[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 16-13934
Non-Argument Calendar

D.C. Docket No. 0:15-cr-60309-JIC-1

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JUDEL JEAN-CHARLES,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Florida

(March 16, 2017)

Before HULL, WILSON AND BLACK, Circuit Judges.

PER CURIAM:

Judel Jean-Charles appeals the district court's denial of his motion to suppress physical evidence and statements he made on the day of his arrest after entering a conditional guilty plea to one count of use of one or more unauthorized access devices, in violation of 18 U.S.C. § 1029(a)(2), and one count of aggravated identity theft, in violation of 18 U.S.C. § 1028A. On appeal, Jean-Charles asserts his initial encounter with Officer Joseph Calicchio was not a consensual police-citizen encounter, but rather an investigatory detention implicating the Fourth Amendment. He further contends Calicchio did not have the reasonable suspicion of criminal activity necessary to justify detaining him and, accordingly, the district court erred in denying his motion to suppress.[1] After review of the parties' briefs and the record, we find the encounter between Calicchio and Jean-Charles did not violate the Fourth Amendment and affirm the district court's ruling.

The Fourth Amendment only extends to interactions between a citizen and the police if a detention or arrest is taking place—consensual encounters are not subject to Fourth Amendment scrutiny. *United States v. Perez*, 443 F.3d 772, 777 (11th Cir. 2006). Police officers may approach individuals in public places for questioning without implicating the Fourth Amendment, so long as "a reasonable person would feel free to terminate the encounter." *United States v. Drayton*, 536

[1] We review a district court's denial of a motion to suppress under a mixed standard, reviewing the court's findings of fact for clear error and the application of law to those facts *de novo*. *United States v. Ramirez*, 476 F.3d 1231, 1235 (11th Cir. 2007). "All facts are construed in the light most favorable to the prevailing party below." *United States v. Perez*, 443 F.3d 772, 774 (11th Cir. 2006).

U.S. 194, 201 (2002). Factors we use to determine whether a reasonable person would feel free to leave include, among other things, "whether a citizen's path is blocked or impeded; whether identification is retained; the suspect's age, education, and intelligence; the length of the suspect's detention and questioning; the number of police officers present; the display of weapons; any physical touching of the suspect, and the language and tone of voice of the police." *Perez*, 443 F.3d at 778 (quoting *United States v. Del La Rosa*, 922 F.2d 675, 678 (11th Cir. 1991)).

Calicchio's initial encounter with Jean-Charles, spanning no more than a minute, was a casual police-citizen conversation falling outside the protection of the Fourth Amendment. Jean-Charles was standing at the door of a Honda in a public parking lot when Calicchio approached and, in a conversational tone, asked him whether the car was his. Calicchio then proceeded to explain his presence to Jean-Charles. During this very brief interaction, Calicchio never raised his voice, drew or otherwise displayed his weapon, or attempted to physically restrain Jean-Charles. The Fourth Amendment does not forbid police officers from "approaching individuals on the street or in other public places and putting questions to them if they are willing to listen." *Drayton*, 536 U.S. at 200. And Calicchio never exerted a "show of authority that communicate[d] to [Jean Charles] that his liberty [was] restrained, meaning he [was] not free to leave."

United States v. Baker, 290 F.3d 1276, 1278 (11th Cir. 2002). Accordingly, the district court did not err in finding the protections of the Fourth Amendment inapplicable to the initial phases of Jean-Charles' interaction with Calicchio.

However, when Calicchio asked Jean-Charles to provide identification and remove his hands from his pockets, their casual encounter arguably transformed into an investigatory detention subject to Fourth Amendment scrutiny. We have previously explained police officers may seize a suspect for a brief, investigatory *Terry*[2] stop so long as the officer has reasonable suspicion the suspect was involved in, or is about to be involved in, criminal activity, and the stop is "'reasonably related in scope to the circumstances which justified the interference in the first place.'" *United States v. Acosta*, 363 F.3d 1141, 1144-45 (11th Cir. 2004) (quoting *Terry*, 392 U.S. at 20).[3] Reasonable suspicion is not "'readily, or even usefully, reduced to a neat set of legal rules.'" *United States v. Sokolow*, 490 U.S. 1, 7 (1989) (quoting *Illinois v. Gates*, 462 U.S. 213, 232 (1983)). But, at the

[2] *Terry v. Ohio*, 392 U.S. 1, (1968).

[3] Jean-Charles appears to argue *Terry* requires probable cause rather than reasonable suspicion to justify a seizure so long as the officer involved has no reason to fear for her safety. This argument is inapposite and wholly unsupported by precedent. Jean-Charles is correct to contend officer safety was the animating principle behind the Supreme Court's articulation of reasonable suspicion in the *Terry* decision itself. However, the Supreme Court has since made clear "[t]he Fourth Amendment permits brief investigative stops . . . when a law enforcement officer has . . . [t]he "reasonable suspicion" necessary to justify such a stop." *Navarette v. California*, —U.S.—, 134 S. Ct. 1683, 1687 (2014); *see also United States v. Smith*, 201 F.3d 1317, 1322 (11th Cir. 2000) (explaining "[t]he temporary, investigative detention of a person is constitutionally permissible if there exists, at the time of the detention, a reasonable suspicion that the person detained has been, is, or is about to be involved in criminal activity."). The law requires only reasonable suspicion to support a brief, investigatory stop regardless of any concerns an officer might have regarding her safety.

least, it requires the officer to have a "particularized and objective basis" for suspecting wrongdoing based on the totality of the circumstances. *United States v. Arvizu*, 534 U.S. 266, 273 (2002).

By the time Calicchio's interaction with Jean-Charles matured into investigatory detention subject to Fourth Amendment scrutiny, he was not acting on "'inchoate and unparticularized suspicion or [a mere] hunch.'" *United States v. Yuknavitch*, 419 F.3d 1302, 1311 (11th Cir. 2005) (quoting *United States v. Perkins*, 348 F.3d 965, 970 (11th Cir. 2003)). Instead, Calicchio properly established an objective basis for suspecting legal wrongdoing, as *Terry* and its progeny requires. *See id.* Calicchio, a veteran police officer, was dispatched on a suspicious incident call to an area he knew had experienced significant problems with credit card fraud. There, he encountered an individual, Jean-Charles, standing by a car roughly matching the description of the suspicious vehicle provided by the police dispatcher.[4] During their ensuing conversation, Jean-Charles surreptitiously

[4] Jean-Charles argues the anonymous tip underlying Calicchio's deployment to the bank parking lot had insufficient indicia of reliability to serve as a proper foundation for reasonable suspicion. *See Alabama v. White*, 496 U.S. 325, 329 (1990) (explaining "'[s]ome tips, completely lacking in indicia of reliability, would either warrant no police response or require further investigation before a forcible stop of a suspect would be authorized'") (citing *Adams v. Williams*, 407 U.S. 143, 147 (1972)). This argument is unpersuasive. While the anonymous tip here may have been insufficient to justify a *Terry* stop standing alone, the district court properly considered it as a single factor making up the "totality of the circumstances" necessary to establish reasonable suspicion. *See United States v. Yuknavitch*, 419 F.3d 1302, 1311 (11th Cir. 2005) ("[w]hen making a determination of reasonable suspicion, we must look at the totality of the circumstances of each case to see whether the detaining officer has a particularized and objective basis for suspecting legal wrongdoing") (quoting *United States v. Perkins*, 348 F.3d 965, 970 (11th Cir. 2003)).

sought to discard what appeared to be, and in fact were, debit cards. After this attempt was noticed, Jean-Charles appeared nervous as if on the verge of flight. And, Calicchio subsequently noticed a large bulge in Jean-Charles' pocket. The Fourth Amendment does not require police officers to remain willfully blind to suspicious activity. Instead, they are encouraged to "draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them." *Arvizu*, 534 U.S. at 273. Here, the totality of the circumstances demonstrates Calicchio's suspicion of legal wrongdoing was supported by objective facts as the Fourth Amendment requires.[5] Consequently, the district court did not err in denying Jean-Charles's motion to suppress. We affirm.

AFFIRMED.

[5] Jean-Charles also argues Calicchio, and the district court, improperly relied on his attire as justifying the existence of reasonable suspicion. We need not consider Jean-Charles's clothing choices at all to determine Calicchio had "'a particularized and objective basis for suspecting legal wrongdoing'" and so was justified in conducting a *Terry* stop. *Yuknavitch*, 419 F.3d at 1311 (quoting *Perkins*, 348 F.3d at 970).