



ELEVENTH CIRCUIT DISCUSSES SUSPECT DESCRIPTION MATCH AS REASONABLE SUSPICION FOR A STOP

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On November 8, 2017, the Eleventh Circuit Court of Appeals decided *the United States v. Felix*¹, which serves as an excellent review regarding when a suspect description match amounts to reasonable suspicion to justify an investigative detention. The relevant facts of *Felix*, taken directly from the case, are as follows:

At approximately 12:30 AM, on June 20, 2015, Officer Nicholas Ursitti of the Fort Myers Police Department responded to a dispatch call regarding a robbery that had occurred on Palm Beach Boulevard. Officer Ursitti was familiar with that neighborhood because robberies frequently occur there and the suspects often flee into the surrounding neighborhoods. The dispatch call identified the robbery suspects as two black males who appeared to be young or in their twenties, and who were last seen wearing black shirts and headed south toward Redbone's Bar and Grill.

While en route to Redbone's, Officer Ursitti observed an individual, later identified as Defendant, who matched the description of the robbery suspects. Specifically, he was a black male wearing a black shirt and black pants. Officer Ursitti pulled his patrol car in front of Defendant, exited his vehicle, and asked Defendant to come speak to him about the incident that had occurred on Palm Beach Boulevard. Soon after providing his ID, which showed that he resided in a neighborhood located 20 minutes away, Defendant made a phone call and began avoiding Officer Ursitti's questions. Defendant then dropped to his knees and hunched over appearing to conceal something.

Footage from Officer Ursitti's body camera video showed Defendant squatting on the ground and talking on the phone with someone he was referring to as his mother. Officer Ursitti repeatedly told Defendant that he needed to pat him down for firearms and then Defendant could go on his way. Defendant emptied his pockets without being instructed to do so. After Defendant refused to comply with Officer Ursitti's instruction to lift his shirt,

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Officer Ursitti and other officers who had arrived at the scene restrained Defendant and found a firearm in his front waistband. Officers identified Defendant as a convicted felon and placed him under arrest."ⁱⁱⁱ

Felix was ultimately indicted on federal drug and weapons violations. He filed a motion to suppress in district court and argued that his detention was not supported by reasonable suspicion. The district court denied the motion and later convicted Felix at a bench trial. Felix appealed the denial of the motion to suppress.

The issue we will examine on appeal is whether the officer had reasonable suspicion to detain Felix for armed robbery and frisk him for weapons.

The court of appeals began by noting the general constitutional principals that control this case. The court stated

The Fourth Amendment protects an individual against unreasonable searches and seizures. U.S. CONST. amend. IV. "Not all interactions between law enforcement and citizens, however, implicate the scrutiny of the Fourth Amendment." *United States v. Jordan*, 635 F.3d 1181, 1185 (11th Cir. 2011). **A seizure occurs only where law enforcement uses physical force or some show of authority to restrain the liberty of an individual. *Id.***

An officer is permitted to seize a suspect for a brief, investigatory stop if the officer has a reasonable suspicion that the subject was involved in, or is about to be involved in criminal activity, and the stop "was reasonably related in scope to the circumstances which justified the interference in the first place." *Id.* at 1186 (quoting *Terry v. Ohio*, 392 U.S. 1, 19-20, 30 (1968)). "Reasonable suspicion is determined from the totality of the circumstances and from the collective knowledge of the officers involved in the stop." *United States v. Williams*, 876 F.2d 1521, 1524 (11th Cir. 1989) (citation omitted). "An inchoate and unparticularized suspicion or hunch of criminal activity is not sufficient to meet the reasonable suspicion standard." *United States v. Lopez-Garcia*, 565 F.3d 1306, 1313 (11th Cir. 2009) (quotation omitted).ⁱⁱⁱ [emphasis added]

The court of appeals then examined the relevant facts of the case to determine if reasonable suspicion supported Felix's stop. Here, the officer received a dispatch regarding two black males, in black shirts, in their early 20's, with guns, who had committed an armed robbery and were last seen on foot headed south and east. The officer knew that this was a common crime in this area and knew from experience that perpetrators typically flee on foot into the surrounding neighborhoods. He began driving around a nearby neighborhood that was south of the crime location. About ten minutes after the crime, he observed a black male wearing all black clothing heading south from the direction of the crime. This was approximately ½ mile from the crime location, in a high crime area. The officer reported that the male, later identified as Felix, saw him, turned north, then turned back south toward the officer, grabbed his cell phone, appeared to make a call, and began walking in circles, while appearing to act nervously. Felix argued that this behavior did not occur until after the officer initiated the investigative detention and as such it should not be considered as part of the reasonable suspicion analysis.

The court of appeals noted two cases that serve as instructive in this situation. First, they cited the Supreme Court case of *Illinois v. Wardlow*^v, in which the court held that an individual's presence in a high-crime area is a relevant factor in the reasonable suspicion analysis. Second, they cited the Eleventh Circuit case of the *United States v. Hunter*^v, in which the court held that an individual's proximity to illegal activity is relevant to the reasonable suspicion analysis.

The court then stated that, even if it does not consider Felix's nervous, unnatural behavior after being noticed by the officer, that reasonable suspicion still existed to justify the stop and frisk for weapons. Specifically, the court stated

[A]lthough Defendant argues that his nervous behavior after Officer Ursitti approached him is irrelevant to the reasonable-suspicion analysis because he had already been seized at that point, we do not reach that argument because we conclude that—even leaving aside subsequent behavior preceding the frisk which behavior the Government characterizes as quite suspicious and provocative—**Officer Ursitti had reasonable suspicion to engage in a brief investigatory stop of Defendant at the outset. As the district court noted, "[s]topping an individual who matches the description of an armed robber in relative close proximity to the crime scene, within ten minutes of the crime occurring, and patting them down for weapons is well within the bounds of the Fourth Amendment and *Terry*."**^{vi} [emphasis added]

As such, the court of appeals affirmed the denial of the motion to suppress.

Author's note on frisks:

Although the court, in this case, did not distinguish the stop from the frisk, officers must have a reasonable belief that a suspect is armed and dangerous in order to lawfully conduct a frisk under the Fourth Amendment. This is in addition to the reasonable suspicion required to justify the initial stop. The reason that that was not discussed in this case is that the reasonable suspicion here was regarding an armed robbery, which automatically provides a reasonable belief that the suspect is *armed and dangerous*, thereby justifying the frisk for weapons.

ⁱ No. 16-16457 (11th Cir. Decided November 8, 2017 Unpublished)

ⁱⁱ Id. at 2-3

ⁱⁱⁱ Id. at 7-8

^{iv} 528 U.S. 119, 124 (2000)

^v 291 F.3d 1302 (11th Cir. 2002)

^{vi} Id. at 10