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Brief detention of person did not violate Fourth Amendment under circumstances

FACTS:

Johann Deffert, in camouflage pants, was walking down a Grand Rapids sidewalk on a Sunday across from a church in service, openly carrying an FNP-45 tactical pistol which was strapped to his leg in a drop leg tactical leg holster with a TLR-2 rail mounted tactical light with a laser sight attached to the pistol. An observer called 911 regarding a suspicious person who subsequently notified Grand Rapids police. Police Officer Moe responded to the dispatch and noted that Deffert appeared to be "talking to nobody." Deffert was actually singing "Hakuna Matata," a song from the movie *The Lion King*. Officer Moe approached Deffert on foot with his service firearm drawn. He ordered Deffert to lie down on the ground, handcuffed him and removed Deffert's pistol from the holster. Deffert was then seated in the cruiser while Officer Moe conducted a LEIN check. Subsequently, a supervisor was called to the scene, the handcuffs were removed, and the pistol was unloaded and returned. Deffert was not charged with any crime. The entire contact lasted approximately thirteen minutes.

Deffert sued Officer Moe and others including the City of Grand Rapids (defendants) in federal district court alleging a variety of claims, including that his constitutional right to be free from unreasonable searches and seizure under the Fourth Amendment to the U.S. Constitution had been violated. It was undisputed by the parties that openly carrying a pistol is lawful in Michigan so long as the person is carrying the firearm with lawful intent and the firearm is not concealed. Further, it was not disputed that Deffert had been "seized" within the meaning of the Fourth Amendment, i.e., that his freedom of movement had been restrained without a warrant having been issued. Rather, defendants argued that an exception to the Fourth Amendment proscription applied in that Officer Moe was justified in stopping and briefly detaining Deffert in the course of a community-caretaking function, or, alternatively, as a reasonable investigatory stop.

QUESTION:

Did the actions of the police officers in restraining Deffert constitute an unreasonable seizure under the Fourth Amendment to the U.S. Constitution?

ANSWER ACCORDING TO THE FEDERAL DISTRICT COURT: NO. The Court reviewed two exceptions to the Fourth Amendment as adopted by the U.S. Supreme Court, i.e., the so-called exigent circumstances exception and the Terry stop exception. With respect to the exigent circumstances exception, the district court noted that one of the four situations that may give rise to application of the exception is the risk-of-danger exigency to police or others. The Sixth Circuit Court of Appeals has applied the risk-of-danger exigency in cases where police officers were performing "community-caretaker" functions rather than traditional law-enforcement functions. The Court agreed with defendants that the totality of the circumstances and the inherent necessities of the situation demonstrated that a true immediacy existed and that Officer Moe was absolved from the need to apply for a warrant. In addition, the Court found that under the criteria of *Terry v Ohio*, the police officers had reasonable suspicion to stop and briefly detain Deffert.

Deffert v Moe, Case No. 1:13-cv-1351 (United States District Court, Western District of Michigan, Southern Division) June 1, 2015.

EDITOR'S NOTE: This case should be monitored for appeal to the Sixth Circuit Court of Appeals.

This column highlights a recent judicial decision or Michigan Municipal League Legal Defense Fund case that impacts municipalities. The information in this column should not be considered a legal opinion or to constitute legal advice.