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UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

April 2, 2024

Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

GIANNI MONTAY MINNERS, a/k/a The Supreme, a/k/a Ganni Montay Minners, a/k/a Ganni Monta Minners, a/k/a Gianni Monta Minners, a/k/a Gianni Montriel Minners, a/k/a Gianni Montiel Minners, a/k/a Montay Fields,

Defendant - Appellant.

No. 23-5066
(D.C. No. 4:22-CR-00214-GKF-1)
(N.D. Okla.)

ORDER AND JUDGMENT*

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

Defendant-Appellant Gianni Montay Minners, upon a conditional plea of guilty, was convicted of being a felon in possession of a firearm. 18 U.S.C. § 922(g)(1); I R. 92, 110–12. He was sentenced to 27 months' imprisonment and two years' supervised release. I R. 110–12. He appeals from the district court's denial of

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

** After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. See Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

his motion to suppress evidence obtained from the search and seizure of his person.

II R. 39. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Background

On June 15, 2022, two officers approached Mr. Minners near the front entrance of the Savanna Landing Apartments (“Savanna Landing”). II R. 8, 13. At a motion hearing, the arresting officer testified that the purpose of approaching Mr. Minners was to discuss two previous incidents involving Mr. Minners. Id. at 11, 27.

The June 9 incident (six days earlier) was an armed confrontation involving Mr. Minners and other men near the entrance of Savanna Landing, where Mr. Minners was captured on video and in photographs holding a gun. Id. at 8–9; I R. 51–53. Officers received this information from an apartment security guard. II R. 8.

The June 11 incident (four days earlier) involved a shooting at a liquor store located approximately four blocks from Savanna Landing, and officers believed that Mr. Minners was the target based on video footage. Id. at 11–12. Officers also discovered through police records that Mr. Minners was a certified member of the 107 Hoover gang and a convicted felon. Id. at 10–11.

When officers approached Mr. Minners, it was around 5 pm and still light, and he was speaking with a group of five women seated in lawn chairs with a child present. Id. at 12–14, 16–17. Only one officer conversed with Mr. Minners and captured the interaction on his body camera. When the officer exited his car and approached Mr. Minners, Mr. Minners was standing with his back to the officer.

Body-camera footage at 00:30–00:40. The approaching officer asked, “What’s up? Are you Gianni? What’s your name, man?” II R. 35. When the officer got closer, Mr. Minners backed up a few steps towards the officer (still facing away) and gave the officer an ID card saying, “Here’s my ID, if you need some.” Body-camera footage at 00:40–00:45. Mr. Minners then leaned over to help a woman who had spilled a drink. II R. 35.

The officer responded, “I just asked you if you were Gianni.” Mr. Minners replied, “Huh?” while still bent over. Id. The officer repeated his question. Id. at 36. Mr. Minners turned his head to the officer and said, “Gianni who?” The officer asked, “Is that not your name?” Mr. Minners: “No.” The officer: “All right. Then why did you just hand me an ID with Gianni on it?” Mr. Minners: “Who?” Id.

Mr. Minners was still leaned over. The officer said, “Step back here, Gianni.” Mr. Minners replied, “yeah” and turned slightly toward the officer. The officer then reached out and grabbed Mr. Minners’s arm, and Mr. Minners responded, “I ain’t doing nothing” and again “I ain’t doing nothing, sir” as he pulled his arm away. Id.; Body-camera footage at 01:00–01:09. As relevant here, this was the moment Mr. Minners was seized for Fourth Amendment purposes. The district court so held in an order supplementing its oral ruling. I R. 80–82.

After the seizure, Mr. Minners turned away from the officer again. When the officer tried once more to grab Mr. Minners, Mr. Minners ran from the officer and was eventually tackled and placed in handcuffs. Body-camera footage at 01:10–02:00. The officer searched Mr. Minners and located a firearm in his waistband. Id.

at 02:25–02:32.

Mr. Minners moved to suppress the evidence obtained from the June 15 seizure because officers lacked reasonable suspicion. I R. 16–19. At the motion hearing, the arresting officer testified to his suspicion that Mr. Minners possessed a gun. II R. 8–19. Specifically, the officer testified that Mr. Minners was “blad[ing] away” from him — when asked what this meant, he explained that “blading” meant “not showing me the front of his person.” Id. at 15–16. He also testified that he believed Mr. Minners standing next to a group of women and a child was a bad situation, and there was “a potential for hostages.” Id. at 18. On cross-examination, the officer reiterated that “I just wanted to have a talk with [Mr. Minners] about the incidents.” Id. at 27.

In an oral ruling, the district court denied the motion to suppress and found that the officer “had a particularized and objective basis for suspecting Mr. Minners of criminal activity, specifically possessing a firearm as a felon.” Id. at 39. The district court accepted a conditional plea, id. at 50, and Mr. Minners now appeals from the denial of his suppression motion.

Discussion

“When reviewing the district court’s denial of a motion to suppress, we view the evidence in the light most favorable to the government and accept the district court’s factual findings unless they are clearly erroneous.” United States v. Grimmett, 439 F.3d 1263, 1268 (10th Cir. 2006). “The ultimate question of

reasonableness under the Fourth Amendment is a legal conclusion that we review de novo.” Id.

The Fourth Amendment protects “against unreasonable searches and seizures[.]” U.S. Const. amend. IV. An 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 arrest.” United States v. McHugh, 639 F.3d 1250, 1255 (10th Cir. 2011) (citations omitted). An investigatory detention is warranted “if the officer has a reasonable suspicion supported by articulable facts that criminal activity ‘may be afoot,’ even if the officer lacks probable cause.” United States v. Sokolow, 490 U.S. 1, 7 (1989) (quoting Terry v. Ohio, 392 U.S. 1, 30 (1968)). The detention must be “justified at its inception” by reasonable suspicion. McHugh, 639 F.3d at 1255 & n.3 (citations omitted). In this case, there is no dispute that Mr. Minners was detained when the officer directed Mr. Minners where to stand and grabbed his arm. Aplt. Br. at 8; Aplee. Br. at 11; I R. 80–81. Therefore, the sole issue before us is whether the officer had reasonable suspicion that criminal activity was afoot — here, possession of a weapon by a felon — to justify the investigatory detention.

Reasonable suspicion requires a “particularized and objective basis” that criminal activity is occurring, United States v. Cortez, 449 U.S. 411, 417–18 (1981), and more than an “inchoate and unparticularized suspicion or ‘hunch.’” Sokolow, 490 U.S. at 7 (citation omitted). The “level of suspicion [required] is considerably less than proof of wrongdoing by a preponderance of the evidence” and “less

“demanding” than probable cause. Id. In evaluating reasonable suspicion, we consider the totality of the circumstances. Id. at 8. We do not evaluate and reject each factor in isolation, even if each factor alone could indicate innocent activity. See United States v. Arvizu, 534 U.S. 266, 274 (2002). “This process allows officers to draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them[.]” Id. at 273. An officer’s “[s]ubjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis.” Whren v. United States, 517 U.S. 806, 813 (1996).

The district court relied upon the totality of circumstances to establish reasonable suspicion. It mentioned: (1) Mr. Minners’s possession of a gun as a felon six days earlier, (2) Savanna Landing’s location in a high-crime area, (3) Mr. Minners’s “furtive or evasive movements[,]” and (4) officers’ knowledge that Mr. Minners was a gang member and the suspected target of a shooting four days earlier. II R. 36–38. Taken together, we agree that these facts provided an objective basis for officers to suspect that Mr. Minners possessed a gun as a felon on June 15.

A. Mr. Minners’s possession of a gun six days earlier

Mr. Minners argues the officer’s knowledge that he possessed a gun on June 9 cannot contribute to reasonable suspicion of gun possession on June 15 because the information was stale, and gun possession is “transitory or momentary” not ongoing. Aplt. Br. at 10–11. We disagree.

The staleness doctrine dictates that “[p]robable cause to search cannot be based on stale information that no longer suggests that the items sought will be found

in the place to be searched.” United States v. Snow, 919 F.2d 1458, 1459 (10th Cir. 1990). As to reasonable suspicion, “timeliness of information is but one of many factors in the mix” and “the nature of the criminal activity at issue” factors in. United States v. Cortez-Galaviz, 495 F.3d 1203, 1209 (10th Cir. 2007). For example, timeliness is less relevant for criminal conduct that is ongoing and continuous (i.e., driving without a license, drug dealing, or conspiracy to commit fraud) and more relevant for transitory criminal conduct (i.e., jaywalking or mugging) which has a clear beginning and end point. Id.; see Snow, 919 F.2d at 1460 (evidence of conspiracy to defraud government collected over five-week period was not too stale given ongoing nature of crime); United States v. Mathis, 357 F.3d 1200, 1207 (10th Cir. 2004) (evidence of drug dealing dating back two years was not too stale given ongoing nature of crime).

Gun possession may fall somewhere in the middle of this scale. While gun possession could be transitory, it is not a crime like jaywalking, where entering and exiting the street clearly bookends the crime. Possession can also be actual or constructive. Viewing the evidence most favorably to the government, however, timeliness is less relevant, and a reasonable officer could certainly suspect that Mr. Minners still possessed a firearm as a felon.

Furthermore, only six days elapsed between the reported gun possession and the seizure. This court has held that an allegation of gun possession 17 days before a search did not render the information too stale to contribute to reasonable suspicion, given that “[i]t is reasonable to infer that one who brandishes a firearm will

intermittently possess that firearm for some period of time afterwards.” United States v. Lazos, 314 F. App’x 127, 133 (10th Cir. 2009) (unpublished). Obviously at some point, evidence of the June 9 gun possession might become too stale to contribute to reasonable suspicion of ongoing gun possession, but six days is not long enough.

Mr. Minners also argues that the officer approached him to discuss the recent incidents, not because the officer thought he had a gun, and therefore his detention was not justified at its inception. Aplt. Br. at 11–12; see II R. 11, 13, 27. But we look to objective facts to discern whether reasonable suspicion exists, not the officer’s subjective intentions. See Whren, 517 U.S. at 813. Here, the objective facts available to the officer support reasonable suspicion of Mr. Minners’s gun possession, which ends our inquiry.

B. Mr. Minners’s gang affiliation and involvement in a shooting four days earlier

Mr. Minners’s gang affiliation and involvement in a shooting four days before the seizure also support reasonable suspicion. While “suspected gang affiliation — ‘is not sufficient to create reasonable suspicion’” it is a part of the totality of the circumstances. United States v. Hammond, 890 F.3d 901, 906–07 (10th Cir. 2018). Mr. Minners argues that his reported gang affiliation should not contribute to reasonable suspicion because the reliability of the police department’s certification process was vague and underexplained, Aplt. Br. at 12–15, but the reliability of the certification process is irrelevant to the reasonable suspicion calculus. This evidence,

together with the reported gun possession six days earlier, and the fact that Mr. Minners was the alleged target of a shooting four days earlier, only strengthens the inference that Mr. Minners likely possessed a gun on June 15. It is reasonable to infer that anyone, let alone a gang member, would more likely possess a firearm if they were actively targeted.

C. Location in high-crime area and actions when approached by police

Finally, Mr. Minners's actions when approached by police in a high-crime area properly contributed to reasonable suspicion. Mr. Minners argues that (1) the district court mischaracterized his actions as furtive and that he did not "blade" away from officers by shielding his body, and (2) presence in a high-crime area is insufficient to establish reasonable suspicion. Aplt. Br. at 14–19.

First, it is debatable from the body-camera footage whether Mr. Minners was intentionally shielding the front of his body from police or otherwise simply ignoring the officer. But the footage clearly shows that Mr. Minners remained with his back to the officer throughout the entire interaction and gave inconsistent answers to the officer's questions — i.e., handing the officer an ID card with the name Gianni on it but saying his name was not Gianni. We have held that "vague, inconsistent or evasive answers" contribute to reasonable suspicion. United States v. Samilton, 56 F.4th 820, 828 (10th Cir. 2022) (citation omitted). While an individual is free to ignore police officers and "'furtive' movements alone" do not create reasonable suspicion, United States v. Humphrey, 409 F.2d 1055, 1059 (10th Cir. 1969); see United States v. Davis, 94 F.3d 1465, 1468–69 (10th Cir. 1996), we do not base our

finding of reasonable suspicion here on this behavior alone. We consider Mr. Minners's actions alongside his gun possession six days earlier, that he had been shot at four days earlier, and that he was a reported gang member.

Second, the same logic applies to Mr. Minners's presence in a high-crime area. Even if it is not alone sufficient to support reasonable suspicion, see Illinois v. Wardlow, 528 U.S. 119, 124 (2000), we view it as a factor in the totality of the circumstances analysis that adds to reasonable suspicion.

AFFIRMED.

Entered for the Court

Paul J. Kelly, Jr.
Circuit Judge

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
GIANNI MONTAY MINNERS,)
<i>a/k/a "The Supreme,"</i>)
<i>a/k/a "Ganni Montay Minners,"</i>)
<i>a/k/a "Ganni Monta Minners,"</i>)
<i>a/k/a "Gianni Monta Minners,"</i>)
<i>a/k/a "Gianni Montriel Minners,"</i>)
<i>a/k/a "Gianni Montiel Minners,"</i>)
<i>a/k/a "Montay Fields,"</i>)
)
Defendant.)

ORDER

This matter comes before the court *sua sponte* to expound upon its verbal ruling during the November 2, 2022 evidentiary hearing on the Motion to Suppress [Doc. 27] of defendant Gianni Montay Minners. During the hearing, the court made a record of its finding that Mr. Minners was not seized for purposes of the Fourth Amendment until Tulsa Police Department Officer Colton Martin directed Mr. Minners where to stand and attempted to grab Mr. Minners by the arm.

“A person is seized by the police and thus entitled to challenge the government’s action under the Fourth Amendment when the officer, by means of physical force or show of authority, terminates or restrains his freedom of movement, through means intentionally applied.” *Brendlin v. California*, 551 U.S. 249, 254 (2007) (internal citations and quotations omitted). To determine whether such a display of force or authority has been made, the relevant inquiry is “whether ‘a reasonable person would have believed that he was not free to leave.’” *United States v. Tafuna*, 5 F.4th 1197, 1200 (10th Cir. 2021) (quoting *Brendlin*, 551 U.S. at 255). “[T]he test is not what

the defendant himself thought, but what a reasonable, law-abiding person would have thought had he been in the defendant's shoes." *Id.* Relevant factors include:

- (1) the threatening presence of several officers; (2) the brandishing of a weapon by an officer; (3) physical touching by an officer; (4) aggressive language or tone of voice by an officer indicating compliance is compulsory; (5) prolonged retention of an individual's personal effects; (6) a request to accompany an officer to the police station; (7) interaction in a small, enclosed, or non-public place; and (8) absence of other members of the public.

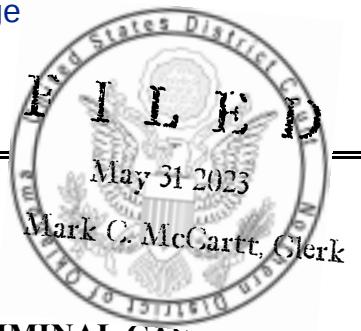
United States v. Jones, 701 F.3d 1300, 1313 (10th Cir. 2012) (quoting *United States v. Rogers*, 556 F.3d 1130, 1137-38 (10th Cir. 2009)). The list is "not exhaustive," and "no single factor is dispositive." *Id.*

The court has reviewed the body cam footage of Officer Colton Martin from June 15, 2022. Based on its review of the body cam footage, as well as Officer Colton's testimony during the November 2, 2022 evidentiary hearing, no reasonable, law-abiding person would have believed he was not free to leave until Officer Martin told Mr. Minners where to stand and attempted to grab his arm. Prior to that time, Mr. Minners was approached by two officers, but only one spoke to him. Neither brandished their weapon. Neither attempted to touch him. The interaction occurred in public, near a group of eight other people. Officer Martin did not employ an aggressive tone or indicate that compliance was compulsory. Rather, Officer Martin simply asked Mr. Minners his name several times. "It is well-established that 'a seizure does not occur simply because a police officer approaches an individual and asks a few questions.'" *Jones*, 701 F.3d at 1313 (quoting *United States v. Lopez*, 443 F.3d 1280, 1283 (10th Cir. 2006)). Thus, no seizure occurred until Officer Martin directed Mr. Minners where to stand and grabbed his arm, at which point a reasonable, law-abiding citizen would have believed he was not free to leave.

The court fully incorporates its verbal rulings on the record during the November 2, 2022 evidentiary hearing, finding that Officer Martin had a “particularized and objective basis” for suspecting Mr. Minners of criminal activity—specifically, possessing a firearm as a felon.

IT IS SO ORDERED this 3rd day of November, 2022.


Gregory K. Frizzell
United States District Judge
Northern District of Oklahoma



UNITED STATES DISTRICT COURT

Northern District of Oklahoma

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

v.

GIANNI MONTAY MINNERS
 a/k/a "The Supreme"
 a/k/a "Ganni Montay Minners"
 a/k/a "Ganni Monta Minners"
 a/k/a "Gianni Monta Minners"
 a/k/a "Gianni Montriel Minners"
 a/k/a "Gianni Montiel Minners"
 a/k/a "Montay Fields"

)

Case Number: 4:22-CR-00214-001-GKF

USM Number: 10375-062

Fred Randolph Lynn

Defendant's Attorney

THE DEFENDANT:

pleaded guilty to count One of the Indictment

pleaded nolo contendere to count(s) _____ which was accepted by the Court.

was found guilty on count(s) _____ after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. §§ 922(g)(1) and 924(a)(2)	Felon in Possession of a Firearm and Ammunition	6/15/22	1

The defendant is sentenced as provided in this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

 The defendant has been found not guilty on count(s) _____ Count(s) _____ is are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid. If ordered to pay restitution, the defendant must notify the Court and United States Attorney of material changes in economic circumstances.

May 30, 2023
 Date of Imposition of Judgment

Signature of Judge

Gregory K. Frizzell, United States District Judge
 Name and Title of Judge

May 31, 2023
 Date

DEFENDANT: Gianni Montay Minners
CASE NUMBER: 4:22-CR-00214-001-GKF

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: Twenty-seven months.

The Court makes the following recommendations to the Bureau of Prisons:

The defendant is remanded to the custody of the United States Marshal.

The defendant shall surrender to the United States Marshal for this district:

at _____ a.m. p.m. on _____.

as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

before 2 p.m. on _____.

as notified by the United States Marshal.

as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this Judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this Judgment.

UNITED STATES MARSHAL

By _____

DEPUTY UNITED STATES MARSHAL

DEFENDANT: Gianni Montay Minners
CASE NUMBER: 4:22-CR-00214-001-GKF

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of: Two years.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 - The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. You must make restitution in accordance with 18 U.S.C §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: Gianni Montay Minners
CASE NUMBER: 4:22-CR-00214-001-GKF

STANDARD CONDITIONS OF SUPERVISION

As part of your supervision, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when to report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by the probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person, such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may, after obtaining Court approval, notify the person about the risk or require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

AO 245B (Rev. 10/17) Judgment in a Criminal Case
Sheet 3B — Supervised Release

DEFENDANT: Gianni Montay Minners
CASE NUMBER: 4:22-CR-00214-001-GKF

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall submit his person, residence, office or vehicle to a search, conducted by the United States Probation Officer at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release; failure to submit to a search may be grounds for revocation; the defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.
2. The defendant shall successfully participate in a program of testing and treatment, to include inpatient treatment, for drug and alcohol abuse, at a treatment facility and on a schedule determined by the probation officer. The defendant shall abide by the policies and procedures of the testing and treatment program to include directions that the defendant undergo urinalysis or other types of drug testing consisting of no more than eight tests per month if contemplated as part of the testing and treatment program. The defendant shall waive any right of confidentiality in any records for drug and alcohol treatment to allow the probation officer to review the course of testing and treatment and progress with the treatment provider.

U.S. Probation Officer Use Only

A U.S Probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this Judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____

Date _____

DEFENDANT: Gianni Montay Minners
CASE NUMBER: 4:22-CR-00214-001-GKF

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the Schedule of Payments.

TOTALS	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
	\$100	N/A	N/A	N/A	N/A

The determination of restitution is deferred until
An Amended Judgment in a Criminal Case (AO 245C) will be entered after such determination.

The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss***</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
TOTALS	\$ _____	\$ _____	

Restitution amount ordered pursuant to Plea Agreement \$ _____

The defendant must pay interest on any fine or restitution of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the Judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

The Court determined that the defendant does not have the ability to pay interest and it is ordered that:

the interest requirement is waived for the fine restitution.

the interest requirement for the fine restitution is modified as follows:

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.

** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

*** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Gianni Montay Minners
CASE NUMBER: 4:22-CR-00214-001-GKF**SCHEDULE OF PAYMENTS**

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A Lump sum payment of \$ 100 due immediately, balance due

not later than _____, or
 in accordance with C, D, E, or F below; or

B Payment to begin immediately (may be combined with C, D, or F below); or

C Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this Judgment; or

D Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E Payment during the term of supervised release will commence within _____ (e.g., 30 or 90 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F Special instructions regarding the payment of criminal monetary penalties:

Any monetary payment is due in full immediately, but payable on a schedule to be determined pursuant to the policy provision of the Federal Bureau of Prisons' Inmate Financial Responsibility Program if the defendant voluntarily participates in this program. If a monetary balance remains, payment is to commence no later than 60 days following release from imprisonment to a term of supervised release in equal monthly payments of \$50 or 10% of net income (take home pay), whichever is greater, over the duration of the term of supervised release and thereafter as prescribed by law for as long as some debt remains. Notwithstanding establishment of a payment schedule, nothing shall prohibit the United States from executing or levying upon property of the defendant discovered before or after the date of this Judgment.

Unless the Court has expressly ordered otherwise, if this Judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the Clerk of the Court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

The defendant shall pay the cost of prosecution.

The defendant shall pay the following court cost(s):

The defendant shall forfeit the defendant's interest in the following property to the United States:
Firearm, firearm accessories, and ammunition shall be forfeited as directed in the Preliminary Order of Forfeiture, Dkt. # 64.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

1 wasn't a reasonable suspicion that Mr. Minners was engaging in
2 criminal activity and the fruits of the search, the gun, should
3 be suppressed, Your Honor.

4 THE COURT: Thank you, sir.

5 (Discussion held off the record)

6 THE COURT: So the issue of consensual encounter is
7 raised here and unfortunately we're in a situation with 495
8 defendants and I've got a 3:30 hearing, I got to make a call
9 here. And normally in the past, I would do, you know, an
10 academic, you know, 20-page order but, frankly, I don't have
11 time with McGirt.

12 I think the government is correct when in its brief it
13 takes the position that the encounter shifted from consensual
14 to an investigative detention when Officer Martin reached out
15 and grabbed Mr. Minners' arm. Mr. Minners engaged in some form
16 of conversation with Officer Martin, you know, handed the ID
17 back to him. It was more or less nonresponsive.

18 Officer Martin says, first of all, "What's up? Are you
19 Gianni? What's your name, man?" Mr. Minners hands Officer
20 Martin an ID by reaching his hand back, the Creek Nation ID.
21 Mr. Minners then leans down to help the woman who just spilled
22 something on the ground. Officer Martin says, "I just asked
23 you if you were Gianni."

24 Mr. Minners says "huh" while still bending over and
25 looking down.

1 Officer Martin then asks, "I just asked if you were
2 Gianni."

3 Mr. Minners turns his head to look at Officer Martin
4 and says, "Gianni who?"

5 Officer Martin says, "Is that not your name?"

6 Mr. Minners says, "No."

7 Officer Martin then says, "All right. Then why did you
8 just hand me an ID with Gianni on it?"

9 Mr. Minners says, "Who?"

10 Officer Martin mutters, "I don't believe this." A
11 little girl starts to walk between Officer Martin and
12 Mr. Minners. Officer Martin says, "Step back here, Gianni."

13 Mr. Minners says, "Yeah," and kind of raises up but
14 only half turns toward Officer Martin and says, "I ain't doing
15 nothing." At that point, Officer Martin reaches out and grabs
16 Mr. Minners' arm.

17 The Tenth Circuit has the time to dissect this into
18 milliseconds and tell me if I'm wrong, but I concur with the
19 government, with the little time I'm now afforded in the wake
20 of McGirt, and take the position that the encounter shifted
21 from consensual to investigative at the point Officer Martin
22 reached out and grabbed Mr. Minners' arm.

23 Officer Martin testified that prior to June 15th, 2022,
24 Savanna Landing Apartments security officer Gary Head provided
25 him with still photographs dated June 9, 2022, depicting

1 Mr. Minners with a black semiautomatic pistol in his hand.
2 Officer Martin, therefore, was aware that six days prior to the
3 date of the charged crime Mr. Minners possessed a firearm.

4 Mr. Minners argues that this evidence is too stale to
5 constitute reasonable suspicion. However, the Tenth Circuit
6 has previously found that evidence of a legal infraction that
7 occurred 20 days prior was "sufficiently current" to provide
8 reasonably suspicion.

9 The court references *United States v. Cortez-Galaviz*
10 G-a-1-a-v-i-z, 495 F.3d 1203, 1209-1210 (10th Cir. 2007).

11 Additionally, Officer Martin testified that he knew the
12 Savanna Landing Apartments to be a high-crime area. Frankly,
13 the area has been known as high-crime for 40 years. I remember
14 as a clerk to Judge Brett unknowingly driving into the area
15 where we had numerous drug crimes at the time. It's known to
16 be a high-crime area, the officer testified to it, and it's
17 clearly true.

18 "Although the fact that a stop occurred in a high-crime
19 area cannot alone justify an investigative detention" -- that's
20 a quote from the Tenth Circuit -- the Tenth Circuit has stated,
21 "A suspect's presence in a high-crime area is still relevant to
22 whether the totality of the circumstances justify a detention."
23 That's *Briggs*, 720 F.3d at 1286.

24 And as an aside, my kids played baseball next door at
25 Johnson Park and we frequently would hear gunfire issuing from

1 those apartments.

2 Further, furtive or evasive movements are to be
3 considered in the totality of the circumstances. That's
4 Briggs, 720 F.3d 1286-1287. Officer Martin's body cam video
5 clearly depicts Mr. Minners turning and bending his body such
6 that Mr. Officer Martin could not see his chest and waist.
7 Moreover, Mr. Minners denied that his name was Gianni.

8 The court refers counsel to *United States v. Pettit*,
9 785 F.3d 1374, 1379, (10th Cir. 2015), wherein the Tenth
10 Circuit stated that "to satisfy the reasonable-suspicion
11 standard, an officer need not rule out the possibility of
12 innocent conduct."

13 Finally, Officer Martin testified that he knew that
14 Mr. Minners -- he knew Mr. Minners to be a gang member, a
15 certified gang member, and resembled the intended target of
16 shots fired at a nearby liquor store on June 11, 2022, only
17 four days prior to the charged crime.

18 As in *United States v. Roelandt*, R-o-e-l-a-n-d-t, 827
19 F.3d 746, at 748-749, (8th Cir. 2016), the defendant, a known
20 felon and a gang member, in this case certified by the Tulsa
21 Police Department, was in a high-crime area. Officers in
22 Roelandt knew that the defendant had recently possessed a gun.

23 In this case, Officer Martin was aware of the shots
24 fired at the nearby liquor store on June 11th, four days prior
25 to the charged crime, and that Mr. Minners resembled the

1 intended target of those shots. Under the circumstances, the
2 court in Roelandt concluded that reasonable suspicion existed.
3 That's at page 749.

4 In this case, the court concludes and finds that
5 officer Martin had a particularized and objective basis for
6 suspecting Mr. Minners of criminal activity, specifically
7 possessing a firearm as a felon. The motion to suppress at
8 docket No. 27 will be denied.

9 We previously dealt with the motion in limine at docket
10 No. 28. And as to docket 29, in the interim we looked at the
11 elements, and the elements of this crime are that the defendant
12 had to possess a gun on the day in question, on the day alleged
13 in the indictment. The pictures from three days before were
14 not on the day of the indictment. Those pictures are excluded.
15 The motion in limine is granted.

16 Anything further that we can address?

17 MR. JOHNSTON: No, Your Honor. Thank you.

18 MR. LYNN: No, Your Honor. Thank you.

19 THE COURT: Very well. Anything further with regard
20 to the pretrial?

21 MR. LYNN: No, Your Honor.

22 MR. JOHNSTON: No, Your Honor. Thank you.

23 THE COURT: Thank you very much. We are in recess.

24 (The proceedings were concluded)

25

C E R T I F I C A T E

I, Brian P. Neil, a Certified Court Reporter for the Northern District of Oklahoma, do hereby certify that the foregoing is a true and accurate transcription of my stenographic notes and is a true record of the proceedings held in above-captioned case.

I further certify that I am not employed by or related to any party to this action by blood or marriage and that I am in no way interested in the outcome of this matter.

In witness whereof, I have hereunto set my hand this
7th day of August 2023.

s/ Brian P. Neil

Brian P. Neil, RMR-CRR
United States Court Reporter

Pertinent Constitutional Provisions

United States Constitution, Amendment Four:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Pertinent Statutory Provisions

18 U.S.C. § 922(g)(1):

(a) It shall be unlawful-

(1) for any person-

(A) except a licensed importer, licensed manufacturer, or licensed dealer, to engage in the business of importing, manufacturing, or dealing in firearms, or in the course of such business to ship, transport, or receive any firearm in interstate or foreign commerce; or

(B) except a licensed importer or licensed manufacturer, to engage in the business of importing or manufacturing ammunition, or in the course of such business, to ship, transport, or receive any ammunition in interstate or foreign commerce;

18 U.S.C. § 924(a)(2):

(2) Whoever knowingly violates subsection (a)(6), (h), (i), (j), or (o) of section 922 shall be fined as provided in this title, imprisoned not more than 10 years, or both.