

Recent Case Report

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U.S. v. Johnson

(9th Cir. 2009) 581 F.3d 994

Issue

Did officers have sufficient grounds to detain three men suspected of plotting a bank robbery?

Facts

An Alaska state trooper and a U.S. Marshall were driving in an unmarked SUV in Anchorage when, while stopped for a traffic light, they noticed the following in the parking lot of a bank: Three men were standing next to a Buick that was parked near the bank's front entrance. The hood of the car was raised, but the men were not looking at the engine; instead, it appeared they were watching the bank. Two of the men then started walking toward the bank's front door and one of them flipped up the hood on his sweatshirt, partially obscuring his face. The third man got behind the wheel of the Buick and waited. The officers decided to investigate.

The trooper entered the bank and saw the two men standing in line, whispering to each other and surveying the bank lobby. Just then, one of them "looked directly" at the trooper who, although he was wearing plain clothes, was easily recognizable as an officer, as he was carrying a sidearm, taser, and two-way radio. The man then said something to the other man, and both of them immediately walked out of the bank and entered the Buick. The officers pulled their SUV behind the Buick and turned on their emergency lights.

The first thing they did was pat search the men, and found that two of them were carrying handguns. One of the two, Johnson, was charged with possession of a firearm by a felon and, when his motion to suppress the gun was denied, he pled guilty.

Discussion

In what may be the most frivolous appeal in 2009, Johnson argued that his gun should have been suppressed because the officers lacked grounds to believe that he and his accomplices, or "associates," were about to rob the bank. The Ninth Circuit summarily disposed of the matter, ruling that the circumstances "were more than sufficient to support [the officers'] suspicion that Johnson and his associates were casing a bank for a potential robbery," and planned to flee with the third man in the Buick. The court also ruled that the officers had grounds to pat search the men because they "suspected that a bank robbery was about to take place, which increased their suspicion that the men might be armed." POV