Constitutional Law - Should I Stay or Should I Go: First Circuit's Analysis of Fourth Amendment Seizure - United States v. Fields, 823 F.3D 20 (1st Cir. 2016)

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CONSTITUTIONAL LAW—SHOULD I STAY OR SHOULD I GO?: FIRST CIRCUIT’S ANALYSIS OF FOURTH AMENDMENT SEIZURE—UNITED STATES V. FIELDS, 823 F.3D 20 (1ST CIR. 2016).

The Fourth Amendment of United States Constitution grants citizens the right to be free from unreasonable searches and seizures, which reflects a dual purpose: to protect an individual’s privacy and to protect one against compulsory production of evidence that can be used against the individual. In addition, the Fourth Amendment ultimately governs the conduct of state actors when an unreasonable search or seizure occurs.

The Supreme Court has defined what constitutes a “seizure” for Fourth Amendment purposes as the “termination of freedom of movement through means intentionally applied” by government action, pertinently, police action. Moreover, the Supreme Court has clarified that in order for a seizure to occur under the Fourth Amendment, “there must be either the application of physical force, however slight, or, where that is absent, submission to an officer’s ‘show of authority’ to restrain the subject’s liberty.” Whether a seizure has occurred also may depend on multiple factors including: whether a reasonable person would have felt free to leave, the threatening presence of police officers, the display of an officer’s

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1 U.S. CONST. amend. IV (providing basis for defendant’s appeal on Fourth Amendment grounds).
2 See Davis v. United States, 328 U.S. 582, 587 (1946) (introducing purpose of Fourth Amendment in regard to search and seizure).
3 See Mapp v. Ohio, 367 U.S. 643, 660 (1961) (holding Fourth Amendment’s right to privacy embodied is enforceable against states); Wolf v. Colorado, 338 U.S. 25, 27-28 (1949) (“The security of one’s privacy against arbitrary intrusion by the police—which is at the core of the Fourth Amendment—is basic to a free society.”). The Fourth Amendment is applicable to state officials through the Due Process Clause of the Fourteenth Amendment. See Mapp, 367 U.S. at 660. Police officers are state officials for Fourth Amendment purposes, pertinently, in regard to unlawful searches or seizures. See id.
5 California v. Hodari D., 499 U.S. 621, 621 (1991); see also Victor R. Quiros, Note, The Impact of California v. Hodari D. Upon Police Pursuits in California: The Fruit of the Poisonous Tree Is No Longer Poisonous, 19 W. ST. U. L. REV. 641, 642 (1992) (“On April 23, 1991, the United States Supreme Court, in California v. Hodari D., provided a bright-line test to determine when a seizure occurs within the meaning of the Fourth Amendment: ‘there must be either the application of physical force, however slight, or, where that is absent, submission to an officer’s “show of authority” to restrain the subject’s liberty.’”).
weapon, physical touching, and the officer’s language or tone. Further, in order determine whether a seizure has occurred, one must look at the totality of the circumstances objectively.

In the event a seizure occurs, and such a seizure was conducted in violation of the Fourth Amendment, evidence obtained during that seizure will be inadmissible at trial by a doctrine known as the exclusionary rule. The exclusionary rule functions as a deterrent to unlawful police conduct; its effect is that evidence obtained as a product of an unreasonable seizure is considered “fruit of the poisonous tree.” For example, if a police officer conducts an unconstitutional search or seizure of a person, and finds a weapon, which amounts to a violation of a law, the weapon cannot be used as evidence in trial unless it is shown that the search or seizure was lawful by reviewing the circumstances surrounding the encounter. It is important

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6 See United States v. Mendenhall, 446 U.S. 544, 544 (1980) (defining seizure under Fourth Amendment). In Mendenhall, the Supreme Court stated the test to determine when a suspect has been seized is whether the techniques used by the police overcame a detainee’s free will. Id. at 553-54. The court noted several factors that tend to indicate that a seizure has occurred: (1) threatening presence of officers (e.g., size difference or presence of several officers); (2) display of weapons; (3) physical touching; or (4) language or tone implying compliance will be compelled. Id.


8 See Quiros, supra note 5, at 643-44 (discussing exclusionary rule).

[T]his Court held that in a federal prosecution the Fourth Amendment barred the use of evidence secured through an illegal search and seizure. This ruling was made for the first time in 1914. It was not derived from the explicit requirements of the Fourth Amendment, it was not based on legislation expressing Congressional policy in the enforcement of the Constitution. The decision was a matter of judicial implication. Since then it has been frequently applied and we stoutly adhere to it.


9 See Quiros, supra note 5, at 643-44 (discussing Fourth Amendment and exclusionary rule). “The effect of the exclusionary rule is that evidence which is the product of an unreasonable seizure is considered ‘fruit of the poisonous tree’ and cannot be used by the prosecution during its case-in-chief.” Id.

10 Terry v. Ohio, 392 U.S. 1, 13-15 (1968). Petitioner was convicted of carrying a concealed weapon. Id. at 4. He sought review of the trial court’s decision to deny his motion to suppress the weapon, contending that the weapon was seized in violation of his Fourth Amendment rights. Id. at 8. Certiorari was granted, and the Supreme Court affirmed the petitioner’s conviction. Id. The Court held that the officer conducting the “pat-frisk” had reasonable suspicion to believe that the petitioner and his companion were about to commit a crime. Id. at 3. The Court determined that even though the Officer lacked “probable cause” to conduct the “pat-frisk,” the officer’s conduct was lawful under the Fourth Amendment because of the reasonable suspicion standard introduced in this case. Id. at 20-28.
to note, however, the factors used to analyze what constitutes an unlawful “search” and unlawful “seizure” vary substantially.\footnote{See id. (noting importance of distinguishing between analysis of “search” and analysis of “seizure”). It is paramount to understand that a seizure and a search are different concepts under the Fourth Amendment. \textit{Id.} at 10. There are varying elements in determining what constitutes a search and a seizure. \textit{Id.}}

In \textit{United States v. Fields}, the United States Court of Appeals for the First Circuit analyzed the issue of whether a person is “seized” for Fourth Amendment purposes when he is approached and questioned by a police officer, the police officer calls for backup, and four other police officers subsequently arrive on the scene.\footnote{United States v. Fields, 823 F.3d 20, 27 (1st Cir. 2016) (introducing pertinent issue of case about whether there was “show of authority”).}

In the early morning of September 12, 2012, defendant Ernest Fields (“Fields”) was walking towards Roxbury Street in Roxbury, Massachusetts, in the direction opposite Madison Park.\footnote{See \textit{United States v. Fields}, No. 13-10097-DJC, 2014 WL 2616636, at *1-2 (D. Mass. June 11, 2014) (providing background for how initial encounter between defendant Fields and Officer Fisher ensued).} Officer Fisher was on routine patrol in the area at the time, and noticed Fields walking in the direction from Roxbury Heritage State Park towards Officer Fisher’s parked police cruiser.\footnote{See \textit{Fields}, 823 F.3d at 23 (illustrating background of encounter between defendant Fields and Officer Fisher).} Officer Fisher noticed that Fields was walking alone, and had just separated from a group of men—which Officer Fisher opined was trespassing in Madison Park.\footnote{See id. (explaining first interaction between Fields and Officer Fisher).} As Fields was walking past Officer Fisher’s police cruiser, Officer Fisher got out of the car and asked Fields “what was going on tonight?” Fields responded by explaining that he was on his way to his mother’s house.\footnote{\textit{Id.} at 28 (noting direction in which defendant traveling, which is important factor regarding whether defendant was “surrounded”); \textit{see Fields}, 2014 WL 2616636, at *2.}

As the encounter continued, Fields explained that he was uncomfortable around the police, and Officer Fisher noticed that Fields was becoming increasingly agitated and nervous.\footnote{See \textit{Fields}, 823 F.3d at 27 (describing Fields demeanor with Officer Fisher, leading to Officer Fisher’s decision to call for backup).} Becoming concerned about the “nature and tone” of Fields’ comments and general behavior, Officer Fisher called for backup by using the radio in his tactical vest, specifically saying he was “off with one on Roxbury Street by myself.”\footnote{\textit{Id.} (quoting district court fact pattern).} Within approximately one minute, four other police officers arrived on the scene, from the direction in which Fields was initially walking, and parked on the
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front side of Officer Fisher’s police cruiser. Officer Fisher’s account of the encounter explains that the four arriving police officers positioned themselves on the sides of Officer Fisher’s police cruiser, so that they were not blocking Fields’ path to continue walking. Upon arrival, none of the backup officers spoke to Fields. However, Fields reiterated his nervousness and when he went to put his cell phone away—inadvertently lifting his shirt revealing that he was carrying a pocket knife—one of the officers moved in to conduct a pat and frisk search. Upon searching Fields with some resistance, the searching officer discovered a firearm in Field’s waistband; Fields was apprehended and charged with multiple offenses, including various firearm charges.

19 Id. (noting position of which arriving officers parked their vehicles). This is paramount in the Appeals Court’s analysis about determining whether Fields was “surrounded” by the five officers for Fourth Amendment seizure purposes. Id. at 28

20 Id. at 27.

According to Officer Fisher’s account, the officers positioned themselves at the sides of his police cruiser, such that neither the officers nor the police cruiser blocked Fields from proceeding down Roxbury Street toward Malcolm X Boulevard, which was the direction in which Fields was originally traveling. Officer Dodd’s testimony, although different in some respects from Officer Fisher’s testimony, was also that none of the officers “stood directly in front of Fields . . . .” Thus, according to Officer Dodd’s account, too, Fields could have continued down Roxbury Street toward Malcolm X Boulevard.

21 See id. (stating officers arrived about one minute after backup call for backup and detailing police encounter).

22 See id. at 27.

[N]one of the backup officers spoke to Fields. Fields reiterated his nervousness and displayed more agitation during this portion of the encounter. It was not until Fields lifted his shirt and inadvertently revealed that he had a knife on his person that the officers moved toward Fields and that Officer Dodd indicated that he was going to conduct a pat-frisk of Fields. Fields resisted the pat-frisk by pushing Officer Dodd’s hands away twice. Officer Fisher and Officer Andrew Hunter then moved in to assist Officer Dodd by pinning Fields’ arms to his side, thereby enabling Officer Dodd to conduct a pat-frisk of Fields.


Officer Dodd did a pat-frisk of Fields and removed the knife, but also felt a firearm in Fields’ waistband. Dodd then had Officers Fisher and Hunter handcuff Fields and, after some struggle with Fields, Officer Dodd removed the firearm from his waistband. Fisher secured the gun and Dodd took Fields to the police wagon. Later during booking, Fields made an unsolicited statement, in the presence of Sergeant McCarthy that he carried a gun to protect himself from police after someone was shot in the South End. Fields was
Fields subsequently pleaded guilty to being a felon in possession of a firearm with ammunition. However, on appeal Fields contends the district court erred in denying his motion to suppress the finding of a firearm and ammunition on the grounds that they were found in violation of the Fourth Amendment, arguing there was a “showing of authority” when Officer Fisher called for backup and four other officers arrived on the scene. The United States Court of Appeals for the First Circuit upheld the district court’s decision, holding the firearm and ammunition were obtained lawfully because Fields was not subject to a “showing of authority” for Fourth Amendment Purposes. Judge Barron of the appeals court explained:

[F]ields’s challenge to the District Court’s ruling on his suppression motion rests on his contention that he was not “free to leave”—and thus that a seizure occurred due to a “show of authority” —when the four officers arrived at the scene in response to a call for backup from the officer Fields initially encountered. According to Fields, the five officers at that point made the requisite show of authority even though they lacked a lawful basis to seize him.

As it was previously stated, a “seizure” for Fourth Amendment purposes, is the “termination of freedom of movement through means intentionally applied.” Moreover, in order for a seizure to occur under the Fourth Amendment “there must be either the application of physical force, however slight, or, where [physical force] is absent, submission to an

charged with various charges including trespassing, assault and battery on a police officer, resisting arrest, and various dangerous weapon and firearms charges.

Id. 24 See Fields, 823 F.3d at 23 (providing procedural history for Fields’ case). Fields protected his right to appellate review, despite pleading guilty. Id.

25 See id. at 23-25 (reaffirming Fields’ contention of being subject to a “showing of authority” for Fourth Amendment purposes).

26 Id. at 26-28 (stating rationale for finding why Fields was not subject to “show of authority”). The court found that there was no “show of authority” because the backup officers did not physically touch defendant, they did not make comments that indicated that he was being treated as a potential suspect, and defendant was not meaningfully restricted in his field of movement. Id.

27 Id. at 25-26. Fields’ contention is that he was subject to a “show of authority” when reporting that Officer Fisher called for backup, and subsequently, four other officers arrived on the scene. Id.

officer’s ‘show of authority’ to restrain the subject’s liberty.”

The occurrence of a seizure may also depend on multiple factors including whether a reasonable person would have felt free to leave, the threatening presence of police officers, the display of an officer’s weapon, physical touching, and the officer’s language or tone.

It is paramount to establish whether a “show of authority” occurred when determining whether a seizure has occurred for Fourth Amendment purposes; if so, there is a seizure. Moreover, the circumstances surrounding the encounter must be viewed objectively and in their totality; meaning, if a reasonable person would not feel free to leave, a seizure has occurred. The Supreme Court acknowledges that few people would ever feel justified in walking away from the police; however, the reality is that not every encounter between a person and a police officer can be viewed as a seizure for Fourth Amendment purposes.

However, specific factors, including but not limited to the presence of multiple police officers can be significant in determining whether a “show

30 See United States v. Mendenhall, 446 U.S. 544, 554 (1980) (noting several factors indicating presence of seizure). Further, the Court in Mendenhall interprets the purpose of the Fourth Amendment, holding:

[A] person is “seized” only when, by means of physical force or a show of authority, his freedom of movement is restrained. Only when such restraint is imposed is there any foundation whatever for invoking constitutional safeguards. The purpose of the Fourth Amendment is not to eliminate all contact between the police and the citizenry, but “to prevent arbitrary and oppressive interference by enforcement officials with the privacy and personal security of individuals.” Id. at 553-54 (citing United States v. Martinez-Fuerte, 428 U.S. 543, 554 (1976)). “As long as the person to whom questions are put remains free to disregard the questions and walk away, there has been no intrusion upon that person’s liberty or privacy.” Id. at 553-54 (emphasis added).
31 See Hodari D., 499 U.S. at 6281. Such a “‘show of authority’” occurs “when ‘in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave.’” Id. at 628. Further, the show of authority effects a seizure only when the defendant actually yields or submits to the show of authority. Id. at 625-26.
32 See id. (re-introducing “seizure” for Fourth Amendment purposes).
33 See United States v. Cardoza, 129 F.3d 6, 16 (1st Cir. 1997) (discussing “free to walk away” test for purposes of stops and seizures). In Cardoza, Judge Bownes, acknowledged that “few people . . . would ever feel free to walk away from any police question.” Id. However, he also recognized the potential to turn every police encounter into a seizure. Id. Therefore, he stated, “[t]he ‘free to walk away’ test . . . must be read in conjunction with the Court’s frequent admonitions that ‘a seizure does not occur simply because a police officer approaches an individual and asks a few questions.’” Id. (quoting Florida v. Bostick, 501 U.S. 429, 434 (1991)). Thus, the “free to walk away” test focuses on whether the conduct of law enforcement “objectively communicate[s] that [law enforcement] is exercising [its] official authority to restrain the individual’s liberty of movement.” Id.
of authority” has occurred. Federal courts, for example, have acknowledged that it is not unreasonable to assume that a person surrounded by multiple police officers would not feel free to leave.

It is important to note that, in Fields, the government contended that the issue regarding a show of authority is irrelevant because the encountering of officers could have justified the seizure of Fields based on the reasonable suspicion that Fields violated a public trespassing law. However, the court did not feel it necessary to analyze the issue of reasonable suspicion because it affirmed the district court’s ruling that there was a “show of authority.” Thus, the court addressed only the show of authority issue in its opinion.

In Fields, it was Fields’ who argued that the presence of multiple officers, the formation of the officers (five officers “surrounding” him), and the calling of backup by Officer Fisher in Fields’ presence, in combination, constituted a “show of authority.” The district court, however, found that because the facts and circumstances, the officer’s conduct did not constitute a show of authority, noting that the totality of the circumstances indicated that Fields was not subject to the same. On appeal, the United States Court of Appeals for the First Circuit agreed, concluding, inter alia, that the conversation between Fields and Officer Fisher was dominated by Fields, and that there was an absence of commanding orders and tone by Officer Fisher to warrant Fields’ assumption that he was a potential suspect, or would be seized. The First Circuit reaffirmed the district court’s decision.

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34 See Mendenhall, 446 U.S. at 554 (mentioning several factors indicating a show of authority).
35 See United States v. Fermin, 771 F.3d 71, 77 (1st Cir. 2014) (“It is not clear that a reasonable person, surrounded by five police officers, would believe that he was free to leave.”); United States v. Goddard, 491 F.3d 457, 461 (D.C. Cir. 2007) (“But whether a person is ‘surrounded’ is itself a judgment to be made from the facts of each case. After all, ‘the presence of multiple officers does not automatically mean that a stop has occurred.’”).
36 See United States v. Fields, 823 F.3d 20, 26 (1st Cir. 2016) (determining show of authority as only relevant legal issue in case).
37 See id. at 31 (reasoning that because trial court decision was upheld, it was unnecessary to analyze reasonable suspicion).
38 Id. at 31 and 35 (upholding trial court’s decision on motion to suppress).
39 Id. at 29. Fields’ contention was that he was “surrounded” by five police officers, and that, in combination with other circumstances surrounding the encounter, subjected him to the officers “show of authority.” Id. at 28-29.
40 Id. at 26. The officer asked Fields general questions, (e.g. what was going on and where he was headed). Id. at 27. But see United States v. Cardoza, 129 F.3d 6, 15 (1st Cir. 1997) (finding no seizure even where officers asked defendant “more demanding and pointed” questions); United States v. Sealey, 30 F.3d 7, 8-10 (1st Cir. 1994) (finding no seizure where officer shouted “what’s up” and, in response, defendant fled).
41 See Fields, 823 F.3d at 28 (quoting United States v. Drayton, 536 U.S. 194, 200 (2002)) (“Law enforcement officers do not violate the Fourth Amendment’s prohibition on unreasonable seizures merely by approaching individuals on the street or in other public places and putting questions to them if they are willing to listen.”). Compare Cardoza, 129 F.3d at 16 (finding no
that Fields was not subject to a “show of authority.” The court also acknowledged the significance of the five officers arriving on the scene. It reasoned, however, that Fields was not “surrounded” by the officers—despite the presence of five of them—because he could have moved in “the direction which he was originally traveling,” and the formation of the police officers did not objectively communicate that Fields was not free to leave the scene. Based on multiple diagrams presented in the initial trial, the First Circuit determined the positioning of the officers was such that they did not obstruct Fields’ original direction of travel; therefore, the officers did not terminate Fields’ freedom of movement for Fourth Amendment seizure purposes. Further, the court reasoned that despite the presence of several officers, there is a legitimate interest in calling for back-up, or the detention of a suspect, for reasons not related to investigative purposes. Moreover, the court justified its reasoning by reiterating the test for whether a person is

seizure when officer did not ask defendant to stop or approach police car, with United States v. Espinoza, 490 F.3d 41, 49 (1st Cir. 2007) (finding seizure where officer approached vehicle commanding to shut off engine).

See Fields, 823 F.3d at 28 (supporting contention that Fields was not subject to “show of authority” based on aforementioned factors).

See id. at 26 (noting presence of five police officers is certainly important feature of encounter). The court has raised the issue of whether a reasonable person, surrounded by five police officers, would believe that he was free to leave. See United States v. Fermin, 771 F.3d 71, 77 (1st Cir. 2014). In Fermin, the court analyzed whether an encounter between the defendant and the police was consensual, or a seizure. Id. It was undisputed that four or five police officers were present in some formation around the defendant, and asked if they could speak to the defendant about his suitcase. Id. The defendant did not leave, but instead, submitted to police questioning. Id. The Fermin court noted that “[i]t is not clear that a reasonable person, surrounded by five police officers, would feel free to leave.” Id.; see also United States v. Holloway, 499 F.3d 114, 117 (1st Cir. 2007) (holding submission to a show of police authority is a prerequisite for finding seizure).

See Fields, 823 F.3d at 29 (reasoning why Fields was not surrounded). Fields was standing in the front of a parked police cruiser when the backup officers arrived. Id. Because the officers were positioned upon arrival, the district court determined that the officers did not restrict Fields from “walking in the direction which he was originally traveling.” Id.

See id. (emphasizing importance of officer’s positioning in determining whether Fields’ freedom of movement was terminated).

See id. at 30 (discussing other “legitimate reasons for an officer to summon and maintain backup”). According to Judge Baron:

[T]he arrival of backup officers in response to a call for assistance thus may signal, depending on the facts, only that backup will remain on the scene in the event that the person who has encountered a lone police officer chooses to stay, rather than that such a person is not free to leave.

Id. (citing State v. Thomas, 246 P.3d 678, 686 (Kan. 2011)); see also Thomas, 246 P.3d at 686 (noting “a mere call for back-up does not automatically transform all citizen-law enforcement encounters into investigatory detentions”); State v. Green, 826 A.2d 486, 499 (Md. 2003) (“That [law enforcement] called for back-up as a safety measure did not suddenly transform the consensual encounter into a seizure.”).
seized must be viewed objectively; meaning, the officer’s words and actions would have conveyed to a reasonable person that he was not free to leave.\(^{47}\) The appeals court concludes its discussion with an analysis of the totality of the circumstances test applicable to the law of seizures, and asserts that despite the test being imprecise, the burden of proof is on Fields to establish that there was a show of authority given the encounter.\(^{48}\) The First Circuit ultimately surmised that, based on the facts, there was no basis to overturn the ruling of the district court because Fields was not subject to the officer’s “show of authority” for Fourth Amendment seizure purposes.\(^{49}\)

Part of the conclusion for the First Circuit’s decision relies on the fact that Officer Fisher did not make any commands towards Fields.\(^{50}\) The court relies heavily on the conversation between Fields and Officer Fisher was mainly dominated by Fields—who reiterated his agitation during the encounter, and appeared nervous.\(^{51}\) The court reasoned that absent commands, or a commanding tone by Officer Fisher towards Fields, there lacked a basis for a “showing of authority” because a reasonable person would have believed that he or she was free to leave.\(^{52}\) While the precedent for their decision is established, the court’s argument given these facts is rather unconvincing, but justifiable given the legal authority provided by

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\(^{47}\) See *Fields*, 823 F.3d at 31 (quoting *Michigan v. Chesternut*, 486 U.S. 567, 573 (1988)) (“[T]hat test is necessarily imprecise, because it is designed to assess the coercive effect of police conduct.”). “[T]he test for existence of a ‘show of authority’ is an objective one: not whether the citizen perceived that he was being ordered to restrict his movement, but whether the officer’s words and actions would have conveyed that to a reasonable person.” *California v. Hodari D.*, 499 U.S. 621, 628 (1991).

\(^{48}\) See *Fields*, 823 F.3d at 22-23 (noting totality of circumstances test not crystalline, but flexible depending on circumstances of case); *Chestermun*, 486 U.S. at 573 (“[T]hat test... focus[es] on particular details of... conduct in isolation.”).

\(^{49}\) See *Fields*, 823 F.3d at 31 (holding Fields failed to meet burden of proof to establish show of authority). The court explains that under the totality of the circumstances approach that they must follow, the facts presented do not establish that a seizure occurred when four other officers arrived on the scene. *Id.* at 23. Thus, the court affirmed the district court’s ruling on the motion to suppress. *Id.* at 35.

\(^{50}\) See *id.* at 28 (reiterating importance of an officer’s tone throughout encounter).

\(^{51}\) See *id.* at 27. The court looks at whether there is a “commanding tone” by officers. *Id.* at 28. In *Fields*, the court finds an absence of such tone, which played an important role in their analysis of the “show of authority” issue. *Id.*

\(^{52}\) *Id.* at 28. The court explained that, absent police commands, or any sort of verbal demonstration of authority, the conclusion finds against a showing of authority. *Id.; see also United States v. Drayton*, 536 U.S. 194, 198 (2002) (discussing scenario where officers asked bus passengers to consent to search). The *Drayton* Court held that “[l]aw enforcement officers do not violate the Fourth Amendment’s prohibition of unreasonable searches and seizures merely by approaching individuals on the street or in other public places and putting questions to them if they are willing to listen.” *Id.* at 200. Compare *United States v. Cardoza*, 129 F.3d 6, 16 (1st Cir. 1997) (finding no seizure when the officer rolled down the window and asked question to defendant), with *Fields*, 823 F.3d at 23. The facts in *Fields* are distinguishable from those in *Cardoza*, in that, Officer Fisher approached Fields on foot, and also called for backup. *Fields*, 823 F.3d at 23.
It is not unfounded to ascertain that a person approached by even a single police officer—who asks, “What’s going on tonight?”—is treating that person as a potential suspect, or with suspicion that gives the person a feeling that he or she is not free to leave. The court relies on precedent that explains, “law enforcement officers do not violate the Fourth Amendment’s prohibition on unreasonable seizures merely by approaching individuals on the street or in other public places and putting questions to them if they are willing to listen.” In the present case, it seems unrealistic to expect Fields to have simply walked past Officer Fisher because he was unwilling to listen to officer. It is much more realistic to expect Fields, or any reasonable person, to feel, even at that moment, that he was not free to leave because Officer Fisher approached and began to question him. However, on this issue, the appeals court’s application of precedent was applied correctly, and its conclusion aligned with legal authority.

The First Circuit did, however, erroneously apply their analysis regarding the presence of five police officers surrounding Fields. A “showing of authority” certainly occurred at the moment four other police

54 See Cardoza, 129 F.3d at 16. The court acknowledges that when a police officer approaches and asks a question, many would feel treated as a potential suspect or not free to leave. Id. However, it is logical that not every police encounter can be viewed as a seizure. Id.
55 See Commonwealth v. Grinkley, 688 N.E.2d 458, 467 (Mass. App. Ct. 1997) (determining officers’ conduct constituted as Fourth Amendment seizure). In Grinkley, police investigated the report of a gun on a playground, and approached a group who were dispersing and yelled stop. Id. at 460-61. As a result, the Grinkley court deemed that this conduct alone was enough to be considered a Fourth Amendment seizure. Id. at 467.
56 See Commonwealth v. Badore, 715 N.E.2d 73, 75 (Mass. App. Ct. 1999) (explaining facts as to why seizure occurred). In Badore, the court held that when the police blocked the defendant’s car by parking cruisers in front and behind suspect’s vehicle, the defendant was seized. Id. at 75. In Fields, the responding officers similarly parked their cruisers around Fields. See also United States v. Fields, No. 13-10097-DJC, 2014 WL 2616636, at *1 (D. Mass. June 11, 2014) (noting presence and positioning of police officers).
officers arrived at the scene. It is difficult to believe that a reasonable person would have felt free to leave when in the presence of five police officers. The First Circuit, however, neglected to acknowledge the fact that Fields was surrounded, and instead, argued that Fields was not surrounded because he could have walked in the direction in which he originally was traveling, as it was the only path not blocked by police officers. Given this logic, police officers could strategically surround a person; yet it should not be considered a seizure simply because the officers unknowingly—or even purposely—leave a small path for the person to willingly walk by. Moreover, the First Circuit determined whether a person is “surrounded” must be determined by the facts of each case.

Lastly, the appeals court provides an analysis on the totality of the circumstances approach. The totality of the circumstances approach, as the court mentions, is “necessarily imprecise” because it is designed to assess the coercive effect of police conduct, taken as a whole, rather than to focus on particular details of that conduct in isolation. The totality of the circumstances approach gives the court broad discretion in determining whether a “show of authority” exists. Yet, the court’s analysis relies mostly

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60 See United States v. Fields, 823 F.3d 20, 29 (1st Cir. 2016) (reiterating Fields was surrounded and subject to show of authority).
61 See United States v. Ferrain, 771 F.3d 71, 77 (1st Cir. 2014) (showing it is reasonable for one to believe that he or she not free to leave).
62 See Fields, 823 F.3d at 29 (reiterating the court’s reasoning).
63 See id. at 26. Whether a person is surrounded will be determined on a case-by-case basis. Id.; see also United States v. Goddard, 491 F.3d 457, 477 (D.C. Cir. 2007) (explaining presence of multiple police officers does not automatically indicate person surrounded). This case-by-case analysis of whether a person is surrounded leaves courts with much discretion in determining whether a person is surrounded. Id. In Fields, the court relied on the fact that Fields had one point of egress to continue walking through. Fields, 823 F.3d at 28 n.6. This fact, however, should not have been the deciding factor in analyzing whether Fields was surrounded; thus, when viewing the issue objectively, it is logical to expect a reasonable person, surrounded by five police cruisers, to believe she was not free to leave. Id.
64 See Fields, 823 F.3d at 31 (introducing totality of circumstances approach).
65 Id. at 31 (noting First Circuit’s recognition of totality of circumstances approach to seizures as “necessarily imprecise.”) In this case, the appeals court relied heavily on specific facts to find its conclusion, despite the importance of viewing the encounter as a “whole,” as required by the totality of the circumstances approach. Id. The court introduced the totality of circumstances approach, acknowledged its importance, and then based their conclusion on three facts—the lack of commanding words or tone by Officer Fisher, the fact that the conversation was dominated by Fields—and the fact that none of the four arriving backup officers spoke to Fields. Id. at 28-31. The court instead, should have looked at whether a reasonable person, being surrounded by five police officers, would have felt free to leave. Id. at 29.
66 See Michigan v. Chesternut, 486 U.S. 567, 573-74 (1988) (holding totality of circumstances approach requires each case be viewed individually). Because each case under the totality of circumstances approach is viewed individually, it follows that the courts will have broader discretion in their analysis. Id.
on particular facts such as Fields dominating the conversation and when Fields was surrounded by five police officers.67

In Fields, the United States Court of Appeals for the First Circuit decided whether there was a “show of authority” for Fourth Amendment seizure purposes, where Fields encountered a police officer, that officer called for backup, and within a minute, four other police officers arrived on the scene. The appeals court affirmed the district court’s decision, holding that Fields’ motion to suppress a firearm was properly denied because there had been no “showing of authority” as to constitute a Fourth Amendment seizure. In deciding so, the appeals court relied heavily on the fact that Officer Fisher gave no commands to Fields. The appeals court neglected to acknowledge that Fields was surrounded upon the arrival of five police officers, who positioned themselves and their cruisers around Fields. Consequently, the court’s decision implies that a reasonable person would have put up their “police blinders,” and simply walked through the five police officers, as if free to leave. This implication is simply unfeasible, and it is difficult to fathom how a reasonable person in this situation would feel free to leave. Instead of relying on specific facts including, among others, the fact that none of the arriving officers spoke to Fields, the appeals court should have applied the totality of the circumstances test more aggressively, and viewed the encounter as a whole, rather than deciphering specific incidences of the encounter. Unfortunately, the court’s application of the law in deciding whether Fields was subject to a “show of authority” when he was surrounded by five police officers should be viewed as erroneous, and thus raises prudential concerns. The appeals court’s misapplication of the law provides police with more leeway to act coercively, when instead, the court’s decision should have set precedent that secures the rights of persons provided by the United States Constitution.

Connor J. Gilbert

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67 See Fields, 823 F.3d at 31 (noting that Fields’ failed to demonstrate a show of authority under the totality of circumstance).