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United States Court of Appeals
Tenth Circuit

PUBLISH

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

September 14, 2026

Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

No. 25-1147

GARRYN JACKSON,

Defendant - Appellant.

Appeal from the United States District Court
for the District of Colorado
(D.C. No. 1:23-CR-00398-REB-1)

Justin A. Lollman, of GableGotwals, Tulsa, Oklahoma, for Defendant-Appellant.

Marissa R. Miller, Assistant United States Attorney (Peter McNeilly, United States Attorney, with her on the brief), Office of the United States Attorney, Denver, Colorado for Plaintiff-Appellee.

Before **BACHARACH**, **EBEL**, and **KELLY**, Circuit Judges.

BACHARACH, Circuit Judge.

This appeal involves a pat-down search following the detention of Mr. Garryn Jackson. The pat-down led the police to find a gun, which resulted in Mr. Jackson's conviction for unlawfully possessing a firearm

and ammunition. *See* 18 U.S.C. § 922(g)(1). Mr. Jackson appeals, and the overarching issue is whether the police had a reasonable basis to suspect criminal activity. The district court answered *yes*, relying on Mr. Jackson’s furtive movements in an SUV parked in a high-crime area at roughly 1:50 a.m., with three to four individuals nearby. We agree with the district court’s answer and the reliance on these circumstances.

I. The police stop Mr. Jackson based on suspicion of drug dealing.

While patrolling in a police car, two officers—Emmett Hurd and Jonathan Moran—saw an SUV in a parking lot. The lot was next to a bus stop and a check-cashing store; but the buses weren’t running, and the check-cashing store had been closed for hours. So the officers decided to investigate.

They entered the lot and parked, blocking the SUV. Inside the SUV were Mr. Jackson and two women. The officers got out of the police car and asked Mr. Jackson to get out. He did, and the officers started to conduct a pat-down. A struggle took place and led the officers to find a gun in Mr. Jackson’s pants.

II. Mr. Jackson challenges the pat-down.

In district court, Mr. Jackson sought suppression of evidence about the gun, arguing that the officers had detained him without reasonable suspicion of criminal activity. The district court conducted an evidentiary hearing, and the officers testified. Based on the testimony, the court denied

Mr. Jackson’s motion to suppress, concluding that the police had reasonable suspicion to make the stop.

III. We apply different standards for the district court’s factual findings and legal conclusions.

For the court’s legal conclusions, we conduct de novo review. *United States v. Rosenschein*, 136 F.4th 1247, 1254 (10th Cir. 2025). For findings of fact, however, we apply the clear-error standard and view the evidence in the light most favorable to the government. *United States v. Pettit*, 785 F.3d 1374, 1378–79 (10th Cir. 2015).

IV. The district court’s factual findings aren’t clearly erroneous.

The officers conducted the pat-down after stopping the SUV with Mr. Jackson inside. He argues that the pat-down was tainted because the stop was unlawful. The stop would have been lawful only if the police had reasonable suspicion of criminal activity. *United States v. Samilton*, 56 F.4th 820, 827–28 (10th Cir. 2022).

When considering whether the police had reasonable suspicion of a crime, the district court found that

- three or four people had stood outside the SUV and
- Mr. Jackson had made furtive movements when the police car entered the lot.

Mr. Jackson challenges both findings as clearly erroneous. “A finding of fact is clearly erroneous ‘if it is without factual support in the record or if, after reviewing all of the evidence, we are left with the definite and firm

conviction that a mistake has been made.’” *Hafen v. Howell*, 121 F.4th 1191, 1207 (10th Cir. 2024) (quoting *Hamric v. Wilderness Expeditions, Inc.*, 6 F.4th 1108, 1119 (10th Cir. 2021)).

A. The district court didn’t clearly err in finding that people had stood around the SUV.

The district court found that three or four people had stood around the SUV. For this finding, the district court relied on testimony by both Officer Moran and Officer Hurd; but Mr. Jackson challenges only the reliance on Officer Moran’s testimony, arguing that it conflicted with Officer Hurd’s written accounts. This challenge is misguided.

Officer Moran’s testimony matched what he had said in his written account. Granted, Officer Hurd hadn’t mentioned the people in his own written statement or in his written explanation of probable cause.¹ But the district court had discretion to assess Officer Moran’s credibility against the backdrop of the written statements. *See United States v. McCane*, 573 F.3d 1037, 1040 n.1 (10th Cir. 2009) (explaining that the district court had discretion to credit a police officer’s testimony when ruling on a motion to

¹ Officer Moran testified that

- the written explanation of probable cause was designed to identify “the important details” and
- he had tried to provide the specific details in his own written statement.

suppress). The district court acted within that discretion when crediting Officer Moran's testimony even though Officer Hurd's written statements hadn't mentioned the people outside the SUV.

We thus conclude that the court didn't clearly err in finding that three or four people had stood around the SUV.

B. The district court didn't clearly err in finding furtive movements.

The district court also found that the police had observed Mr. Jackson making furtive movements inside the SUV. But the parties disagree on the timing of those observations. According to Mr. Jackson, the court relied on the officers' observations after the SUV had been blocked. If Mr. Jackson is right, his furtive movements couldn't have justified the detention. *See United States v. Cash*, 733 F.3d 1264, 1274 n.7 (10th Cir. 2013) (explaining that certain evidence "cannot factor into the reasonable suspicion analysis because it was not seen until after [the officer] extended the detention").

But the government says that the court relied on observations of furtive movements when the police car had entered the parking lot. We agree with the government's interpretation because the district court stated

that the officers had seen movement when “they approached in the police car.” R. vol. 1, at 84.²

The resulting issue is whether this finding was clearly erroneous. *See* pp. 3–4, above. For this finding, the court relied on testimony by both officers. *Id.* at 92. Mr. Jackson acknowledges the officer’s testimony about furtive movements before the stop, but argues that the officers didn’t see furtive movements until after they had blocked the SUV. This testimony was implausible based on

- inconsistencies in the officers’ narratives and
- body-camera footage suggesting that the officers couldn’t have seen Mr. Jackson.

When considering the officers’ credibility, we give “due deference” to the district court’s assessment. *United States v. Le*, 173 F.3d 1258, 1264 (10th Cir. 1999).

² Despite this statement, Mr. Jackson argues that the district court didn’t find that the officers had seen movements prior to the stop because

- the district court relied only on Officer Hurd’s testimony about the timing of the movements and
- Officer Hurd had testified that he didn’t see the movements until after the stop.

But the district court found that “*both officers* [had] testified credibly that they observed Mr. Jackson making furtive movements when they first arrived at the scene.” R. vol. 1, at 92 (emphasis added). And Officer Hurd testified that he had seen movements before making the stop. *See* p. 7, below.

In a written statement, Officer Hurd said why he thought probable cause existed to arrest Mr. Jackson, but this explanation didn't include furtive movements. R. vol. 1, at 26–28; *see also id.* vol. 3, at 36, 160, 176 (testimony by the officers about the purpose of the statement). Hours later, Officer Hurd and Officer Moran provided additional written statements. *Id.* at 67, 156, 178–79. In those statements, the officers described Mr. Jackson's movements. R. vol. 1, at 29, 32. The district court could reasonably assess the officers' credibility based on the differences between their testimony and the written explanation of probable cause.

Mr. Jackson disagrees, arguing that the district court couldn't rely on the officers' testimony because Officer Hurd had spotted the furtive movements only after the police car blocked the SUV. But this argument rests on a misunderstanding of Officer Hurd's testimony. In that testimony, he described seeing the movements "immediately" when he and Officer Moran had pulled into the parking lot. R. vol. 3, at 188; *see also id.* at 190 (Officer Hurd explaining that he had seen the movements "as soon as we pull[ed] in [the parking lot]"). Officer Hurd didn't say that he had seen the movements only after Officer Moran had parked in front of the SUV.

Similarly, Officer Moran testified that he had seen the movements before parking the police car. *Id.* at 16. Mr. Jackson points out that Officer Moran's written statement suggested that he hadn't seen the movements until he parked the police car. The district court could have used this

inconsistency to question Officer Moran’s testimony. *United States v. Lemon*, 497 F.2d 854, 857 (10th Cir. 1974). But we don’t assess credibility in the first instance. *United States v. Fox*, 902 F.2d 1508, 1515 (10th Cir. 1990).

The Fourth Circuit Court of Appeals addressed this distinction in *United States v. Abdallah*, 911 F.3d 201, 208–209, 220 (4th Cir. 2018). There the issue was whether the district court had erred in crediting an officer’s testimony at a suppression hearing despite inconsistencies with his earlier testimony before a grand jury. In the grand jury proceedings, the officer had testified that the defendant

- started talking slowly after getting the *Miranda* warnings and
- waived his *Miranda* rights orally and in writing.

Id. at 208. At a later suppression hearing, the officer testified differently, stating that

- the defendant had interrupted the *Miranda* warning to say that he wouldn’t talk and
- the officer hadn’t obtained a written waiver of *Miranda* because the defendant started talking “a mile a minute.”

Id. at 207–08. Relying on the officer’s testimony at the suppression hearing, the district court denied the motion to suppress. *United States v. Abdallah*, 196 F. Supp. 3d 599, 600, 604 (E.D. Va. 2016), *rev’d & remanded*, 911 F.3d 201 (4th Cir. 2018).

The defendant moved for reconsideration, arguing that the officer's testimony at the suppression hearing had contradicted his testimony before the grand jury. 911 F.3d at 208. The district court acknowledged an inconsistency, but declined to reconsider its denial of the motion to suppress. *United States v. Ritchie*, No. 15-cr-18 (E.D. Va. Jan. 6, 2017).

On appeal, the defendant challenged the court's reliance on the officer's testimony at the suppression hearing. The Fourth Circuit rejected this challenge, explaining that the district court could credit the officer's hearing testimony despite the inconsistencies with the grand jury testimony. *Abdallah*, 911 F.3d at 220.

The same is true here. Regardless of whether Officer Moran's testimony at the suppression hearing had conflicted with his written statement, the district court could resolve the inconsistency in assessing the officer's credibility. *United States v. Alexander*, 447 F.3d 1290, 1293–94 (10th Cir. 2006). So the district court didn't err in crediting Officer Moran's testimony on when he had seen the furtive movements.

C. The body-camera footage doesn't show clear error.

According to Mr. Jackson, the footage from body-camera shows that the officers couldn't have seen the movements from the police car. From the footage, Mr. Jackson makes two arguments:

1. It would be difficult to see Mr. Jackson in the low lighting.

2. The SUV's front seats and headrests prevented anyone from seeing movement in the backseat.

For the first argument, Mr. Jackson relies primarily on a still image from Officer Hurd's footage, captured while Officer Hurd was walking toward the SUV. In this image, it is difficult to see Mr. Jackson.

But Officer Hurd's footage doesn't necessarily show what the officers would have seen.³ After all, the human eye can often observe more than what is captured on camera. *See Martinez v. Hinojosa*, 177 F.4th 654, 661 (5th Cir. 2026) (stating that "a video may not display exactly what a person would have seen from the same location as the camera"); *see also Gabaldon v. New Mexico State Police*, 139 F.4th 1207, 1211 (10th Cir. 2025) (noting that a police officer could have seen events even though "dash-cam footage" didn't "show every detail in [the officer's] report"). And the footage itself is grainy. So the district court could credit the officers' testimony despite the difficulty of seeing movement in the body-camera footage.⁴

³ Mr. Jackson insists that the officers couldn't have seen the furtive movements when walking toward the SUV. But Mr. Jackson doesn't address whether the police could have seen the furtive movements when pulling into the lot.

⁴ Mr. Jackson also relies on visual images showing Officer Moran standing next to the SUV. Based on these images, Mr. Jackson argues that the back seat would have been dark. But these images came from footage taken after the stop and at an angle different from the one that existed when the officers saw the movement. So these images don't show clear

Mr. Jackson also argues that the police couldn't have seen furtive movements because the front seats and headrests would have prevented anyone from seeing movement in the back seat. In support, Mr. Jackson relies on body-camera footage showing

- what Officer Hurd would have seen when standing in front of the SUV and
- what Officer Moran would have seen when standing next to the SUV.

This argument is new because Mr. Jackson didn't rely in district court on the presence of the front seats and headrests. And we typically require a showing of good cause before considering an argument omitted in a motion to suppress. Fed. R. Crim. P. 12(b)(3)(C), 12(c)(3); *see United States v. Fernandez*, 24 F.4th 1321, 1328 (10th Cir. 2022) (stating that absent "good cause for the delay," we consider an argument waived when it was omitted in a motion to suppress).

For the sake of argument, we can assume the existence of good cause. Even with this assumption, however, Mr. Jackson's new argument wouldn't suggest clear error in the district court's finding of furtive movements. Mr. Jackson suggests that the officers couldn't have seen furtive movements when parking the police car nose to nose with the SUV. But the officers testified that they had seen furtive movements when entering the

error in the district court's findings on when the officers saw the movement.

lot. *See* p. 7, above. The district court could reasonably infer that the officers would have viewed the SUV at an angle when entering the lot.⁵ Given the angle, the court could reasonably find that the SUV’s front seats and headrests wouldn’t have blocked the officers’ sight line into the back seat.⁶

Moreover, the front seats didn’t cover the middle of the back seat; and Officer Hurd testified that Mr. Jackson had moved “throughout the vehicle.” R. vol. 3, at 188–89, 196–97. As a result, the district court could reasonably credit the officers’ testimony even if the front seats and headrests might have obscured the officers’ view of part of the back seat.

In sum, Mr. Jackson hasn’t shown that the district court clearly erred in finding furtive movements before the stop.

⁵ The officers testified that they had approached the lot while going south. R. vol. 3, at 40, 187. Officer Moran added that he

- had entered the lot facing west and
- had first seen the movements while facing west.

Id. at 16, 40, 72. Mr. Jackson was seated on the right side of the SUV, which would have been the side closest to Officer Moran when he entered the lot. *Id.* at 15, 43; Appellant’s Opening Br. at 33.

⁶ Mr. Jackson argues that the officers didn’t have a clear view into the SUV when entering the parking lot. But the body-camera footage suggests that the officers could have seen inside the SUV.

V. Reasonable suspicion existed.

The Fourth Amendment guarantees a right to be free from “unreasonable searches and seizures.” U.S. Const. amend. IV. But “a police officer may in appropriate circumstances and in an appropriate manner approach a person for purposes of investigating possibly criminal behavior even though there is no probable cause to make an arrest.” *Terry v. Ohio*, 392 U.S. 1, 22 (1968). Such a stop must be “justified at its inception.” *United States v. Madrid*, 713 F.3d 1251, 1256 (10th Cir. 2013) (quoting *Terry*, 392 U.S. at 20).

An investigatory stop is justified when “the specific and articulable facts and rational inferences drawn from those facts give rise to a reasonable suspicion a person has or is committing a crime.” *United States v. McHugh*, 639 F.3d 1250, 1255 (10th Cir. 2011) (quoting *United States v. DeJear*, 552 F.3d 1196, 1200 (10th Cir. 2009)). For reasonable suspicion, “[o]fficers only need ‘some minimal level of objective justification for making the stop.’” *United States v. Phillips*, 71 F.4th 817, 822 (10th Cir. 2023) (quoting *United States v. Sokolow*, 490 U.S. 1, 7 (1989)).

The reasonableness of an officer’s suspicion is based on the totality of the circumstances. *United States v. Daniels*, 101 F.4th 770, 776 (10th Cir. 2024). We “evaluate each factor alleged to support an inference of reasonable suspicion separately and in the aggregate.” *United States v. Gurule*, 935 F.3d 878, 885 (10th Cir. 2019).

The district court focused on five circumstances:

1. the location's reputation as a high-crime area,
2. the time of the incident,
3. the parking of the SUV in reverse,
4. the presence of people standing around the SUV and their dispersal as the police approached, and
5. Mr. Jackson's furtive movements.

R. vol. 1, at 89–90. These factors combined to create reasonable suspicion.

First, the court could consider the location's high crime rate when combined with other factors. *United States v. Conner*, 699 F.3d 1225, 1231 (10th Cir. 2012); *United States v. DeJear*, 552 F.3d 1196, 1201 (10th Cir. 2009); *see also United States v. McHugh*, 639 F.3d 1250, 1257 (10th Cir. 2011) (considering the location's reputation and past calls regarding possible criminal activity). The officers testified that

- the location was a hotspot for crime, including drug dealing,
- employees of a nearby check-cashing store had complained about trespassing and drug use, and
- nearby residents had complained about violence and drug activity.

R. vol. 3 at 9–14, 184–85.⁷

⁷ Mr. Jackson concedes the relevance of the location of the stop. Appellant's Reply Brief at 1–2. But he criticizes the concept of a “high-crime area,” arguing that we should assign “minimal relevance” to the location. But we've considered the volume of crime in the face of similar criticism. *United States v. Guardado*, 699 F.3d 1220, 1223 (10th Cir. 2012).

Second, the court could reasonably consider the time of the incident as part of the totality of the circumstances. *See Conner*, 699 F.3d at 1231 (“Another factor in determining the existence of reasonable suspicion is the time of night.”); *McHugh*, 639 F.3d at 1257 (stating that the fact that the incident “occurred late at night or early in the morning” can be relevant to the analysis).⁸ The incident took place at approximately 1:50 a.m. R. vol. 1, at 83–84, 90. The timing could suggest drug dealing.

Third, the SUV was reverse-parked. Officer Hurd testified that drug dealers often reverse-park at this location so that they can leave quickly. R. vol. 3, at 187; *see also id.* at 189 (testimony by Officer Hurd that “individuals that are selling street-level narcotics will back into that spot and will conduct open-air drug sales out of motor vehicles such as that”). Granted, people often reverse-park for innocent reasons. But the SUV was parked at 1:50 a.m. in a location known for drug-dealing. And neither the nearby business nor the bus service were open. Given the time and frequency of crime in the area, the district court could reasonably question why an innocent person would take the time to reverse-park.

Fourth, the officers testified that they had seen three or four people standing around the SUV, adding that their presence suggested drug

⁸ Mr. Jackson concedes the relevance of this factor. Appellant’s Reply Brief at 1–2.

dealing. *Id.* at 14–15, 188–90. And the people quickly dispersed once the police car entered the lot, which the officers viewed as a sign of possible drug-dealing. *Id.* at 15, 38–39, 190.

The people could have dispersed because they didn’t want to talk to the police, but “the existence of a plausible innocent explanation does not preclude a finding of reasonable suspicion.” *United States v. Pettit*, 785 F.3d 1374, 1381 (10th Cir. 2015). Even if the presence and dispersal of the people weren’t enough in themselves to suggest criminal activity, they could have contributed to the officers’ reasons to suspect criminal activity.

Finally, the officers testified that Mr. Jackson had made furtive movements, and those movements contribute to reasonable suspicion. *See United States v. Briggs*, 720 F.3d 1281, 1286 (10th Cir. 2013); *United States v. DeJear*, 552 F.3d 1196, 1200–1201 (10th Cir. 2009).

Given the totality of the circumstances, the officers had reasonable suspicion of criminal activity. So the police didn’t violate the Fourth Amendment when stopping the SUV. And Mr. Jackson rests his challenge on the stop itself rather than the subsequent pat-down.⁹ Because the stop was permissible, the district court didn’t err in denying the motion to suppress. So we affirm the conviction.

⁹ A pat-down requires reasonable “suspicion that the suspect may be armed and dangerous.” *United States v. Rice*, 483 F.3d 1079, 1084 (10th Cir. 2007).