

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

UNITED STATES OF AMERICA : CRIMINAL ACTION
 :
 v. :
 :
 ROLANDO PEREZ-BOSCANA : NO. 16-106

MEMORANDUM

Padova, J.

November 30, 2016

Defendant Rolando Perez-Boscana has been charged in a two-count Indictment with possession of a firearm by a convicted felon, in violation of 18 U.S.C. § 922(g)(1) (Count One), and possession of an unregistered shotgun, in violation of 26 U.S.C. § 5861(d) (Count Two). Presently before the Court is Defendant's Motion to Suppress a shotgun recovered from Defendant's van during a warrantless search, as well as incriminating post-arrest statements made by Defendant during a subsequent drive to the police station. We held a Hearing on the Motion on September 22, 2016. For the reasons that follow, we deny Defendant's Motion in its entirety.

I. BACKGROUND

When Defendant testified during the September 22, 2016 Hearing, he admitted to asking family members to commit perjury on his behalf.¹ As a result, we have largely discredited Defendant's version of the events. The police officers involved in the search and subsequent

¹For example, during the September 22, 2016 Hearing, Defendant admitted to asking his sister, Millie, to testify that Defendant found the shotgun in her home, even though Defendant knew that Millie did not know that the shotgun had been stored in her home. (9/22/16 N.T. at 191, 206-209.) Additionally, Defendant's Hearing Testimony also unearthed falsehoods he told his family about the shotgun. Defendant testified that he did not tell the officers at any point during their encounter that he intended to turn the shotgun over to the police. (Id. at 197-99.) However, in a recorded telephone call he made from prison on January 22, 2016, Defendant told his fiancée, Valerie, that he had told the officers that he had been attempting to take the shotgun to the police district. (Id. at 201-204, Gov't's Ex. 18 at 3.)

arrest of Defendant credibly testified during the September 22, 2016 Hearing to the following facts. On the evening of January 20, 2016, Philadelphia Police Officers Robert Filler and George Lane were on patrol in a marked patrol vehicle in the neighborhood near Front Street and Clearfield Street, searching for a suspect in a double homicide that had taken place nearby. (9/22/16 N.T. at 12-13, 40, 91.) Officers Filler and Lane patrolled that neighborhood every night. (Id. at 90-91.) It is “a high drug area, open air drug market, [with] lots of violent crime, lots of guns, [and] lots of robbers.” (Id. at 90.)

At approximately 7:10 p.m., Officers Filler and Lane were driving northbound on the 3000 block of North Water Street, when they noticed two individuals, one of whom was Defendant, standing behind a van that was parked on the sidewalk in violation of a traffic law,² with both of its rear swing-out doors open. (Id. at 15, 17, 19-21, 123-24.) Although the street was poorly lit, Officer Filler stated that the light from the patrol car’s headlights illuminated the back of the van, allowing him to see into the back of the van from his vantage point in the driver’s seat. (Id. at 18, 20, 23, 93.) Officer Filler testified that “as we were traveling I observed what I believed to be a stock of a shotgun or a long rifle wood stock” in the back area of the van. (Id. at 21.) Officer Filler immediately told Officer Lane, ““Oh, shit, he has a shotgun.”” (Id. at 22.)

As Officers Filler and Lane approached the van in their patrol car, they observed Defendant close the van doors and walk away from the van in the direction of the officers, while the second individual walked away.³ (Id. at 22, 54-55, 94, 98.) Officer Filler stopped the patrol

²Although the officers’ post-arrest report (Def.’s Ex. 6) states only that Defendant had committed a parking violation, the Government has stated that Defendant violated 75 Pa. Cons. Stat. Ann. § 3353(a)(1)(ii).

³The second individual was never identified. (9/22/16 N.T. at 20.)

car when he was four to six feet from Defendant. (Id. at 28.) When Officer Filler exited the patrol car, he observed Defendant drop two 12-gauge shotgun shells onto the sidewalk. (Id. at 28-29, 58-59, 129-30.) Officer Lane retrieved the ammunition, and Officer Filler stopped Defendant and frisked him for weapons. (Id. at 23, 28, 59, 94, 100, 112.) Officer Filler then detained Defendant in the back of the patrol car and asked him about the van. (Id. at 23.) Defendant informed Officer Filler that he was the owner of the van. (Id. at 23, 64.) Officer Filler proceeded to walk over to the van while Officer Lane remained with Defendant. (Id. at 64, 94.) The engine of the van was running throughout the encounter, although Officer Filler did not notice that the van was turned on until after Defendant had been detained. (Id. at 69.) Using a flashlight, Officer Filler looked through the van window and observed a shotgun behind the rear seat of the van. (Id. at 67.) Officer Filler attempted to open the door to the van, but found that it was locked. (Id. at 23-24.) He walked back to the patrol car and told Officer Lane that there was a shotgun in the van. (Id. at 24.) Officer Filler testified:

I went back to this Defendant. I let him know; that if he had a key, to let us have it. We were going to get into the van. If I had to break the windows, we were going to get in. The car was running, at that point. You know, there was a shotgun in the car and the car's running. He just discarded two shotgun shells. I mean, I was going to do what we had to do to get that [shotgun].

(Id.) Although Defendant initially told the officers that he did not have a key to the van, he eventually produced a set of keys from his right sock. (Id. at 95, 101.) Officer Lane unlocked the van and recovered a double-barreled shotgun with a wood stock from the rear of the van. (Id. at 102.) After recovering the shotgun, the officers handcuffed Defendant, placed him under arrest, and transported him to the police station. (Id. at 36, 131.)

While Officers Filler and Lane were transporting Defendant, the three men had a conversation because Defendant was concerned about the charges he faced. (Id. at 37.) While

the officers denied interrogating Defendant during the drive to the station, they reported that Defendant told them that “he thought that if the gun was not loaded, that it wasn’t as much of an offense.” (Id. at 37-38, 106.) Defendant also told the officers that “he didn’t think he could get in trouble if the shotgun shells were separated from the shotgun[;]” and that he had been trying to sell the shotgun for \$100.00. (Id. at 38, 106.)

II. LEGAL STANDARD

“A defendant may move to suppress evidence in the court where the trial will occur, as Rule 12 provides.” Fed. R. Crim. P. 41(h). On a motion to suppress, the burden of proof is initially on the defendant who seeks suppression of the evidence. United States v. Johnson, 63 F.3d 242, 245 (3d Cir. 1995) (citing United States v. Acosta, 965 F.2d 1248, 1256 n.9 (3d Cir. 1992)). “[O]nce the defendant has established a basis for his motion, i.e., the search or seizure was conducted without a warrant, the burden shifts to the government” to establish by a preponderance of the evidence that the evidence sought to be suppressed is admissible. Id. (citing United States v. McKneely, 6 F.3d 1447, 1453 (10th Cir. 1993)); see also United States v. Lowe, 791 F.3d 424, 432 n.4 (3d Cir. 2015) (citing Johnson, 63 F.3d at 245).

When evaluating a motion to suppress, the credibility of witnesses is assessed by the trial court. United States v. Demings, 787 F. Supp. 2d 320, 326 (D.N.J. 2011) (citing United States v. Davis, 514 F.2d 1085, 1088 (7th Cir. 1975)). The court “can accept or reject any or all of a witness’s testimony.” Id. (citing United States v. Murphy, 402 F. Supp. 2d 561, 569-70 (W.D. Pa. 2005)).

III. DISCUSSION

Defendant contends that the shotgun seized during the search of his van and his incriminating post-arrest statements should be suppressed either as (1) the poisonous fruits of an

invalid investigatory stop, or in the alternative, as (2) evidence subject to the exclusionary rule as the result of a warrantless search and seizure lacking probable cause.

The Fourth Amendment guarantees “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures” and that “no Warrants shall issue, but upon probable cause” U.S. Const. amend. IV. Ordinarily, under the Fourth Amendment, the government must obtain a warrant prior to searching areas in which an individual possesses a reasonable expectation of privacy. United States v. Herrold, 962 F.2d 1131, 1137 (3d Cir. 1992). The Supreme Court has explained that “searches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment-subject only to a few specifically established and well-delineated exceptions.” Horton v. California, 496 U.S. 128, 133 n.4 (1990) (quoting Katz v. United States, 389 U.S. 347, 357 (1967)). Evidence obtained during a warrantless search is admissible at trial only if the search and seizure were permissible under one of the recognized exceptions to the Fourth Amendment’s warrant requirement. Minnesota v. Dickerson, 508 U.S. 366, 372 (1993); Herrold, 962 F.2d at 1137.

In the event that evidence is illegally obtained due to a Fourth Amendment violation, a defendant may seek to suppress the evidence. United States v. Calandra, 414 U.S. 338, 347 (1974); Herrold, 962 F.2d at 1137. Furthermore, evidence obtained in a search conducted in connection with an invalid investigatory stop may be inadmissible as ““fruit of the poisonous tree.”” United States v. Brown, 448 F.3d 239, 244 (3d Cir. 2006) (quoting Wong Sun v. United States, 371 U.S. 471, 487–88 (1963) and citing United States v. Coggins, 986 F.2d 651, 653 (3d Cir. 1993)). The exclusionary rule was created by the Supreme Court as a “deterrent sanction that bars the prosecution from introducing evidence obtained by way of a Fourth Amendment

violation.” Davis v. United States, 564 U.S. 229, 231-32 (2011); see also United States v. Katzin, 769 F.3d 163, 169 (3d Cir. 2014) (“To deter Fourth Amendment violations, when the Government seeks to admit evidence collected pursuant to an illegal search or seizure, the judicially created doctrine known as the exclusionary rule at times suppresses that evidence and makes it unavailable at trial.” (citing Herring v. United States, 555 U.S. 135, 139 (2009))).

A. Fruit of the Poisonous Tree

Defendant argues that because the initial investigatory stop was not based on reasonable suspicion that criminal activity was afoot, evidence of the shotgun is tainted as a result of the Fourth Amendment violation and, therefore, must be suppressed as fruit of the poisonous tree. Specifically, Defendant contends that because Officer Filler could not have seen the shotgun from his vantage point in the patrol car, the investigatory stop was not justified by reasonable suspicion.

Since Defendant has established a basis for his Motion by showing that a warrantless search took place, the burden shifts to the Government to establish, by a preponderance of the evidence, that the shotgun is admissible under one of the recognized exceptions to the warrant requirement. Johnson, 63 F.3d at 245. The Government maintains that the shotgun was discovered during a permissible search following a valid investigatory stop and, thus, it need not be suppressed as fruit of the poisonous tree. Under the Fourth Amendment, brief investigatory stops, commonly referred to as Terry stops, are permissible if they are based on “reasonable, articulable suspicion that criminal activity is afoot.” Illinois v. Wardlow, 528 U.S. 119, 123 (2000) (citing Terry v. Ohio, 392 U.S. 1, 30 (1968)). Reasonable suspicion is “a less demanding standard than probable cause,” although it requires, at least, “a minimal level of objective justification for making the stop.” Id. at 123 (citing United States v. Sokolow, 490 U.S. 1, 7

(1989)). To make a showing that he or she has reasonable suspicion to make a stop, “[t]he officer must be able to articulate more than an ‘inchoate and unparticularized suspicion or hunch of criminal activity.’” Wardlow, 528 U.S. at 123-24 (quoting Terry, 392 U.S. at 27). When we assess whether a Terry stop was reasonable, we consider “the totality of the circumstances, which can include [the defendant’s] location, a history of crime in the area, [the defendant’s] nervous behavior and evasiveness, and [the officer’s] ‘commonsense judgments and inferences about human behavior.’” Johnson v. Campbell, 332 F.3d 199, 206 (3d Cir. 2003) (quoting Wardlow, 528 U.S. at 124-25). Our “reasonable suspicion analysis is objective; subjective motive or intent is not relevant.” United States v. Goodrich, 450 F.3d 552, 559 (3d Cir. 2006) (citing Terry, 392 U.S. at 21-22). Moreover, our reasonableness assessment “must be measured by what the officers knew before they conducted their search.” Florida v. J.L., 529 U.S. 266, 271 (2000).

Defendant argues that the officers could not have had reasonable suspicion to support stopping him because Officer Filler could not have seen the shotgun in the back of the van as he drove the patrol car towards Defendant. Defendant maintains that the lighting conditions on the street were too poor to enable the officers to view the inside of the van from their position in the patrol car. Defendant also relies on the 7548(a) post-incident report in which Officer Lane details the officers’ reasons for the investigatory stop:

Vehicle parked illegally on the sidewalk with the owner Rolando Perez-Boscana and another male at the rear with both doors open. The driver looked in the direction of police and slammed the rear doors shut and began walking southbound on Water Street away from the van. Owner reached into his pocket, discarded two shotgun shells onto the highway. The van was running and was registered to the male police had stopped. Police observed in plain view in the rear of the van a shotgun.

(Def.'s Ex. 6.; see also 9/22/16 N.T. at 117.) Defendant argues that it is significant that Officer Filler's viewing of the gun is not one of the initial sentences in Officer Lane's report. He argues that if Officer Filler had truly seen the gun, this important fact would have appeared in the first sentence of the report. We are not persuaded that the order of the events transcribed in the report carries any controlling significance.

The Government maintains that the evidence of record establishes that the officers had reasonable suspicion to support their investigatory stop of Defendant. As we discussed above, the officers testified at the Hearing as follows: (1) Officer Filler saw what he believed was the stock of a shotgun in the back of the van, which was illuminated by the headlights of the officers' patrol car (9/22/16 N.T. at 21, 23); (2) the van was parked illegally on the sidewalk (id. at 20); (3) Defendant acted suspiciously by abruptly closing the doors to the van upon the officers' arrival (id. at 22, 54, 94, 98); (4) Defendant dropped shotgun shells onto the ground as the officers approached (id. at 28-29, 59, 130); and (5) Defendant was outside, at night, in a high crime area near the site of a recent double homicide (id. at 12-14, 90).

We conclude, based on this evidence, that the officers had a "reasonable, articulable suspicion that criminal activity [was] afoot." Wardlow, 528 U.S. at 123 (citation omitted). Nervous or evasive behavior can be a "pertinent factor" in an officer's reasonable suspicion calculus. Id. at 124 (citing United States v. Brignoni-Ponce, 422 U.S. 873, 885 (1975); Florida v. Rodriguez, 469 U.S. 1, 6 (1984) (per curiam); Sokolow, 490 U.S. at 8-9. Presence in a "high crime area" is also a relevant consideration when assessing reasonable suspicion. Id. (quoting Adams v. Williams, 407 U.S. 143, 144, 147-148 (1972)); see also Goodrich, 450 F.3d at 561-62 (explaining that a defendant's presence in a high crime area, at night, near the scene of a crime, and the general absence of other people in the area, has also been found to justify reasonable

suspicion to conduct an investigatory stop). Moreover, hand gestures consistent with the type of behavior that would accompany a criminal transaction, coupled with presence in a high crime area at night, is sufficient to justify an investigative stop. The Third Circuit concluded in United States v. Whitfield, 634 F.3d 741 (3d Cir. 2010), that the defendant’s “presence in the evening hours after 9:00 o’clock . . . in a high crime area where there’s been drug transactions, arrests for drug transactions, shootings, [involvement in] what appears to be a hand-to-hand exchange, followed by a movement away from one another, and from the officers” supported a finding that the police officers had reasonable suspicion of criminal activity, particularly where the defendant made “furtive gestures,” put his hand in his pocket in “an effort to conceal something or secure something,” and refused to stop and show his hands. Id. at 745 (internal quotation omitted); see also United States v. Lopez, 441 F. App’x 910, 913 (3d Cir. 2011) (stating that the district court ruled correctly that the police officers had reasonable suspicion when “[t]he officers, while working a nighttime shift, observed [defendants] [walk] toward each other while continually surveying their surroundings, and . . . saw them exchange a small article without first shaking hands. The . . . area . . . was a high-crime area, and they suspected . . . a hand-to-hand narcotics transaction”).⁴

⁴The Government argues that the fact that the van was parked illegally on the sidewalk, in violation of 75 Pa. Cons. Stat. Ann. § 3353(a)(1)(ii), was one of the factors contributing to the officers’ reasonable suspicion. Not only is this factor relevant to a finding of reasonable suspicion under Terry, but, it alone, may have also provided the officers with adequate justification to detain Defendant in a traffic stop. “The Supreme Court [has] established a bright-line rule that any technical violation of a traffic code legitimizes a stop.” United States v. Mosley, 454 F.3d 249, 252 (3d Cir. 2006) (citing Whren v. United States, 517 U.S. 806 (1996)). To conduct a traffic stop, officers need only have a reasonable suspicion to believe that an individual has violated the traffic laws. United States v. Delfin-Colina, 464 F.3d 392, 397 (3d Cir. 2006) (holding that “the Terry reasonable suspicion standard applies to routine traffic stops.”) Where, as here, the officers observed the van on the sidewalk, they plainly had a reasonable suspicion to believe that the driver had violated a traffic law, namely, 75 Pa. Cons.

We conclude, based on the totality of the circumstances, that the Government has established by a preponderance of the evidence that the officers had reasonable suspicion to conduct an investigatory stop of Defendant pursuant to Terry, 392 U.S. at 30. Moreover, even if we did not credit Officer Filler's testimony that he saw what appeared to him to be the stock of a shotgun as he drove towards Defendant, the aggregation of other factors nonetheless supports reasonable suspicion to support the Terry stop of Defendant. Defendant's nervous behavior of hastily shutting the door to the van and dropping shotgun shells on the ground, at night, near the scene of a recent crime, in a high crime area, is at least as suspicious, if not more suspicious, than similar scenarios in which a finding of reasonable suspicion was upheld. See Whitfield, 634 F.3d at 745; Lopez, 441 F. App'x at 913.

Thus, insofar as the Defendant seeks to suppress evidence as fruit of the poisonous tree based on the illegality of the initial investigatory stop, we conclude that, because the investigatory stop of Defendant was valid, the subsequently discovered shotgun may not be suppressed on this basis. Accordingly, we deny Defendant's Motion to Suppress with regard to this argument.

B. The Exclusionary Rule

Defendant argues that, because the warrantless search of his van violated the Fourth Amendment, the shotgun must be suppressed pursuant to the exclusionary rule. As we discussed above, once Defendant has established that the shotgun was found during a warrantless search, the Government has the burden to prove, by a preponderance of the evidence that an exception to the warrant requirement applies. See Johnson, 63 F.3d at 245; see also United States v.

Stat. Ann. § 3353(a)(1)(ii). Thus, at a minimum, it appears that the officers could, consistent with the Fourth Amendment, stop Defendant to investigate the apparent traffic violation.

Donahue, 764 F.3d 293, 300 (3d Cir. 2014) (citing Herrold, 962 F.2d at 1143; United States v. Vasey, 834 F.2d 782, 785 (9th Cir. 1987)).

1. Automobile Exception

The Government maintains that the automobile exception to the exclusionary rule applies in this case. The Supreme Court has explained the automobile exception as follows: “[i]f a car is readily mobile and probable cause exists to believe it contains contraband, the Fourth Amendment . . . permits police to search the vehicle without more.” Pennsylvania v. Labron, 518 U.S. 938, 940 (1996) (citing California v. Carney, 471 U.S. 386, 393 (1985)); see also Donahue, 764 F.3d at 299-300 (“The automobile exception permits vehicle searches without a warrant if there is ‘probable cause to believe that the vehicle contains evidence of a crime.’” (quoting United States v. Salmon, 944 F.2d 1106, 1123 (3d Cir. 1991))). Although warrantless searches of property ordinarily require both probable cause and exigent circumstances, “the ready mobility of automobiles permits their search based only on probable cause.” United States v. Burton, 288 F.3d 91, 100 (3d Cir. 2002) (citations omitted). Individuals enjoy a lower expectation of privacy in the contents of a vehicle if there is probable cause to believe that the vehicle contains contraband. United States v. Ross, 456 U.S. 798, 823 (1982) (“an individual’s expectation of privacy in a vehicle and its contents may not survive if probable cause is given to believe that the vehicle is transporting contraband”). Thus, if there is probable cause “to search a vehicle, the search ‘is not unreasonable if based on facts that would justify the issuance of a warrant, even though a warrant has not been actually obtained.’” United States v. Cobb, 483 F. App’x 719, 723 (3d Cir. 2012) (quoting Ross, 456 U.S. at 809); see also, Burton, 288 F.3d at 100 (“The automobile exception to the warrant requirement permits law enforcement to seize and

search an automobile without a warrant ‘if probable cause exists to believe it contains contraband.’”) (quoting Labron, 518 U.S. at 940)).

Police officers have probable cause to search a vehicle when the facts available to them would “warrant a [person] of reasonable caution in the belief” that contraband or evidence of a crime is present.” Florida v. Harris, 133 S. Ct. 1050, 1055 (2013) (alterations in original) (quoting Texas v. Brown, 460 U.S. 730, 742 (1983)). The Supreme Court has adopted a totality of the circumstances approach to determining the existence of probable cause, thereby “reject[ing] rigid rules, bright-line tests, and mechanistic inquiries in favor of a more flexible, all-things-considered approach.” Id. Moreover, while conducting an investigative stop, a police officer may obtain additional information that causes his or her reasonable suspicion of criminal activity to blossom into a determination of probable cause that a vehicle contains contraband. See, e.g., Colorado v. Bannister, 449 U.S. 1, 4 (1980) (stating that the police officer’s observation during a valid traffic stop of items matching the description of recently stolen items and of passengers matching the description of the suspects, provided probable cause to seize the items without a warrant); cf. United States v. Navedo, 694 F.3d 463, 470 (3d Cir. 2012) (noting that in Wardlow, “it was the information that the police obtained during the brief investigative stop that allowed the brief Terry detention to blossom into probable cause for arrest”). Moreover, police officers who conduct a Terry stop in a situation in which they face potential danger may shine a flashlight into a vehicle associated with the stopped individual. See United States v. Tyson, 307 F. App’x 664, 667 (3d Cir. 2009) (stating that, after police officers conducted a legitimate Terry stop in a high crime area at night, they were justified in shining their flashlights into a car when they discovered the handle of a firearm under a seat).

The Government maintains that the officers had probable cause to search the van pursuant to the automobile exception because the officers were in a high crime neighborhood, Defendant was holding shotgun shells, the officers had good reason to believe that there was a shotgun in the van, and the shotgun posed a threat to the public. Additionally, the Government asserts that because the officers could have reasonably concluded that their safety, and the public's safety, would be put at risk if they failed to search for the shotgun, the officers were permitted to look into the window of the van while conducting a valid investigatory stop. See, e.g., Tyson, 307 F. App'x at 667 (concluding that police officers were justified in shining their flashlights into the front seat area of a car that had previously been, and was soon to be, occupied by the two individuals the officers had stopped in an area in which gunfire had recently occurred, and the location of the gun remained unknown).

During the September 22, 2016 Hearing, Defendant testified that the shotgun was "invisible" after he hid it under his work bin beneath the third row seat of the van. (9/22/16 N.T. at 161-63, 182.) He claims that, because the shotgun was hidden underneath these objects, Officer Filler could not have seen the shotgun through the window of the van. Defendant argues that if Officer Filler did not see the shotgun in the van, the officers lacked probable cause to believe that the van contained contraband, the search of the van was thus unreasonable, and the shotgun must be suppressed pursuant to the exclusionary rule. As we discussed supra note 1, we do not find Defendant's testimony to be credible. Thus, we do not credit Defendant's assertion that the officers could not have seen the shotgun because it was hidden under other items in the van.

As we discussed above, the officers had reasonable suspicion that criminal activity was taking place when they stopped Defendant. During the course of the investigatory stop, the

officers learned two additional facts. First, the officers noticed, that the car was locked while its engine was running. (9/22/16 N.T. at 69.) Second, Officer Filler viewed the shotgun in the van by shining his flashlight into the windows of the van. (Id. at 67.) The officers' concern for their safety was significantly heightened after Officer Filler confirmed the presence of a shotgun in the van. See New York v. Class, 475 U.S. 106, 116 (1986) (finding the search of a car to be justified under the Fourth Amendment due to the danger to officer safety of allowing the defendant to immediately return to his car when there is a firearm in the car). The danger to the officers and the public was further exacerbated due to the fact that the van was left locked and running during the encounter. We find that these two additional factors, combined with the factors justifying the officers' reasonable suspicion to conduct the Terry stop of Defendant, established probable cause for the officers to believe that the van contained evidence of a crime and that the shotgun in the running van presented a potential danger to both the officers and the general public. We conclude, accordingly, that the automobile exception to the warrant requirement applies in this case.

2. Plain View Exception

The Government also argues that, in addition to the automobile exception, the plain view exception to the warrant requirement justified the search of the van and the seizure of the shotgun. Defendant argues that, because the officers were not in a lawful position to view the shotgun when Officer Lane searched the van, the plain view exception does not justify the warrantless search of the van. Specifically, Defendant contends that because Officer Filler did not see the shotgun through the window of the van while shining his flashlight through the window, the incriminating character of the shotgun could not have been apparent prior to the

search of the van. As previously stated, we do not credit Defendant's testimony regarding the visibility of the shotgun in the van.

Under the plain view doctrine, evidence that is inadvertently discovered by police officers may, under certain circumstances, be seized without a warrant. Coolidge v. New Hampshire, 403 U.S. 443, 466 (1971). Consequently, evidence that was seized when it was lying in plain view will not be suppressed pursuant to the exclusionary rule, provided that (1) the officers did not violate the Fourth Amendment in arriving at the place from which the evidence could be plainly viewed, (2) the incriminating character of the evidence is immediately apparent, and (3) the officers have a lawful right to access the object seized. Horton, 496 U.S. at 136-37. Thus, the plain view doctrine "is best understood 'not as an independent exception to the warrant clause, but simply as an extension of whatever the prior justification for an officer's access to an object may be.'" United States v. Yamba, 506 F.3d 251, 257 (3d Cir. 2007) (quoting Texas v. Brown, 460 U.S. 730, 738-39 (1983)).

In this case, Officer Filler did not violate the Fourth Amendment in arriving at the place from which the shotgun could be plainly viewed since the officers were engaged in a valid investigatory stop. Moreover, Officer Filler credibly testified that the incriminating character of the shotgun was immediately apparent to him as he viewed the shotgun through the window of the van with his flashlight; and Officer Lane had a lawful right to access the seized shotgun pursuant to the automobile exception due to the presence of probable cause. See Horton, 496 U.S. at 136-37. Therefore, we conclude that the Government has established, by a preponderance of the evidence, that because Officer Filler saw the shotgun in plain view through the window of the van, the officers were justified in searching the van and seizing the shotgun. Thus, in addition to finding that the automobile exception applies, we also conclude that the

plain view exception applies in this case. We further conclude, accordingly, that there is no basis to suppress the shotgun pursuant to the exclusionary rule, and we deny Defendant's Motion to Suppress on this basis.⁵

C. Post-Arrest Statements

Defendant argues that any incriminating statements he made while being transported to the police station must be suppressed. Although Defendant denies making any such statements to the officers during his ride to the police station, he argues that if such statements exist, they should be suppressed as fruits of the poisonous tree because they were made as a result of an invalid investigatory stop and an invalid search and seizure.

As we discussed earlier, the Supreme Court has held that "evidence and witnesses discovered as a result of a search in violation of the Fourth Amendment must be excluded from evidence." Oregon v. Elstad, 470 U.S. 298, 305-06 (1985) (citing Wong Sun, 371 U.S. at 471). "The Wong Sun doctrine applies as well when the fruit of the Fourth Amendment violation is a confession." Id.

Defendant maintains that he did not make any incriminating statements to the police officers. However, Officer Lane and Officer Filler each testified to materially indistinguishable statements made by Defendant during the ride to the police station. (9/22/16 N.T. at 37-38, 106.) Because we have found the officers' testimony to be credible, we accept that Defendant made the

⁵Defendant argues that the search-incident-to-arrest exception to the warrant requirement is the only exception that could apply in this case and that, under the law governing that exception, as it is applied in the automobile context, the officers' warrantless search of the van was unreasonable. Defendant asserts that the search was unreasonable because he was not within reaching distance of the passenger compartment at the time of the search and the officers had no reasonable suspicion to believe that the van contained evidence of the offense of arrest. However, as we discussed above, we have concluded that both the automobile and plain view exceptions to the warrant requirement apply in this case. Accordingly, we need not analyze Defendant's arguments as to the search-incident-to-arrest exception.

incriminating statements he is now seeking to suppress. Defendant further argues that even if he did make incriminating statements, because the initial stop and the search and seizure were unlawful, any statements elicited as a direct result of the officers' unlawful conduct must be suppressed. Defendant contends that, but for the illegal stop and search and seizure, the incriminating statements would have never been made.

We have concluded that the investigatory stop of Defendant and the subsequent search and seizure did not violate the Fourth Amendment. We have also concluded that the police officers' recovery of the shotgun did not violate the Fourth Amendment. Because only statements made as a result of a Fourth Amendment violation may be suppressed under the fruits of the poisonous tree doctrine, the statements made here need not be excluded. See Wong Sun, 371 U.S. at 471. Defendant's request to suppress the post-arrest statements made to the officers is, therefore, denied.

IV. CONCLUSION

For the foregoing reasons, we deny Defendant's Motion to Suppress evidence of the shotgun and the post-arrest statements. An appropriate Order follows.

BY THE COURT:

/s/ John R. Padova
John R. Padova, J.

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

UNITED STATES OF AMERICA	:	CRIMINAL ACTION
	:	
v.	:	
	:	
ROLANDO PEREZ-BOSCANA	:	NO. 16-106

ORDER

AND NOW, this 30th day of November, 2016, upon consideration of Defendant's "Motion to Suppress Physical Evidence and Post-Arrest Statements" (Docket No. 18), all documents filed in connection thereto, and the Hearing held on September 22, 2016, **IT IS HEREBY ORDERED** that said Motion is **DENIED** for the reasons stated in the attached Memorandum.

BY THE COURT:

/s/ John R. Padova
John R. Padova, J.