

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA :
 :
 v. : CRIMINAL ACTION
 :
 : NO. 05-440
 DESMOND FAISON, and :
 TYREK MCGETH :

SURRICK, J.

OCTOBER 5, 2007

MEMORANDUM & ORDER

Presently before the Court are Defendants Desmond Faison and Tyrek McGeth's Motions to Suppress Physical Evidence Seized on July 28, 2003 (**Doc. Nos. 421, 433**). A **Suppression Hearing was held on August 15, 2007**. For the following reasons, Defendants' Motions will be **denied**.

I. BACKGROUND

On February 21, 2007, the grand jury returned a 194-Count Fifth Superseding Indictment ("Indictment") charging Defendant Desmond Faison, Defendant Tyrek McGeth, and **twenty co-defendants** with offenses related to their participation in a wide-ranging drug conspiracy. The Indictment charged the defendants with conspiracy to distribute narcotics in violation of 21 U.S.C. § 846; engaging in a continuing criminal enterprise in violation of 21 U.S.C. § 848(a), (b); being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1); possession of a firearm in furtherance of a drug trafficking crime in violation of 18 U.S.C. § 924(c); distribution and possession with intent to distribute narcotics in violation of 21 U.S.C. § 841(a)(1); and other

related offenses.¹

II. FINDINGS OF FACT

On the evening of July 28, 2003, Corporal Robert Reilly of the Pennsylvania State Police was traveling northbound on Interstate 95 in a marked patrol car when he saw a white sedan traveling at a high rate of speed in the left lane. (Suppression Hr'g Tr. 62, Aug. 15, 2007.) He observed the car change to the right lane without using a turn signal, approach the car in front of it to within half a car length, then change back to the left lane without using a turn signal, and again, approach the car in front of it to within half a car length. (*Id.*)

Corporal Reilly pulled the car over, walked up to the car, and asked both the driver and the passenger to identify themselves. (*Id.* at 63.) The driver identified himself as Desmond Faison and the passenger identified himself as James Hart and gave a date of birth as September 20, 1982. (*Id.*) Reilly ran this information through the NCIC database and determined that there was an outstanding robbery warrant for a James Hart with the same date of birth as the passenger, and matching his physical description. (*Id.*; Doc. No. 433-2 at 1.) There were no hits in the system for Defendant Faison. (Hr'g Tr. 79.)

Reilly returned to the car and asked the passenger, Defendant McGeth, to step out of the vehicle. (*Id.* at 64.) He informed McGeth that the system showed an outstanding warrant for his arrest, patted him down for weapons, handcuffed him, and had him sit on the guard rail. (*Id.*) At this point, McGeth admitted he had falsely identified himself and properly identified himself as Tyrek McGeth. (*Id.* at 64-65.)

Corporal Reilly then approached Defendant Faison and asked him to step out of the car.

¹Not all defendants were charged with all counts in the Indictment.

(*Id.* at 65.) Robbery is a violent felony, and since Faison was riding in the car with an associate who was wanted for robbery, Reilly conducted a pat down of Faison as a safety measure. (*Id.* at 80.) He explained to Defendant Faison that the name given by Defendant McGeth had come back with an outstanding robbery warrant and asked Faison if there were any weapons in the car. (*Id.* at 65.) Faison said there were not. (*Id.*) Corporal Reilly asked Faison if he could check the car for weapons. (*Id.*) Faison gave Corporal Reilly his consent to search the vehicle. (*Id.*) While looking through the passenger compartment of the car, Reilly found a loaded Charles Daily forty-five caliber pistol under the front passenger seat. (*Id.* at 66-67.) He also found over \$5000 in cash in the driver's side door pocket. (*Id.* at 66-69.)

Reilly placed both McGeth and Faison under arrest and took them back to the police station. (*Id.* at 69.) Subsequently, Defendant McGeth was advised of his *Miranda* rights, after which he made a statement to Trooper Robert Levan admitting ownership of the gun found in the search. (*Id.* at 83.)

III. CONCLUSIONS OF LAW

Defendants seek to suppress all physical evidence seized on July 28, 2003 arguing that the search was conducted without probable cause. Defendant McGeth also argues that his statement to Trooper Levan following his arrest is the fruit of an illegal Fourth Amendment seizure and should be suppressed. *See Wong Sun v. United States*, 371 U.S. 471, 484 (1963).

“[T]he decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred.” *Whren v. United States*, 517 U.S. 806, 810 (1996). Corporal Reilly acted properly in stopping the car driven by Defendants after he witnessed the car engage in a number of traffic violations, including speeding and changing lanes

without signaling.

It clearly does not violate the Fourth Amendment for the officer to request identification of a driver pulled over for a traffic violation. In addition, it is not unconstitutional or improper for a police officer to ask the name of a passenger in a car as “there is no legitimate expectation of privacy associated with one’s identity.” *Commonwealth v. Campbell*, 862 A.2d 659, 665 (Pa. Super. 2004); *see also, Hiibel v. Sixth Judicial Dist. Court of Nev.*, 542 U.S. 177, 185 (“In the ordinary course a police officer is free to ask a person for identification without implicating the Fourth Amendment.”); *INS v. Delgado*, 466 U.S. 210, 216 (1984) (“[I]nterrogation relating to one’s identity or a request for identification by the police does not, by itself, constitute a Fourth Amendment seizure.”). Corporal Reilly did not violate Defendant McGeth’s constitutional rights by asking him to identify himself.

Corporal Reilly’s investigative actions following his discovery of the outstanding warrant for Defendant McGeth also do not violate the Fourth Amendment prohibition on unreasonable searches and seizures. “After a traffic stop that was justified at its inception, an officer who develops a reasonable, articulable suspicion of criminal activity may expand the scope of an inquiry.” *United States v. Givan*, 320 F.3d 452, 458 (3d. Cir. 2003). Once Reilly determined that there was an outstanding robbery warrant for James Hart, the alias provided by Defendant McGeth, he acted well within constitutional bounds by taking him into custody, frisking him for a weapon, and further investigating the situation.

Defendant McGeth was evidently wanted for a violent crime. This put Corporal Reilly on notice that the people that he was dealing with might be dangerous. The Court in *Terry v. Ohio*, 392 U.S. 1, 27 (1968), determined that a search can be justified if “a reasonably prudent man in

the circumstances would be warranted in the belief that his safety or that of others was in danger.” Therefore, Reilly’s frisk of Defendant Faison was completely reasonable under the circumstances.

Corporal Reilly then requested the consent of Defendant Faison to look through the car for weapons. Faison gave his consent before the search was conducted. Consent to a search is a “specifically established exception” to the warrant requirement. *Schneckloth v. Bustamonte*, 412 U.S. 218, 219 (1973); *see also Givan*, 320 F.3d at 459. Defendant Faison argues that his consent was not validly given. The validity of consent to a search turns on the totality of the circumstances. *Schneckloth*, 412 U.S. at 248. Corporal Reilly testified at the Suppression Hearing that he asked Defendant Faison if there were any weapons in the car. Defendant Faison responded that there were not. Corporal Reilly then asked if he could search the car. Defendant Faison voluntarily gave his permission. (Hr’g Tr. 65.) Reilly testified that he would not have conducted the search if consent had been denied. (*Id.* at 83.) We find Corporal Reilly’s testimony credible. Based upon the totality of the circumstances we conclude that the search of the vehicle by Corporal Reilly was with the consent of Defendant Faison.

We are satisfied that Corporal Reilly did not violate the constitutional rights of Faison or McGeth during his entire encounter with them on July 28, 2003. Moreover, the statement made by Defendant McGeth to Trooper Levan was not the fruit of unlawful conduct by either Corporal Reilly or Trooper Levan. *See Wong Sun*, 371 U.S. at 484.

III. CONCLUSION

For these reasons, we conclude that the Defendants have presented no basis whatsoever for the suppression of the evidence seized during the search of their car, or during the questioning

that followed. Accordingly, Defendant's Motion to Suppress will be denied.

An appropriate Order follows.

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ORDER

AND NOW, this 5th day of October, 2007, upon consideration of Defendants Desmond Faison and Tyrek McGeth's Motions to Suppress Physical Evidence Seized on July 28, 2003 (Doc. Nos. 421, 433), and all documents submitted in support thereof and in opposition thereto, it is ORDERED that the Motions are DENIED.

IT IS SO ORDERED.

BY THE COURT:

/s/ R. Barclay Surrick
U.S. District Court Judge