

ALBUQUERQUE CRIMINAL LAWYER BLOG

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Yelling "Freeze" Constitutes a Seizure Under the 4th Amendment

"Freeze" is not something you want to hear from a police officer. The command will send a chill through most reasonable people. That is exactly why it is considered a seizure under the 4th Amendment.

A seizure under the 4th Amendment occurs when the person stopped reasonably believes that her or she is not free to leave. The very command "freeze" suggests that the person is not allowed to leave. In fact, leaving would be a violation of the command to freeze. Leaving and freezing are mutually exclusive, unless of course the officer is considerate enough to offer you the option of freezing or leaving.

The issue was addressed in the Tenth Circuit cases of *U.S. v. Alarcon-Gonzales* (1996). The court in *Alarcon-Gonzales*, as would most, took it for granted that the command was a seizure. The court stated that whether or not it was a seizure was not even an issue, the issue was whether there was reasonable suspicion to yell the command to begin thereby taking for granted that the command was a seizure.

In *Alarcon-Gonzalez*, the immigration service (at that time "INS") was investigating roofing companies suspected of hiring undocumented workers. The company for whom the defendant worked was not necessarily suspected. The immigration officers intended to use consensual encounters with roofing workers to conduct their investigation and ferret out illegal workers. When they approached the defendant and one of his co-workers, they intended such a consensual encounter. However, as they approached, defendant's co-worker was reaching into the cab of his truck for a shingle gun. One of the officers mistook the gun for a weapon and yelled "freeze" to the co-worker. In response, the defendant also froze.

Despite the fact the command was not even yelled at defendant, the Court ruled that it constituted a seizure of defendant under the circumstances since he clearly did not feel free to leave. In addition, the Court found lack of reasonable suspicion for the seizure since there was no reason to suspect defendant or his friend of illegal activity, other than the color of their skin. Thus there was no reason to approach them to begin with and therefore the seizure was illegal from its inception.

Of course, had the defendant's friend not froze, and continued to pull out the shingle gun, the later conversation would likely have been one regarding excessive force and §1983 violations. Thus, faced with this situation, one is

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faced with a dilemma. You cannot both assert your constitutional rights and obey the command of the officer. A reasonable person would freeze believing they were not free to leave as the Court in *Alarcon-Gonzales* rightly noted.

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