



TENTH CIRCUIT UPHOLDS REASONABLE SUSPICION WHEN GANG MEMBER LIED TO OFFICER

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On August 1, 2017, the Tenth Circuit Court of Appeals decided *the United States v. Coca*ⁱ, in which the court discussed whether an officer illegally detained a gang member who lied to the officer about having just left an apartment where a wanted gang member may have been hiding. The relevant facts of *Coca*, taken directly from the case, are as follows:

On the afternoon of August 27, 2015, United States marshals received information that Richard Gutierrez, a known gang member, might be present at 1505 La Fonda Drive, Apartment 3811, in Las Cruces, a unit of the Buena Vista Apartments. Gutierrez was wanted for violating the terms of his federal supervision by failing to report. A federal warrant for his arrest was outstanding. Around 3:00 p.m., marshals conducting surveillance on Apartment 3811 witnessed a male subject exit the apartment. The subject, later identified as Defendant Coca, was wearing a baseball cap, white muscle shirt, and shorts. He was walking westbound across La Fonda Drive. Marshals radioed their observations to assisting officers in the vicinity. One of those officers was Cody Austin of the Las Cruces Gang Task Unit.

Officer Austin promptly spotted Defendant walking west along a drainage culvert running more or less perpendicular from La Fonda Drive to Stull Drive. Austin stopped his vehicle, got out, and yelled at Defendant, who was several yards away. Once Austin had Defendant's attention, Austin asked if they could speak. At that point, Defendant turned around and walked toward Austin. Austin then recognized Defendant with whom he had "past dealings." Rec. vol. II, at 16. After Austin radioed the marshals' service and assisting units to advise of the situation, he asked Defendant where he was coming from. Defendant told Austin he was coming from the Telshor Manor Apartments. Those apartments were located on the other side of the freeway. Austin "called him out on it," and let Defendant know he believed he was lying. *Id.* Austin told Defendant that just moments prior he had been seen coming out of Buena Vista Apartment 3811. At that point, Austin asked Defendant "if he would have a seat for me." *Id.* Defendant sat down in the grass alongside the culvert. Seconds after Defendant sat down, Las Cruces Officers

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Horatio Rivera, also a part of the Gang Task Unit, and Anthony Lucero, a part of the K-9 Unit, arrived on the scene. Meanwhile, Austin radioed dispatch to check for outstanding warrants against Defendant.

All three officers stood near Defendant while waiting for the dispatch report. Defendant remained seated. Austin was speaking with Defendant when he noticed in plain view a new tattoo, "CB," on Defendant's neck. Austin believed "CB" stood for Cruces Boys, a Las Cruces prison gang. With Defendant's cooperation, Officer Rivera photographed the tattoo per the common practice of the Gang Task Unit. After taking one or two photos while Defendant was seated, Rivera asked him to stand up for further photos. When Defendant did so, Austin spotted a handgun behind a folded T-shirt tucked in Defendant's waistband. See Government's Exh. 2. Austin knew Defendant was a convicted felon. He promptly seized the handgun and placed Defendant under arrest.ⁱⁱ

Ultimately, Coca was charged with federal weapons violations and filed a motion to suppress. At the motion, he argued that Officer Austin detained him without reasonable suspicion and the unlawful detention led to the discovery of the firearm. The district court ruled that the initial encounter was consensual but turned into an investigative detention when the officer told Coca to sit down. However, the district court held that the officer had sufficient reasonable suspicion to support the detention. Thus, the district court denied the motion to suppress, and Coca appealed to the Tenth Circuit Court of Appeals.

The issue on appeal was whether Officer Austin had sufficient reasonable suspicion to justify the detention of Coca when he asked him to sit down.

On appeal, the Tenth Circuit first noted the law relevant to the issue above. The court stated

We recognize three sorts of police-citizen interactions: consensual encounters, investigative detentions, and arrests. A consensual encounter is not a seizure within the meaning of the Fourth Amendment and need not be supported by suspicion of criminal activity. In comparison, an investigative detention is an encounter during which a police officer stops and briefly detains a person for investigative purposes. Such detention constitutes a seizure under the Fourth Amendment and is lawful only if the officer has a reasonable suspicion supported by articulable facts, together with rational inferences to be drawn therefrom, that criminal activity may be afoot. Finally, an arrest is a Fourth Amendment seizure characterized by the intrusive or lengthy nature of the detention. Only probable cause will support an arrest. See *Morris v. Noe*, 672 F.3d 1185, 1191-92 (10th Cir. 2012).

"Reasonable suspicion is a particularized and *objective* basis for suspecting the person stopped of criminal activity." In other words, something more than an inchoate or unparticularized suspicion or hunch is necessary. *United States v. Rodriguez*, 739 F.3d 481, 485 (10th Cir. 2013) (emphasis added). But the standard is not particularly demanding. The circumstances necessary to arouse reasonable suspicion fall "considerably short of satisfying a preponderance of the evidence standard." *United States v. Arvizu*, 534 U.S. 266, 274 (2002).ⁱⁱⁱ

The court then set out to examine the facts known to Officer Austin that, when viewed objectively, could reasonably support reasonable suspicion that Coca was involved in criminal activity. First, the court noted that Officer Austin knew that the U.S. Marshals were trying to execute an arrest warrant on Gutierrez. Second, Officer Austin knew that both Gutierrez and Coca were likely gang members. Third, Officer Austin knew that the Marshals had witnessed a person meeting Coca's description leave the apartment where Gutierrez was believed to be hiding. Fourth, the court noted that it was a "reasonable inference" to believe that Coca would have known that Gutierrez was wanted. Fifth, Officer Austin knew that Coca's response to his prior whereabouts was likely a lie. Lastly, New Mexico Statute Annotated, Section 30-22-1.A. makes it a crime to "knowingly" obstruct, resist, or oppose "any officer of the state...serving or attempting to serve or execute an process or any rule or order of the court..." The Tenth Circuit then held that

[T]he totality of the circumstances coupled with N.M. Stat. Ann § 30-22-1.A. would have provided a prudent officer with the suspicion necessary to detain Defendant consistent with the Fourth Amendment.^{iv}

As such, the Tenth Circuit affirmed the denial of the motion to suppress.

ⁱ No. 16-2093 (10th Cir. Decided August 1, 2017)

ⁱⁱ Id. at 2-4

ⁱⁱⁱ Id. at 5-6

^{iv} Id. at 7