

Proximity to the Crime: A Factor Indicating Guilt or Merely at the Wrong Place at the Wrong Time

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We have all heard the expression “in the wrong place at the wrong time” at some point in our lives. The phrase can mean something as minor as getting stuck in a terrible traffic jam or something as life-altering as being suspected of a serious crime. Thankfully, the Fourth Amendment protects citizens, who unfortunately may find themselves near a crime after it occurs, from governmental intrusion without reasonable suspicion. Merely being “in the wrong place at the wrong time” then, becomes insufficient for law enforcement to stop someone. Or is it?

For law enforcement to legally make a stop, there needs to be reasonable suspicion that a crime has occurred. To determine whether reasonable suspicion exists, a “totality of the circumstances” analysis is used—essentially, whether the facts

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taken together give rise to an inference that criminal activity is occurring. The use of the plural word “circumstances” implies a necessity that more than one fact must occur to create the presumption that criminal activity is underway.

It seems logical that if a vehicle is seen in the area after a crime is committed, it may raise some suspicion that the particular vehicle may have been involved. But without more corroborating information, how much does the vehicle really tell us? Any innocent person could happen to be in the area after a crime has occurred, and so more information is necessary.

The Eighth Circuit in *United States v. Mosley*² focused almost exclusively on the fact that a vehicle was spotted in the area of a bank robbery not long after the robbery occurred, and ignored other factors that may have indicated reasonable suspicion was not present.³ In *Mosley*, the vehicle was pulled over 5.8 miles from the

² 878 F.3d 246 (8th Cir. 2017).

³ *See id.* at 250.

bank where the robbery in question occurred, about eight minutes after the robbery took place.⁴ Although the vehicle was present in the area where the crime was committed, there was no further information that tied it to the crime.⁵ A witness simply reported that he saw the vehicle near the bank after the robbery, but stated that he did not know if the vehicle had any connection to the robbery itself.⁶ While this is certainly relevant information, it seems to be a bit of a stretch to consider it dispositive of criminal activity on its own.

The Eighth Circuit's decision seems to be even more of a stretch when viewed in conjunction with a Fifth Circuit decision that involved a very similar factual scenario. In *United States v. Jaquez*,⁷ the Fifth Circuit concluded that although a vehicle was in the general vicinity of the crime about fifteen minutes after the initial report, and matched a description of the one seen firing shots, this

⁴ *See id.*

⁵ *See id.*

⁶ *See Mosley*, 878 F.3d at 250.

⁷ 421 F.3d 338 (5th Cir. 2005).

information alone was insufficient to support a stop.⁸ Additionally, in other cases where courts concluded that reasonable suspicion was present based on proximity to the incident in question, the vehicle in question was significantly closer to the scene of the crime than the 5.8 miles in *Mosley*.⁹ Further, while eight minutes is not necessarily a long amount of time, it is generally longer than the amount of time elapsed in other cases where courts focused on temporal proximity as the basis for finding reasonable suspicion. If we are to determine whether reasonable suspicion is present based on a totality of the circumstances, then there should be more than

⁸ *See id.* at 341.

⁹ *See United States v. Roberts*, 787 F.3d 1204, 1209 (8th Cir. 2015) (stating vehicle spotted only seven blocks from where shooting occurred); *United States v. Bolden*, 508 F.3d 204, 206 (5th Cir. 2007) (noting officer discovered vehicle merely upon “rounding the corner”); *United States v. Juvenile TK*, 134 F.3d 899, 904 (8th Cir. 1998) (discussing vehicle spotted “no more than two blocks” from scene of robbery).

one circumstance present to create a presumption that criminal activity is afoot. Mere proximity to a crime is not enough.