APP 1a

[PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 19-11131

D.C. Docket No. 3:17-cr-00444-WKW-WC-1

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

GUILLERMO GONZALEZ-ZEA,

Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Alabama

(April 30, 2021)

Before NEWSOM and BRANCH, Circuit Judges, and RAY,* District Judge.

BRANCH, Circuit Judge:

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* Honorable William M. Ray, II, United States District Judge for the Northern District of Georgia, sitting by designation.

Immigration and Customs Enforcement ("ICE") agents in the process of staking out a residence in search of an ICE fugitive, whose social security number had been linked to a utility account at the address in question, stopped a car leaving the residence in the early morning hours of September 26, 2017. Guillermo Gonzalez-Zea was driving that car. ICE agents asked Gonzalez-Zea for his name and requested identification. Gonzalez-Zea produced an ID card issued in Mexico and admitted that he did not have any identification issued by the United States because he was here illegally. The officers explained that they were looking for an ICE fugitive, and Gonzalez-Zea stated that he lived alone, but he gave the officers permission to search his house. During the search of the residence, the officers discovered multiple firearms in plain view and arrested Gonzalez-Zea for possession of a firearm and live ammunition by an illegal alien in violation of 18 U.S.C. §§ 922(g)(5) and 924(a)(2). Gonzalez-Zea moved to suppress the evidence, and the district court denied his motion.

On appeal, Gonzalez-Zea argues that the district court should have granted his motion to suppress because: (1) the ICE officers did not have the requisite individualized reasonable suspicion to stop him; (2) the ICE officers unlawfully prolonged the stop; and (3) Gonzalez-Zea's consent to search his home was involuntary. After careful review and with the benefit of oral argument, we affirm.

I. Background

Between 5:00 and 6:00 a.m. on September 26, 2017, three ICE officers, Purdy, Skillern, and Hinkle, staked out a house in Heflin, Alabama (the "Heflin house"). The officers sought to apprehend Jose Rodolfo Alfaro-Aguilar, a Honduran national and an ICE fugitive with a warrant for his deportation.[2] ICE agents believed Alfaro-Aguilar might be at the Heflin house because a few months earlier a social security number associated with Alfaro-Aguilar had been used to connect a utility service at the Heflin house—although there was no evidence that the utility was connected in Alfaro-Aguilar's name. The ICE investigation also revealed that the same social security number was associated with another individual by the name of Jose Sanchez who had 26 aliases and who was associated with 15 possible addresses, with the Heflin address being the most recent location.[3]

During the stakeout, all three ICE officers wore ICE badges and bulletproof vests with ICE printed on the front and the back and carried holstered firearms.

[2] Alfaro-Aguilar did not appear at his scheduled June 2016 immigration hearing, but his counsel indicated that Alfaro-Aguilar had departed the United States. Following that hearing, the immigration judge issued an order of removal for Alfaro-Aguilar. Approximately a year later, the ICE officers received the lead in this case that the social security number used by Alfaro-Aguilar was used to connect a utility service at the Heflin house.

[3] Although Gonzalez-Zea argues that the social security number was associated with "26 other individuals," that contention is undermined by the record. The record confirms that the social security number was associated with two individuals—the fugitive Alfaro-Aguilar and Jose Sanchez. While Jose Sanchez had 26 documented aliases, he counts as only one individual.

Sometime before dawn, Officer Purdy saw a man leave the house, get into a car, and leave the residence. Unable to tell whether the driver was the fugitive Alfaro-Aguilar, Officer Skillern activated his lights and siren and pulled the car over to ascertain whether the driver was the fugitive, while another officer continued to surveil the residence.

The driver, Gonzalez-Zea, pulled over promptly. Officer Skillern asked Gonzalez-Zea for his name, which Skillern recognized "didn't match the person [they] were looking for." Officer Skillern asked Gonzalez-Zea for identification to confirm his identity, and Gonzalez-Zea gave him an identification card issued by Mexico. Officer Skillern asked Gonzalez-Zea if he had any other forms of identification, and Gonzalez-Zea said that he did not. When Officer Skillern asked "why he wasn't able to have an Alabama driver's license or any other United States issued ID," Gonzalez-Zea stated that he was in the country illegally. This colloquy occurred about a minute into the encounter.

At that point, Officer Skillern was "pretty positive" that Gonzalez-Zea was not the fugitive he was looking for, and he explained to Gonzalez-Zea that the officers were seeking a fugitive and asked whether anyone else lived in the house. Gonzalez-Zea stated that he lived there alone, but he granted the officers permission to go inside and "take a look" around. According to Officer Skillern, Gonzalez-Zea "didn't have any objection at all" when asked for his consent and

their conversation was "friendly" and "cordial." The record confirms that none of the officers drew their weapons during their encounter with Gonzalez-Zea, he was not patted down or searched, and he was not handcuffed. The officers did not read him his *Miranda* rights at this time, or tell him that he had a right to refuse to consent, or that he was free to go.

Gonzalez-Zea drove his own car back to the house, and the officers followed in their cars. Gonzalez-Zea unlocked the door to the house and entered the house with the officers. As the officers walked around, they asked Gonzalez-Zea questions about his living arrangements—whether anyone else lived there with him, how many rooms there were, and which room was his. Once the officers entered Gonzalez-Zea's bedroom, they saw two guns in plain view: a shotgun in the corner and a rifle in an open closet. Officer Hinkle then read Gonzalez-Zea his *Miranda* rights. After being read his rights, Gonzalez-Zea indicated he was willing to answer the officers' questions, and when asked if there were other weapons in the home, he showed officers where another firearm was located in a drawer.

Gonzalez-Zea was charged with one count of possession of a firearm and live ammunition by an illegal alien under 18 U.S.C. §§ 922(g)(5)[4] and 924(a)(2).[5] He moved to suppress the evidence, alleging that it was recovered after "an unlawful traffic stop and unreasonable detention" and that his consent to search was not voluntary. After an evidentiary hearing, the magistrate judge issued a Report and Recommendation ("R&R") recommending that the district court deny the motion to suppress. The district court adopted the R&R over Gonzalez-Zea's objections.

The district court found that the officers had reasonable suspicion to "believe the man they saw leaving the house [Gonzalez-Zea]. . . was the fugitive" they were seeking. Thus, "[t]hey were therefore permitted to stop and identify him." The district court also found that the officers did not unreasonably extend the stop because they did not "detour from their search for [the fugitive]," and all their questions related to whether Gonzalez-Zea was the fugitive or whether the fugitive lived in the house. Finally, the district court found that, based on the totality of the

[4] Section 922(g) provides in relevant part that: "It shall be unlawful[] for any person . . . who, being an alien . . . is illegally or unlawfully in the United States . . . to possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce." 18 U.S.C. § 922(g)(5)(A).

[5] Section 924(a)(2) provides that "[w]hoever knowingly violates [18 U.SC. § 922(g)] shall be fined as provided in this title, imprisoned not more than 10 years, or both."

circumstances, Gonzalez-Zea's consent to search the house was voluntary. Gonzalez-Zea appealed.

II. Standard of Review

"Because rulings on motions to suppress involve mixed questions of fact and law, we review the district court's factual findings for clear error and its application of the law to the facts *de novo*." *United States v. Jordan*, 635 F.3d 1181, 1185 (11th Cir. 2011) (quotation omitted). We construe the facts in the light most favorable to the party that prevailed below, here, the government. *United States v. Gordon*, 231 F.3d 750, 754 (11th Cir. 2000).

III. Discussion

A. Whether the officers had reasonable suspicion to stop Gonzalez-Zea

Gonzalez-Zea argues that the officers did not have the requisite individualized, reasonable suspicion necessary to conduct an investigatory stop. Specifically, he argues that he did not commit any traffic violation, and the officers' decision to stop any vehicle that left the residence under surveillance to determine if the driver was the fugitive that they were searching for is not the sort of particularized, reasonable suspicion required by the Fourth Amendment.

The Fourth Amendment prohibits "unreasonable searches and seizures." U.S. Const. amend. IV. "Evidence obtained in violation of the Fourth Amendment must be suppressed." *Jordan*, 635 F.3d at 1185. Whether a search or seizure is

reasonable "depends upon all of the circumstances surrounding the search or seizure and the nature of the search or seizure itself." *United States v. Montoya de Hernandez*, 473 U.S. 531, 537 (1985).

The Fourth Amendment does not prohibit a police officer, "in appropriate circumstances and in an appropriate manner [from] approach[ing] a person for purposes of investigating possibly criminal behavior even though there is no probable cause to make an arrest"—these brief investigative detentions are commonly referred to as "*Terry* stop[s]." *See Terry v. Ohio*, 392 U.S. 1, 22 (1968). *Terry* and its progeny allow an officer to, "consistent with the Fourth Amendment, conduct a brief, investigatory stop when the officer has a reasonable, articulable suspicion that criminal activity is afoot." *Illinois v. Wardlow*, 528 U.S. 119, 123 (2000). Such investigatory stops are also authorized based on a reasonable suspicion of past criminal activity, including where an officer has "a reasonable suspicion, grounded in specific and articulable facts, that a person [the officer] encounter[s] was involved in or is wanted in connection with [another crime]." *United States v. Hensley*, 469 U.S. 221, 229 (1985) (upholding a brief *Terry* stop of a person believed to be the individual on a police-issued wanted flyer "to check identification, . . . to pose questions to the person, or to detain the person briefly while attempting to obtain further information"); *United States v. Kapperman*, 764 F.2d 786, 792 (11th Cir. 1985) (holding that a *Terry* stop of a vehicle was

supported by reasonable suspicion where officers had an objective reason to believe that there may have been a fugitive inside the vehicle).

In *Terry*, the Supreme Court adopted "a dual inquiry for evaluating the reasonableness of an investigative stop." *United States v. Sharpe*, 470 U.S. 675, 682 (1985) (citing *Terry*, 392 U.S. at 20). Under *Terry*'s two-part inquiry, we first examine "whether the officer's action was justified at its inception," which turns on whether the officers had a reasonable suspicion that the defendant had engaged in, was engaging in, or was about to engage in, a crime. *Terry*, 392 U.S. at 20. In the second part of the inquiry, we consider "whether [the stop] was reasonably related in scope to the circumstances which justified the interference in the first place." *Id.*; *see also Jordan* 635 F.3d at 1186.

Reasonable suspicion "is not concerned with 'hard certainties, but with probabilities.'" *United States v. Lewis*, 674 F.3d 1298, 1304 (11th Cir. 2012) (quoting *United States v. Cortez*, 449 U.S. 411, 418 (1981)). To show that an officer has reasonable suspicion, the officer "must be able to articulate more than an 'inchoate and unparticularized suspicion or "hunch" of criminal activity.'" *Wardlow*, 528 U.S. at 123 (quoting *Terry*, 392 U.S. at 27). "While reasonable suspicion is a less demanding standard than probable cause and requires a showing considerably less than preponderance of the evidence, the Fourth Amendment requires at least a minimal level of objective justification for making the stop." *Id.*

Reasonable suspicion may "be based on commonsense judgments and inferences about human behavior." *Id.* at 125. "[W]e look to the totality of the circumstances to determine the existence of reasonable suspicion." *Jordan*, 635 F.3d at 1186.

Here, construing the facts in the light most favorable to the government as the prevailing party, it is clear that the officers had reasonable suspicion to stop Gonzalez-Zea's car and conduct an investigatory *Terry* stop under the totality of the circumstances. The officers knew that a social security number associated with the fugitive Alfaro-Aguilar had been used recently to connect a utility service at the Heflin house. Thus, they had a specific, articulable, objective basis for believing that the fugitive could be found at that location. Additionally, when the officers observed Gonzalez-Zea leaving the house, it was in the pre-dawn hours of September 26, 2017. Given the time of day, the officers possessed an objective, reasonable suspicion that any man leaving the house was either the fugitive, or as a resident of the house, may have known the fugitive and his whereabouts. This information provided officers with sufficient particularized, reasonable suspicion to conduct an investigatory stop of Gonzalez-Zea. *See Hensley*, 469 U.S. at 229; *Kapperman*, 764 F.2d at 792.

To the extent Gonzalez-Zea argues that the ICE officers had to observe a traffic violation or suspicious behavior specific to Gonzalez-Zea before stopping

his vehicle,[6] his argument is unpersuasive because "[t]he touchstone of the Fourth Amendment is reasonableness, not individualized suspicion." *Lewis*, 674 F.3d at 1306 (quoting *Samson v. California*, 547 U.S. 843, 855 n.4 (2006)). In fact, "[t]he Supreme Court has rejected efforts to limit investigative stops to situations in which the officer has personally observed suspicious conduct." *United States v. Aldridge*, 719 F.2d 368, 371 (11th Cir. 1983). Rather, because reasonable suspicion "is not concerned with 'hard certainties, but with probabilities,'" *Lewis*, 674 F.3d at 1304, the investigative lead linking the social security number used by the fugitive Alfaro-Aguilar to a recently opened utility account at the Heflin house and the officer's observation of a male leaving the house in the pre-dawn hours were sufficient to justify the brief investigatory stop of the vehicle in order to confirm whether the driver was the fugitive the ICE officers were seeking.

Gonzalez-Zea also cites a number of traffic-stop cases for the proposition that police cannot conduct a random traffic stop to check a driver's license or question a driver about his citizenship status without any reasonable suspicion of

[6] Gonzalez-Zea acknowledges in his brief that this was a *Terry* stop, not a traffic stop. This contention is supported by the testimony of the ICE officers at the hearing on the motion to suppress that the vehicle stop was an investigatory stop to determine whether the male driver was the fugitive they were seeking—not a traffic stop. The ICE officers further testified that, even if they had witnessed a traffic violation, they lacked the authority to pull a vehicle over for a traffic violation or to issue traffic citations. Nevertheless, while this case is not a traffic-stop case, as we explained in *Lewis*, "cases involving traffic stops are nonetheless relevant in evaluating the reasonableness of investigatory detentions more generally." 674 F.3d at 1306 n.5.

criminal activity. As explained above, the *Terry* stop here was supported by the officers' reasonable suspicion, grounded in specific, articulable facts, that the fugitive they were looking for could be at the house in question, and that Gonzalez-Zea—a male seen leaving the house in the early morning hours—could have been that fugitive or could have known the fugitive's whereabouts. In short, this case is a far cry from the cases cited by Gonzalez-Zea wherein traffic stops based on a suspicion of mere potential general criminality were held to violate the Fourth Amendment. *See, e.g.*, *United States v. Brignoni-Ponce*, 422 U.S. 873, 874 (1975) (explaining that "the Fourth Amendment forbids stopping vehicles at random to inquire if they are carrying aliens who are illegally in the country" and "stopping or detaining persons for questioning about their citizenship on less than a reasonable suspicion that they may be aliens"); *United States v. Yousif*, 308 F.3d 820, 827–28 (8th Cir. 2002) (holding that the police violated the defendant's Fourth Amendment rights by stopping every car that went through a checkpoint to look for drugs without having an articulable, reasonable suspicion that the vehicle or its occupants are subject to seizure for a violation of the law); *United States v. Jiminez-Medina*, 173 F.3d 752, 755 (9th Cir. 1999) (holding that an officer did not have reasonable suspicion to stop a vehicle simply because it was driving slowly, was a certain vehicle type, was on a known alien-smuggling corridor at an odd hour, and the driver seemed preoccupied).

Accordingly, for all the above reasons, we conclude that the officers had reasonable suspicion to justify the stop of Gonzalez-Zea's vehicle.[7]

We now must turn to the second step of the *Terry* inquiry—whether the stop was reasonably related in scope to the circumstances which justified the interference in the first place—which leads us to Gonzalez-Zea's second issue.

B. Whether the officers unlawfully prolonged the stop

Gonzalez-Zea argues that, even if the initial stop was valid, the officers unlawfully prolonged it when they asked for Gonzalez-Zea's identification and inquired as to whether he had any identification issued by the United States. According to him, the stop should have ended as soon as the officers observed that

[7] Gonzalez-Zea also argues that the officers' reliance on the reports linking the social security number to the Heflin house was unreasonable because the number was associated with both Alfaro-Aguilar and Sanchez (who had 26 aliases). In other words, he argues that the officers had to rule out all other possible users of the social security number before they could have a legitimate, reasonable suspicion that the fugitive Alfaro-Aguilar was using the social security number and might be located at the Heflin house. Gonzalez-Zea's argument conflates the concepts of what evidence is necessary to establish probable cause versus what is sufficient for reasonable suspicion—a much lower threshold. The Supreme Court has stated repeatedly that officers do not have to rule out every possibility of innocent conduct in order to possess reasonable suspicion to conduct an investigatory stop. *See United States v. Arvizu*, 534 U.S. 266, 277 (2002) ("A determination that reasonable suspicion exists [for an investigative stop] . . . need not rule out the possibility of innocent conduct."); *Wardlow*, 528 U.S. at 125–26 (explaining that even where there are "innocent reasons" for certain conduct, where officers have specific, articulable, reason to believe that criminal activity was, is, or is about to be afoot, *Terry* authorizes the officers to detain individuals to resolve that ambiguity). As discussed above, under the totality of the circumstances, the ICE officers had a reasonable suspicion to justify the stop in this case. *See United States v. Simmons*, 172 F.3d 775, 779 (11th Cir. 1999) (holding that police officers possessed reasonable suspicion and did not act unreasonably in detaining the defendant to investigate whether he was the subject of a warrant for a person with a similar name, even though the warrant was from a county on the other side of the state and the date of birth did not match the defendant's).

he did not match the physical description of Alfaro-Aguilar and at the latest when Gonzalez-Zea told the officers his name, which did not match the fugitive's.

As explained previously, a *Terry* stop must also be "reasonably related in scope to the circumstances which justified the interference in the first place." *Terry*, 392 U.S. at 20; *see also Jordan* 635 F.3d at 1186. Thus, an initially lawful investigatory stop may become unlawful if it is "prolonged beyond the time reasonably required to complete" the purpose of the stop. *Rodriguez v. United States*, 575 U.S. 348, 355–57 (2015); *Florida v. Royer*, 460 U.S. 491, 500 (1983) (plurality opinion) ("An investigative detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop.").

As discussed previously, the officers had a reasonable suspicion that Gonzalez-Zea could be the fugitive alien sought by ICE. Therefore, the officers stopped the vehicle leaving the Heflin house and immediately began asking a series of questions to dispel promptly and quickly with the task of confirming Gonzalez-Zea's identity. Officer Skillern asked Gonzalez-Zea for his name and for identification to confirm the name he gave.[8] These identification questions

[8] To the extent Gonzalez-Zea argues that the officers were not permitted to ask him for supporting identification and should have just accepted the name he supplied to the officers at face value, his argument is unpersuasive. As the Supreme Court has emphasized, "questions concerning a suspect's identity are a routine and accepted part of many *Terry* stops." *Hiibel v. Sixth Judicial Dist. Ct. of Nev.*, 542 U.S. 177, 186 (2004); *see also United States v. Diaz-Lizaraza*, 981 F.2d 1216, 1221 (11th Cir. 1993) (explaining that "[d]uring a *Terry* stop, officers may ask a suspect to identify himself or herself" and concluding that "the agents' request for identification and basic personal information was reasonable"). For this reason, Gonzalez-Zea's

were related in scope to the circumstances that justified the stop in the first place—confirming whether the driver of the vehicle was the fugitive.

Further, when Gonzalez-Zea produced an identification card from another country, Officer Skillern asked him whether he had any United States identification, and when Gonzalez-Zea stated that he did not, Officer Skillern asked why he did not have any United States identification. Gonzalez-Zea argues that this additional identification inquiry "was a diversion from the purpose of the stop[] and an "impermissible foray into investigating unrelated criminal activity." We disagree. Asking for an alternate form of identification simply was another identification-related inquiry that was part of the task of verifying Gonzalez-Zea's identity, which was the purpose of the *Terry* stop. Although Gonzalez-Zea stated that he was in the United States illegally in response to Officer Skillern's questions, at no point during the stop did the officers investigate another crime or ask questions unrelated to verifying Gonzalez-Zea's identity and locating the fugitive. The record establishes that Officer Skillern acted diligently and the overall *Terry* stop did not exceed the time needed to handle the matter for which

related argument that the officers were not permitted to ask him for his name or identification because they should have been able to confirm from a "cursory visual inspection" that he was not the fugitive Alfaro-Aguilar similarly fails.

the stop was made—verifying whether Gonzalez-Zea who was seen leaving the Heflin house was the fugitive and attempting to locate the fugitive.[9]

Accordingly, for all these reasons, we conclude that the officers did not unlawfully extend the stop.[10]

C. Whether Gonzalez-Zea voluntarily consented to the officers' search of the house

Gonzalez-Zea argues that the district court erred when it found that he voluntarily consented to the officers' search of his house because the totality of the circumstances weigh against the voluntariness of his consent. Specifically, he asserts that his consent was the product of an illegal road-side seizure. Further, he argues that even if his seizure was valid, his consent was not voluntary because the officers were armed, the stop occurred during the pre-dawn hours in a rural area,

[9] To the extent that Gonzalez-Zea relies on our post-*Rodriguez* interpretation in *United States v. Campbell*, 912 F.3d 1340 (11th Cir. 2019), as to what renders a traffic stop unreasonably prolonged, we note that following briefing and oral argument in this case, a majority of this Court voted to grant rehearing *en banc* in *Campbell*, and as a result we vacated the underlying panel decision, 981 F.3d 1014 (2020). Accordingly, *Campbell* is no longer good law and will not be discussed further.

[10] In arguing that the *Terry* stop was unreasonably prolonged, Gonzalez-Zea also appears to challenge whether the overall manner and length of the investigatory detention was reasonable. *See United States v. Acosta*, 363 F.3d 1141, 1146 (11th Cir. 2004) (explaining that when evaluating the overall reasonableness of the scope of a *Terry* stop, we apply "four non-exclusive factors": (1) "the law enforcement purposes served by the detention"; (2) "the diligence with which the police pursue the investigation"; (3) "the scope and intrusiveness of the detention"; and (4) "the duration of the detention." (quoting *United States v. Gil*, 204 F.3d 1347, 1351 (11th Cir. 2000)). To the extent that Gonzalez-Zea challenges the reasonableness of the manner and length of the detention, his argument fails as all four *Acosta* factors are satisfied in this case for the same reasons that the stop was not unreasonably prolonged.

the officers did not return his identification card, they left their red-and-blue lights on, and he was never told he was free to leave or that he had the ability to refuse consent.[11] We disagree.

As an initial matter, as discussed previously, we conclude that the ICE officers had reasonable suspicion to conduct an investigatory stop with Gonzalez-Zea and that the officers did not prolong the stop. Accordingly, it follows necessarily that Gonzalez-Zea's consent to the search of the Heflin house was not the product of an illegal seizure. Consequently, we consider his alternative argument that, even if his seizure was valid, his consent was the product of the allegedly coercive circumstances.

A warrantless search "conducted pursuant to valid consent is constitutionally permissible." *Schneckloth v. Bustamonte*, 412 U.S. 218, 222 (1973). In order to be valid, consent must be voluntarily given. *Id.* Consent is voluntary "if it is the product of an 'essentially free and unconstrained choice.'" *United States v. Benjamin*, 958 F.3d 1124, 1134 (11th Cir. 2020). Voluntariness of consent "is a question of fact to be determined from the totality of all the circumstances." *Schneckloth*, 412 U.S. at 227. The government bears the burden of proving that

[11] To the extent that Gonzalez-Zea also argues that the officers should have informed him of his *Miranda* rights and that their failure to do so mitigates the voluntariness of his consent, his argument fails. We have previously held that a consent to search is not a self-incriminating statement and that the failure to give a defendant a *Miranda* warning does not render the defendant's consent to search invalid. *United States v. Hidalgo*, 7 F.3d 1566, 1568 (11th Cir. 1993).

"the consent was . . . freely and voluntarily given." *Id.* at 222 (quoting *Bumper v. North Carolina*, 391 U.S. 543, 548 (1968)). A district court's determination that consent was voluntary is a finding of fact that will not be disturbed on appeal absent clear error. *United States v. Spivey*, 861 F.3d 1207, 1212 (11th Cir. 2017). "Normally, we will accord the district judge a great deal of deference regarding a finding of voluntariness, and we will disturb the ruling only if we are left with the definite and firm conviction that the trial judge erred." *Id.*

When evaluating the totality of the circumstances underlying consent, we look at several factors, including "the presence of coercive police procedures, the extent of the defendant's cooperation with the officer, the defendant's awareness of his right to refuse consent, the defendant's education and intelligence, and the defendant's belief that no incriminating evidence will be found." *United States v. Purcell*, 236 F.3d 1274, 1281 (11th Cir. 2001).

Almost all of these factors point in one direction—that Gonzalez-Zea voluntarily consented to the search. The ICE officers did not coerce Gonzalez-Zea into providing his consent. Rather, after Gonzalez-Zea stated that he lived alone, the ICE officers simply asked if they could search the Heflin house. Gonzalez-Zea agreed without any hesitation, drove his own vehicle back to the house, unlocked the house to let the officers in, and cooperated throughout the search. He was neither in custody nor restrained in any manner at the time he gave consent.

Further, testimony at the suppression hearing confirmed that Gonzalez-Zea "didn't have any objection at all," when asked for his consent and his interaction with the ICE officers was "friendly" and "cordial." Although the officers were armed during the interaction with Gonzalez-Zea, they never removed their weapons. Officers routinely carry weapons while on duty and, therefore, the mere presence of a weapon on an officer does not render an encounter with an officer unduly coercive and is insufficient to render a defendant's consent involuntary. *See United States v. Drayton*, 536 U.S. 194, 205 (2002) (explaining, in the context of determining whether an individual was seized or engaged in a consensual encounter with immigration officers, that "[t]he presence of holstered firearm is unlikely to contribute to the coerciveness of the encounter absent active brandishing of the weapon").

Likewise, the fact that the red-and-blue police lights were activated on Officer Skillern's vehicle during his interaction with Gonzalez-Zea did not affect the voluntariness of Gonzalez-Zea's consent. Leaving police lights on is simply not a display of force or coercive conduct on the part of an officer that could affect an individual's decision to freely and voluntarily consent to a search. *See Schneckloth*, 412 U.S. at 233 (noting that involuntary consent is consent that is "coerced by threats or force, or granted only in submission to a claim of lawful authority").

Additionally, while the fact that the defendant's identification was not returned at the time he consented to the search "is a factor we . . . consider in evaluating the totality of the circumstances," "it is not a litmus test for voluntary consent." *Purcell*, 236 F.3d at 1282. Here, there is no indication that the officers gave Gonzalez-Zea back his identification card at or before the time they asked for his consent to search the house. Nevertheless, in light of the friendliness of the encounter, Gonzalez-Zea's lack of any objection to the search, and the absence of any coercive behavior by the officers, under the totality of the circumstances, the failure to return Gonzalez-Zea's identification card is insufficient to render his consent involuntary.[12]

While Gonzalez-Zea takes issue with the fact that the ICE officers failed to advise him expressly that he had a right to refuse consent, the Supreme Court "has rejected in specific terms the suggestion that police officers must always inform citizens of their right to refuse when seeking permission to conduct a warrantless

[12] Gonzalez-Zea cites two cases—*United States v. Pruitt*, 174 F.3d 1215, 1220 (11th Cir. 1999), and the Tenth Circuit's decision in *United States v. Mendez*, 118 F.3d 1426, 1430 (10th Cir. 1997)—in support of his contention that his consent was rendered involuntary by the officers' failure to return his identification card. *Pruitt*, however, did not involve the issue of the voluntariness of the defendant's consent because the defendant did not consent to a search. 174 F.3d at 1218. And in *Mendez*, the Tenth Circuit addressed the issue of the officer's retention of the driver's identification in the context of determining whether a traffic-stop became a consensual encounter, not when determining whether the driver's consent to search the vehicle was voluntary. 118 F.3d at 1430–31. *Mendez* certainly does not stand for the *per se* rule that an officer's retention of an individual's identification renders an individual's consent involuntary. *Id.* at 1432. Moreover, even if *Mendez* stood for such a rule, we would not be bound by it. *See Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981) ("Under the established federal legal system the decisions of one circuit are not binding on other circuits.").

consent search." *Drayton*, 536 U.S. at 206; *Schneckloth*, 412 U.S. at 234 ("[N]either this Court's prior cases, nor the traditional definition of 'voluntariness' requires proof of knowledge of a right to refuse as the sine qua non of an effective consent to search."). Rather, the Supreme Court has emphasized repeatedly "that the totality of the circumstances must control, without giving extra weight to the absence of this type of warning." *Drayton*, 536 U.S. at 206–07. Here, although the ICE officers did not inform Gonzalez-Zea of his right to refuse consent, there is no claim (or evidence of record) that the officers took any action that would have suggested to Gonzalez-Zea that he had no right to refuse the request to search the house. Given the lack of any coercive behavior on the part of the ICE officers, "[t]he mere fact that [the officers] did not inform [Gonzalez-Zea] of his right to refuse consent . . . is insufficient to render [his] consent involuntary." *United States v. Zapata*, 180 F.3d 1237, 1242 (11th Cir. 1999).

Relatedly, Gonzalez-Zea argues that his consent was involuntary because the officers did not inform him that he was free to go, but the Fourth Amendment does not require that a defendant be advised that he is "free to go before [his] consent to search may be deemed voluntary." *Ohio v. Robinette*, 519 U.S. 33, 40 (1996). Thus, the absence of this notification does not render Gonzalez-Zea's consent involuntary, particularly in light of the totality of the circumstances discussed above.

Accordingly, for the above reasons, we conclude that the district court did not clearly err in finding that, based on the totality of the circumstances, Gonzalez-Zea voluntarily consented to the search of the Heflin house.

IV. Conclusion

For these reasons, we affirm the district court's denial of Gonzalez-Zea's motion to suppress.

AFFIRMED.

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

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April 30, 2021

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 19-11131-JJ
Case Style: USA v. Guillermo Gonzalez-Zea
District Court Docket No: 3:17-cr-00444-WKW-WC-1

This Court requires all counsel to file documents electronically using the Electronic Case Files ("ECF") system, unless exempted for good cause. Non-incarcerated pro se parties are permitted to use the ECF system by registering for an account at www.pacer.gov. Information and training materials related to electronic filing, are available at www.ca11.uscourts.gov. Enclosed is a copy of the court's decision filed today in this appeal. Judgment has this day been entered pursuant to FRAP 36. The court's mandate will issue at a later date in accordance with FRAP 41(b).

The time for filing a petition for rehearing is governed by 11th Cir. R. 40-3, and the time for filing a petition for rehearing en banc is governed by 11th Cir. R. 35-2. Except as otherwise provided by FRAP 25(a) for inmate filings, a petition for rehearing or for rehearing en banc is timely only if received in the clerk's office within the time specified in the rules. Costs are governed by FRAP 39 and 11th Cir.R. 39-1. The timing, format, and content of a motion for attorney's fees and an objection thereto is governed by 11th Cir. R. 39-2 and 39-3.

Please note that a petition for rehearing en banc must include in the Certificate of Interested Persons a complete list of all persons and entities listed on all certificates previously filed by any party in the appeal. See 11th Cir. R. 26.1-1. In addition, a copy of the opinion sought to be reheard must be included in any petition for rehearing or petition for rehearing en banc. See 11th Cir. R. 35-5(k) and 40-1 .

Counsel appointed under the Criminal Justice Act (CJA) must submit a voucher claiming compensation for time spent on the appeal no later than 60 days after either issuance of mandate or filing with the U.S. Supreme Court of a petition for writ of certiorari (whichever is later) via the eVoucher system. Please contact the CJA Team at (404) 335-6167 or cja_evoucher@ca11.uscourts.gov for questions regarding CJA vouchers or the eVoucher system.

For questions concerning the issuance of the decision of this court, please call the number referenced in the signature block below. For all other questions, please call Tiffany A. Tucker, JJ at (404)335-6193.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Jeff R. Patch
Phone #: 404-335-6151

OPIN-1 Ntc of Issuance of Opinion

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

UNITED STATES OF AMERICA	)	
	)	
v.	)	CASE NO. 3:17-CR-444-WKW
	)	[WO]
GUILLERMO GONZALEZ-ZEA	)	

MEMORANDUM OPINION AND ORDER

I. INTRODUCTION

Immigration and Customs Enforcement (ICE) deportation officers linked a fugitive to a house in Heflin, Alabama, so they put the house under surveillance. The officers saw a man leave the house and get in a car, but they could not tell who the man was, so they stopped him and asked for his ID. The man was Defendant Guillermo Gonzalez-Zea. Gonzalez-Zea identified himself, said he lived alone in the house, and admitted that he was an illegal alien. The officers recognized that Gonzalez-Zea was not the fugitive they were after, but they still asked to search his house. Gonzalez-Zea consented. Once inside the house, the officers spotted several guns in plain view, so they arrested Gonzalez-Zea.

The United States charged Gonzalez-Zea with being an illegal alien in possession of a firearm and live ammunition. Now before the court is Gonzalez-Zea's Motion to Suppress (Doc. # 28), in which he argues that the officers: (1) lacked reasonable suspicion to stop his car; (2) unreasonably extended the vehicle

stop; and (3) did not get valid consent to search his house. After an evidentiary hearing, the Magistrate Judge recommended that the court deny the motion. (Doc. # 56.) Gonzalez-Zea objected to the Magistrate Judge's factual findings and legal conclusions. (Doc. # 57.)

The court agrees with the Magistrate Judge's conclusion, but it expands the supporting rationale and corrects minor misstatements of the facts. Based upon the applicable law and a thorough review of all of the evidence, the Motion to Suppress is due to be denied.

II. STANDARD OF REVIEW

When a party objects to a Magistrate Judge's Report and Recommendation, the district court must review the disputed portions *de novo*. 28 U.S.C. § 636(b)(1). The district court "may accept, reject, or modify the recommendation, receive further evidence, or resubmit the matter to the magistrate judge with instructions." Fed. R. Crim. P. 59(b)(3).

De novo review requires that the district court independently consider factual issues based on the record. *Jeffrey S. ex rel. Ernest S. v. State Bd. of Educ.*, 896 F.2d 507, 513 (11th Cir. 1990). If the Magistrate Judge made findings based on witness testimony, the district court must review the transcript or listen to a recording of the proceedings. *Id*. The district court cannot reject a credibility determination without rehearing live testimony. *United States v. Powell*, 628 F.3d 1254, 1257 (11th Cir.

2010). But the district court may, without holding a new hearing, modify findings in a way that is consistent with the Magistrate Judge's credibility determination. *See Proffitt v. Wainwright*, 685 F.2d 1227, 1240–41 (11th Cir. 1982).

III. FACTS

On September 26, 2017, ICE deportation officers Christopher Purdy, Scott Skillern, and Waylon Hinkle (together, "the officers") staked out a house located at 30926 Highway 431 in Heflin, Alabama. The officers were pursuing a man named Jose Rodolfo Alfaro-Aguilar, an illegal alien with an administrative warrant out for his arrest. (Doc. # 46-3, at 113.) But as things turned out, the officers ended up arresting Defendant Guillermo Gonzalez-Zea instead.

The officers did not know for sure where Alfaro-Aguilar lived. (*See* Doc. # 46-3, at 11–13; Doc. # 47, at 65, 69.) But Officer Purdy got a lead from colleagues in Atlanta that Alfaro-Aguilar might be in Heflin. (Doc. # 47, at 66.) Purdy verified that lead. (Doc. # 47, at 69.) As he explained at the evidentiary hearing, there was a Social Security number in ICE's file on Alfaro-Aguilar. (Doc. # 46-3, at 11; Doc. # 47, at 70.) And according to a database, the same Social Security number was associated with a man named Jose Sanchez — a man with twenty-six possible aliases and fifteen possible addresses. (Doc. # 46-3, at 27–33; Doc. # 47, at 71–72.)[1] The

[1] Purdy could not remember whether he searched the database for the Social Security number or for Jose Sanchez. (Doc. # 47, at 71.)

first of those addresses was 30926 Highway 431 in Heflin. The Social Security number used by both Alfaro-Aguilar and Sanchez had been used to open a utility account at that address. (Doc. # 46-3, at 29; Doc. # 47, at 77.)[2]

Officers Purdy, Skillern, and Hinkle went to Heflin to stake out the house. (Doc. # 47, at 5, 48, 63.) They got to the house between 5:00 and 6:00 a.m. (Doc. # 47, at 7.) Purdy and Skillern parked their cars about 50–75 yards from the end of the driveway (Doc. # 47, at 6–7, 74), and Hinkle was at a store a few minutes away (Doc. # 21, at 5; Doc. # 47, at 48).

Sometime before dawn, Purdy saw a man leave the house, get in a car, and start driving away. (Doc. # 47, at 10, 74.) The man drove past where Skillern was parked. (Doc. # 47, at 10.) Neither Purdy nor Skillern could tell whether Alfaro-Aguilar was the driver. (Doc. # 47, at 10, 77). Skillern flipped on his car's siren and flashing red and blue lights; the suspect vehicle stopped; and Skillern went to identify the driver. (Doc. # 47, at 10–11, 17.) Purdy stayed put to watch the house (Doc. # 47, at 14, 43, 78), while Hinkle came to help Skillern (Doc. # 47, at 48). The sole purpose of this vehicle stop was to determine whether the driver was the fugitive Alfaro-Aguilar. (*See* Doc. # 34, at 2; Doc. # 47, at 32; Doc. # 55, at 2.)

[2] The Magistrate Judge found that "Purdy had been informed by an officer in Atlanta that . . . utilities had been connected in the fugitive's name at that address." (Doc. # 56, at 2; *see also* Doc. # 56, at 6.) That overstates the evidence. Purdy testified that *a* utility had been connected at the house using the Social Security number also used by the fugitive. (Doc. # 47, at 69.) There is no evidence that the utility was connected in Alfaro-Aguilar's name.

But Alfaro-Aguilar was not the driver; Defendant Gonzalez-Zea was behind the wheel. When asked, Gonzalez-Zea gave Skillern his name, which Skillern recognized "didn't match the person we were looking for." (Doc. # 47, at 11.) Skillern then asked for identification, and Gonzalez-Zea handed the officer a Mexican ID card. (Doc. # 47, at 11–12, 38–39.) Skillern asked for a driver's license, but Gonzalez-Zea replied that he did not have one. When asked why, he admitted that he was in the United States illegally. (Doc. # 47, at 12, 38–40.)

At this point, the vehicle stop had taken only a "couple minutes" (Doc. # 47, at 42, 49, 60), but Skillern was already "pretty positive" that Gonzalez-Zea was not Alfaro-Aguilar (Doc. # 47, at 14).[3] So Skillern told Gonzalez-Zea that the officers were looking for a fugitive and asked him who lived in the house. Gonzalez-Zea answered that he lived there alone. (Doc. # 47, at 14.)

Skillern then asked if the officers could go inside the house to "take a look." Gonzalez-Zea did not object. (Doc. # 47, at 15.) Skillern did not tell Gonzalez-Zea that he had a right not to consent to a search. (Doc. # 47, at 42.)

By the time Gonzalez-Zea agreed to the search, Hinkle had arrived on the

[3] In addition to his name and the Mexican identification card, there were other indications that Gonzalez-Zea was not Alfaro-Aguilar. Skillern noticed that Gonzalez-Zea is missing several fingers and has discolored pigment on his hands and arms. (Doc. # 47, at 39.) That information did not appear in Alfaro-Aguilar's file. (*See* Doc. # 46-3, at 11–13; Doc. # 47, at 39.) Also, Alfaro-Aguilar is a Honduran citizen, but Gonzalez-Zea produced a Mexican ID card. (Doc. # 46-3, at 11; Doc. # 47, at 39, 72.)

scene, meaning that two officers were by Gonzalez-Zea's car. (Doc. # 47, at 13, 42, 60.) Both officers, Skillern and Hinkle, wore ballistic vests emblazoned with police and ICE insignia. Their pistols were visible, though not drawn. (Doc. # 47, at 15, 40, 46–47, 52.) Skillern did not tell Gonzalez-Zea that he was free to go. (Doc. # 47, at 40.) Neither officer read Gonzalez-Zea his *Miranda* rights before Skillern asked to search the house. (Doc. # 47, at 40, 42, 57.) There is no evidence that Skillern turned off his car's lights and siren. And there is no evidence that Skillern gave Gonzalez-Zea's Mexican ID card back to him.[4]

After Gonzalez-Zea agreed to let the officers search his home, Gonzalez-Zea drove his own car the short distance back to the house. The officers followed in their own cars. (Doc. # 47, at 17.) The officers did not search or handcuff him. (Doc. # 47, at 15, 53.) Gonzalez-Zea unlocked the door and let the officers inside. (Doc. # 47, at 18.) An officer then stepped into the bedroom and saw a shotgun in the corner of the room. (Doc. # 47, at 18–19, 53.) An officer also saw a rifle in an open closet. (Doc. # 47, at 53.) Both firearms were in plain view. Hinkle read Gonzalez-Zea his *Miranda* rights in Spanish after they found the two guns. (Doc. # 47, at 22–26, 44, 55.) Gonzalez-Zea then led the officers to a pistol in a drawer. (Doc. # 47, at 26–27, 54, 57.)

[4] The Magistrate Judge found that Gonzalez-Zea "was not detained or placed under arrest" during the stop. (Doc. # 56, at 3.) Though he was not arrested, he was certainly detained. *See United States v. Pruitt*, 174 F.3d 1215, 1219 (11th Cir. 1999).

Gonzalez-Zea is now charged with a single count of being an illegal alien in possession of a firearm and live ammunition, a violation of 18 U.S.C. §§ 922(g)(5) and 924(a)(2). (Doc. # 15, at 1.) Gonzalez-Zea moved to suppress the evidence "recovered as a result of an unlawful traffic stop and unreasonable detention." (Doc. # 28, at 1.) The Magistrate Judge held an evidentiary hearing at which Officers Purdy, Skillern, and Hinkle testified. (Doc. # 47.) The Magistrate Judge recommended denying the motion to suppress. (Doc. # 56.) Gonzalez-Zea filed written objections to the Recommendation. (Doc. # 57.) For the reasons that follow, the Recommendation is due to be modified in accordance with this Memorandum Opinion and Order, and the motion to suppress is due to be denied.

IV. DISCUSSION

The Fourth Amendment prohibits "unreasonable searches and seizures." U.S. Const. amend. IV. The officers seized Gonzalez-Zea when they stopped his car, and they searched his home when they went inside to look around. Gonzalez-Zea argues that the seizure was unconstitutional because the officers' suspicions were unreasonable and because the stop was overbroad. He also contends that the officers did not get valid consent to search his home. But his arguments are not persuasive.

A. The vehicle stop did not violate the Fourth Amendment because the officers had reasonable suspicion to stop Gonzalez-Zea's car and because they did not unreasonably extend that stop.

Under *Terry v. Ohio*, 392 U.S. 1 (1968), "even in the absence of probable

cause, police may stop persons and detain them briefly in order to investigate a reasonable suspicion that such persons are involved in criminal activity." *United States v. Pruitt*, 174 F.3d 1215, 1219 (11th Cir. 1999) (quoting *United States v. Tapia*, 912 F.2d 1367, 1370 (11th Cir. 1990)). But there are limits on when law-enforcement officers can make a so-called "*Terry* stop." *Hiibel v. Sixth Judicial Dist. Court of Nev.*, 542 U.S. 177, 185 (2004). One limit is that the stop must be "justified at its inception," *Terry*, 392 U.S. at 20, meaning that the officers must have a "reasonable suspicion" of criminal activity, *United States v. Sokolow*, 490 U.S. 1, 7 (1989). Another limit is that the seizure must be "reasonably related in scope to the circumstances which justified the interference in the first place." *Terry*, 392 U.S. at 20. Gonzalez-Zea argues that the officers here violated both limits. They did not.

1. *The officers had reasonable suspicion to stop Gonzalez-Zea's car because they saw him leave a house linked to a fugitive.*

The "reasonable suspicion" threshold for a *Terry* stop requires that an officer "be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant" the seizure. *Tapia*, 912 F.2d at 1370 (quoting *Terry*, 392 U.S. at 21). That is, the officer must have more than a "hunch." *Terry*, 392 U.S. at 27. There must be "at least a minimal level of objective justification for making the stop." *Jackson v. Sauls*, 206 F.3d 1156, 1165 (11th Cir. 2000) (quoting *Illinois v. Wardlow*, 528 U.S. 119, 123 (2000)). And generally, reasonable suspicion "must attach to the particular person stopped." *United States*

v. Lewis, 674 F.3d 1298, 1305 (11th Cir. 2012) (citing *United States v. Cortez*, 449 U.S. 411, 418 (1981)).

But even though a "hunch" is not enough to justify a *Terry* stop, "the likelihood of criminal activity need not rise to the level required for probable cause, and it falls considerably short of satisfying a preponderance of the evidence standard." *United States v. Bautista-Silva*, 567 F.3d 1266, 1272 (11th Cir. 2009) (quoting *United States v. Arvizu*, 534 U.S. 266, 274 (2002)). Officers may develop reasonable suspicion "by observing exclusively legal activity." *United States v. Gordon*, 231 F.3d 750, 754 (11th Cir. 2000). And reasonable suspicion must be based on the "totality of the circumstances," which "allows officers to draw on their experiences and specialized training to make inferences from and deductions about the cumulative information available to them that might well elude an untrained person." *Bautista-Silva*, 567 F.3d at 1272 (quoting *Arvizu*, 534 U.S. at 273).

According to Gonzalez-Zea, Officers Purdy, Skillern, and Hinkle could not have reasonably suspected "that Jose Alfaro-Aguilar was associated with — let alone actually lived in — the address in Heflin; or that Mr. Gonzalez-Zea was Mr. Alfaro-Aguilar." (Doc. # 57, at 11.) Not so. Based on the totality of the circumstances, the officers had reasonable suspicion to believe that the man they saw leaving the house at 30926 Highway 431 was the fugitive Jose Alfaro-Aguilar. They were therefore permitted to stop and identify him.

Officer Purdy testified that he got a lead from his colleagues in Atlanta that Alfaro-Aguilar might be in Heflin. When Purdy went to verify that lead, he found that Alfaro-Aguilar and Jose Sanchez used the same Social Security number. The house at 30926 Highway 431 was the first listed possible address for Sanchez. A utility account had been opened at that house using the Social Security number shared between Alfaro-Aguilar and Sanchez. The officers went to the house looking for a Hispanic male, and they saw a man seen leave the house.

To be sure, the only link between Alfaro-Aguilar and Sanchez was that they had used the same Social Security number. (Doc. # 47, at 77.) Officer Purdy also testified that in cases like this, multiple people "typically" use the same Social Security number. (Doc. # 47, at 77.) And indeed, the report on Sanchez listed multiple aliases with the same Social Security number. (Doc. # 46-3, at 27–29.) But even if the odds were against Alfaro-Aguilar actually being the driver, that does not necessarily mean that the officers lacked reasonable suspicion. *See Sokolow*, 490 U.S. at 7–8. The officers had evidence linking Alfaro-Aguilar to the house, and Gonzalez-Zea emerged from the house, so the officers had reasonable suspicion to stop him.

2. *The officers did not unreasonably extend the stop because the seizure was brief, and the officers focused on the reason for the stop.*

Of course, it is not enough that the officers had reasonable suspicion to stop Gonzalez-Zea; the stop also had to be limited in scope. *Pruitt*, 174 F.3d at 1221.

Courts determine whether a *Terry* stop was overbroad by looking at several factors, including: "the law enforcement purposes served by the detention, the diligence with which the police pursue the investigation, the scope and intrusiveness of the detention, and the duration of the detention." *United States v. Simmons*, 172 F.3d 775, 780 (11th Cir. 1999) (quoting *United States v. Hardy*, 855 F.2d 753, 759 (11th Cir. 1988)).

According to Gonzalez-Zea, the officers extended the stop too far when they continued to detain him even after they realized that he was not Alfaro-Aguilar. (Doc. # 57, at 13.) That argument fails. Officers Purdy, Skillern, and Hinkle did not detour from their search for Alfaro-Aguilar. They stopped Gonzalez-Zea to see if he was Alfaro-Aguilar, and Skillern's questions focused on establishing Gonzalez-Zea's identity and whether he or anyone else lived in the house. The fact that Gonzalez-Zea was not Alfaro-Aguilar did not rule out the possibility that Alfaro-Aguilar lived in the house. The officers did not search, arrest, or handcuff Gonzalez-Zea. And perhaps most importantly, Skillern's questions did not take too long; the stop did not last more than a "couple minutes."

Gonzalez-Zea asserts that Skillern should have accepted his Mexican ID card without asking for a driver's license (or why he did not have one). But when an officer pulls over a car, it is reasonable to ask for a driver's license. After all, state law requires that drivers have a license. *See* Ala. Code § 32-6-1(a). The U.S.

Supreme Court's decisions also "make clear that questions concerning a suspect's identity are a routine and accepted part of many *Terry* stops." *Hiibel*, 542 U.S. at 186; *see Adams v. Williams*, 407 U.S. 143, 146 (1972).

To be sure, an officer cannot ask questions unrelated to the reason for a vehicle stop "in a way that prolongs the stop, absent the reasonable suspicion ordinarily demanded to justify detaining an individual." *Rodriguez v. United States*, 135 S. Ct. 1609, 1615 (2015). Officers cannot spend any more time than is "reasonably required to complete the stop's mission." *Id.* at 1616 (quoting *Illinois v. Caballes*, 543 U.S. 405, 407 (2005)). But at the same time, an officer "may conduct certain unrelated checks," *id.* at 1615, and make "ordinary inquiries incident to the . . . stop," *id.* (quoting *Caballes*, 543 U.S. at 408); *see also United States v. Griffin*, 696 F.3d 1354, 1362 (11th Cir. 2012) (quoting *Arizona v. Johnson*, 555 U.S. 323, 333 (2009)) (holding "unrelated questions posed during a valid *Terry* stop do not create a Fourth Amendment problem unless they 'measurably extend the duration of the stop'").

Sometimes it can be difficult to reconcile the command that an officer not prolong a stop with the officer's authority to ask unrelated questions. *See United States v. Green*, 897 F.3d 173, 181 (3d Cir. 2018) (noting the difficulty). But in this case, any of Skillern's questions that fell beyond the precise reason for the stop — finding out if Alfaro-Aguilar was the driver — were still "reasonably related in scope" to the reason for the stop. *Terry*, 392 U.S. at 20; *cf. United States v. Vargas*,

848 F.3d 971, 974 (11th Cir. 2017). They were, in other words, ordinary inquiries incident to the stop. Also, questions about Gonzalez-Zea's lack of a driver's license and whether he (or anyone else) lived in the house could not have taken more than a minute. And overall, Skillern acted diligently and reasonably. His questions therefore did not transform the stop into an unconstitutionally prolonged seizure. *See Griffin*, 696 F.3d at 1362.

B. Gonzalez-Zea gave valid consent to the search of his home.

Even though the *Terry* stop of Gonzalez-Zea's car was valid, the search of his home is a separate question. The focus is on Gonzalez-Zea's consent to the search. "A consensual search is constitutional if it is voluntary; if it is the product of an 'essentially free and unconstrained choice.'" *United States v. Purcell*, 236 F.3d 1274, 1281 (11th Cir. 2011) (quoting *Schneckloth v. Bustamonte*, 412 U.S. 218, 225 (1973). "In assessing voluntariness, the inquiry is factual and depends on the totality of the circumstances." *Id.* (citing *Schneckloth*, 412 U.S. at 248–49).

Gonzalez-Zea argues that his consent was involuntary because it was obtained: "(1) by two armed law enforcement officers wearing law enforcement regalia; (2) during a stop in darkness on an isolated rural road; (3) while Mr. Gonzalez-Zea's identification card was in the possession of law enforcement officers; (4) while the red and blue police lights were still on; (5) without Mr. Gonzalez-Zea being informed that he was free to leave; and (6) without Mr.

Gonzalez-Zea having been informed of his *Miranda* rights or his right to refuse to consent." (Doc. # 57, at 16 n.10; *see* Doc. # 54, at 8–11.) Gonzalez-Zea's objections are certainly relevant in determining the validity of consent, but the totality of the circumstances shows that his consent was voluntary.

Like most law-enforcement officers, Skillern and Hinkle were armed. But neither officer drew his gun, and the mere presence of holstered firearms does not make consent involuntary. *See United States v. Drayton*, 536 U.S. 194, 205 (2002); *United States v. Perez*, 443 F.3d 772, 778 n.2 (11th Cir. 2006). The same is true of the officers' badges and other law-enforcement insignia. *See Drayton*, 536 U.S. at 204–05; *United States v. Villanueva-Fabela*, 202 F. App'x 421, 427 (11th Cir. 2006).

Though the stop happened before dawn on a relatively rural road, Gonzalez-Zea was in his car just down the road from his house. He was also on the side of a public highway, not in a police station or the back of a police car. Even if it was as early as 5:00 a.m., that would not necessarily invalidate his consent. *See United States v. James*, 423 F.2d 991, 992–93 (5th Cir. 1970) (affirming a district court's finding that consent to a search "in the dark hours of the morning" was valid).

The court assumes that Skillern's flashing red and blue lights were still on, meaning that Gonzalez-Zea was not free to leave. *See* Ala. Code § 13A-10-52(b); *id*. § 32-5-113(a). But a person can give consent to a search even when under arrest. *See, e.g.*, *United States v. Watson*, 423 U.S. 411, 424 (1976); *United States v.*

Hidalgo, 7 F.3d 1566, 1571 (11th Cir. 1993). The question is not whether Gonzalez-Zea was free to leave immediately, but whether he was free to refuse consent. *See Purcell*, 236 F.3d at 1282 (citing *Florida v. Bostick*, 501 U.S. 429, 435 (1991)). Likewise, even assuming that Skillern had not returned Gonzalez-Zea's ID when he asked for consent, that would not necessarily negate consent. *Id.*

Skillern did not tell Gonzalez-Zea that he could refuse consent, but courts have repeatedly "rejected in specific terms the suggestion that police officers must always inform citizens of their right to refuse when seeking permission to conduct a warrantless consent search." *Drayton*, 536 U.S. at 206. And finally, the lack of a *Miranda* warning before the search "is only one factor in assessing voluntariness." *United States v. Hall*, 565 F.2d 917, 921 (5th Cir. 1978); *see also United States v. Bates*, 840 F.2d 858, 861 (11th Cir. 1988).

Even viewing all six of Gonzalez-Zea's objections together, they do not show that his consent was invalid. That is because one must also consider the fact that Gonzalez-Zea: (1) was neither searched nor handcuffed; (2) drove his own car back to the house; and (3) unlocked the door and let the officers inside. Based on the totality of the circumstances, Gonzalez-Zea's consent was voluntary; it was the product of an essentially free and unconstrained choice.

V. CONCLUSION

Upon careful consideration of the Motion to Suppress (Doc. # 28), the Magistrate Judge's Recommendation (Doc. # 56), and Gonzalez-Zea's objections to that Recommendation (Doc. # 57), and after a thorough review of the record, it is ORDERED that the Recommendation is ADOPTED as MODIFIED in accordance with this Memorandum Opinion and Order, Gonzalez-Zea's objections are OVERRULED, and the Motion to Suppress is DENIED.

DONE this 10th day of September, 2018.

/s/ W. Keith Watkins
CHIEF UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

App 1c

UNITED STATES OF AMERICA,	)	
	)	
v.	)	CRIM. ACT. NO. 3:17cr444-WKW
	)	(WO)
GUILLERMO GONZALEZ-ZEA	)	

RECOMMENDATION OF THE MAGISTRATE JUDGE

Defendant Guillermo Gonzalez-Zea ("Gonzalez-Zea") was charged on October 17, 2017, in a single count indictment with being an illegal alien in possession of a firearm and live ammunition in violation of 18 U.S.C. § 922(g)(5) and § 924(a)(2). On February 5, 2018, Gonzalez-Zea filed a motion to suppress all physical items seized, statements made, and other "fruits" obtained as a result of "an unlawful traffic stop and unreasonable detention" on September 26, 2017, in Heflin, Alabama, in the Middle District of Alabama. (Doc. # 28 at 1). Claiming that the stop of his vehicle were unsupported by reasonable suspicion, Gonzalez-Zea contends that all evidence seized and statements made should be suppressed because the traffic stop violated the Fourth Amendment to the United States Constitution. Gonzalez-Zea also contends that the duration of the traffic stop was unreasonably extended. (*Id*. at 3). Finally, Gonzalez-Zea argues that his consent to search his residence was "coerced and obtained in a means insufficiently distinguishable from [his] illegal seizure." (*Id*).

On April 4, 2018, the Court held an evidentiary hearing on the motion to suppress. For the reasons which follow, the Court concludes that the motion to suppress is due to be DENIED.

FACTS

Before dawn on the morning of September 26, 2017, United States Department of

Homeland Security Immigration and Customs Enforcement deportation officers Christopher Purdy, Scott Skillern and Waylon Hinkle were surveilling a residence located at 30926 Highway 431, in Heflin, Alabama. The officers were trying to locate an Immigration and Customs Enforcement fugitive named Jose Rodolfo Alfaro-Aguilar for whom there was a warrant for his deportation.[1] (Doc. # 47, Evid. Hrg Tr. at 63). Officer Purdy had been informed by an officer in Atlanta that the fugitive might be living at the address because utilities had been connected in the fugitive's name at that address. The officers arrived at the residence before 5:00 a.m. and parked within sight of the house.

Officer Purdy observed a male leave the residence in a vehicle but Purdy was parked too far away to identify the man as the fugitive. Purdy informed Skillern that a male had left the residence in the vehicle, and Skillern stopped the vehicle a short distance from the house to see if the driver was the fugitive. It is undisputed that the only reason Skillern stopped the vehicle was simply to ascertain whether the driver of the vehicle was the fugitive. Skillern activated his lights and siren. The defendant, who was driving the vehicle, stopped. Skillern approached the vehicle and asked the defendant his name. Recognizing that the name was not that of the fugitive, Skillern asked for identification. The defendant produced an identification document issued by Mexico. Skillern asked for additional identification issued by the United States but the defendant stated he did not have identification because he was in the country illegally. All of this occurred within a minute of the stop of the defendant.

During Skillen's short conversation with the defendant, officer Hinkle arrived. At that

[1] Alfaro-Aguilar was ordered removed in July 2016. (Doc. # 47, Evid. Hrg Tr. at 64).

point, the deportation officers were sure the defendant was not the fugitive. The defendant was not detained or placed under arrest. But the officers explained to the defendant that they were looking for a fugitive and asked if there was anyone else in the house. The defendant replied that he lived alone, and Skillern asked if they could "go back and take a look." (Doc. # 47, Evid. Trans. at 15).

The officers and the defendant drove back to the residence in their respective vehicles. Gonzalez-Zea unlocked the door and allowed the officers to enter the house. When the officers entered a bedroom, they saw a shotgun in the corner and found a rifle in a closet. Once the officers found firearms in the residence, Hinkle advised the defendant of his rights in Spanish. The defendant indicated that he was willing to answer questions and admitted that there was another firearm in the house. After recovering the third weapon, the defendant was arrested.

DISCUSSION

A. Validity of Investigatory Stop

The Fourth Amendment protects individuals from "unreasonable searches and seizures" by government officials, and its protections extend to "brief investigatory stops of persons or vehicles." *United States v. Arvizu*, 534 U.S. 266, 273 (2002). Under *Terry v. Ohio*, 392 U.S. 1 (1968), "even in the absence of probable cause, police may stop persons and detain them briefly in order to investigate a reasonable suspicion that such persons are involved in criminal activity."[2] *United States v. Pruitt*, 174 F.3d 1215, 1219 (11th Cir. 1999) (quoting *United States*

[2] The government does not argue, and the court does not find, that the agents had probable cause to initiate a traffic stop.

v. Tapia, 912 F.2d 1367, 1370 (11th Cir. 1990)). "Where police have been unable to locate a person suspected of involvement in a past crime, [they have] the ability to briefly stop that person, ask questions, or check identification," and "if police have a reasonable suspicion, grounded in specific and articulable facts, that a person they encounter was involved in or is wanted in connection with a completed felony, then a *Terry* stop may be made to investigate that suspicion." *United States v. Hensley*, 469 U.S. 221, 229 (1985).

For brief investigatory stops, the Fourth Amendment is satisfied "when the officer has a reasonable, articulable suspicion that criminal activity is afoot." *United States v. Gordon*, 231 F.3d 750, 754 (11th Cir. 2000) (quoting *Illinois v. Wardlow*, 528 U.S. 119, 123 (2000)). The reasonable suspicion required for a *Terry* stop is more than a hunch, and considering the totality of the circumstances, must be supported by some minimal level of objective justification that the person engaged in unlawful conduct. *United States v. Sokolow*, 490 U.S. 1, 7-8 (1989). Reasonable suspicion "is obviously considerably less than proof of wrongdoing by a preponderance of the evidence, *INS v. Delgado*, 466 U.S. 210, 217 (1984), or even the implicit requirement of probable cause that a fair probability that evidence of a crime will be found." *Tapia*, 912 F.2d at 1370. Reasonable suspicion requires "'at least a minimal level of objective justification for making the stop.'" *United States. v. Acosta*, 363 F.3d 1141, 1145 (11th Cir. 2004) (quoting *Jackson v. Sauls*, 206 F.3d 1156, 1165 (11th Cir. 2000). It does not require officers to catch the suspect in a crime. Instead, "[a] reasonable suspicion of criminal activity may be formed by observing exclusively legal activity." *Gordon*, 231 F.3d 750, 754 (11th Cir. 2000).

The "reasonable suspicion" standard requires that, to justify an investigatory stop, a police officer must "be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." *Terry*, 392 U.S. at 21 (footnote omitted)); *see also United States v. Williams*, 876 F.2d 1521, 1524 (11th Cir. 1989) (citing *Sokolow*, 490 U.S. at 7) (holding that reasonable suspicion "requires that the police articulate facts which provide some minimal, objective justification for the [investigatory] stop."). When assessing the facts articulated by an officer to determine whether an investigatory stop is warranted, a court must view them in totality and cannot engage in a "'divide-and-conquer analysis[.]'" *United States v. Bautista-Silva*, 567 F.3d 1266, 1273-74 (11th Cir. 2009). Reasonable suspicion may exist based on the totality of the circumstances even if each individual fact articulated by the officer, standing alone, is susceptible of an innocent explanation. *Id.*; *see also Arvizu*, 534 U.S. at 274-75. Moreover, "officers are permitted to "draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that 'might well elude an untrained person.'" *Arvizu*, 534 U.S. at 273 (quoting *United States v. Cortez*, 449 U.S. 411, 418 (1981)).

The court must decide whether, taken together and in light of the deportation officers' experience, the factors articulated by the officers gave rise to "reasonable suspicion, grounded in specific and articulable facts," that the fugitive was driving the vehicle they observed leaving the residence. *See Hensley*, 469 U.S. at 229; *see also 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 to see whether the detaining officer has a 'particularized and objective basis' for suspecting legal wrongdoing."). The court finds that, under the totality of the circumstances known to the deportation officers, *Acosta*, 363 F.3d at 1145, and in light of the officers' experience and training, *Arvizu*, 534 U.S. at 273, it was reasonable for the officers to suspect that the driver of the vehicle may have been the fugitive they sought. *See Cortez*, 449 U.S. at 418 (holding that reasonable suspicion "does not deal with hard certainties, but with probabilities. Long before the law of probabilities was articulated as such, practical people formulated certain common sense conclusions about human behavior; jurors as factfinders are permitted to do the same—and so are law enforcement officers").

Officer Purdy had been informed by agents in Atlanta that utilities had been connected at the residence in the fugitive's name and using his social security number. The officers in Atlanta had run the fugitive's name, date of birth and social security number through a database which revealed the Heflin address. The officers knew that the fugitive's age, height, weight and ethnicity. Purdy testified that they were looking for an Hispanic male "roughly in his mid or late forties." (Doc. # 47, Evid. Hrg Tr. at 75). Skillern testified that they were looking for an Hispanic male of a "certain height and weight." (*Id*. at 33). Hinkle was aware that the fugitive they sought was a Honduran national whose last known address was the residence in Heflin, Alabama. (*Id*. at 58).

Purdy also accessed the Department of Homeland Security's Enforcement and Removal Module (EARM) to secure a report on Alfaro-Aguilar. Alfaro-Aguilar's EARM report indicated

that he was 48 years old, Honduran, and using a particular social security number.[3] (Def's Ex. 5) Purdy was aware that the officers in Atlanta had run a Clear report on Alfaro-Aguilar. (Doc. # 8). Purdy ran the report to confirm the information provided to him by the officers in Atlanta. The Clear report also confirmed the Heflin address as the last known address of an individual using the same social security number as Alfaro-Aguilar. (*Id.*) Based on the objective facts, the court concludes that the initial investigatory stop of the vehicle was not in violation of the Fourth Amendment because the officers had reasonable suspicion, supported by specific, articulable facts, to stop the driver of the vehicle for the purpose of identification. *Hensley*, 469 U.S. at 229 (holding that, "[w]here police have been unable to locate a person suspected of involvement in a past crime, [they may] briefly stop that person, ask questions, or check identification,"); *see also Illinois v. Rodriguez*, 497 U.S. 177, 186 (1990) ("[I]n order to satisfy the 'reasonableness' requirement of the Fourth Amendment, what is generally demanded of the many factual determinations that must regularly be made by agents of the government . . . is not that they always be correct, but that they always be reasonable."). This stop was reasonable.

B. Scope and Duration of the Investigatory Stop

Next, Gonzalez-Zea asserts that the duration of the stop was improperly extended once Skillern determined that he was not the fugitive. When Skillern approached the vehicle, he asked Gonzalez-Zea for identification. This he was clearly permitted to do. Skillern was entitled to check Gonzalez-Zea's identification "including questioning the driver . . ., requesting

[3] In accordance with the E-Government Act of 2002, as amended on August 2, 2002, and M.D. Ala. General Order No. 2:04mc3228, the court declines to reveal the personal identifier.

consent to search . . . *and* running a computer check for outstanding warrants." *United States v. Simmons*, 172 F.3d 775, 778 (11th Cir. 1999) (emphasis in original). "Mere questioning . . . is neither a search nor a seizure." *United States v. Purcell*, 236 F.3d 1274, 1279 (11th Cir. 2001).

> Law enforcement officers do not violate the Fourth Amendment's prohibition of unreasonable seizures merely by approaching individuals on the street or in other public places and putting questions to them if they are willing to listen. . . . Even when law enforcement officers have no basis for suspecting a particular individual, they may pose questions, ask for identification, and request consent to search luggage – provided they doe not induce cooperation by coercive means.

United States v. Drayton, 536 U.S. 194, 201-02 (2002). *See also, United States v. Baker,* 290 F.3d 1276 (11th Cir. 2002). "Typically, . . . the officer may ask the detainee a moderate number of questions to determine his identity and to try to obtain information confirming or dispelling the officer's suspicions. But the detainee is not obligated to respond." *Berkemer v. McCarty*, 468 U.S. 420, 439 (1984).

When Gonzalez-Zea volunteered that he was in the country illegally, Skillern explained that the officers were seeking a fugitive and asked Gonzalez-Zea for his assistance. Gonzalez-Zea agreed to assist the officers and consented to a search of his residence. The unrebutted evidence demonstrates that Skillern asked Gonzalez-Zea for his assistance and permission to search his residence, and Gonzalez-Zea gave the officers consent. At that juncture, Gonzalez-Zea's consent fundamentally altered the nature of the encounter – from a brief investigatory stop into a consensual encounter.

C. Search Subsequent to Investigatory Stop

In his motion to suppress, Gonzalez-Zea argues that his consent to the search of his residence was coerced and not sufficiently attenuated from the improper traffic stop. At the evidentiary hearing on the motion to suppress, the evidence clearly demonstrated and the court finds that Skillern asked Gonzalez-Zea for permission to search his residence to locate the alien fugitive, and Gonzalez-Zea consented to the search. The court finds that Gonzalez-Zea's consent to search was voluntary and not the product of any force or coercion. *See generally United States v. Desir*, 257 F.3d 1233, 1236 (11th Cir. 2001). "A consensual search is constitutional if it is voluntary; if it is the product of an "essentially free and unconstrained choice."" *Purcell,* 236 F.3d at 1281. *See also Acosta*, 363 F.3d at 1151. When the officers searched the bedroom of the residence, they observed in plain view two firearms. "A consensual search is manifestly reasonable so long as it remains within the scope of the consent." *United States v. Martinez*, 949 F.2d 1117, 1119 (11th Cir. 1992).

CONCLUSION

For the reasons as stated, the court finds that the defendant's constitutional rights were not violated, and it is the RECOMMENDATION of the Magistrate Judge that the defendant's motion to suppress (doc. # 28) be DENIED. It is further

ORDERED that the parties shall file any objections to the said Recommendation on or before **August 2, 2018.** A party must specifically identify the factual findings and legal conclusions in the Recommendation to which objection is made; frivolous, conclusive, or general objections will not be considered. Failure to file written objections to the Magistrate

Judge's findings and recommendations in accordance with the provisions of 28 U.S.C. § 636(b)(1) shall bar a party from a de novo determination by the District Court of legal and factual issues covered in the Recommendation and waives the right of the party to challenge on appeal the district court's order based on unobjected-to factual and legal conclusions accepted or adopted by the District Court except upon grounds of plain error or manifest injustice. *Nettles v. Wainwright*, 677 F.2d 404 (5th Cir. 1982); 11TH CIR. R. 3-1. *See Stein v. Lanning Securities, Inc.*, 667 F.2d 33 (11th Cir. 1982). *See also Bonner v. City of Prichard*, 661 F.2d 1206 (11th Cir. 1981) (en banc).

Done this 19th day of July, 2018.

/s/Charles S. Coody
CHARLES S. COODY
UNITED STATES MAGISTRATE JUDGE