

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

UNITED STATES OF AMERICA	:	
	:	CRIMINAL ACTION
v.	:	No. 16-282
	:	
DEION PALMER	:	

MCHUGH, J.

APRIL 7, 2017

MEMORANDUM

Defendant Deion Palmer has been charged with illegal possession of a firearm in violation of 18 U.S.C. § 922(g)(1). He now moves to suppress the weapons on which this charge is based, arguing that they were obtained by means of an illegal seizure. For the reasons below, Palmer’s Motion to Suppress is denied.

On May 17, 2016, Officer Domico of the Philadelphia Police Department’s Narcotics Field Unit received a series of text messages from a confidential informant notifying him that Palmer was driving a black, two-door Honda and carrying a gun. The informant, who had worked with Domico in the past and had a track record of providing reliable information, also supplied Domico with the Honda’s approximate location and license plate number. On the afternoon of the following day, Domico found the black Honda parked on the 2900 block of Rosehill Street, observed the car’s dark tinted windows, and passed his informant’s tip along to officers in the area. At this time, Domico also shared with his fellow officers pictures of Palmer, the car, and its license plate.

At 6:00 p.m. that evening, Officers Gorman and Blaszczyk started their shift. Acting on the tip relayed by Domico, they drove to the 2900 block of Rosehill where they found the black Honda parked on the street. Like Domico, Gorman and Blaszczyk observed that the Honda had

dark tinted windows—an apparent violation of Pennsylvania’s Motor Vehicle Code. 75 Pa. Stat. Ann. § 4524. With Palmer nowhere to be seen, the officers continued on their rounds.

Sometime after 9:00 p.m., Gorman and Blaszczyk returned to the 2900 block of Rosehill where they found the Honda still parked on the street, but now with Palmer standing outside. The officers drove a short distance, parked their car, and waited. Gorman and Blaszczyk soon observed what they believed to be the Honda traveling north, away from the 2900 block of Rosehill. They tailed the car as it turned east on Clearfield Street, eventually getting close enough to confirm the license plate number and to observe again that the windows on the car were heavily tinted. At this point, the officers activated their lights signaling for the driver to pull over.

Palmer, who was behind the wheel, reacted by stopping the car. But seconds later, before the officers could get out of their vehicle or even put it in park, he accelerated and drove at a high rate of speed down several small residential streets. Blaszczyk and Gorman pursued Palmer, who ignored stop signs, struck poles and parked cars, and eventually came to a stop behind a double-parked vehicle on the 200 block of Mayfield Street. According to Blaszczyk and Gorman, Palmer then threw two dark objects out of the passenger window and took off on foot. Blaszczyk gave chase while Gorman recovered the objects, which proved to be two loaded handguns. Palmer was apprehended a short time later.

Palmer argues that Gorman and Blaszczyk lacked reasonable suspicion for pulling him over and moves to suppress the handguns recovered by Gorman. He advances a complex analysis of the definition of “seizure” under the Fourth Amendment in an attempt to undercut the legality of the initial stop. The government advances three separate positions in opposition to the motion: 1) that Palmer was not “seized” for Fourth Amendment purposes until he was

physically apprehended, after officers observed him throwing the weapons out the window; 2) that the tinted windows on the vehicle provided the basis for a legitimate “pretextual” vehicle stop; and 3) that the officers had reasonable suspicion to make the stop based on the information obtained from the confidential informant. Because I find that all three of the government’s positions provide independent justification for the stop in question, Palmer’s motion will be denied.

I. Because Palmer did not submit to police authority when he briefly pulled over to the side of the road, no Fourth Amendment seizure took place.

In determining whether evidence was obtained pursuant to a lawful seizure, the threshold question is when the seizure occurred. In *California v. Hodari D.*, the Supreme Court explained that a seizure occurs when there is either an application of physical force to restrain movement, or submission to a show of authority. 499 U.S. 621 (1991). Palmer maintains that Gorman and Blaszczyk’s initial attempt to pull him over constituted a show of authority and that he was seized when he submitted to this show of authority by momentarily stopping the car.¹

Palmer’s legal argument rests on *United States v. Brown*, 448 F.3d 239 (3d Cir. 2006). There, police officers stopped two men in the vicinity of a recent robbery. After informing them that the robbery victim was en route and that they would be free to go if they were not identified as the assailants, one of the officers demanded that the men, one of whom was Kareem Brown, submit to a pat-down search. Brown initially complied by placing his hands on a police car, but almost immediately after the officer began to frisk him, Brown attempted to break away. The officer placed Brown in hand-cuffs, completed his search, and recovered a handgun. Brown later moved to suppress the gun as the fruit of an illegal seizure. The government claimed that

¹ Palmer accurately notes that an “initial submission is not undercut by any subsequent attempt to flee.” *Brown*, 448 F.3d at 246.

Brown's actions did not manifest submission to a show of authority, but the Third Circuit disagreed. Palmer now cites *Brown* for the proposition that he submitted to authority when he pulled his car over for a period of seconds before leading officers on a high-speed chase, and that the evidence must be suppressed unless there was a lawful basis for the initial stop.

Palmer's position, however, cannot be reconciled with the Third Circuit's decision in *United States v. Smith*, 575 F.3d 308 (3d Cir. 2009). In that case, two officers on late-night patrol stopped a pedestrian, Thomas Smith, and ordered him to place his hands on the hood of their squad car. Smith then "took two steps toward the vehicle, at which point one or both of the officers began to open their car doors. At the sound of the car door opening, Smith turned and ran. . . . [B]oth officers were still in the vehicle[.]" 575 F.3d at 311. The controlling question was whether Smith had been seized when he took two steps towards the police officers. The court concluded that although the police officers had made a show of authority when they ordered Smith to place his hands on the car, Smith's reaction to that order did not manifest submission to the police officers' show of authority. *Id.* at 316. In reaching this conclusion, the court distinguished *Brown*. In *Brown*, the court noted, police had taken two actions that constituted a show of authority. First was the officer's "statement to Brown and his friend that a robbery victim was being brought over to identify them as possible suspects and, if they were not identified, they would be free to go—necessarily implying that they were not free to leave." *Id.* at 315 (quoting *Brown*, 448 F.3d 245). Second, "the officer also made a show of authority when he demanded to pat down Brown." *Id.* According to the *Smith* court, the linchpin in *Brown* was not the suspect's brief submission to the second show of authority, as Palmer argues. Rather, it was his initial compliance with the order to stay put until the robbery victim arrived on the scene: "While the moment that Brown turned to face the car was the first physical contact

between the officer and the defendant, Brown already had submitted by following the officer's order to stay put. In other words, his submission by that point was manifest." *Id.*

I credit the testimony of Gorman and Blaszczyk that Palmer briefly pulled over, but sped away before they could approach. Accordingly, *Smith*, not *Brown*, controls this case. Like *Smith*, this case concerns a single show of authority: Gorman and Blaszczyk's attempt to pull over the black Honda by activating their flashing lights. Like *Smith*, the only arguable submission to authority lasted a matter of seconds and was quickly abandoned. *Smith* makes clear that such "momentary compliance [is] not enough to trigger a seizure under *Hodari D.*" *Id.*; see also *United States v. Valentine*, 232 F.3d 350 (3d Cir. 2000) (suspect who stopped and identified himself in response to police command was not seized).² I therefore find that Palmer was not seized when he briefly pulled over and that the weapons that Officer Gorman recovered at the end of the chase were not the fruit of an unconstitutional seizure.

II. The officers conducting surveillance had a good faith basis to believe that the degree of tint on the Honda's windows violated the Pennsylvania Motor Vehicle Code.

Even if I accepted Palmer's position that he was "seized" the moment he pulled over, I find that the officers' initial attempt to pull Palmer over was justified by virtue of his heavily tinted windows. While the Fourth Amendment generally requires the government to obtain a warrant based on probable cause before effectuating a seizure, a "well-established" exception to the general rule "permits an officer to conduct a brief, investigatory stop when the officer has a reasonable, articulable suspicion that criminal activity is afoot." *United States v. Lewis*, 672 F.3d 232, 237 (3d Cir. 2012). In the automobile context, the Supreme Court has "established a bright-line rule that any technical violation of a traffic code legitimizes a stop, even if the stop is merely

² In *Valentine*, the court cited with approval another Circuit Court decision that is virtually identical to this case: *United States v. Washington*, 12 F.3d 1128, 1132 (D.C. Cir. 1994).

pretext for an investigation of some other crime.” *United States v. Mosley*, 454 F.3d 249, 252 (3d Cir. 2006). For a traffic violation to legitimize a stop, the officer need only to “have observed [the] violation prior to initiating the traffic stop.” *Lewis*, 672 F.3d at 237. “Ex post facto justifications” for a stop “are impermissible.” *Id.*

The government argues that the heavily tinted windows on the black Honda justified Gorman and Blaszczyk’s attempt to pull Palmer over. In his Motion to Suppress, Palmer did not dispute that his windows were heavily tinted, and conceded that tinted windows could provide the officers with reasonable suspicion to make a traffic stop. At the suppression hearing, however, defense counsel argued that the available photographs of the vehicle undercut the officers’ claims that they believed the Honda’s windows were illegally tinted. I disagree.

As an initial matter, nothing indicates that Officers Gorman and Blaszczyk relied on tinted windows as an ex post facto justification for the stop. The record here shows that Gorman and Blaszczyk investigated Domico’s tip after beginning their shift at 6:00 p.m. They drove to the 2900 block of Rosehill, spotted what they believed to be Palmer’s black Honda, and confirmed the identity of the vehicle based on its license plate number. It therefore appears that Gorman and Blaszczyk’s initial identification of Palmer’s vehicle took place hours before they pulled him over. Significantly, it also appears that their initial observations of the Honda took place during daylight hours, which would have enabled them to assess the condition of the car’s windows. Government Exhibit 43 corroborates the officers’ testimony as to the timing of events, in that it shows Gorman or Blaszczyk used their in-vehicle computer to search for information about the Honda’s license plate at 6:37 p.m.. I also note that records of the U.S. Naval Observatory establish that on May 18, 2016, the sun did not set until 7:12 p.m..³ This evidence

³ Sun or Moon Rise/Set Table for Philadelphia in 2016, U.S. NAVAL OBSERVATORY, http://aa.usno.navy.mil/data/docs/RS_OneYear.php (In Form A, type “2016” into the “Year” field; select

supports Gorman's and Blaszczyk's testimony that they observed Palmer's heavily tinted windows well in advance of the stop.

As to whether the windows appeared to be tinted to a degree that might violate the Pennsylvania Motor Vehicle Code, I find the sworn testimony of all three police officers to be credible. Domico has been a police officer for more than 20 years and Gorman and Blaszczyk have both been on the force for approximately a decade. The hearing testimony and record in this case make clear that these experienced officers were attempting to pursue their investigation in a way that would allow them to confirm Palmer's unlawful possession of firearms, without revealing the fact that a confidential source was supplying information. The record also makes clear that the officers believed that Palmer's heavily tinted windows provided a pretext that would enable them to accomplish their objective. After his confidential informant gave him the location of the black Honda, Domico drove past the vehicle and, according to his testimony at the hearing, made a mental note that its windows were heavily tinted. He then explained to his informant that he was "trying to get uniform to stop him [(Palmer)] so he don't know I'm on to him in case he don't have [the guns]." Gov. Ex. 10 at 0278. Acting on the tip from Domico, Gorman and Blaszczyk began their shift by observing the black Honda's heavily tinted windows during daylight hours, thereby establishing the pretextual basis for a later traffic stop. Moreover, Gorman and Blaszczyk's post-arrest paperwork explicitly identifies heavily tinted windows as the reason for making the initial stop. Under the circumstances, Gorman and Blaszczyk would have been fully aware that this basis for stopping Palmer would likely be challenged; that they nonetheless documented it demonstrates confidence in their assessment.

"sunrise/sunset" from the "Type of table" menu; select "Pennsylvania" from the "State or Territory" menu; type "Philadelphia" in the City or Town Name" field; click the "Compute Table" button).

The photographic evidence is also consistent with each officer's testimony. While the photograph of the vehicle submitted as Government Exhibit One is not definitive because glare on the windshield makes it difficult to discern the level of tint, the rear windshield appears sufficiently opaque to support the testimony of the officers. Of greater significance are Government Exhibits Four and Five, both of which clearly show darkly tinted rear windows. In any case, the issue is not whether the level of tint did in fact violate the Motor Vehicle Code, but whether the officers reasonably believed that it did. *See Heien v. North Carolina*, 135 S. Ct. 530, 534 (U.S. 2014) ("The Fourth Amendment prohibits 'unreasonable searches and seizures.' Under this standard, a search or seizure may be permissible even though the justification for the action includes a reasonable factual mistake."). Based on my examination of the photographs in the record, I conclude that the officers reasonably believed the windows to be illegally tinted prior to stopping Palmer. Therefore, even if a seizure occurred when Palmer briefly pulled over, it was a permissible pretextual stop.

III. The information that Officer Domico received from a confidential informant was sufficiently reliable to supply a lawful basis for a vehicle stop.

The Supreme Court "[has] firmly rejected the argument that reasonable cause for an investigative stop can only be based on the officer's personal observation, rather than on information supplied by another person." *Navarette v. California*, 134 S. Ct. 1683, 1688 (2014). Thus, the Court has upheld investigatory stops that were based on reports from confidential informants, provided those reports bore "sufficient indicia of reliability to provide reasonable suspicion." *Id.* at 1688. An informant's "explicit and detailed description of alleged wrongdoing, along with a statement that the event was observed firsthand, entitles his tip to greater weight than might otherwise be the case." *Illinois v. Gates*, 462 U.S. 213, 234 (1983), *cited with approval in Navarette*, 134 S. Ct. at 1689. Similarly, a tip from a known and reliable

informant is entitled to more weight than a tip from an anonymous source. *See Adams v. Williams*, 407 U.S. 143, 146 (1972) (upholding a stop based on a tip from an “informant [who] was known to [the arresting officer] personally and had provided him with information in the past,” and noting that “[t]his is a stronger case than obtains in the case of an anonymous telephone tip”).

Against this backdrop of Supreme Court precedent, I find that the tip from Domico’s confidential informant gave Gorman and Blaszczyk reasonable suspicion to stop the black Honda.⁴ Domico credibly testified that he had substantial experience working with, and had never received false information from, the informant in question. According to Domico, past tips from the informant had provided the basis for search warrants that had in turn resulted in successful raids where both illegal weapons and narcotics were found.

And while the defense is correct that the informant did not always make clear how he obtained the information that he provided to Officer Domico, this alone is not fatal given the informant’s history of veracity. *See Gates*, 462 U.S. at 233 (“If . . . a particular informant is known for the unusual reliability of his predictions of certain types of criminal activities in a locality, his failure, in a particular case, to thoroughly set forth the basis of his knowledge surely should not serve as an absolute bar to a finding of probable cause based on his tip.”).⁵

Moreover, when passing along second-hand information to Domico, the informant was careful to qualify his tips or independently verify information. For instance, he noted at one point that he

⁴ The parties agree that under the collective knowledge doctrine, Officer Domico’s knowledge of the informant’s tips can be imputed to Officers Blaszczyk and Gorman. *United States v. Whitfield*, 634 F.3d 471, 745 (3d Cir. 2010).

⁵ Further adding to his credibility, the informant admitted when he did not have information sought by Domico. When asked if anyone had “shot at [Defendant] the other day,” the informant answered “I didn’t here [sic] of anyone shooting at [him].” Gov. Ex. 10 at 0273. This forthright admission of ignorance undercuts the defense’s argument that the informant was “desperate[ly] . . . trying to curry favor with narcotics officers.” MTS at 12.

was only “80% sure” there would be a gun in a “possible” stash house, and later, when “they said” that Palmer had “switched up to two door Honda,” the informant took steps to locate, and “get tags” for Palmer’s new vehicle. Gov. Ex. 10 at 0272–73.

Significantly, it is also clear that at least some of the informant’s tips were contemporaneous eyewitness reports. For example, he accurately communicated what type of clothing Palmer was wearing and advised Domico that Palmer was “walking back and fourth [sic] to his car.”⁶ *Id.* at 0277–78. Read in the context of his two-day long text message exchange with Domico, it also appears that the informant’s tip regarding the gun in the black Honda was based on first-hand information. That tip read, in pertinent part: “It’s over he has the gun in his car Driver side door panel that’s where the gun is.” *Id.* at 0279. The specificity of this tip and the lack of qualifying language or attribution to an unnamed source strongly suggest that the informant saw Palmer place a gun in his vehicle.

Taken in combination with the informant’s proven reliability, this ongoing series of communications, which obviously included some measure of first-hand observation, formed a credible basis on which police could conclude that Palmer was in possession of a weapon, as ultimately proved to be the case.

IV. There is no basis upon which to conclude that defendant was unlawfully “targeted.”

Palmer contends that there was a concerted effort by law enforcement to arrest him, and without specifying any particular legal theory such as racial profiling or personal malice, suggests that the officers acted unlawfully. The facts supporting this claim were advanced at the suppression hearing

⁶ At certain times, Domico seemed to give real-time directions to the informant. For instance, while redaction makes it impossible to say with certainty, it appears that he instructed the informant to “stand with him [an apparent reference to Palmer] until he leaves.” Gov. Ex. 10 at 0278.

through the testimony of Thomas Burnett and Kelvin Deleon, both friends and neighbors of Palmer. Mr. Burnett and Mr. Deleon testified that the vehicle stop that gave rise to the chase was preceded by another stop of a different vehicle—a minivan—earlier that evening. They further testified that Palmer was a passenger in that minivan, that he was pulled aside and subjected to intense questioning for a prolonged period of time, and that Blaszczyk was present at that earlier stop.

As a preliminary matter, despite the government’s (unnecessarily) aggressive cross-examination of Burnett and Deleon, I find their testimony credible. Blaszczyk is extraordinarily tall and striking in appearance, lending credibility to Burnett’s and Deleon’s claims that they saw him on the evening of May 18. Moreover, although Blaszczyk and Gorman denied any recollection of stopping a minivan in which Palmer was a passenger, the records from their in-vehicle computer suggest that one of them ran a license plate search on a minivan around the time of the alleged previous stop.

The defense maintains that Burnett’s and Deleon’s testimony should raise questions as to the credibility of the officers, but I disagree. Although I am convinced that Blaszczyk was in fact present at the earlier stop, both he and Gorman seemed genuinely unable to recall the incident and I have no reason to doubt the truthfulness of their testimony. Beyond that, although Palmer strongly believes that he was unfairly made the subject of interest by police, I find that Domico’s “targeting” of the Defendant was not only appropriate, but emblematic of the type of police work that attempts to prevent violent acts before they occur. Domico testified that Palmer was a known “player” within this area of the city, involved in the drug trade to such an extent that his photograph and nickname were posted on a bulletin board at the 25th District. Furthermore, the mother of Palmer’s child had herself recently been the victim of gun violence that might have been connected in some way to his participation in the drug trade. In fact, testimony at the suppression hearing disclosed that Palmer had been to visit her in the

hospital on the evening of May 18, within an hour or two of when Gorman and Blaszczyk pulled him over. Given Palmer's background, his potential motive for retaliatory action, and the tip from a reliable informant that Palmer was illegally carrying a firearm, law enforcement had a compelling and legitimate interest in intervening to confiscate his weapons. In simple terms: to the extent there was "targeting," it was not unlawful.

V. Conclusion

For these reasons, Defendant's Motion to Suppress will be denied. An appropriate order follows.

/s/ Gerald Austin McHugh
United States District Judge

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ORDER

This 7th day of April, 2017, having considered Defendant Deion Palmer's Motion to Suppress, the Government's Response thereto, and having held a hearing on Defendant's Motion, it is hereby **ORDERED** that Defendant's Motion is **DENIED**.

/s/ Gerald Austin McHugh
United States District Judge