

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

UNITED STATES OF AMERICA,

v.

KEITH MOORE,

Defendant.

CRIMINAL ACTION
NO. 17-0593

MEMORANDUM

PAPPERT, J.

June 13, 2018

Keith Moore is charged with one count of possession of a firearm by a convicted felon in violation of 18 U.S.C. § 922(g). The weapon was seized after a search of Moore's car following his arrest for driving under the influence. He moves to suppress all evidence arising from the search, contending that the police officers who stopped him lacked reasonable suspicion to do so, and further lacked justification to arrest him and search his car. The Court held an evidentiary hearing (ECF No. 25) during which the arresting officers testified, as did Moore's longtime girlfriend. The officers' testimony was credible, while Moore's girlfriend's account of the events of the night in question was not believable. For these and the other reasons that follow, the Court denies the Motion.

I

On February 17, 2017, Philadelphia Police Officers Michael Mitchell and Sean Foley were patrolling the East Safe Grid in the 24th Police District. (Hr'g Tr. at 5:17 – 18, 6:25–7:9, 39:25–40:8, 41:1–6.) They were both in uniform and in a marked police van. (*Id.* at 8:11–23, 40:16–22.) The East Safe Grid is within the Kensington section of

the city and is a known high-crime area, with gun violence, narcotics and robberies. (*Id.* at 7:23–8:5, 9:22–10:3, 41:15–25.) Officer Mitchell, who was driving the van, has been a law enforcement officer for approximately seven years and served in the 24th District for six.¹ (*Id.* at 39:25–40:11.) Officer Foley is a ten-year veteran officer and has worked in the 24th District since 2011. (*Id.* at 6:16–24.) Foley testified that he has encountered thousands of intoxicated people and both officers have executed driving under the influence arrests. (*Id.* at 14:3–11, 67:9–11.)

At approximately 9:50 p.m. that evening, the officers drove up behind a white Nissan Rogue, driven by Moore, travelling westbound on Westmoreland Street between C and D Streets. (Hr’g Tr. at 7:3–5, 22:11–21, 10:4–15, 42:15–18.) Westmoreland was dark; it is bordered by an unlit park to the north and abandoned factories to the south. (*Id.* at 10:22–25; 66:15–24.) Moore was driving at roughly five to ten miles per hour even though the speed limit was twenty-five miles per hour. (*Id.* at 10:25–11:5, 43:6–10.) His car’s head and tail lights were off. (*Id.* at 10:11–15, 42:18–21, 55:8–10.) Seeing this, Mitchell and Foley decided to conduct a traffic stop. (*Id.* at 10:25–11:1, 11:6–8, 42:18–21, 55:11–13, 56:13–16).

The officers’ testimony differs slightly as to when they activated their lights and siren. Mitchell testified that he turned on the lights and siren on Westmoreland Street but that Moore continued to drive, turning south onto C Street. (*Id.* at 43:18–23, 56:13–16.) Foley testified that he began running the Nissan’s plates while the car was on Westmoreland but that before the results came back, Moore turned left onto C Street. (*Id.* at 11:13–18, 11:23–12:1.) Foley stated that Mitchell activated the lights and siren almost immediately after they turned onto C Street. (*Id.* at 23:6–8.)

¹ He currently serves as a Philadelphia Highway Patrol Officer. (Hr’g Tr. at 40:12–15.)

Moore did not pull over. (*Id.* at 43:18–20.) He instead continued to drive slowly down C Street with the officers following approximately five to ten feet behind him, lights and siren on. (*Id.* at 11:19–20, 12:9–12, 43:21–44:10.) Officer Foley, as the passenger in the police van, testified that he had a good view straight into the back of the Nissan, which has a relatively large, albeit tinted,² back windshield. (*Id.* at 11:20–23; Def.’s Exs. 35 & 36.) He watched as Moore reached with his right arm behind the passenger seat. (Hr’g Tr. at 12:1–5.) Mitchell too saw the reaching motion. (*Id.* at 44:11–17.) Foley testified that Moore continued “fumbling around with that area” for the length of C Street, before turning right onto Allegheny Avenue. (*Id.* at 12:6–14, 43:23–44:1.) Moore continued westbound, still driving slowly, on Allegheny Avenue while the officers pursued him. (*Id.* at 12:11–14, 43:23–44:5.)

Despite the flashing lights and blaring siren, Moore never pulled over. (*Id.* at 23:13–14.) This forced Mitchell to pull the van in front of Moore’s car and stop about halfway down Allegheny Avenue, forcing Moore to do so as well. (*Id.* at 12:14–18, 44:1–5, 44:22–23.) Both officers got out of the van and approached Moore’s car from the front. (*Id.* at 12:18–23, 44:23–25.) They both testified that they again saw Moore, looking this time through the (obviously un-tinted) windshield, reaching his right arm behind the passenger seat. (*Id.* at 12:23–25, 44:24–45:3.) Officer Foley stated he looked straight at Moore through the windshield and saw him reach behind the passenger seat, something he considered an obvious safety concern. (*Id.* at 12:23–25.)

Officer Mitchell approached the driver’s side of Moore’s car, while Foley walked to the passenger’s side. (*Id.* at 13:3–4.) Mitchell began talking with Moore through the

² The Nissan has tint on the rear and side windows. (Hr’g Tr. at 95:4–15; Def.’s Exs. 35 & 36.) Neither Officer testified to the windows’ tint.

open driver's side window and immediately smelled the odor of marijuana coming from the car and alcohol coming from Moore. (*Id.* at 13:4–6, 45:3–11, 45:19–21.) Foley also smelled alcohol on Moore and burnt marijuana in the Nissan. (*Id.* at 14:18–21.) After approximately fifteen to sixty seconds of interacting with Moore, Officer Mitchell believed he was under the influence of drugs or alcohol and began to arrest him. (*Id.* at 45:21–25, 46:13–19, 60:3–5, 62:19–63:10; Def.'s Ex. 4.)

Mitchell testified that Moore was stuporous and lethargic, with slurred, incoherent speech and bloodshot eyes. (Hr'g Tr. at 47:5–21, 63:7–10.) Officer Foley testified that Moore appeared to be highly intoxicated, with red, glassy eyes, slurred speech and difficulty understanding easy commands. (*Id.* at 14:1–4, 14:13–17.) Neither officer administered a breathalyzer or conducted a field sobriety test, but both testified that upon getting out of the car, Moore was unsteady, could not stand up straight and almost fell walking to the police van. (*Id.* at 14:16–17, 47:21–24, 49:16–20.) Upon arriving at the Police Detention Unit approximately one hour after his arrest, Moore was uncooperative and refused a blood test. (*Id.* at 50:3–10, 51:9–52:9, Def.'s Ex. 15.) Officer McCue from the PDU noted that Moore had glassy eyes and refused to listen. (Hr'g Tr. at 50:15–20; Def.'s Ex. 15.)

While Officer Mitchell was interacting with Moore, Officer Foley looked behind the passenger seat. (Hr'g Tr. at 13:6–7, 18:8–17.) Using his flashlight, Foley saw a large object bulging from the map pocket on the back of the seat. (*Id.* at 13:7–10.) Unable to see what it was, Foley opened the back passenger's side car door and identified the object as a handgun. (*Id.* at 13:10–16.) After Moore was placed into custody in the back of the police van, the officers conducted a further search of the

Nissan. (*Id.* at 14:25–15:14.) They recovered a black .45 caliber Norinco handgun from the pocket on the back of the passenger seat. The gun had a bullet in the chamber and was equipped with a magazine. (*Id.* at 15:3–7.) They also seized three additional magazines, a box of .32 caliber ammunition and additional .45 caliber ammunition. (*Id.* at 14:25–15:2, 15:8–14; Def.’s Ex. 12.) They also found, but did not seize, a half-empty bottle of vodka. (Hr’g Tr. at 17:11–16; Def.’s Ex. 4.) No marijuana or drug paraphernalia was found. (Hr’g Tr. at 38:4–11; Def.’s Ex. 12.) When the search was complete, having determined that the car was properly registered to Moore’s mother and having no reason to tow it, Foley parked the car on Allegheny Avenue and left it there. (Hr’g Tr. at 15:15–22.)

Moore argues that the initial stop, his warrantless arrest and the subsequent search of the Nissan violated his Fourth Amendment rights. He largely challenges the officers’ credibility. To do so, at least with respect to his level of intoxication, he relies on the testimony of his longtime girlfriend, Stephanie Latimore. The Court believed the officers while finding Latimore’s story improbable. Moreover, the officers’ conduct was reasonable under the applicable legal standards.

II

The Fourth Amendment to the United States Constitution prohibits “unreasonable searches and seizures,” including unreasonable investigatory stops of persons or vehicles. U.S. Const. amend. IV; *United States v. Cortez*, 449 U.S. 411, 417 (1981). Brief investigatory stops are permissible if supported by “reasonable suspicion to believe that criminal activity ‘may be afoot.’” *United States v. Arvizu*, 534 U.S. 266, 273 (2002) (quoting *United States v. Sokolow*, 490 U.S. 1, 7 (1989)); see also *United States v.*

Mathurin, 561 F.3d 170, 174 (3d Cir. 2009) (“[A]n officer may conduct an investigatory stop of a moving vehicle if he has reasonable suspicion that its passengers are engaged in criminal activity.”) (citation omitted). Further, a warrantless arrest is reasonable under the Fourth Amendment where “there is probable cause to believe that a criminal offense has been or is being committed.” *Wright v. City of Philadelphia*, 409 F.3d 595, 601 (3d Cir. 2005) (quoting *Devenpeck v. Alford*, 543 U.S. 146, 152 (2004)).

Generally, the party seeking to suppress evidence bears the burden of proof. *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)). However, once the defendant establishes a basis for suppression, the burden shifts to the government to show by a preponderance of the evidence that the search or seizure was reasonable. *Johnson*, 63 F.3d at 245; *see also United States v. Burton*, 193 F.R.D. 232, 237 (E.D. Pa. Feb. 25, 2000), *aff’d on other grounds*, 288 F.3d 91 (3d Cir. 2002) (citing *United States v. Matlock*, 415 U.S. 164, 178, n. 14 (1974)). If the court finds a stop or search unreasonable, all evidence obtained therefrom must be suppressed. *United States v. Johnson*, 592 F.3d 442, 447 (3d Cir. 2010) (citing *United States v. Brown*, 448 F.3d 239, 244 (3d Cir. 2006)).

III

A

The initial stop of Moore’s vehicle was supported by reasonable suspicion. The requirement of reasonable suspicion “applies with equal force to a traffic stop of a vehicle.” *United States v. Lewis*, 672 F.3d 232, 237 (3d Cir. 2012) (citing *United States v. Delfin–Colina*, 464 F.3d 392, 397 (3d Cir. 2006)). However, “[i]n *Whren v. United States*, 517 U.S. 806 (1996), the Supreme Court established a bright-line rule that any technical

violation of a traffic code legitimizes a stop, even if the stop is merely pretext for an investigation of some other crime.” *United States v. Mosley*, 454 F.3d 249, 252 (3d Cir. 2006). This requires only the observation of a traffic violation prior to initiating the traffic stop. *See Lewis*, 672 F.3d at 237.

The initial stop of Moore’s car was supported by reasonable suspicion because the officers both credibly testified that he was driving at night without his headlights in violation of the Pennsylvania Motor Vehicle Code § 4302(a). *See United States v. Johnson*, 434 F. App’x 159, 162 (3d Cir. 2011) (finding that traffic violation of driving at night without headlights provided reasonable suspicion for a traffic stop). Moore argues that “Officers Foley and Mitchell did not observe a violation of state traffic laws on the night in question.” (Mot. at 3; Memo. at 3.) There is no evidence in the record that Moore’s lights were in fact on, (Hr’g Tr. at 157:15–19, 158:3–8), rather Moore notes that no traffic citation was issued. (Mot. at 3; Memo. at 3.) However, reasonable suspicion is determined by “whether the facts and circumstances within the officer’s knowledge at the time of an investigative stop or arrest objectively justify that action[.]” not on the “specific offense for which the defendant ultimately [is] charged.” *United States v. Laville*, 480 F.3d 187, 194 (3d Cir. 2007) (citing *Devenpeck*, 543 U.S. at 152).³

B

The thrust of Moore’s Motion relates to the officers’ basis for searching the Nissan. First, although Moore does not directly argue that his arrest was not supported by probable cause, he contends that he was not intoxicated, calling into question the

³ Moore also argued that the car’s daytime running lights were on, providing sufficient illumination. (Memo. at 3.) This contention was contradicted by hearing testimony (Hr’g Tr. at 95:16–18), and is, in any event, immaterial given that any technical traffic code violation legitimizes a stop. *See Whren*, 517 U.S. 806.

legitimacy of his arrest and any attendant search. Second, Moore argues that the search of the car was unreasonable as it does not fall under one of the exceptions to the warrant requirement. Moore's arrest was supported by probable cause and the search of his car was reasonable in light of Moore's conduct, whether analyzed as a search incident to arrest or as a *Terry* frisk for weapons.

i

A warrantless arrest must be supported by probable cause to be reasonable under the Fourth Amendment. *See Laville*, 480 F.3d at 194. "Probable cause exists whenever reasonably trustworthy information or circumstances within an arresting officer's knowledge are sufficient to warrant a person of reasonable caution to conclude that an offense has been or is being committed by the person being arrested." *Id.* (citing *United States v. Draper*, 358 U.S. 307, 313 (1959)); *United States v. Myers*, 308 F.3d 251, 255 (3d Cir. 2002)). The determination "is fundamentally a factual analysis" in which the Court must determine "whether the objective facts available to the officers at the time of arrest were sufficient to justify a reasonable belief that an offense was being committed." *Myers*, 308 F.3d at 255 (citations omitted).

Courts look to the law of the state where the arrest occurred to determine the reasonableness of a warrantless arrest. *Myers*, 308 F.3d at 255. Under Pennsylvania law, "an individual may not drive, operate or be in actual physical control of the movement of a vehicle' if the 'individual is under the combined influence of alcohol and a drug or combination of drugs to a degree which impairs the individual's ability to safely drive, operate or be in actual physical control of the movement of the vehicle.'" *Rinehart*

v. Hamilton, No. 09-1470, 2010 WL 3505124, at *7 (W.D. Pa. Sept. 3, 2010) (quoting 75 Pa. C.S.A. § 3802(d)(3)).

Probable cause to arrest for driving under the influence is determined by the totality of the circumstances and “exists ‘where the officer has knowledge of sufficient facts and circumstances to warrant a prudent person to believe that the driver has been driving under the influence of alcohol or a controlled substance.’” *Hall v. Raech*, 677 F. Supp. 2d 784, 797 (E.D. Pa. 2010) (quoting *Commonwealth v. Angel*, 946 A.2d 115, 118 (Pa. Super. Ct. 2008)). Signs of intoxication that support probable cause include erratic driving, the odor of alcohol, bloodshot eyes, slurred speech and failure to perform sobriety tests. *Hall*, 677 F. Supp. 2d at 797 (citing *Commonwealth v. Hughes*, 908 A.2d 924, 928 (Pa. Super. Ct. 2006)).

Moore’s arrest was supported by probable cause. After Officer Mitchell turned on the police van’s lights and siren, Moore continued to drive, well under the applicable speed limit, for approximately two blocks in the dark without his headlights on. (Hr’g Tr. at 43:23–44:5.) The only way the police could get Moore to stop was to pull in front of him and cut him off. (*Id.* at 23:9–14.) Both officers testified that upon approaching the Nissan, they smelled marijuana and alcohol. (*Id.* at 14:18–21, 45:3–11, 45:19–21.) They saw that Moore had red, bloodshot eyes, slurred speech and difficulty responding to police commands. (*Id.* at 14:13–17; 47:5–21.) Although Moore argues that driving “slowly and carefully” is not indicative of drunk driving (Memo. at 4), Moore’s conduct of driving significantly below the speed limit at night without his lights on and failing to pull over upon command, when considered together with the officers’ observations of

Moore, support a finding of probable cause to arrest Moore for DUI under the totality of the circumstances.

ii

Moore relies largely on the hearing testimony of longtime girlfriend Stephanie Latimore, ostensibly in an effort to show that he could not have been intoxicated when he was pulled over. Specifically, Latimore attempted to construct a timeline showing that Moore had not been drinking or smoking marijuana that night and had no time to do so before Mitchell and Foley came across him.

Latimore testified that she picked Moore up between 6:00 and 6:30 p.m. that night. (*Id.* at 82:12–14, 83:21–84:1.) Her phone records show a call with Moore at 6:10 p.m. and then three “unavailable” calls from Moore at 6:21, 6:29 and 6:30 p.m. (*See* Def.’s Ex. 27; Hr’g Tr. at 87:3–88:10.) According to Latimore, she then drove with Moore to the Home Depot on Oregon Avenue in South Philadelphia and then to the Walmart on Columbus Boulevard to pick up boxes and money orders for Latimore’s upcoming move.⁴ (Hr’g Tr. at 88:20–89:1, 89:9–14, 90:2–4.) She presented a money order receipt from the Walmart timestamped at 7:39 p.m. (Def.’s Ex. 71; *see* Hr’g Tr. at 90:5–92:22.)

Latimore then explained that she and Moore took “the long way home.” (Hr’g Tr. at 93:3–7.) Moore was planning to meet up with his brother Leroy⁵ in order to pick up his mother’s Nissan. Moore and Leroy were allegedly “going back and forth” on where they would meet because his brother was “playing around.” (*Id.* at 93:25–94:12.)

⁴ Although there is a Home Depot in the same shopping complex as the Walmart on Columbus Boulevard, something that Latimore knew because she used to work in that area, she testified that she drove to the Home Depot on Oregon Avenue because she “wasn’t thinking.” (Hr’g Tr. at 146:5–16.)

⁵ Latimore testified that Moore’s brother Leroy also goes by the name of Sean, and she used the two names interchangeably throughout her testimony. (Hr’g Tr. 93:19–20.)

Latimore and Moore were thus “killing time” on Broad Street until approximately 8:00 p.m. when Leroy said that he would meet them at his house (*Id.* at 96:11–13, 97:9–12, 98:19–23.) Latimore testified that Leroy’s house was near the intersection of Westmoreland and D Street in Kensington. (*Id.* at 98:24–99:4.)

Latimore said she and Moore parked on the west side of D Street, just north of Westmoreland, and were looking at furniture on her phone, laughing and talking until approximately 9:30 p.m. (*Id.* at 100:22–101:2, 101:16–19, 105:23–24.) Latimore and Moore were going through a rough patch in their relationship and were using the time to “talk things through.” (*Id.* at 137:15–25.) During that time, Moore allegedly lost his phone in Latimore’s Chevy Malibu, prompting her to call him (as shown by her phone records) at 9:10 p.m. (*Id.* at 107:12–107:20, 114:6–22; Def.’s Ex. 27.) According to Latimore, Moore got out of the car to meet Leroy at approximately 9:30 p.m. and the two brothers then walked south to Westmoreland before turning out of view. (Hr’g Tr. at 103:2–5, 103:19–104:17.) Latimore further testified that Moore did not appear intoxicated when she picked him up, she did not smell any alcohol, and that throughout their sojourn together, Moore was just “acting like Keith.” (*Id.* at 115:14–24.) She stated that she was with Moore the whole time and did not see him drink any alcohol or use marijuana. (*Id.* at 89:23–90:1, 110:17–111:7.)

If Latimore’s account of her evening with Moore was credible, it would cast doubt on the officers’ assessment of Moore’s level of intoxication. It was not. Latimore’s stretching of the timeline by, among other things, purportedly “taking the long way home” was suspect, putting into question Moore’s whereabouts between (at least) approximately 8:00 p.m. and when Officers Mitchell and Foley first saw his car around

9:50 p.m. Latimore’s circuitous route back to Kensington and the proffered reasons for it were not believable. Nor was her explanation of her 9:10 p.m. call to Moore. Latimore said she called Moore’s phone at that time because the two of them “couldn’t find the phone” while they were sitting alone in the front of her sedan. (Hr’g Tr. at 107:19.) It is far more likely that, to the extent the couple was together at all that night, they parted ways well before that time and Latimore was simply calling Moore, wherever he was.

Latimore’s demeanor while testifying also negatively affected the credibility of her story. She was very much at ease during her direct examination, but became suddenly, visibly flustered as the prosecutor cross-examined her on the specifics of that story. *See United States v. Mallory*, 765 F.3d 373, 382 (3d Cir. 2014) (stating that questions of witness credibility turn on evaluations of demeanor). Immediately after she was asked when she first discussed that evening with Moore, Latimore’s demeanor abruptly changed and she requested a recess in the hearing. (*Id.* at 124:21–125:6.) She did not appear faint or ill, but requested the adjournment because she “just need[ed] to breathe,” explaining that she has low iron and felt weak. (*Id.* at 125:9–16.)

After the hearing resumed, Latimore said that although she learned of Moore’s arrest the following day, and spoke with him one to two days after that, she could not remember the first time she learned that Moore had been arrested for DUI. (Hr’g Tr. at 126:15–129:21.) This is likewise hard to believe given her purported ability to account for his whereabouts that evening and her sworn testimony that he was not intoxicated prior to his arrest.

Finally, the search of the Nissan was reasonable. In some instances, a warrant is not required for a vehicle search incident to a lawful arrest. *See Arizona v. Gant*, 556 U.S. 332 (2009). In *Gant*, “the [Supreme] Court adopted a new, two-part rule under which an automobile search incident to a recent occupant’s arrest is constitutional (1) if the arrestee is within reaching distance of the vehicle during the search, or (2) if the police have reason to believe that the vehicle contains ‘evidence relevant to the crime of arrest.’” *Davis v. United States*, 564 U.S. 229, 234–35 (2011) (citing *Gant*, 564 U.S. at 343); *see also United States v. Brown*, 765 F.3d 278, 290 (3d Cir. 2014). A search of the defendant’s reaching distance is permitted when “there remains a reasonable possibility that the arrestee could access a weapon or destructible evidence in the container or area being searched.” *United States v. Shakir*, 616 F.3d 315, 321 (3d Cir. 2010).

Alternatively, in some cases “the offense of arrest will supply a basis for searching the passenger compartment of an arrestee’s vehicle[.]” *Gant*, 556 U.S. at 344; *United States v. Donahue*, 764 F.3d 293, 299 n.6 (3d Cir. 2014) (stating that the search incident to arrest exception to the warrant requirement “permits vehicle searches . . . if it is ‘reasonable to believe evidence relevant to the crime of arrest might be found’”) (citing *Gant*, 556 U.S. at 335). “The *Gant* incident-to-arrest exception is both broader and narrower than the automobile exception: it requires a lesser basis for a search than a showing of probable cause, *United States v. Vinton*, 594 F.3d 14, 25 (D.C. Cir. 2010), but ‘does not extend to evidence of other offenses,’ *United States v. Polanco*, 634 F.3d 39, 42 (1st Cir. 2011).” *Donahue*, 764 F.3d at 299 n.6.

The search of the Nissan was a reasonable search incident to arrest. Officers Foley and Mitchell both smelled marijuana in the car and alcohol coming from Moore. They believed Moore was highly intoxicated. (Hr’g Tr. at 14:18–21, 45:3–11, 45:19–21.) When Mitchell turned on the lights and siren to pull Moore over, both officers saw Moore reach his right arm into the area behind the front passenger seat. (*Id.* at 12:1–5, 44:14–17.) They again saw Moore reach when they approached from the front of the car. (*Id.* at 12:23–25, 44:24–45:3.) Under these facts, it was reasonable to believe that evidence of the crime of arrest, such as drugs or alcohol, would be found in the car.

ii

Alternatively, under a separate exception to the warrant requirement, police may search the areas of a car where weapons may be hidden if they have reasonable suspicion that an occupant may be armed and dangerous. *United States v. Rivera*, No. 12-474, 2013 WL 764915, at *3 (E.D. Pa. Feb. 27, 2013) (citing *Arizona v. Johnson*, 555 U.S. 323, 327 (2009); *Michigan v. Long*, 463 U.S. 1032, 1051–52 (1983)); *United States v. Colen*, 482 F. App’x 710, 711–12 (3d Cir. 2012) (“Thus, where—as here—police conduct a valid traffic stop they may conduct a limited search for weapons” including in “areas of the stopped vehicle where a weapon may be hidden” if supported by reasonable suspicion that the person stopped is armed and dangerous). Reasonable suspicion requires more than an “inchoate and unparticularized suspicion or ‘hunch’”—“the police officer must be able to point to specific and articulable facts which, taken together with rational inference from those facts, reasonably warrant that intrusion.” *Terry*, 392 U.S. at 21, 27. “The search of the passenger compartment of an automobile, limited to those areas in which a weapon may be placed or hidden, is permissible if the police officer

possesses a reasonable belief . . . that the suspect is dangerous and the suspect may gain immediate control of weapons.” *Colen*, 482 F. App’x at 712 (quoting *Maryland v. Buie*, 494 U.S. 325, 332 (1990)). Officers “need not be absolutely certain that the individual is armed; the issue is whether a reasonably prudent man in the circumstances would be warranted in his belief that his safety or that of others was in danger.” *Colen*, 482 F. App’x at 712 (quoting *Terry*, 392 U.S. at 27).

Reasonable suspicion is a “less demanding standard than probable cause,” *United States v. Delfin–Colina*, 464 F.3d 392, 396 (3d Cir. 2006) (quoting *Illinois v. Wardlow*, 528 U.S. 119, 123 (2000)), requiring “only a ‘minimal level of objective justification,’” *Delfin–Colina*, 464 F.3d at 396 (quoting *Sokolow*, 490 U.S. at 7). Courts must consider “the totality of the circumstances—the whole picture” when assessing whether there is a “particularized and objective basis for suspecting” criminal activity. *Cortez*, 449 U.S. at 417; *see also United States v. Brown*, 448 F.3d 239, 247 (3d Cir. 2006) (quoting *Arvizu*, 534 U.S. at 274) (“[O]ur ultimate determination of reasonable suspicion requires us to consider [the facts] not ‘in isolation from each other,’ but . . . as part of the ‘totality of the circumstances.’”). Officers are thus enabled “to draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that might elude an untrained person.” *United States v. Thompson*, 772 F.3d 752, 758 (3d Cir. 2014) (quoting *Arvizu*, 534 U.S. at 273). Factors officers may consider pertinent include “whether the area is a high-crime area, a suspect’s ‘nervous, evasive behavior,’ and flight from police officers.” *United States v. Whitfield*, 634 F.3d 741, 744 (3d Cir. 2010) (quoting *Wardlow*, 528 U.S. at 124).

Under the totality of the circumstances, the officers had reason to believe that Moore was armed and dangerous. Moore was stopped in a high crime, violent area. (*Id.* at 8:2–5, 9:22–10:3, 41:15–21.) He failed to pull over for a marked police van with its lights flashing and siren wailing, deciding instead to continue driving through the dark with no lights on. (*Id.* at 23:13–14; 43:23–44:5.) While refusing to stop, Moore continuously reached into the area behind the front passenger seat, in what could be reasonably perceived as an attempt to retrieve or conceal something. (*Id.* at 12:6–14, 43:23–44:1.) Even after the officers stopped Moore by blocking his path, he continued to reach into the area behind the back passenger seat as the officers approached. (*Id.* at 44:23–45:3.) Under these circumstances, the officers were warranted in their belief that their safety was threatened. *See United States v. Moorefield*, 111 F.3d 10, 14 (3d Cir. 1997) (holding furtive movements and failure to obey police commands constitutes suspicious behavior for purposes of a *Terry* frisk).

Moore asks the Court to disbelieve that the police could actually see what he was doing while being followed. He argues that their “claim that they were able to observe [him] making furtive movements through the closed tinted windows of his vehicle on a dimly lit street at night in February is incredulous.” (Memo. at 7.) The evidence of the rear window’s tint was limited to Latimore’s testimony that the car had tinted windows and photos of the Nissan, taken both during the day and at night. (Hr’g Tr. at 95:4–15; Def.’s Exs. 33–36.) The pictures show that the windows were tinted, but do not show the degree of the tint or demonstrate that the officers could not see Moore through the back window from their vantage point. The Nissan Rogue, a mid-sized SUV, has a wide back window. (*See* Def.’s Ex. 33 & 35; Hr’g Tr. at 11:20–23.) The officers testified that they

were in the police van within feet of the car with a direct line of sight into the rear window. (Hr’g Tr. at 11:18–23, 12:9–12, 43:21–44:10.) Although on a dark street, the van’s head and emergency lights were shining directly on Moore’s back window. (*Id.* at 44:6–10.) Without any evidence on the severity of the tint, the Court is unable to conclude that under these circumstances, the officers were unable to see Moore’s movements within the car.

Further, the reaching motion the officers saw while in pursuit of the Nissan was not an isolated incident, but rather was part of and consistent with the larger narrative of Moore’s suspicious conduct that night. The officers testified that they saw Moore making the same reaching motion through the front windshield when they approached the car after boxing it in. (*Id.* at 12:23–25, 44:24–45:3.) Foley also testified that almost immediately upon approaching the Nissan, he looked right where Moore had been reaching, first shining his flashlight behind the passenger seat and seeing a large object bulging from the seat’s map pocket. He then opened the door and saw the gun. (*Id.* at 13:6–16, 18:8–17.) Even if the Court were to question whether or not the officers could see Moore’s movements through the back window because of the tint, they could see what he was doing through the windshield, allowing them to search the car.

An appropriate Order follows.

/s/ Gerald J. Pappert
GERALD J. PAPPERT, J.