FILED
United States Court of Appeals
Tenth Circuit

May 24, 2023

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

APACHE YOUNG,

Defendant - Appellant.

No. 21-2066
(D.C. No. 1:17-CR-00694-JB-1)
(D. N.M.)

ORDER

Before **CARSON**, **EBEL**, and **ROSSMAN**, Circuit Judges.

This matter is before the court sua sponte to correct an inadvertent misstatement on page 2 of the Opinion issued on May 24, 2023. The correction does not materially alter the Opinion. The Clerk shall reissue the attached corrected version of the Opinion, effective nunc pro tunc to the date the original Opinion was filed.

Entered for the Court

CHRISTOPHER M. WOLPERT, Clerk

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PUBLISH

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff - Appellee, v. APACHE YOUNG, Defendant - Appellant.	No. 21-2066

Appeal from the United States District Court
for the District of New Mexico
(D.C. No. 1:17-CR-00694-JB-1)

Timothy C. Kingston of Tim Kingston LLC, Foley, Alabama, for Defendant – Appellant.

Emil J. Kiehne, Assistant United States Attorney (Fred J. Federici, United States Attorney, with him on the brief), Albuquerque, New Mexico, for Plaintiff – Appellee.

Before **CARSON**, **EBEL**, and **ROSSMAN**, Circuit Judges.

ROSSMAN, Circuit Judge.

After the government charged Mr. Apache Young with one count of violating the felon-in-possession statute, 18 U.S.C. § 922(g)(1), he moved to suppress the firearms seized from his truck during an encounter with law enforcement. Mr. Young argued, first, officers lacked reasonable suspicion to stop him, and second, even if he was justifiably detained, the scope of his detention was not reasonably related to the justification for the initial encounter. The district court rejected both arguments. Mr. Young now appeals the denial of his motion to suppress, reprising arguments he made in the district court. We discern no error in the district court's suppression ruling. Exercising jurisdiction under 28 U.S.C. § 1291, we affirm.

I. BACKGROUND[1]

A. Factual History

The West Mesa is an open space area west of Albuquerque, New Mexico. According to local law enforcement, the West Mesa is known for criminal activity, including drug distribution and abandoned stolen vehicles. On November 13, 2016, Officer Jason Harvey of the Albuquerque Police Open Space Division was on patrol in the West Mesa—an area he had experience patrolling since 2002. It was about sixty-degrees Fahrenheit that day. Around

[1] We derive these facts from the district court's comprehensive recitation in its memorandum and order on the motion to suppress. App. vol. I at 141-53.

2 P.M., Officer Harvey spotted a red pickup truck, parked about a half-mile away. The driver's side door was open. Officer Harvey saw no one near the truck. The scene roused Officer Harvey's curiosity. Based on his experience, when a car or truck is parked on the West Mesa with its doors open, the hood up, or the wheels off, these "are indicators that potentially [the vehicle is] stolen." Supp. App. at 56; App. vol. I at 145. Officer Harvey waited for his partner, Officer Pat Smith, to arrive before the two drove together towards the pickup truck.

When they were about 100 yards from the truck, Officer Harvey observed a man, later identified as Mr. Young, walk out of a nearby abandoned cattle water tank. Mr. Young was wearing pants, but no shirt, and he had blue tattoos on his torso. Officer Harvey also saw Mr. Young carrying what he believed was a handgun in a black holster. When Mr. Young reached the pickup, he placed the object on the left side of the truck bed and approached the officers.

Both officers walked toward Mr. Young, meeting him halfway between their respective vehicles. Officer Harvey asked Mr. Young what he was doing on the West Mesa and if there were "any guns or weapons we need to know about." Mr. Young responded, "No, sir."[2] App. vol. I at 148; Supp. App. at 71;

[2] Officer Harvey's lapel video begins recording once he and Officer Smith make contact with Mr. Young. Although there is no audio for the first 30 seconds, the audio is clear at the time Officer Harvey asks Mr. Young if he has any weapons.

Video 1 at 0:54-0:57. Officer Harvey then asked Mr. Young, "Do you have any weapons on you." App. vol. I at 148; Video 1 at 0:57-0:59. Mr. Young answered, "a pocketknife," which he retrieved from his pants. App. vol. I at 148; Video 1 at 0:59. Reaching for the pocketknife, Officer Harvey said, "Let me just hold on to that for a second while we check everything out" and told Mr. Young, "Just hang out tight right here, okay?" App. vol. I at 148; Video 1 at 1:00-1:07.

Officer Harvey walked to the pickup truck, leaving Mr. Young with Officer Smith. Officer Harvey first looked in the truck bed, which was full of an assortment of objects. He called in the license plate number on his radio and learned the truck was registered to Andy Baca.

Officer Harvey then walked to the cattle water tank "looking for anything that was not consistent with the rest of the surroundings." Supp. App. at 74. Inside the water tank, Officer Harvey observed "clear fluid," blood, and fecal matter. App. vol. I at 149.

After inspecting the water tank, Officer Harvey returned to the truck, where he spotted "the butt of the gun, the grip of it" in the truck bed. *Id.* At this point, Dispatch had confirmed the vehicle was not stolen. Although "it didn't look like any narcotics activity was occurring" Officer Harvey said he "needed to run the individual, just to make sure everything was good to go." Supp. App. at 78.

Officer Harvey then walked back to where Officer Smith was waiting with Mr. Young. Officer Smith asked for Mr. Young's full name, birthday, and Social Security number. When Officer Harvey asked who owned the truck, Mr. Young replied, "Andy Baca." App. vol. I at 149-50.

Officer Harvey returned to his squad car, while Officer Smith waited with Mr. Young. Officer Harvey first phoned his supervisor, Sergeant Jeremy Bassett.[3] He described his encounter with Mr. Young and reported seeing a firearm in the truck bed. He also explained what he had seen in the water tank. Sergeant Bassett asked if Mr. Young was a felon, and Officer Harvey answered, "I'm going to guess he is. He's covered in tats like he is." App. vol. I at 150; Video 2 at 9:08-9:13.

Officer Harvey then radioed Dispatch to check for warrants on Mr. Young. Dispatch found no outstanding warrants but identified that Mr. Young was on "a discharge status under probation [or] parole."[4] App. vol. I at 150;

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[3] The district court's memorandum and order identifies the person Officer Harvey called as Sergeant Sanchez. Officer Harvey testified both at the suppression hearing and at trial that the person he was speaking with was Sergeant Jeremy Bassett. We adhere to the testimony but note our disposition does not depend on the identity of the person Officer Harvey spoke with on the phone.

[4] Generally, when a person completes their sentence of probation or parole, the previously imposed obligations and conditions are "discharged." *See, e.g.*, *Trask* v. *Franco*, 446 F.3d 1036, 1044 (10th Cir. 2006) ("Ms. Bliss's probation [] had already been discharged when the probation officers visited her home in June 2001. Thus, she enjoyed the full protection of the Fourth

Video 2 at 18:03-18:18. Dispatch could not confirm the nature of Mr. Young's underlying offense. Officer Harvey called Sandra Perea at the Probation and Parole Division of the New Mexico Corrections Department; she confirmed Mr. Young had a prior felony conviction.

Officer Harvey then arrested Mr. Young. About 35-40 minutes had elapsed since law enforcement first stopped Mr. Young. Later, after obtaining a warrant, law enforcement searched Mr. Young's truck and found a rifle, shotgun, and ammunition, along with the handgun Officer Harvey had seen during the encounter.

B. Procedural History

In March 2017, the government charged Mr. Young in a single-count indictment with violating the felon-in-possession statute, 18 U.S.C. § 922(g)(1). Mr. Young filed a motion to suppress contending law enforcement violated his Fourth and Fifth Amendment rights during the encounter, and therefore, the firearms seized from his truck must be excluded "as the fruit of unconstitutional conduct." App. vol. I at 38.

Mr. Young made several arguments in his suppression motion but only two are relevant in this appeal.[5] First, Mr. Young argued the officers illegally

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Amendment, including the clearly established right to be free from warrantless searches of her home.").

[5] Mr. Young also argued in the district court that officers arrested him without probable cause and without jurisdiction in violation of the Fourth

seized him without reasonable suspicion of criminal activity when they took his pocketknife and told him not to leave. Second, Mr. Young asserted the circumstances did not justify his continued detention.

In opposing the suppression motion, the government maintained Officer Harvey had reasonable suspicion to believe Mr. Young was engaged in criminal activity. Officer Harvey observed a truck with its door open on the West Mesa—a place known to law enforcement as a repository for stolen and abandoned vehicles. And when he first encountered Mr. Young, Officer Harvey watched him emerge shirtless from inside a water tank near the truck, holding what looked like a handgun in a holster. The government contended law enforcement detained Mr. Young no longer than necessary for Officer Harvey to investigate and learn Mr. Young was convicted of a felony. That information, along with the gun Officer Harvey had seen in the truck bed, provided probable cause to arrest.

In June 2018, the district court held an evidentiary hearing on Mr. Young's motion to suppress. Mr. Young testified he was on the West Mesa that day "picking up scrap metal, and just driving around." Supp. App. at 38. He also described his initial encounter with law enforcement. The prosecution

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Amendment, and that his post-arrest statements should be suppressed because the officers did not inform him of his *Miranda* rights. Mr. Young does not press these arguments on appeal, so we need not consider them.

then called Officer Harvey, who recited his experience patrolling the West Mesa and testified about the circumstances resulting in Mr. Young's arrest that day.[6]

In a written order, the district court denied the motion to suppress. The court first held Officer Harvey had reasonable suspicion to stop Mr. Young "because the circumstances' totality suggest[ed] that [Mr.] Young might be involved in a crime." App. vol. I at 184. The district court next concluded "the circumstances justif[ied] the length and manner" of detention.[7] *Id.*

Mr. Young proceeded to jury trial in September 2018. The jury could not reach a verdict, and the district court declared a mistrial. In December 2018, the government prosecuted Mr. Young again for the same felon-in-possession offense, and the jury found him guilty. On June 11, 2021, the district court sentenced Mr. Young to 235 months in prison, followed by 5 years of supervised release.[8] This timely appeal followed.

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[6] Mr. Young also called William Elliott, a licensed private investigator, to testify about the location of the water tank as it related to the officers' jurisdiction. The jurisdictional issue is not advanced on appeal, so we need not discuss Mr. Elliott's testimony.

[7] As to the remaining issues, the district court determined the post-arrest statements were admissible because Mr. Young was not being interrogated and the officers had jurisdiction to operate on the West Mesa.

[8] The delay between Mr. Young's conviction and sentencing is notable but not without explanation. In July 2019, Mr. Young filed a motion for a new trial under *Rehaif* v. *United States*, 139 S. Ct 2191 (2019). The district court denied this motion in January 2020. Mr. Young's sentencing was

II. DISCUSSION

Mr. Young argues the district court erred in denying his motion to suppress the firearms found in his truck. We review a district court's denial of a motion to suppress by "view[ing] the evidence in the light most favorable to the determination of the district court." *United States* v. *Johnson*, 43 F.4th 1100, 1107 (10th Cir. 2022) (internal quotation marks omitted). We accept the district court's factual findings unless they are clearly erroneous, *see United States* v. *Hammond*, 890 F.3d 901 (10th Cir. 2018), and review legal conclusions de novo, *United States* v. *Burleson*, 657 F.3d 1040, 1044 (10th Cir. 2011). "While the existence of reasonable suspicion is a factual determination, the ultimate determination of the reasonableness of a search or seizure under the Fourth Amendment is a question of law reviewed de novo." *United States* v. *Fonseca*, 744 F.3d 674, 680 (10th Cir. 2014) (internal quotation marks and citations omitted).

Mr. Young urges reversible error on two grounds. First, he contends Officer Harvey did not have reasonable suspicion to initiate an investigatory stop. Second, even if the initial stop was justified, Mr. Young contends the prolonged scope of the detention violated the Fourth Amendment. We reject both arguments and affirm.

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further delayed until mid-2021, in part due to continuance motions filed by Mr. Young.

A. The district court did not err in concluding reasonable suspicion supported the initial stop.

1. Applicable Law

The Fourth Amendment protects individuals "against unreasonable searches and seizures." U.S. Const. amend. IV. Interactions between police and citizens generally fall into one of several categories: "consensual encounters, investigative stops, and arrests." *Oliver* v. *Woods*, 209 F.3d 1179, 1186 (10th Cir. 2000). "Consensual encounters are not seizures within the meaning of the Fourth Amendment." *Id.* "On the opposite extreme are arrests, which are characterized by highly intrusive or lengthy search or detention." *Id.* (internal quotation marks omitted). Absent a warrant, an officer can make an arrest if he "has probable cause to believe a crime has been committed by the arrestee." *Id.*

"An investigative detention, which is also referred to as a *Terry* stop, is a seizure within the meaning of the Fourth Amendment, but unlike an arrest, it need not be supported by probable cause." *Id.* We engage in a twofold inquiry "[t]o determine whether an investigative detention or a protective search is reasonable under the Fourth Amendment[.]" *United States* v. *King*, 990 F.2d 1552, 1557 (10th Cir. 1993). "First, the officer's action must be 'justified at its inception,'" *Id.* (quoting *Terry* v. *Ohio*, 392 U.S. 1, 20 (1968), meaning an officer must have a reasonable suspicion that criminal activity may be occurring,

Oliver, 209 F.3d at 1186. Second, the detention must be "reasonably related in scope to the circumstances" prompting the stop. *Terry*, 392 U.S. at 20. Put another way, "[t]he scope of the search must be 'strictly tied to and justified by' the circumstances which rendered its initiation permissible." *Id.* at 19.

"[T]he police can stop and briefly detain a person for investigative purposes if the officer has a reasonable suspicion supported by articulable facts that criminal activity may be afoot." *United States* v. *Sokolow*, 490 U.S. 1, 7 (1989) (internal quotation marks omitted). Reasonable suspicion requires "more than an inchoate and unparticularized suspicion or hunch" but "considerably less than proof of wrongdoing by a preponderance of the evidence." *Id.* (internal quotation marks and citations omitted). In assessing whether reasonable suspicion exists, courts must look at the totality of the circumstances. *United States* v. *McHugh*, 639 F.3d 1250, 1256 (10th Cir. 2011). "[R]easonable suspicion may exist even if it is more likely than not that the individual is not involved in any illegality." *Id.* (internal quotation marks and citation omitted). "As long as an officer has a particularized and objective basis for suspecting an individual may be involved in criminal activity, he may initiate an investigatory detention." *United States* v. *Pettit*, 785 F.3d 1374, 1379-80 (10th Cir. 2015) (internal quotation marks and citation omitted). When assessing the actions of a police officer under the Fourth Amendment,

what matters are "objective facts, not the officer's state of mind." *United States* v. *Neff*, 300 F.3d 1217, 1222 (10th Cir. 2002).

2. Analysis

According to the district court, Officer Harvey had reasonable suspicion to stop Mr. Young and initiate an investigatory detention.[9] The district court emphasized five facts to support its conclusion:

- "[Officer] Harvey was out on the West Mesa . . . a place known for criminal activity";
- Officer Harvey spotted "a red pickup truck with its driver's side door open, which, to [Officer] Harvey, was a sign that the pickup truck might have been stolen";
- Officer Harvey saw Mr. Young shirtless, "emerge[] from a hidden location—an abandoned water tank";
- Officer Harvey saw Mr. Young "carrying a dark object" which he thought "was a firearm in a holster,"; and
- Mr. Young was "covered in tattoos, which [Officer] Harvey thought were 'prison tattoos.'" App. vol. I at 188-89, 194.

[9] The district court determined the investigatory stop began once Officer Harvey took Mr. Young's pocketknife and told him to "hang tight." App. vol. I at 185. Mr. Young does not argue otherwise in his appellate briefing. We note that at oral argument Mr. Young's counsel suggested a slightly different understanding of when the seizure occurred, contending the detention started when Officer Harvey first encountered Mr. Young. Oral Arg. at 6:33-6:44. "[O]ur precedent holds that issues may not be raised for the first time at oral argument." *United States* v. *Abdenbi*, 361 F.3d 1282, 1289 (10th Cir. 2004). In any event, Mr. Young's newly-advanced timeline does not disturb the disposition in this case.

Mr. Young does not contend these findings are clearly erroneous.[10] Instead, he claims reversal is warranted because each fact, without more, is insufficient "indicia of criminal activity . . . to reasonably warrant [Officer] Harvey or his partner to detain [him]." Aplt. Br. at 19. This argument is misguided. A reasonable suspicion analysis requires a court to assess the totality of the circumstances, not to consider facts in isolation. *See McHugh*, 639 F.3d at 1256; *United States* v. *Soto*, 988 F.2d 1548, 1555 (10th Cir. 1993) ("Whether . . . an investigative detention is supported by an objectively reasonable suspicion of illegal activity does not depend upon any one factor, but on the totality of the circumstances."). Here, the district court conducted the proper inquiry by assessing all the circumstances. As the district court correctly observed, "no single factor is determinative in this case." App. vol. I at 194.

Mr. Young next argues it was legal error for the district court to rely on certain facts in its assessment of reasonable suspicion. In particular, Mr. Young challenges the district court's reliance on the West Mesa location, his tattoos, and that he was suspected of carrying a gun when spotted by Officer Harvey. We consider Mr. Young's arguments in our de novo review of whether, under the totality of the circumstances, Officer Harvey had

[10] In his opening brief, Mr. Young confirms he "does not challenge the District Court's rendition of the facts." Aplt. Br. at 10.

reasonable suspicion to initiate an investigatory detention. As we explain, we discern no error in the district court's reasoned decision.

i. West Mesa Location

The district court acknowledged the West Mesa may be used for recreational activities but also found "there is no doubt that the West Mesa bears the reputation as a place where a police officer patrolling the area should be on alert for criminal activity." App. vol. I at 190. In support of this finding, the district court emphasized Officer Harvey's testimony that the West Mesa was known for housing "stolen vehicles and stolen property" and he recovered "hundreds of stolen vehicles out there." Supp. App. at 50-51.

On appeal, Mr. Young does not challenge the district court's finding that the West Mesa is a high crime area.[11] Rather, he asserts this factor "might have justified a brief, consensual encounter . . . but not detention, a search of the truck, and the subsequent arrest." Aplt. Br. at 18. We are not persuaded.

A person's mere presence in a high crime area *alone* cannot support a reasonable suspicion determination. *See Brown* v. *Texas*, 443 U.S. 47, 52 (1979) ("The fact that appellant was in a neighborhood frequented by drug

[11] Because Mr. Young does not contest that the West Mesa is a high crime area, we accept the district court's factual finding based on the record developed.

users, standing alone, is not a basis for concluding that appellant himself was engaged in criminal conduct."). As the Supreme Court has recognized, "the fact that the stop occurred in a 'high crime area' [is] *among* the relevant contextual considerations in a *Terry* analysis." *Illinois* v. *Wardlow*, 528 U.S. 119, 124 (2000) (emphasis added). Mr. Young offers little to show the district court erred in relying on the high-crime nature of the West Mesa under the totality of the circumstances.

Mr. Young maintains, "the nature of the location . . . should be given little or no weight in the analysis given all the other factors that would lead a reasonable police officer to conclude that there was no criminality." Aplt. Br. at 19. We disagree. As we will explain, the facts taken together support Officer Harvey's conclusion that, when he first encountered Mr. Young on the West Mesa, he reasonably believed "criminal activity 'may be afoot.'" *See Oliver*, 209 F.3d at 1186 (quoting *Sokolow*, 490 U.S. at 7).

ii. "Prison" Tattoos

The district court factored into its reasonable suspicion determination Officer Harvey's observation that Mr. Young was "covered in what appeared to be prison tattoos." Supp. App. at 68; App. vol. I at 195 n.10; *see also* Lapel Video 2 at 9:07-9:13 (showing Officer Harvey telling his supervisor Mr. Young is probably a felon because "he's covered in tats like he is"). Officer Harvey assumed Mr. Young had "prison tattoos" because "they weren't

traditional tattoos, as far as art was concerned, with the regular mainstream tattoo industry" and "[t]hey were blue in color, what you would see in prison." Supp. App. at 69; App. vol. I at 195 n.10. According to the district court, the government had "provided some cause for [it] to defer to [Officer] Harvey on this matter" based on Officer Harvey's "general, anecdotal experience that his colleagues' tattoos tend to feature multiple colors" and "his presumption that multiple colored tattoo ink [is] not plentiful in prison." App. vol. I at 195 n.10. But the district court emphasized Mr. Young's tattoos only "factor[ed] slightly into [its] reasonable suspicion analysis." *Id.*

Mr. Young contends the district court erred by concluding his tattoos supported reasonable suspicion that he was engaged in criminal activity. Accepting tattoos as evidence that a person has spent time in prison, Mr. Young explains, "would mean that any person's taste in decorating his or her own body [would be] subject to law enforcement speculation." Aplt. Br. at 18. Mr. Young's point is well taken. But there is no reversible error here.

The district court appropriately acknowledged Officer Harvey's ability to recognize prison tattoos based on his experience. Given all the facts, the district court concluded Mr. Young's tattoos only "factor[ed] slightly" into the reasonable suspicion calculus. App. vol. I at 195 n.10. The district court thus correctly limited the weight given to Mr. Young's tattoos

in the overall assessment of reasonable suspicion.[12] Under these circumstances, Mr. Young has not shown error.

iii. Carrying Object Suspected to be a Gun

According to the district court, that Officer Harvey observed "[Mr.] Young carrying what looked like a firearm weigh[ed] towards reasonable suspicion." App. vol. I at 191. The district court acknowledged "that merely possessing a firearm may not, by itself, be enough to support reasonable suspicion." *Id.* But here, the court reasoned Mr. Young "was carrying a firearm under circumstances that raise[d] a reasonable possibility that his possession of that firearm [was] not lawful." *Id.* at 194. The district court emphasized Mr. Young was "in a place where criminal activity is known to

[12] There is nothing inherently suspicious about a tattoo. Rather, when courts endorse reliance on the suspect's tattoos to support reasonable suspicion, the record will typically show a link between the tattoos and gang affiliation. *See United States* v. *Aragones*, 483 F. App'x 415, 417 (10th Cir. 2012) (including a defendant's "gang tattoo" as a fact in the reasonable suspicion analysis); *United States* v. *Jeter*, 175 F. App'x 261, 265 (10th Cir. 2006) ("Defendants' tattoos, which suggested possible gang affiliation and a tendency towards violence, were also a part of the totality of the circumstances."); *see also United States* v. *Glass*, 833 F. App'x 149, 150 (9th Cir. 2021) ("Glass had a tattoo and his companion had clothing indicating affiliation with a particular street gang."), *United States* v. *Howard*, 815 F. App'x 69, 77 (6th Cir. 2020) ("Unusual tattoos that in an officer's experience are consistent with gang membership can support a finding of reasonable suspicion."); *United States* v. *Vasquez-Ortiz*, 344 F. App'x 551, 554 (11th Cir. 2009) ("Vasquez-Ortiz was dressed in attire that indicated gang membership and appeared to have a tattoo that indicated gang membership."). Here, Officer Harvey assumed Mr. Young had "prison tattoos," and the record says nothing about gang affiliation.

occur" and "once he saw the police officers, he dropped the firearm in the pickup truck bed and walked away from it." *Id.*

On appeal, Mr. Young first argues "carrying a gun in New Mexico is not against the law." Aplt. Br. at 15; Rep. Br. at 1. We agree, but that is beside the point here, as Mr. Young appears to acknowledge. He admits "a person's possession of a firearm might, under the specific facts of a particular case, provide an officer reasonable suspicion." Aplt. Br. at 16. Mr. Young maintains the facts in this case "demonstrate that [his] simple possession of a gun, without anything more, could not reasonably implicate him in any kind of illegal activity." *Id.* at 17. The government responds Mr. Young did not only possess a firearm but "he placed [it] in the bed of the truck, as if to conceal it" and he "walked away from the truck, as if to distance himself from it." Aplee. Br. at 16. According to the government, "possession of a firearm can contribute to the existence of reasonable suspicion when combined with other facts." *Id.* at 17. We agree with the government.

Again, we must look at the totality of the circumstances. *See Arvizu*, 534 U.S. at 273 ("When discussing how reviewing courts should make reasonable-suspicion determinations, we have said repeatedly that they must look at the 'totality of the circumstances' of each case." (citation omitted)). Here, Officer Harvey suspected Mr. Young was carrying a gun

when he first observed him exit the water tank and walk towards the truck holding an object resembling a gun in a black holster. Officer Harvey then watched Mr. Young put the suspected firearm into the truck bed and walk away from the truck. And several minutes later, when Officer Harvey asked Mr. Young if he had any guns, Mr. Young said, "No sir." App. vol. I at 148. Based on these circumstances, we are persuaded, as the district court concluded, Officer Harvey reasonably suspected Mr. Young illegally possessed the firearm.[13]

iv. Truck Door Ajar & Emerging Shirtless from Hidden Place

The district court determined two additional factors supported reasonable suspicion for the investigatory stop: the open truck door and Mr. Young having emerged shirtless from a water tank on the West Mesa. Mr. Young does not challenge these factual findings or contend the district court erred in considering them. But we review de novo whether these facts support the conclusion that Officer Harvey "had reasonable, articulable

[13] The district court did not mention Mr. Young's lie in its reasonable suspicion analysis, but it did include it in its factual findings, which Mr. Young has not challenged on appeal. As the government persuasively explains, "[b]ecause having a gun is otherwise legal, [Mr.] Young's resort to deception suggests that his possession was illegal or that the gun was being used for criminal activity." Aplee. Br. at 15. We agree, and on de novo review, conclude Mr. Young's dishonest answer further supports the district court's ruling.

suspicion of criminal activity at the time of the seizure." *Simpson*, 609 F.3d at 1146.

As the district court correctly recognized, "there is nothing illegal about parking a pickup truck on a mesa and leaving the driver's side door open." App. vol. I at 190. But the court explained "that observed actions are lawful is no bar to a police officer's reasonable suspicion determination." *Id.* at 191. We agree. When considering the totality of the circumstances, courts "need not rule out the possibility of innocent conduct" to conclude there is reasonable suspicion. *Arvizu*, 534 U.S. at 277. Here, the context makes an inherently unsuspicious fact—a truck with an open door—relevant to the overall assessment. The district court appropriately concluded, because Officer Harvey saw the truck "parked out on the West Mesa—a place known as a stolen vehicle repository—next to an abandoned water tank, with no obvious purpose for being there," seeing a truck with the door ajar "weigh[ed] towards reasonable suspicion." App. vol. I at 190-91.

Likewise, the district court noted "[w]alking around shirtless when it is chilly out is not directly associated with any criminal activity." *Id.* at 195 n.10. But, the court continued, "it is strange enough behavior to raise trained and experienced law enforcement's eyebrows out on the West Mesa." *Id.* Thus, in context, when Mr. Young "emerged from a hidden location—an abandoned water tank—with no clear purpose for being in there," the

district court appropriately found these facts supported Officer Harvey's reasonable suspicion. *Id.* at 194. Mr. Young offers no contrary availing argument.

We discern no error in the district court's holding Officer Harvey had reasonable suspicion to stop Mr. Young and investigate.

B. The district court did not err in concluding the scope of Mr. Young's detention was reasonable.

1. Applicable Law

The Fourth Amendment places "limitations on both the length of the detention and the manner in which it is carried out." *United States* v. *Morales*, 961 F.3d 1086, 1091 (10th Cir. 2020). "[A]n investigative detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop." *Florida* v. *Royer*, 460 U.S. 491, 500 (1983). "The scope of the detention must be carefully tailored to its underlying justification." *Id.* We must "take into account whether the police diligently pursue[d] their investigation." *United States* v. *Sharpe*, 470 U.S. 675, 685 (1985); *accord United States* v. *Mayville*, 955 F.3d 825, 831 (10th Cir. 2020) (explaining that in assessing whether the length of a detention is reasonable, "we consider whether the officers diligently pursued the mission of the stop"). "There is no bright-line rule to determine whether the scope of police conduct was reasonably related to the goals of the stop; rather our evaluation is guided by common sense and

ordinary human experience." *United States* v. *Albert*, 579 F.3d 1188, 1193 (10th Cir. 2009) (quoting *United States* v. *Melendez-Garcia*, 28 F.3d 1046, 1052 (10th Cir. 1994)).

2. Analysis

According to the district court, both the manner and length of Mr. Young's detention satisfied the Fourth Amendment.[14] The district court framed the issue as "whether, after [Officer] Harvey spoke with [Mr.] Young and checked out the water tank, there continued to be reasonable suspicion to justify detaining Young." App. vol. I at 197. "There [was] no question that [Officer] Harvey could maintain the stop long enough to get [Mr.] Young's identity and check for outstanding warrants," the district court reasoned. *Id.* The more difficult question, the district court identified, was "whether [Officer] Harvey violated [Mr.] Young's Fourth Amendment rights by continuing to detain him long enough to check whether he was a felon." *Id.* The district court ultimately concluded the circumstances justified the check into Mr. Young's felony status.

[14] Mr. Young does not contend on appeal that he was detained in an unreasonable manner. Nor would such an argument be successful on the record before us. As the district court correctly observed, "neither [Officers] Harvey nor Smith physically restrained [Mr.] Young during the detention, nor did they draw their weapons." App. vol. I at 196-97.

On appeal, Mr. Young contends the district court erroneously determined the length of the investigatory detention was reasonable. Mr. Young insists law enforcement had no basis to continue detaining him after Officer Harvey "determined [Mr. Young] was not wanted and that the truck had not been stolen."[15] Aplt. Br. at 20. Pointing to several Tenth Circuit cases,[16] Mr. Young asserts "while an initial detention might be warranted, law enforcement cannot prolong the detention in the hope of finding . . . some other incriminating factor." *Id.* at 23. Here, Mr. Young argues, "that is exactly what occurred." *Id.* While we agree with Mr. Young's understanding of the law, his arguments are unavailing.

It is well settled that "[a]n unreasonably prolonged detention is unconstitutional." *United States* v. *Anderson*, 62 F.4th 1260, 1267 (10th Cir. 2023) (citing *United States* v. *Samilton*, 56 F.4th 820, 827 (10th Cir. 2022)). When analyzing whether the length of an investigatory detention satisfies the Constitution, we consider whether the stop is tailored to its underlying

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[15] The government argues there was reasonable suspicion from the outset to believe Mr. Young was a felon in illegal possession of a firearm. But even assuming the government has it wrong, as Mr. Young contends, we conclude the district court did not err in deciding the length of detention was reasonable.

[16] *United States* v. *Lopez*, 443 F.3d 1280, 1285 (10th Cir. 2006); *United States* v. *Lambert*, 46 F.3d 1064, 1068 n.3 (10th Cir. 1995); *United States* v. *Guzman*, 864 F.2d 1512, 1519 (10th Cir. 1988), overruled on other grounds by *United States* v. *Botero-Ospina*, 71 F.3d 783 (10th Cir. 1995).

justification, and whether additional reasonable suspicion of criminal activity came to light during the detention that would authorize further investigation. *See United States* v. *Cortez*, 965 F.3d 827, 833 (10th Cir. 2020) ("An officer's authority to seize the occupants of a vehicle ends when tasks tied to the traffic infraction are—or reasonably should have been—completed. . . . except where . . . the officer has independent reasonable suspicion of criminal wrongdoing on behalf of the seized individual that justifies further investigation." (internal quotation marks and citations omitted)). We must also assess "whether the officers diligently pursued the mission of the stop." *Mayville*, 955 F.3d at 831.

We begin with Mr. Young's contention that his encounter with law enforcement should have ended as soon as Officer Harvey confirmed the truck was not stolen. This argument is unavailing for several reasons. First, Officer Harvey did not unreasonably prolong the length of the investigatory detention by calling Dispatch to check for outstanding warrants after learning the truck was not stolen. As the district court correctly explained, "police officers may check to see whether a detainee is a wanted person, irrespective of circumstances of that detention." App. vol. I at 197. We have previously held an officer "was justified in performing a warrants check even in the absence of objective safety concerns because he was entitled to

determine whether any of the detainees were evading justice." *United States* v. *Burleson*, 657 F.3d 1040, 1051 (10th Cir. 2011).

The circumstances of the initial encounter supported Officer Harvey's further inquiry into Mr. Young's criminal history. Officer Harvey observed "a man drop a firearm into a cluttered pickup truck bed and walk away from the truck moments after spotting the police officers." App. vol. I at 198. These factors, the district court reasoned, could prompt Officer Harvey to "reasonably wonder whether [Mr.] Young had a particular reason to want to not be caught by the police with a firearm." *Id.* We agree. Officer Harvey did not render the length of detention unreasonable by checking for outstanding warrants.

Importantly, when Officer Harvey learned the truck was not stolen, he already had reason to believe Mr. Young was in illegal possession of a firearm. Recall, before Officer Harvey learned about the status of the truck, Mr. Young claimed he had no guns in his possession. But when Officer Harvey inspected the vehicle moments later, he spotted the butt of a gun in the truck bed. Thus, when Mr. Young contends he was free to go, Officer Harvey already knew Mr. Young had lied to law enforcement about having a gun. Under the circumstances, the lie gave Officer Harvey an additional basis for looking into Mr. Young's criminal history. Once Officer Harvey learned Mr. Young was on discharge status, he had further reason to

suspect Mr. Young was in illegal possession of a firearm. Contrary to Mr. Young's assertion, there was a basis for continuing to detain him after the truck was confirmed not stolen—to check for warrants and to investigate the legality of Mr. Young's gun possession—and the more Officer Harvey learned during the detention, the more reason he had to be suspicious that criminal activity was afoot.

The cases Mr. Young relies on do not disturb our conclusion. Mr. Young suggests these cases support "the proposition that, while an initial detention might be warranted, law enforcement cannot prolong the detention in the hope of finding something else . . . that might rise to the level of providing probable cause for an arrest." Aplt. Br. at 23. As a general matter, an investigative stop "can become unlawful if it is prolonged beyond the time reasonably required to complete th[e] mission" that prompted the stop. *Rodriguez* v. *United States*, 575 U.S. 348, 354 (2015) (citation omitted) In any event, here, Officer Harvey did not prolong the detention.

In *Lopez*, the court found the officers did not have reasonable suspicion to stop the defendant; thus, confiscation of the defendant's driver's license was an unconstitutional seizure. *Lopez*, 443 F.3d at 1286. Likewise, in *Lambert*, the officers lacked "the reasonable suspicion necessary to justifiably seize Mr. Lambert." *Lambert*, 46 F.3d at 1071. And in *Guzman*, the only criminal activity suspected was a seatbelt violation,

rendering the continued detention and questioning of defendants unconstitutional. *Guzman*, 864 F.2d at 1519-20. Here, by contrast, Officer Harvey had reasonable suspicion to initiate the stop. Officer Harvey suspected more than a seatbelt violation; he thought the truck was stolen, and by the time he learned it was not, he had developed more reason to think Mr. Young was in illegal possession of a firearm.

Finally, the total time of detention was about "thirty or so minutes." App. vol. I at 197. The key inquiry for Fourth Amendment purposes is not simply how much time elapses but what law enforcement is doing during the suspect's detention. Here, after telling Mr. Young to "hold tight," Officer Harvey immediately searched the areas where he suspected criminal activity—the truck and the water tank. While inspecting the truck, he called in the license plate to check if the truck was stolen and noticed the butt of the gun in the truck bed. Next, he collected Mr. Young's personal information and communicated with Dispatch to inquire about outstanding warrants. When Officer Harvey learned Mr. Young was under discharge status, he immediately called New Mexico Probation and Parole to determine if Mr. Young's discharge was for a felony offense. While all this took some time, there was no interruption or undue delay in the investigative process. On this record, we have no reason to conclude Officer

Harvey failed to diligently pursue the mission of the stop. *See Mayville*, 955 F.3d at 832.

Accordingly, the district court did not err in holding the scope of Mr. Young's detention was constitutional.

III. CONCLUSION

We affirm the district court's denial of Mr. Young's motion to suppress.