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LAW ENFORCEMENT OFFICER TRAINING CASE OF THE MONTH

By Don Hays

Month of August – 2024

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United States v. Refugio Avila, No. 22-3231, 2024 WL 3334954, July 9, 2024. Denial of Motion to Suppress (Firearms Offense) - - Affirmed.

THE CASE: The police found a loaded hand-gun underneath Avila's shirt during a series of pat-downs at a traffic stop. Was the detention and frisk of Avila legal?

FACTS: Two Officers spot Refugio Avila, a known gang member, riding in a car and decide to follow. After witnessing at least three traffic violations, the Officers pull Avila over. Both Officers were aware that Avila's gang was known to carry firearms. As the Officers pulled in behind Avila's parked car, they noticed Avila moving around in his front passenger seat. An Officer asked Avila to step out of his car. Upon exiting the vehicle and without prompting, Avila raised his hands, spread his legs, and turned to face the minivan. An Officer asked Avila whether he had a firearm. Avila answered, "no." The Officer then performed a pat-down. During this pat-down, the Officer discovered a large band around Avila's abdomen. Avila explained that he was wearing the medical device because of a hernia. In response, the Officer discontinued searching around Avila's torso, and shifted to his front pockets and waistline. The Officer found nothing. This initial frisk lasted about thirty seconds. A second Officer then approached Avila and instructed him to walk to the rear passenger side of the vehicle. Avila complied. Turning his attention to the minivan, an Officer conducted a protective sweep of the vehicle—the search lasted about three minutes but also turned up nothing. While the Officer searched the minivan, Avila remained near the back right passenger side of his car and continued to face the vehicle without turning around.

The second Officer saw Avila's positioning and went over to question him while the first Officer was searching the minivan. The second Officer again asked whether Avila had anything in the vehicle because he had been moving around a lot when the officers initiated the stop. Avila offered further explanation for the movement, stating that he was simply shifting food that was in his lap. The Officer inquired about Avila's current affiliation with his streetgang, and Avila replied, "18th Street." The Officer, based on previous statements by other gang members, understood that this was a reference to Avila's membership in a faction of the streetgang. At this point, roughly a minute after the first pat-down, the second Officer conducted a second pat-down of Avila. He searched Avila's front pockets, legs, and groin area. The Officer briefly lifted Avila's shirt and noticed the hernia strap around Avila's torso. This second search lasted about fifteen seconds and once again turned up nothing. After the first Officer finished searching the minivan, he wrote down Avila's name and date of birth, returned to the unmarked police car, and began running the information through a police database. The second Officer left Avila and approached the first Officer in the unmarked police car. While standing at the police car's open door, the second Officer told the first Officer that he thought Avila was standing in a weird position. The second Officer then directed Avila to walk from the back of the minivan toward the police car. As Avila was walking over, the second Officer noticed a bulge in Avila's torso and asked Avila if it was a gun. The first Officer turned away from his in-car computer, lifted Avila's shirt, and pulled a loaded handgun from inside Avila's hernia bandage.

Avila was charged with various Federal felony weapons charges and, prior to his trial, moved to suppress. After a hearing, the District Court denied Avila's motion to suppress. Avila then appealed his subsequent conviction.

ARGUMENTS: On appeal, Avila argued that the District Court erred in denying him motion to suppress.

APPELLATE COURT FINDINGS: The Seventh Circuit Federal Court of Appeals found that:

- 1 the district court's decision to credit police officers' testimony that they had witnessed two traffic violations, justifying traffic stop, was not clearly erroneous;
- 2 the officers had reasonable suspicion to believe that defendant was armed and dangerous, justifying frisk;
- 3 the officers had reasonable suspicion for follow-up frisk;
- 4 the officers had reasonable suspicion to frisk defendant for third time;
- 5 the officers did not unreasonably prolong traffic stop by conducting three frisks.

FIRST ISSUE: Was the district court's decision to credit the police officers' testimony that they had witnessed two traffic violations, justifying traffic stop, clearly erroneous?

CONCLUSIONS AND REASONING: The district court's decision to credit the police officers' testimony that they had witnessed two traffic violations, justifying a traffic stop, was not clearly erroneous, despite the arguments that the officers' testimony regarding a seatbelt violation was unbelievable because the windows of the vehicle were darkly tinted and that the only explanation for the officers' inconsistent testimony regarding the turn signal violation was fabrication. **WHY:** *Even though the still images of officers' body camera footage suggested that the windows were opaque, the district court reviewed the evidence and permissibly concluded that the video footage did not show everything the human eye could see, and the district court concluded that the officers' inconsistency was the product of waning memories, not a story made up from thin air.*

SECOND ISSUE: Did the officer have sufficient reasonable suspicion to justify conducting a traffic stop?

CONCLUSIONS AND REASONING: The Officers had reasonable suspicion, justifying this traffic stop. **WHY:** *The officers saw that neither the driver nor the defendant were wearing their seatbelts and that the driver failed to signal 100 feet ahead of the intersection.*

THIRD ISSUE: Was the first frisk of the defendant justified?

CONCLUSIONS AND REASONING: The court held that the police officer had reasonable suspicion to believe that this defendant was armed and dangerous, justifying a frisk during the traffic stop. **WHY:** *The officer knew the defendant was a member of a violent gang that was engaged in an active conflict, and the officer saw the defendant moving oddly in the vehicle before it came to a stop.*

FOURTH ISSUE: Did the officer have sufficient reasonable suspicion to justify the second, follow-up frisk?

CONCLUSIONS AND REASONING: The Officer had sufficient reasonable suspicion that this defendant was armed and dangerous, to justify the second follow-up frisk during this traffic stop. **WHY:** *The officer knew that the first officer had conducted a relatively cursory initial search; he also knew about the defendant's affiliation with the violent street gang involved in an active conflict and the defendant's odd movements before the vehicle pulled over, and the defendant confirmed his gang affiliation to the officer and then stood awkwardly, essentially hugging the back of the vehicle.*

FIFTH ISSUE: Did the officers have sufficient reasonable suspicion to frisk this defendant for a third time?

CONCLUSIONS AND REASONING: The Officers had sufficient reasonable suspicion to frisk this defendant for third time during the traffic stop. **WHY:** *The officer noticed the defendant's odd posture, he was hunched over and still had not turned to face the officers, the officer told the defendant to walk toward other the officer, and as defendant was walking, the officer spotted a conspicuous bulge on the defendant's torso, a location the officers had not yet searched.*

SIXTH ISSUE: Did the Officers unreasonably prolong this traffic stop by conducting three frisks?

CONCLUSIONS AND REASONING: These Officers did not unreasonably prolong this traffic stop by conducting three frisks of this defendant. **WHY:** *Each search was related to the stop's mission, ensuring officer safety, and the frisks did not unduly prolong stop, and the officers were actively investigating the stop when they recovered the defendant's gun.*

RESULT: The Court of Appeals held that the officers had reasonable suspicion to stop the vehicle, to frisk Avila, and the stop was not unlawfully prolonged. Thus, there was no Fourth Amendment violation. The Court of Appeals concluded that the district court correctly held that the firearm should not be suppressed.

QUIZ QUESTIONS FOR THE MONTH OF AUGUST – 2024

United States v. Refugio Avila, No. 22-3231, 2024 WL 3334954, July 9, 2024. Denial of Motion to Suppress (Firearms Offense) - - Affirmed.

1. As a general rule, Officers must have probable cause to believe that a criminal offense has occurred or is occurring before a *Terry* stop can be made.
 - a. True.
 - b. False.

2. Avila was a passenger in a car driven by his girlfriend. Was Avila “seized” when the police pulled the suspect car over after witnessing several traffic violation?
 - a. Yes.
 - b. No.

3. The Officers conducted a third frisk of Avila. Did the appellate court conclude that the third frisk was illegal?
 - a. Yes.
 - b. No.

4. A traffic stop may become unlawful if it is prolonged beyond the time reasonably required to complete the mission of the stop. In this case, the Officers frisked Avila three times. The Court of Appeals found that the conduct of the Officers did not unreasonably prolong this traffic stop.
 - a. True.
 - b. False.

QUIZ QUESTIONS AND ANSWERS FOR THE MONTH OF AUGUST – 2024

United States v. Refugio Avila, No. 22-3231, 2024 WL 3334954, July 9, 2024. Denial of Motion to Suppress (Firearms Offense) - - Affirmed.

1. As a general rule, Officers must have probable cause to believe that a criminal offense has occurred or is occurring before a *Terry* stop can be made.

b. False. Police officers are permitted to detain a person briefly to conduct an investigatory stop if the officers have *reasonable suspicion* that the person is engaged in criminal activity. U.S. Const. Amend. 4.
2. Avila was a passenger in a car driven by his girlfriend. Was Avila “seized” when the police pulled the suspect car over after witnessing several traffic violation?

a. Yes. “Passengers in cars stopped by police are deemed ‘seized’ for Fourth Amendment purposes and are entitled to challenge the constitutionality of the detention.” *United States v. Wilbourn*, 799 F.3d 900, 908 (7th Cir. 2015) (citing *Brendlin v. California*, 551 U.S. 249, 251, 127 S. Ct. 2400, 168 L.Ed.2d 132 (2007)).
3. The Officers conducted a third frisk of Avila. Did the appellate court conclude that the third frisk was illegal?

b. No. The Court of Appeals found that the Officers had sufficient reasonable suspicion to justify a third frisk of Avila. The Court noted that the officers noticed Avila's odd posture, he was hunched over and still had not turned to face the officers, an officer told Avila to walk toward the other officer, and as Avila was walking, the officer noticed a conspicuous bulge on Avila's torso, a location the officers had not yet searched.
4. A traffic stop may become unlawful if it is prolonged beyond the time reasonably required to complete the mission of the stop. In this case, the Officers frisked Avila three times. The Court of Appeals found that the conduct of the Officers did not unreasonably prolong this traffic stop.

a. True. The Court held that each frisk was related to the stop's mission—ensuring officer safety—and did not unduly prolong the stop as a matter of law. Nor was there any basis on which to conclude that the “tasks tied to the traffic infraction [were]—or reasonably should have been—completed” before the officers discovered the gun. To the contrary, the Court concluded that the officers were actively investigating the stop when they recovered Avila's gun.