



Hearing (“Tr.”). at 44-45. Two uniformed police officers, Brian Reynolds and Gerald Scott, were parked on that street in a marked patrol car. Id. at 43-44, 112. As Atkins drove past, Officer Reynolds recognized him as someone whom he suspected of trafficking in illegal drugs. Id. at 42, 44-45. Officer Reynolds suspected Atkins of dealing in drugs solely because he frequently saw Atkins in the area around 3900 Folsom Street, a known drug-infested area, and observed Atkins talking with individuals whom he also believed to traffick in narcotics. Id. at 41-43, 66, 88-89, 95-98. Officer Reynolds, however, admitted that he had never actually seen Atkins handling, carrying, selling, delivering, or using any narcotics prior to the events in question or heard that any other people had witnessed Atkins engaging in such behavior. Id. at 81-82.

Based on his suspicions, Officer Reynolds began to follow Atkins in the patrol car. Id. at 50, 89. While the officers trailed Atkins, Atkins ran both a stop sign and a red light. Id. at 45-46, 112. After Atkins committed those traffic violations, the officers signaled Atkins to stop his vehicle by activating the patrol car’s overhead lights. Id. at 79-80. Atkins immediately pulled his car to the side of the road. Id. at 80. Officer Reynolds approached Atkins’ car with the intent to issue tickets for the traffic violations. Id. at 49-50. In response to Officer Reynold’s request to see his driver’s license, proof of insurance, and vehicle registration, Atkins produced only a temporary registration slip. Id. at 51. Officer Reynolds then ordered Atkins out of the car to conduct a pat-down search based on his belief that Atkins was trafficking drugs and his experience that drug dealers sometimes carry weapons. Id. at 51, 54.

As he was patting Atkins down, Officer Reynolds observed the top several inches of a clear plastic sandwich baggie sticking out of Atkins’ right jacket pocket. Id. at 55. Although he could not see any drugs inside the baggie and had not yet felt the baggie, he immediately suspected the baggie

to contain drugs because of the position in which the baggie lay in Atkins' pocket and because the top of the baggie was tied into a knot. Id. at 55-57. Officer Reynolds then felt Atkins' pocket, and immediately recognized the shape of crack cocaine pellets. Id. at 58. He removed the baggie from Atkins' pocket and found that it contained 41 pink tinted ziploc packets each allegedly containing crack cocaine. Id. at 59. Officer Reynolds then arrested Atkins and impounded his vehicle Id. at 59-60. At the impound lot, Officer Scott searched the vehicle and found an additional 80 pink tinted packets wedged between the two front seats of the vehicle. Id. at 61. These packets were identical to those found in Atkins' jacket pocket. Id.

## **II. Discussion**

The Fourth Amendment to the United States Constitution prohibits unreasonable searches and seizures. U.S. Const. amend. IV. Courts may exclude evidence from trial obtained during the course of unreasonable searches. Stopping a car and detaining the occupants constitutes a seizure under the Fourth Amendment. United States v. Johnson, 63 F.3d 242, 245 (3d Cir. 1995). Atkins, however, neither disputes the propriety of the Officer's initial stop of his car, nor argues that Officer Reynolds acted unconstitutionally in ordering him out of his car. See Pennsylvania v. Mimms, 434 U.S. 106, 111 n.6 (1977); United States v. Moorefield, 111 F.3d 10, 12-13 (3d Cir. 1997). Rather, Atkins challenges the constitutionality of both the initial search of his person and the subsequent search of his car.

### A. Terry Search

During a temporary traffic stop, a law enforcement officer may conduct "a reasonable search for weapons for the protection of the police officer where he has reason to believe that he is dealing with an armed and dangerous individual." United States v. Kithcart, 134 F.3d 529, 532 (3d Cir.

1998)(quoting Terry v. Ohio, 392 U.S. 1, 27 (1968)); Moorefield, 111 F.3d at 13. The officer does not need to be absolutely certain that the suspect is armed. Moorefield, 111 F.3d at 14. Rather, the officer need only be “able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.” Id. at 13 (quoting Terry, 392 U.S. at 21). The officer, however, may not simply rely on his own subjective good faith to justify a pat-down search during a Terry stop. Kithcart, 134 F.3d at 532.

In determining the constitutionality of a pat-down search, courts examine whether “a reasonably prudent [person] in the circumstances would be warranted in the belief that his safety or that of others was in danger.” Id. (quoting Terry, 392 U.S. at 27). In applying this standard, courts generally require proof that the suspect engaged in specific, suspicious conduct during the stop, such as failing to promptly obey the officer’s orders, or making furtive movements and gestures. See e.g. Moorefield, 111 F.3d at 13 (upholding search where defendant responded to police order to remain in vehicle with his hands in view by attempting to exit the vehicle, raising and lowering his hands several times, and leaning back to shove something towards his waist); United States v. Woodall, 938 F.2d 834, 837 (8th Cir. 1991)(defendant leaned towards floorboard several times during traffic stop); United States v. Colin, 928 F.2d 676, 678 (5th Cir. 1991)(defendant stooped down and moved from side to side inside his vehicle, and defendant’s pocket bulged suspiciously). Atkins argues that Officer Reynolds is unable to point to specific facts that reasonably indicate that Atkins could have been armed and dangerous. The Court agrees.

Officer Reynolds admitted during the evidentiary hearing that the only reason he searched Atkins was because he suspected Atkins of being a drug dealer and believed from experience that drug dealers in the area in which Atkins was driving are often armed. Tr. at 54, 81, 101-6. Officer

Reynolds' mere suspicion that Atkins was participating in the narcotics trade, however, is insufficient by itself to create a reasonable belief that Atkins was armed. Although courts have acknowledged the prevalence of gun possession among drug traffickers, United States v. Adams, 759 F.2d 1099, 1109 (3d Cir. 1985); courts nonetheless require additional specific, articulable facts based on the officer's observation of the suspect's behavior. See Moorefield, 111 F.3d at 13-14. Officer Reynolds is unable to articulate any suspicious behavior that Atkins engaged in during the course of the stop that could lead a reasonable person to believe that Atkins was armed. The uncontested record indicates that Atkins' behavior was entirely appropriate during the traffic stop. Atkins promptly pulled over his car upon the officer's signal. Tr. at 80. He immediately handed over his temporary registration slip upon Officer Reynold's request. Id. He promptly obeyed all of Officer Reynolds commands without making any unnecessary or alarming movements. Id. Indeed, Officer Reynolds admitted that he had no suspicion that Atkins was carrying any firearms or other weapons while he was conducting the pat-down search. Id. at 84, 99. For this reason, the Court concludes that Officer Reynolds was not entitled to conduct a pat-down for weapons on the facts of this case.

The Government next argues that the pat-down search was legitimate under the plain view exception to the Fourth Amendment since Officer Reynolds saw the clear plastic baggie sticking out of Atkins' jacket pocket. The plain view doctrine allows police to conduct a warrantless seizure where the illicit item is located within plain view of the officer. For a seizure to be proper under this exception, four factors must be present: (1) the officer must have arrived lawfully at the vantage point from which the object was seen; (2) the object must have been in plain view; (3) the incriminating character of the object must have been immediately apparent; and (4) the officer must have had a lawful right of access to the object seized. Horton v. California, 496 U.S. 128, 142

(1990); United States v. Menon, 24 F.3d 550, 559 (3d Cir. 1994); United States v. Alexander, 73 F.Supp.2d 489, 491 (E.D.Pa. 1999). There is no evidence that the baggie was visible in plain view when Atkins was standing outside his car prior to Officer Reynold's pat-down. Rather, Officer Reynolds testified that he did not see the baggie protruding from Atkins' pocket until after he began conducting the pat-down. Tr. at 55. Officer Reynolds, therefore, did not arrive lawfully at the vantage point from which he saw the baggie. Without evidence indicating that the baggie was or could have been seen prior to the search, the Court cannot conclude that the Government has met its burden of proving the applicability of the plain view exception.

For these reasons, the Court determines that Officer Reynolds's pat-down search violated Atkins' constitutional rights under the Fourth Amendment. Accordingly, the Court will not permit the Government to introduce the narcotics found on Atkins' person into evidence at trial.

#### B. Vehicle Search

Defendant next requests suppression of the narcotics found in his car as the fruit of the illegal search of his person. The Government argues that the drugs found in Atkins' car are admissible under the inevitable discovery doctrine since they would nonetheless have been found during Officer Scott's inventory search of the impounded vehicle.

Under the inevitable discovery doctrine, the court may admit evidence that was illegally obtained where the prosecution establishes by a preponderance that the information ultimately would have been discovered by lawful means. Nix v. Williams, 467 U.S. 431, 444 (1984); United States v. Vasquez De Reyes, 149 F.3d 192, 195 (3d Cir. 1998). The government may meet its burden of showing that the disputed evidence would have been acquired through lawful means by establishing that the police, following routine procedures, would inevitably have discovered the evidence.

Vasquez De Reyes, 149 F.3d at 195. To determine whether evidence would invariably have been discovered, the court should focus on historical facts that are readily verifiable, rather than speculation as to how events might have transpired had the unlawful search never occurred. Id.

Based on the historical facts in the record, the Court concludes that the government has not sustained its burden in proving that the narcotics would have been inevitably discovered by an inventory search. Officer Reynolds admitted that he would not have impounded Atkins' car had he not found drugs in Atkins' jacket pocket. Tr. at 64-65, 87-88. Had the car not been impounded, the car would not have been searched. Id. Although Officer Scott claims that he would have impounded the vehicle merely based on his suspicion that Atkins was a drug dealer without knowing that Atkins actually was carrying drugs at the time of the stop, the Court finds that his testimony lacks sufficient persuasiveness given that he has never before impounded a vehicle under similar circumstances during his ten years as a police officer. See id. at 117, 122, 124. Given the conflicting intentions of the officers, the Court cannot say, without undue speculation, that the officers would have inevitably impounded Atkins' car and discovered the narcotics therein.

### **III. Conclusion**

The Court grants Defendant's Motion with respect to both the narcotics found on Atkins' person and those found in his automobile. An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA

v.

CEDRIC ATKINS

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CRIMINAL NO. 99-633

**ORDER**

**AND NOW**, this        day of June, 2000, upon consideration of Defendants' Motion to Suppress Evidence (Doc. No. 29), the Government's responsive briefing thereto, and the evidence presented at a hearing held on May 8, 2000, **IT IS HEREBY ORDERED** that the Defendant's Motion is **GRANTED**. All evidence obtained from the search of Defendant's person and automobile on April 12, 1997 is **SUPPRESSED**.

BY THE COURT:

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John R. Padova, J.