



## ELEVENTH CIRCUIT UPHOLDS STOP AND ARREST BASED ON COLLECTIVE KNOWLEDGE

August 2017

For duplication & redistribution of this article, please contact Law Enforcement Risk Management Group by phone at 317-386-8325.  
Law Enforcement Risk Management Group, 700 N. Carr Rd. #595, Plainfield, IN 46168

---

Article Source: [http://www.llrmi.com/articles/legal\\_update/2017\\_united\\_states\\_v\\_hogan.shtml](http://www.llrmi.com/articles/legal_update/2017_united_states_v_hogan.shtml)

©2017 [Brian S. Batterton](#), J.D., Legal & Liability Risk Management Institute

On April 10, 2017, the Eleventh Circuit Court of Appeals decided *the United States v. Hogan*<sup>1</sup>, which serves as an excellent review of the law pertaining to collective knowledge of multiple officers being used to justify a stop and arrest. The relevant facts of *Hogan*, taken directly from the case, are as follows:

In June 2013, Detective Greg Schnupp, a detective with the Montgomery Police Department ("MPD"), was investigating a group of armed-home-invasion robberies. Following one of the robberies, MPD canvassed the victim's neighborhood and a neighbor reported having seen a white Ford Expedition near the scene prior to the crime. The neighbor had written down the license-plate number of the vehicle and provided it to MPD, which later discovered the vehicle was registered to Hogan. Detective Schnupp created a be-on-the-lookout notification ("BOLO") for Hogan to be taken to the police department for questioning. He included descriptions of the two cars registered to Hogan. The BOLO stated Hogan should be considered armed and dangerous, because the victims of the robberies had reported the offenders were armed and because of Hogan's criminal history. Although Detective Schnupp believed he had probable cause to question Hogan and to obtain an arrest warrant, he did not obtain a warrant, because he "was trying to build [a] case against Hogan." Hr'g Tr. at 24 (Mar. 19, 2015).

At morning roll call on June 16, 2013, MPD supervisors issued the BOLO to the patrol units. Corporal Steven Pearson received the BOLO and, while out on patrol that morning, went by Hogan's address, saw a white Ford Expedition in the driveway, and waited for the car to leave. Around noon, an individual left the home and drove away in the Expedition. Corporal Pearson verified the driver was male, and the car matched one of those described in the BOLO; he then stopped the car. Corporal Pearson intended to identify the driver as Hogan and transport him to the police station. Based on the BOLO, Corporal Pearson believed law enforcement had probable cause to arrest Hogan.

---

©2017 Article published in the free LLRMI E-Newsletter

Link to article online: [http://www.llrmi.com/articles/legal\\_update/2017\\_united\\_states\\_v\\_hogan.shtml](http://www.llrmi.com/articles/legal_update/2017_united_states_v_hogan.shtml)  
<http://www.llrmi.com> | <http://www.patctech.com>

As he approached the car, Corporal Pearson instructed the driver to place his hands on the steering wheel and escorted the driver out of the car. The driver identified himself as Hogan. Corporal Pearson asked whether Hogan had any weapons, needles, or items on him that could stick or hurt him during a pat-down. Hogan responded there was a gun in the car, but he did not have anything on his person. Corporal Pearson then patted Hogan down for safety, handcuffed him, advised him he was being detained for questioning, and had him sit on the street curb. At the time, Corporal Pearson was not aware Hogan was a convicted felon.

While waiting for backup, Corporal Pearson contacted Detective Schnupp. When Detective Schnupp learned there was a firearm in Hogan's vehicle, he told Corporal Pearson "to make sure that [Hogan] was handcuffed and that if he did not have the permit for it, that he was currently under arrest for being in possession of a firearm." Hr'g Tr. at 25. Backup units arrived within a "couple minutes"; Corporal Pearson placed Hogan in his police vehicle and transported him to the criminal investigations division.<sup>ii</sup>

Hogan was indicted for federal firearms violations, and he filed a motion to suppress. The magistrate and the district court denied his motion to suppress. He pleaded guilty with a right to appeal the denial of his motion to suppress. He then filed a timely appeal with the Eleventh Circuit Court of Appeals.

On appeal, Hogan argued that he was unlawfully arrested without probable cause and subjected to a custodial interrogation without being provided Miranda warnings.

The Eleventh Circuit first examined the applicable law that speaks to the issue of Hogan's stop, frisk, questioning, arrest and vehicle search. The court stated

**The Fourth Amendment permits a warrantless arrest in a public place if an officer has probable cause to believe that a felony has occurred.** *Florida v. White*, 526 U.S. 559, 565, 119 S. Ct. 1555, 1559 (1999). **Probable cause also permits a warrantless search of a car.** *United States v. Ross*, 456 U.S. 798, 809, 102 S. Ct. 2157, 2164-65 (1982).

**Law enforcement officers have probable cause to arrest when the facts and circumstances within their knowledge are sufficient to warrant a reasonable belief the suspect committed or is committing a crime.** *United States v. Lopez-Garcia*, 565 F.3d 1306, 1314 (11th Cir. 2009). **Probable cause to search exists when, "under the totality of the circumstances, there is a fair probability that contraband or evidence of a crime will be found in a particular place."** *United States v. Thomas*, 818 F.3d 1230, 1243 (11th Cir.), *cert. denied*, 137 S. Ct. 171 (2016). **Probable cause may be based on the collective knowledge of officers.** *United States v. Allison*, 953 F.2d 1346, 1350 (11th Cir. 1992). **The existence of probable cause is determined using an objective standard and without regard to the subjective intent or beliefs of the officers.** *United States v. Franklin*, 694 F.3d 1, 9 (11th Cir. 2012); *see also Whren v. United States*, 517 U.S. 806, 813, 116 S. Ct. 1769, 1774 (1996) ("Subjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis."). **Thus, a reviewing court must evaluate any alternative justifications for a seizure without regard to the rationale**

employed by an officer at the time of the arrest or detention. See *Devenpeck v. Alford*, 543 U.S. 146, 152-56, 125 S. Ct. 588, 593-95 (2004).

Law enforcement may conduct a brief, investigatory *Terry* stop even if probable cause is lacking. *United States v. White*, 593 F.3d 1199, 1202 (11th Cir. 2010) (citing *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868 (1968)). A *Terry* stop must be justified by "reasonable, articulable suspicion based on objective facts that the person has engaged in, or is about to engage in, criminal activity." *Id.* (citation and internal quotation marks omitted); accord *Lopez-Garcia*, 565 F.3d at 1313 (stating reasonable suspicion requires "a particularized and objective basis for suspecting legal wrongdoing" and more than a hunch of criminal activity (citation and internal quotation marks omitted)). Reasonable suspicion is determined based on the totality of the circumstances and the collective knowledge of officers. *United States v. Nunez*, 455 F.3d 1223, 1226 (11th Cir. 2006). If a flyer or bulletin stating a person is wanted in an investigation is issued based on reasonable suspicion the person committed a crime, then reliance on that flyer or bulletin justifies a *Terry* stop to check identification, pose questions, or detain the person briefly while attempting to obtain further information. *United States v. Hensley*, 469 U.S. 221, 232, 105 S. Ct. 675, 682 (1985).

In addition to being justified at its inception, a *Terry* stop must be reasonably related in scope to the circumstances that permitted the stop. *United States v. Griffin*, 696 F.3d 1354, 1358 (11th Cir. 2012). During a lawful traffic stop, officers may take steps reasonably necessary to protect their safety, including requiring the driver and any passengers to exit the car. *United States v. Spoerke*, 568 F.3d 1236, 1248 (11th Cir. 2009). An officer may conduct a pat-down for weapons if he reasonably believes his safety or the safety of others is threatened. *Griffin*, 696 F.3d at 1359. An officer also may handcuff a suspect if he possesses an articulable and objectively reasonable belief that a suspect is dangerous. *United States v. Acosta*, 363 F.3d 1141, 1146-47 (11th Cir. 2004).

A detention may exceed the permissible boundaries of a *Terry* stop and become a de facto arrest that must be supported by probable cause. *United States v. Dunn*, 345 F.3d 1285, 1289-90 (11th Cir. 2003). To determine whether a detention was a *Terry* stop or an arrest, we consider factors such as the law-enforcement purpose served by the detention, the diligence with which the officers pursued the investigation, the scope and intrusiveness of the investigation, and the duration of the detention. *United States v. Street*, 472 F.3d 1298, 1306 (11th Cir. 2006). We ultimately focus "on whether the police diligently pursued a means of investigation likely to confirm or dispel their suspicions quickly, during which time it was necessary to detain the [suspect]." *Id.* (citation and internal quotation marks omitted).

No person "shall be compelled in any criminal case to be a witness against himself." U.S. Const. amend. V. This privilege against self-incrimination requires that a suspect be advised of certain rights before being subject to custodial interrogation. *Miranda v. Arizona*, 384 U.S. 436, 467, 86 S. Ct. 1602, 1624 (1966). Custodial interrogation is "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of

**action in any significant way." *Id.* at 444, 86 S. Ct. at 1612; see also *California v. Beheler*, 463 U.S. 1121, 1125, 103 S. Ct. 3517, 3520 (1983) (stating "the ultimate inquiry" in determining whether a suspect is in custody for the purpose of receiving *Miranda* protection is whether "there is a formal arrest or restraint on freedom of movement of the degree associated with a formal arrest" (citation and internal quotation marks omitted)). Whether a suspect is in custody is determined objectively, and the actual, subjective beliefs of the suspect and the interviewing officer are irrelevant. *United States v. Lall*, 607 F.3d 1277, 1284 (11th Cir. 2010). Individuals temporarily detained during ordinary traffic stops are not in custody for the purpose of applying *Miranda*, although a traffic stop significantly curtails the freedom of action of the driver and any passengers. *Berkemer v. McCarty*, 468 U.S. 420, 436, 440, 104 S. Ct. 3138, 3148, 3150 (1984).<sup>iii</sup> [emphasis added]**

The court then applied the rules above to the facts of Hogan's case. Hogan was stopped based on a BOLO flyer that stated that Hogan was "armed and dangerous." The detective that issued the flyer had reasonable suspicion to support the informant in the flyer. Thus, the flyer provided reasonable suspicion to justify the stop and a reasonable belief that Hogan was armed and dangerous. As such it was reasonable to stop his vehicle and frisk him for weapons. Likewise, the question posed to Hogan about whether there were guns in the car was asked prior to his arrest, and was thus not part of a custodial interrogation; therefore, *Miranda* warnings were not required. Further, the officer's actions were reasonably related in scope to the purpose of the stop. Although the officer did not know that Hogan was a convicted felon who was prohibited from possessing a firearm, the officer called the detective and told him about the weapon. The detective knew that Hogan was a convicted felon and told the officer to arrest Hogan. This arrest was supported by probable cause developed based on the collective (combined) knowledge of the officer and the detective. As such, there was probable cause for Hogan's arrest and probable cause for the search of his vehicle.

Therefore, the court of appeals affirmed the denial of the motion to suppress.

---

<sup>i</sup> No. 16-13226 (11<sup>th</sup> Cir. Decided April 10, 2017 Unpublished)

<sup>ii</sup> *Id.* at 2-4

<sup>iii</sup> *Id.* at 7-11