

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

UNITED STATES OF AMERICA : CRIMINAL ACTION
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ZACHARIAS NELSON, JR. : NO. 06-240

MEMORANDUM AND ORDER

McLaughlin, J.

September 19, 2006

A Maryland state trooper stopped a car on Interstate 95 for speeding. The defendant was riding as a passenger in the car which he owned. As the trooper approached the car, he smelled marijuana. He called for backup and conducted a search of the passenger compartment and trunk of the car. The trooper found no marijuana, but he did find crack cocaine in the trunk. The defendant has moved to suppress the evidence of the cocaine and the defendant's statements that the cocaine was his. The Court will deny the motion.

I. Findings of Fact

The Court held an evidentiary hearing on the defendant's motion to suppress on September 11, 2005. Testifying at the hearing were Trooper Christian Armiger, Corporal Marty Sigmund and Trooper Chris Spinner, all of whom are members of the Maryland State Police. Based on the testimony and evidence

presented at the hearing the Court makes the following findings of fact.

Trooper Christen Armiger is in his sixth year with the Maryland State Police. During his training at the Maryland State Police Academy, he observed a controlled burn of marijuana in a controlled environment. Marijuana was burned and the odor was admitted into a room so the students would recognize the odor of marijuana. Trooper Armiger has made over 100 arrests for controlled dangerous substances, a majority of those being marijuana, as well as attending interdiction and drug seminars throughout the country.

On March 15, 2006, Trooper Armiger was assigned to road patrol on Interstate 95. He was working speed enforcement using a laser unit that is a tool for measuring speed. Before and after his shift on that day, he performed a self-check on the laser unit to be sure it was reading accurately. It was.

Trooper Armiger was parked on Interstate 95 in the center median at the 101 mile marker in Cecil County, Maryland, at approximately 12:49 p.m. He was watching southbound traffic, targeting vehicles using the laser device. He observed a vehicle traveling southbound in the center lane which appeared to be traveling above the posted speed limit of 65 m.p.h. He targeted the vehicle with the laser and received a digital speed reading of 73 m.p.h. The vehicle passed his location. He pulled out

after the vehicle and made a traffic stop. The vehicle was approximately 1000 feet away when he targeted it. He could not see inside the vehicle because the windows were tinted.

Trooper Armiger approached the stopped vehicle on the passenger side because the vehicle had pulled to the right shoulder of Interstate 95. When he approached the passenger side, the passenger window came down and Trooper Armiger identified himself and told the occupants of the vehicle that they were being audio and video recorded and the purpose of the stop. He detected a strong odor of burnt marijuana coming from within the vehicle. It was a fresh odor.

There were two people in the vehicle, the driver and the defendant. Trooper Armiger collected the driver's identification and the registration for the vehicle. The defendant, who was the owner of the vehicle, was seated in the front passenger seat and was holding a Liberty Travel folder. Trooper Armiger asked the defendant if he was traveling and the defendant said that he was on his way to the airport to a wedding in Bermuda.

Trooper Armiger returned to his vehicle and requested the assistance of another trooper to perform a probable cause search on the vehicle because of the odor of marijuana. He did not call for a K-9 unit. It is the policy of the Maryland State Police that if they already have probable cause to search a

vehicle, as Trooper Armiger thought he had, they do not call the K-9 unit.

Trooper Shulte arrived first as backup. Trooper Armiger asked the driver to step out of the vehicle to be sure that he did not have any weapons and so that he could search the vehicle. He told the driver that he could smell the odor of marijuana. The driver said that he had nothing to do with that. Trooper Armiger then searched the driver, who had no weapons or contraband. Trooper Armiger put the driver on the guardrail with Trooper Shulte. He asked the defendant to step from the vehicle. The defendant was rude and abrupt and said that Trooper Armiger was harassing him. The defendant got out of the vehicle and Trooper Armiger searched him and noticed that he had a large clump of currency in his pocket. He put the defendant along the guardrail with Trooper Shulte.

Two other officers, Sgt. Lewis and Cpl. Sigmund, arrived to assist with the search. Trooper Armiger searched the vehicle with the help of Cpl Sigmund. He did not locate any contraband in the passenger compartment. As he opened the trunk, the defendant said that he did not give him consent to open that. In the trunk, Trooper Armiger saw a white plastic bag tied up. He looked inside and saw the corner of a heat sealed bag containing a white rock-like substance which he recognized to be

crack cocaine. Sgt. Lewis is a well known interdiction officer. He confirmed that it was cocaine.

Once they found the cocaine, the troopers placed the defendant and the driver in handcuffs and into the police vehicle. The trooper found \$1206 in currency during the search of the defendant's person at the barracks.

On several occasions, Trooper Armiger asked the other officers if they smelled marijuana. They said that they did. Trooper Armiger did not conduct a sobriety test. He did not consider giving Mr. Thompson a field sobriety test because he was not driving erratically, except that he was traveling above the speed limit. He did not see any evidence that the driver was impaired. The defendant did not admit to smoking marijuana. Nor did the driver.

Trooper Armiger has not made an arrest every time he smelled marijuana. There have been occasions when he has smelled marijuana and the occupants of the vehicle admitted that they had been smoking marijuana. There have been occasions when the occupants admitted smoking marijuana but he has not actually found any marijuana. The odor in those cars was similar to what he smelled in the defendant's car.

Trooper Armiger has been involved 35 or 40 times in stops involving the smell of marijuana. He has never thought he smelled marijuana and then realized that it was not marijuana.

He has at times smelled marijuana and then could not confirm it one way or the other. There is no standard practice in the State Police to do urine testing on the occupants of the car in a case like this.

Trooper Armiger does not pull everybody over when the laser gun shows they are above the speed limit. He usually starts stopping vehicles at 70 to 71 m.p.h. He'll give them about a 6 mile leeway. In this case, the car was traveling 73 m.p.h. and he ended up giving them a warning. He always stops a car going 73 m.p.h. in a 65 m.p.h. zone.

Cpl. Marty Sigmund responded to Trooper Armiger's request for backup. He was the second back-up officer at the location. Cpl. Sigmund has been involved in about 100 marijuana arrests. Forty percent of the time he found physical evidence of marijuana. On numerous occasions, occupants have admitted smoking marijuana when he smelled it. The people who admit to smoking marijuana are released if no physical evidence of marijuana is found in the car.

Cpl. Sigmund assisted in the search of the passenger compartment of the vehicle. He detected a strong odor of marijuana as soon as he entered the area of the passenger compartment.

Trooper Chris Spinner interviewed the defendant at the Maryland State Police barracks after his arrest. He has become

familiar with the smell of marijuana by training and experience. He also has been a covert investigator in the drug task force. He has come into contact with the smell of burnt marijuana in his covert duties. He has been involved in 50 to 60 cases where he has smelled marijuana and then found marijuana itself or evidence of use. He interviewed the defendant. At about 2:00 p.m., while he was walking with the defendant to the interview room, he detected the odor of burnt marijuana on the defendant's person. The defendant expressed his displeasure that he was arrested. Trooper Spinner told the defendant that he could smell the odor of marijuana on him when he was walking him from the cell. The defendant shrugged that statement off. He did not confirm or deny it.

II. Analysis

Trooper Armiger's stop of the vehicle was lawful. There was probable cause to believe that the vehicle was speeding, in violation of Maryland traffic laws. Police officers may stop a vehicle if there is probable cause to believe that the motorist has committed a traffic offense. See, e.g., Ohio v. Robinette, 519 U.S. 33, 38 (1996); Whren v. United States, 517 U.S. 806, 813 (1996); United States v. Moorefield, 111 F.3d 10,

12 (3d Cir. 1997); United States v. Johnson, 63 F.3d 242, 245-47 (3d Cir. 1995).

Trooper Armiger's actions after pulling over the car were likewise permissible. It is within the proper scope of a traffic stop for an officer to demand the motorist's license and registration and to question the motorist, for example, about his itinerary. See, e.g., United States v. Hernandez, 93 F.3d 1493, 1499 (10th Cir. 1996); United States v. White, 81 F.3d 775, 778 (8th Cir. 1996); United States v. Roberson, 6 F.3d 1088, 1092-1093 (5th Cir. 1993).

It was also permissible for Trooper Armiger to ask the driver and the defendant to get out of the car and move to the rear of the vehicle. During a lawful traffic stop, the officer may order the driver and the passengers to step out of the vehicle without any further suspicion. Pennsylvania v. Mimms, 434 U.S. 106, 111 (1977) (*per curiam*); Maryland v. Wilson, 519 U.S. 408, 410 (1997).

Only a few months ago, the Court of Appeals for the Third Circuit stated that "[i]t is well settled that the smell of marijuana alone, if articulable and particularized, may establish not merely reasonable suspicion, but probable cause." United States v. Ramos, 443 F.3d 304, 308 (3d Cir. 2006), citing United States v. Humphries, 372 F.2d 653, 658 (4th Cir. 2004) ("The odor of marijuana alone can provide probable cause to believe that

marijuana is present in a particular place.") This statement was dictum. The issue in Ramos was whether the smell of marijuana from two parked cars was sufficiently particularized to allow the reasonable suspicion necessary for a traffic stop, not whether it furnished probable cause for a search. The Ramos defendants had also conceded that if the smell of marijuana were present and sufficiently particularized "not only reasonable suspicion, but probable cause would have been established." Id. at 308.

Although technically dictum, the Court believes the statement in Ramos is an accurate statement of the law in this circuit. Every other circuit to have considered the issue has held that the smell of marijuana alone provides probable cause for a search. See Humphries at 658; United States v. Foster, 376 F.3d 577, 588 (6th Cir. 2004) (smell of marijuana provides probable cause to search a vehicle without a search warrant); United States v. Wimbush, 337 F.3d 947, 951 (7th Cir. 2003) (same); United States v. Winters, 221 F.3d 1039, 1042 (8th Cir. 2000) (same); United States v. Reed, 882 F.2d 147, 149 (5th Cir. 1989) (same); United States v. Barron, 472 F.2d 1215 (9th Cir. 1973) (same); cf. United States v. Parker, 72 F.3d 1444, 1450-51 (10th Cir. 1995) (smell of marijuana provides probable cause to search the passenger compartment of a vehicle).

The plaintiff in his motion to suppress relies on a line of cases from the U.S. Court of Appeals for the Tenth

Circuit. These cases hold that the smell of marijuana by itself provides probable cause for a search of a vehicle's passenger compartment, but does not provide probable cause for a search of the trunk. Parker, 72 F.3d at 1450-51; United States v. Nielsen, 9 F.3d 1487, 1491 (10th Cir. 1993).

This approach is unique to the Tenth Circuit and appears, in part, to be based on the appellate court's doubts about the credibility of the police in such cases, who the court found have "an incentive to find evidence of illegal activities and to justify [their] actions when [they] search without consent." Nielsen at 1491. This is not the law here. In this circuit, as discussed below, once there is probable cause to search an automobile, there is probable cause to search the entire vehicle, including the trunk.

Because the smell of marijuana from the defendant's vehicle provided probable cause, Trooper Armiger was not required to obtain a warrant before searching the vehicle. Under the automobile exception to the warrant requirement, a police officer who has probable cause for believing that an automobile that he has stopped contains contraband may conduct a warrantless search of the automobile. Carroll v. United States, 267 U.S. 132, 156 (1925). The officer may search every part of the vehicle and its contents that may conceal the object of the search. United States v. Ross, 456 U.S. 798, 825 (1982); United States v. Schechter, 717

F.2d 864, 869 (3d Cir. 1983) (troopers may search all parts of vehicle, including passenger compartment and trunk, if they had probable cause to believe that the vehicle contained contraband); United States v. Rickus, 737 F.2d 360 (3d Cir. 1984) (same).

Because Trooper Armiger had probable cause to search the vehicle for marijuana, he had probable cause to search the trunk where the crack cocaine at issue was found.

An appropriate Order follows.

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ORDER

AND NOW, this 19th day of September, 2006, upon consideration of defendant's motion to suppress (Docket No. 23), the government's response thereto, and after a hearing on September 11, 2006, IT IS HEREBY ORDERED that said motion is denied for the reasons stated in the accompanying memorandum.

BY THE COURT:

/s/ Mary A. McLaughlin
MARY A. McLAUGHLIN, J.