NONPRECEDENTIAL DISPOSITION
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United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Argued October 3, 2023
Decided October 19, 2023

Before

MICHAEL B. BRENNAN, *Circuit Judge*

MICHAEL Y. SCUDDER, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

No. 22-3218

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

AUBREY JONES,
Defendant-Appellant.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 1:21-cr-00240

Sharon Johnson Coleman,
Judge.

O R D E R

After a brief chase, Chicago police subdued Aubrey Jones and found a loaded handgun with an extended magazine in his pants. Jones unsuccessfully moved to suppress the gun and pleaded guilty to being a felon in possession of a firearm. He argues, however, that the district court should have suppressed the firearm because the police lacked reasonable suspicion justifying a stop and frisk under *Terry v. Ohio*, 392 U.S. 1 (1968). We disagree and affirm.

In the early afternoon of September 24th, 2020, Chicago Police Officer Johnathon Martinez and another officer were remotely viewing and operating a Police Observation Device (POD) on the city's far west side. While watching the live feed, the officers zoomed in to observe Jones walking in full view of the POD camera. Jones's right arm was "stiff and straight," and he was holding his pants near the crotch. His fingers were curled toward his leg, as if gripping an object. Jones also looked around in several directions as he walked past the POD camera. Having patrolled this area for five years, Officer Martinez knew it to be rife with gang violence, shootings, narcotics sales, and illegal firearm possession. He also had previously arrested people acting the same way as Jones and recovered concealed firearms. All of this led Officer Martinez to suspect that Jones was concealing a firearm in his pants.

Officer Martinez and two other uniformed officers left in an unmarked vehicle to talk to Jones. When they drove up to him, he was still gripping his pants and looking around. Officer Martinez got out of the car and yelled "police … stop!" Jones turned and fled, his right hand still clutching his front groin area. After a brief chase, officers tackled Jones and recovered a pistol from his pants.

The government charged Jones with one count of being a felon in possession of a firearm under 18 U.S.C. § 922(g)(1). He moved to suppress the gun, but the district court denied his request. The court concluded that the POD video showed a gun-shaped bulge in Jones's pants and this, combined with the other evidence presented at the motion to suppress hearing, gave police reasonable suspicion to initiate a *Terry* stop. Jones pleaded guilty, reserving the right to challenge the adverse ruling. The district court accepted his plea and sentenced him to 48 months' imprisonment.

On appeal, Jones argues that police seized him in violation of *Terry* because there was no bulge visible in his pants on the POD video and the remaining facts were insufficient to create reasonable suspicion. In reviewing the denial of a motion to suppress, we review the district court's factual findings for clear error and its conclusion that officers had reasonable suspicion de novo. *United States v. Olson*, 41 F.4th 792, 798 (7th Cir. 2022).

To conduct a *Terry* stop, police must have an objectively reasonable suspicion of involvement in criminal activity. *Id.* at 800 (citing *Terry*, 392 U.S. at 30). Reasonable suspicion requires "more than a hunch but less than probable cause." *United States v. Richmond*, 924 F.3d 404, 411 (7th Cir. 2019). Police must point to "specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant" the stop. *Id.* (internal quotations omitted).

Jones first contends that the district court clearly erred in finding that the POD video showed a gun-shaped bulge. He maintains that his hand obstructed the relevant area nearly the entire time and that, when he brushed his hand away from the front of his pants, no bulge was visible.

We have reviewed the POD video, however, and are not left with a "definite and firm conviction" that the district court erred. *Olson*, 41 F.4th at 802 (internal quotations omitted). On the video Jones appears to curl his fingers under a rigid object, using his thumb to grip the opposite side of the object. The object also seems to extend down the front of his right pant leg, jutting out at points as he walks.

Jones further contends that the district court made contradictory rulings on what the POD video shows. He asserts that the court alternatively prohibited Officer Martinez from testifying about the nature of the object in Jones's pants yet later concluded that the object was gun shaped. But Jones takes the court's comments out of context. In the first comment, the court responded to Jones's evidentiary objection by limiting the scope of Martinez's testimony. The court's later comment appropriately drew upon Martinez's testimony that, based on his training and experience, Jones appeared to conceal a firearm in his pants.

Jones next argues that reasonable suspicion is not suggested by other facts in the record—the way he gripped his pants, his apparent nervousness, his immediate flight upon seeing officers, and the high-crime location of the stop. But we have already considered the significance of facts like these and reached the opposite conclusion. In *United States v. Wilson*, 963 F.3d 701 (7th Cir. 2020), we concluded that police had reasonable suspicion when the defendant—in a high-crime area—grabbed at a conspicuous bulge in his pocket, moved evasively, and fled when police attempted contact. *Id.* at 703–04. Although the police in *Wilson* also had received a report of criminal activity just minutes earlier, we deemed the suspect's unprovoked flight, not the criminal report, to be the decisive fact. *Id*. The same holds true here.

Jones' flight in a high-crime area provides further support to find the police had reasonable suspicion. The Supreme Court has held that unprovoked flight in a high-crime area gives police reasonable suspicion to conduct a *Terry* stop. *Illinois v. Wardlow*, 528 U.S. 119, 124–25 (2000). For the first time, Jones now argues that the government lacks statistical support for its characterization of the neighborhood as high in crime, but he waived this argument by failing to raise it in the district court. *Johnson v. Prentice*, 29 F.4th 895, 903 (7th Cir. 2022). Jones also justifies his flight as simply his way of saying he did not want to talk with the police, but a suspect's subjective motivations have no

bearing on the validity of a *Terry* stop. Instead, the focus of the analysis is on the objective reasonableness of officers' suspicion. *See Olson*, 41 F.4th at 800.

Seeking to distinguish *Wardlow*, Jones argues that his "inherently futile flight" should not be singled out as a basis upon which to find reasonable suspicion. But the Supreme Court has rejected this approach, instructing courts not to isolate factors in a "divide-and-conquer analysis." *United States v. Arvizu*, 534 U.S. 266, 274 (2002). Rather, courts should consider the totality of the circumstances, analyzed through officers' experience and specialized training. *Olson*, 41 F.4th at 800. Here the police knew the area to be crime-ridden, and they saw Jones acting nervously, grabbing at his clothing (gun-shaped bulge aside), and fleeing at the sight of officers. Based on these circumstances and their experience, officers had "more than a hunch" to believe that Jones was armed and possibly engaged in criminal activity. *Richmond*, 924 F.3d at 411.

Jones was not seized unlawfully, so the district court correctly denied his motion to suppress. The district court's ruling and Jones's conviction are therefore AFFIRMED.