers.

On appeal to the Seventh Circuit, the defendant acknowledged his lack of standing to challenge the admission of the gun itself, conceding that he had no reasonable expectation of privacy in the sedan or the bag he had abandoned. This appeal only challenged the admissibility of the incriminating statements made to police after the gun was found. The Court considered whether the initial encounter between Cade, T.J., and the officers was consensual, and if Cade's incriminating statements were admissible despite any potential unlawful seizure claims.

The Seventh Circuit affirmed the denial of the defendant's motion to suppress the incriminating statements he made to the officers. The Court found that because the initial encounter with the officers was consensual, and because Cade's incriminating statements were sufficiently attenuated from any allegedly unlawful seizure, the district court correctly concluded that suppression was not warranted.

While most police-citizen interactions implicate the Fourth Amendment, there are certain encounters that do not. For Fourth Amendment purposes, police-civilian encounters are often broken down into three categories. First, an arrest, requiring probable cause that a person has committed, or is committing a crime, which represents a Fourth Amendment seizure. Second, an investigatory stop, limited to a brief, non-intrusive detention of an individual based on reasonable suspicion of criminal activity. While less intrusive, this too, is considered a seizure under the Fourth Amendment, but the threshold for initiation is lower than that for an arrest. Third, a consensual encounter which involves no restraint on the citizen's liberty, where an officer seeks a citizen's voluntary cooperation through non-coercive questioning. Importantly, a consensual encounter does not constitute a seizure within the meaning of the Fourth Amendment. As our Supreme Court has made clear, "...there is no constitutionally cognizable seizure 'simply because a police officer approaches an individual and asks a few questions.'"¹

In determining whether an officer's interaction with a citizen was consensual, this question hinges on the Court's consideration of following factors: the location of the interaction (private or public), the number of officers present, if the police presence was threatening, whether the officers showed weapons or physical force, the officers' language and tone, whether the officers implied the defendant was suspected of a crime, and whether the defendant was informed he was free to leave.

The basis of Cade's appeal rested on three arguments, which he believed demonstrated the grounds for suppression of his statements. First, he argued that the first interaction with the officers was an unlawful seizure, warranting suppression of these statements under the Exclusionary Rule. The Circuit disagreed. The officers calmly approached the couple on a public road, asked reasonable questions, exhibited no threatening conduct nor weapons, and did not imply any suspicions of a crime. Affirming the lower court's decision, the Seventh Circuit determined that this initial interaction between the defendant and the officers was consensual in nature. Next, the Circuit rejected Cade's argument that the use of emergency lights and positioning of the patrol car escalated the interaction to a seizure reasonable a person in Cade's situation—standing outside of a car, on a public street, during the late hours of the night—would have felt free to leave, even on foot. Finally, the defendant argued that the officers lacked reasonable suspicion to seize him and to handcuff him to T.J. However, the Seventh Circuit refrained from addressing whether any seizure at the back of the vehicle was unlawful because the statements Cade sought to suppress were attenuated from the claimed unlawful conduct.

The Court explained, the Attenuation Doctrine acts as an exception to the Exclusionary Rule, rendering evidence seized in violation of the Fourth Amendment admissible if the chain between the police misconduct and the seizure was sufficiently attenuated. To determine attenuation, courts look at the (1) temporal proximity of the illegal conduct to the statements, (2) if any intervening circumstances were present, and, most importantly, (3) the purpose and flagrancy of the police misconduct. The Court's application of the three-part Attenuation Test centered on the following facts. After T.J. admitted her cup contained alcohol and Officer Myers observed an unsealed bottle of alcohol in the vehicle—violating Illinois law—probable cause was established to search the car. During this lawful search, Officer Myers discovered the firearm. Only after finding the gun and ensuring Cade and T.J. understood their Miranda rights did Cade make the incriminating statements he later sought to suppress. There was no evidence of bad faith or flagrant misconduct here, as the officers acted on legitimate grounds for the stop.

For law enforcement officers, the Seventh Circuit's ruling highlights the critical importance of each step involved in police-citizen interactions—from the initial approach to evidence collection—and how these steps influence the admissibility of evidence. Recognizing when an interaction is consensual and how this status impacts your actions as an officer can determine the outcome of a case. In this case, the court's determination that the initial interaction was consensual determined the legality of the rest of the interaction. By understanding and applying these legal standards, officers not only ensure the admissibility of evidence but also uphold the integrity and public trust in law enforcement activities.

United States v. Cade, No. 22-1001 (7th Cir. 2024)

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