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Kilos and Following Your Intuition: United States v. Ahmad

By **Daigle Law Group**

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Today's case from the Seventh Circuit reviews a Fourth Amendment seizure that occurred during a suspicious conversation that arose after Deputy Derek Suttles followed his intuition when two gentlemen were acting strangely at a truck stop. As a reminder, a person is seized under the Fourth Amendment when, viewing the totality of the circumstances surrounding the encounter, a reasonable person would have believed that he or she was not free to leave.

Facts

Deputy Derek Suttles was conducting drug interdiction on the interstate near South Jacksonville, Illinois. He saw an RV with a dirty Idaho license plate traveling on Interstate 72 and followed it so he could read the plate. Syed Ahmad was driving the RV, with his two children and his cousin Muhammad Usama as passengers.

Ahmad exited the interstate and pulled into a truck stop. He and Usama left the RV and went into the convenience store. Deputy Suttles parked nearby and entered the store to use the bathroom. He saw Ahmad and Usama but did not approach them. Deputy Suttles returned to his squad car, ran the RV's license plate, and learned that it was registered to an elderly couple from Idaho. A store employee then approached Deputy Suttles and told him that Ahmad and Usama were acting strangely and appeared to be waiting for Deputy Suttles to leave. Eventually, Ahmad and Usama returned to their RV.

Now suspicious, Deputy Suttles waved Ahmad and Usama over, and Ahmad complied. Deputy Suttles said that he was "working drug interdiction" and that Ahmad "was free to leave at any time but that [he] wanted to ask him a few questions about his trip." Ahmad agreed to talk, telling Deputy Suttles that he was traveling with his two children and Usama from Houston to Columbus, Ohio, to visit family. He said that they first flew to Idaho because it was cheaper to rent the RV there. This story roused Deputy Suttles's suspicions, so he asked to see Ahmad's driver's license and the rental agreement. While Ahmad returned to the RV to retrieve the documents, Deputy Suttles called another K-9 officer to see if he and his drug dog, Kilo, were nearby.

When Ahmad returned, he gave Deputy Suttles his license and the rental agreement. A few minutes passed while Deputy Suttles ran a warrant check, which came back clean. While still retaining his documents, Deputy Suttles asked Ahmad for consent to search the RV. Ahmad gave permission, but

Deputy Suttles did not immediately begin to search. Instead, he asked Ahmad to summon Usama from the RV. Ahmad did so. At this point, Deputy Suttles made the same prefatory comments that he had made to Ahmad, telling Usama that he was free to leave but that he would like to ask a few questions about their trip.

About 15 minutes into the encounter, the K-9 officer arrived with Kilo. The officers asked Ahmad if Kilo could sniff around the outside of the RV, and Ahmad consented. Kilo quickly alerted to the presence of drugs. At that point, Ahmad and Usama were detained while the RV was searched. A large quantity of marijuana was discovered, and the officers placed Ahmad and Usama under arrest. Throughout the entire encounter, Deputy Suttles spoke in a friendly and conversational tone and never drew his weapon.

The government charged Ahmad and Usama (the defendants) with possession with the intent to distribute more than 100 kilograms of marijuana. The defendants filed a motion to suppress the evidence seized from the RV. They argued that Ahmad was unlawfully seized under the Fourth Amendment when Deputy Suttles retained his driver's license and the rental agreement, and as a result, Ahmad's consent to search the RV, which was obtained during this time, was involuntary. The district court denied the motion, and Ahmad subsequently pleaded guilty while reserving the right to appeal the denial of the suppression motion.

Seventh Circuit Court Opinion

The Seventh Circuit Court of Appeals agreed with the district court that Ahmad's encounter with Deputy Suttles was consensual and did not become a Fourth Amendment seizure until Kilo alerted and Ahmad and Usama were detained while the officers searched the RV. The court held that Ahmad's consent to search was voluntary, based on the following factors:

1. Deputy Suttles's initial questioning up until Ahmad's arrest occurred in a public place, a truck stop parking lot.
2. Deputy Suttles spoke in normal, conversational tones, never raised his voice, and made no verbal commands.
3. Deputy Suttles did not physically touch Ahmad or restrain his movement.
4. Deputy Suttles did not draw his weapon and was the only officer on the scene until the K-9 officer arrived with Kilo, by which time Ahmad had already consented to the search.
5. Deputy Suttles told Ahmad that he was free to leave and never indicated otherwise until after Kilo alerted.

6. Deputy Suttles's retention of Ahmad's license and rental agreement did not automatically transform the otherwise consensual encounter into a Fourth Amendment seizure.

Takeaway

A key takeaway is that while retaining a person's identification documents could turn a consensual encounter into a seizure, it is crucial to analyze how long, and under what circumstances, the person's documents were retained. Here, Deputy Suttles held Ahmad's driver's license and RV rental agreement for only a few minutes before Ahmad consented to the search. If someone holds documents in a way that makes another person believe that they cannot leave or ask for the documents back, then the court will view the situation differently.

United States v. Ahmad, 21 F.4th 475 (7th Cir. 2021)

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