

## Legal Updates

U.S. v. Hunter, 2009 WL 1617886 (6th Cir. 2009)

In the city of Cincinnati, Ohio, officers responded to a report of shots fired by an African-American male. The man was described as having long hair, wearing tan clothing and armed with an automatic. Witnesses also reported a silver vehicle at the scene of the shooting.

An officer saw the defendant, who matched the description of the individual firing the shots, place something in the rear seat of a silver vehicle and then walk away toward an apartment building. Another officer apprehended the defendant, Hunter, and read him his Miranda rights. Officers observed an AK-47 rifle on the floor of the back seat of the silver vehicle. Hunter denied that the rifle was his. Hunter's girlfriend was sitting in the passenger seat of the silver car and she was informed there was a mandatory three-year federal sentence for possession of an AK-47. Both Hunter and his girlfriend were taken to the police station in separate squad cars.

Several officers questioned Hunter and his girlfriend in the same room and one of the officers reiterated that both could be charged for possession of the AK-47. A supervising sergeant told Hunter he was going to administer a gunshot residue test on him to determine if he had fired a weapon. The sergeant asked Hunter if he had used fireworks earlier in the day and Hunter replied that he had. The sergeant then told Hunter the test could distinguish between gunshot residue and fireworks.

Shortly after administering the gunshot residue test Hunter asked to speak with the sergeant and told him "he didn't want his girlfriend to go to jail for him and that he fired the gun."

Hunter pled conditionally guilty to being a felon in possession of a firearm, but appealed the conviction arguing his admission was coerced and therefore involuntary.

Conviction upheld The court determined Hunter's statement was voluntarily given. To suppress the statement the court would have had to find that the officers' actions overcame the defendant's will to resist. To determine this, the court would have to consider the totality of circumstances such as; intelligence, education, emotional state, timing of the coercive act to the confession, and the individual's prior experience with the criminal justice system of the defendant.

To find a confession involuntary as a result of coercion there are three requirements for the court to determine:

- 1) Law enforcement misconduct was a significant factor in causing the suspect's admission.
- 2) The officer's actions or words were objectively coercive.
- 3) The coercive actions were sufficient to overbear the defendant's free will.

In this case, the mention of prosecuting Hunter's girlfriend for possession of the weapon was not a significant factor in the defendant's decision to confess. It was only after the gunshot residue test was administered that he asked to speak to the sergeant and confessed to possession of the rifle. In this instance, it was the timing of the admission only after the residue test was administered that helped establish the non-coercive nature of the threat to prosecute his girlfriend.

It is possible for a threat to arrest members of the subject's family to be coercive. These types of statements could cause an involuntary confession which would be suppressed by the court. In this case it was the gunshot residue test that was the crucial

factor in obtaining the confession from Hunter, not the threat to prosecute his girlfriend.

CFInsider note: While the sergeant actually administered a gunshot residue test to the defendant he could also have used this in the form of an enticement/bait question. The sergeant obtained a denial from the defendant that he had not fired a weapon and was not around anyone firing a gun prior to the test. The sergeant anticipated the possible excuse of fireworks as a reason for a person's failure of the gunshot residue test, telling the defendant, "Examiners will be able to distinguish between fireworks and gunshot residue." A properly worded enticement/bait question in this case would be, "Is there any reason you can think of that the examiner will determine there is gunshot residue on your clothing?"

A properly worded enticement/bait question will elicit one of three responses from a subject: a denial, a pause, or an admission. In this case it was the defendant's realization that the gunshot residue test would reveal his deception that caused him to confess.