



## **B. Findings of Fact**

On August 12, 2008, at approximately 6:47 p.m., Philadelphia Police Officers Robert Harris and Craig Coulter (“the Officers”) conducted a traffic stop of a 2008 Ford Expedition driven by Malik Martin. (Hr’g Tr. 36-39; Mouzon Aff.) At the time, both Harris and Coulter were assigned to the 39th District’s “Five Squad” unit, a select group of officers tasked with responding to high-priority criminal offenses. (Hr’g Tr. 37-38.) On this particular night, Harris and Coulter were on patrol in a marked police vehicle and in uniform, with Coulter driving and Harris recording. (*Id.* at 39.) While parked on the corner of Broad Street and either Ontario or Tioga Street, Officer Harris saw the Ford Expedition heading south on Broad and noticed that its registration tag was expired. (*Id.* at 39, 47.) This is a moving violation under Pennsylvania law. (*Id.*) Based solely on Harris’s observation of the expired tag, the Officers drove up behind the Expedition, activated their lights and sirens, and pulled the Expedition over on the 2700 block of Broad Street. (*Id.* at 39-40, 47-48.)

The Officers got out of their vehicle and approached the Expedition. (*Id.* at 40.) Coulter approached on the driver’s side, and Harris approached on the passenger side. (*Id.*) As the Officers walked up to the vehicle, they saw that Malik Martin was the only person in the Expedition. (*Id.*) It was a very hot day, and Officer Harris noticed that the Expedition’s air conditioner was on. (*Id.*) He also noticed that all of the windows in the vehicle were rolled down. (*Id.*) In addition, Harris saw that there were a number of air fresheners inside the Expedition, some placed on the dashboard and others on the coat hook above the rear passenger door. (*Id.* at 40-41.)

Officer Coulter asked Martin for his license and registration. (*Id.* at 41.) Martin informed Officer Coulter that the Expedition was a rental car. (*Id.* at 41, 47-48.) Martin then

gave the license and registration information to Coulter, as well as his credit card as proof that he was the lawful renter of the car. (*Id.*) Coulter verified the rental information and also confirmed that the registration had in fact expired. (*Id.*)

Because the Expedition's windows were down, Officer Harris was able to see into the rear cargo area while standing next to the car on the passenger side. (*Id.* at 41, 52.) Harris saw that there were three large, black, contractor-type trash bags in the cargo area. (*Id.* at 41-42.) He described the bags as having a "square-ish" and *not* irregular shape. (*Id.*) Harris asked Martin what was in the bags, and Martin said that they contained "trash." (*Id.* at 41.) Martin appeared to Harris to be nervous during the stop, and he became more nervous when he was asked about the bags. (*Id.* at 41, 56). At this point, Officer Coulter asked Martin to get out of the vehicle. (*Id.* at 51.) Martin was taken to the side of the car and was detained by the Officers. (*Id.* at 42-43, 51, 55, 57.) He was not placed under arrest or put in handcuffs. (*Id.*)

At no time during the stop did Harris detect any sort of trash smell emanating from the vehicle, particularly the typical garbage smell of food waste. At one point, after Martin was taken out of the car, Harris opened the rear tailgate of the Expedition and visually inspected the bags. (*Id.* at 52-53.) He noted that they were opaque, and he could not see what was inside of them. (*Id.*) He also noted that the bags were not giving off any type of smell. (*Id.*) Officer Harris did not ask Martin for permission to open the rear tailgate. (*Id.* at 53.)

Based upon his police training and experience with regard to the packaging and trafficking of narcotics, based upon the multiple air fresheners spread throughout the car, considering the fact that all of the car's windows were down but the air conditioner was on, and considering the fact that Martin became even more nervous when asked about the trash bags, Officer Harris began to suspect that the trash bags contained illegal drugs. (*Id.* at 42, 54;

Mouzon Aff.) He therefore radioed for a K-9 drug detection unit. (*Id.*) About ten to fifteen minutes later, a K-9 unit arrived. (*Id.* at 43.) The K-9 officer then circled the Expedition with the dog. (*Id.*) After doing this, the K-9 officer advised Harris that the dog had positively indicated that there were drugs in the car. (*Id.*) Martin was put in handcuffs and placed under arrest. (*Id.* at 42-43, 57.) The time was 7:15 p.m. (*Id.* at 57.)

Officer Harris called the Philadelphia Police Department's Narcotics Field Unit and relayed the details of the stop to Officer John Mouzon, who was assigned to the Narcotics Field Unit at the time. (*Id.* at 43; Mouzon Aff.) Mouzon directed Harris to bring Martin and the Expedition to the Philadelphia Police Department's 35th District. (*Id.*) Mouzon then filed an Affidavit of Probable Cause for a Search and Seizure Warrant for the Expedition. (Mouzon Aff.) The Affidavit consisted primarily of the facts of Martin's traffic stop as told to Mouzon by Officer Harris. (*Id.*)

The facts presented in the Affidavit are consistent with the facts provided in Officer Harris's testimony. (*Id.*) The Affidavit does not include the fact that Harris opened the rear tailgate and visually inspected the trash bags without seeking permission.

Based on Officer Mouzon's Affidavit, a magistrate issued a search warrant for the Expedition. (Hr'g Tr. at 43.) Officer Mouzon executed a search pursuant to the warrant and recovered five bales of marijuana from inside the trash bags. (*Id.* at 43; Gov't Resp. 3-4.) Each bale was individually wrapped in cellophane. (*Id.* at 43.) All together the marijuana weighed approximately 132.8 pounds. (Gov't Resp. 3-4.)

## **II. DISCUSSION**

Martin seeks to suppress the marijuana found in the Expedition. He argues that: (1) Officers Harris and Coulter stopped him without reasonable suspicion to believe that he was

engaged in criminal activity or had committed a traffic violation; and (2) in the alternative, even if the Officers were legally justified in stopping him, the Officers lacked reasonable suspicion of any criminal activity to prolong the stop beyond the time it would take to investigate the alleged traffic violation. The Government responds that: (1) the Officers were legally justified in stopping Martin based on the expired registration tag; (2) under the circumstances, the Officers did have reasonable suspicion to prolong the stop beyond the investigation of the traffic violation; and (3) in any event, because Officer Mouzon executed the search pursuant to a valid search warrant, the “good faith” exception should apply and the marijuana should not be suppressed.

**A. The Initial Stop Was Lawful**

The Fourth Amendment protects against unreasonable searches and seizures. U.S. Const. amend. IV; *see also United States v. Ubiles*, 224 F.3d 213, 216 (3d Cir. 2000). “It is settled law that a traffic stop is a seizure of everyone in the stopped vehicle.” *United States v. Mosley*, 454 F.3d 249, 253 (3d Cir. 2006). A traffic stop is lawful under the Fourth Amendment where a police officer observes a violation of the state traffic regulations. *United States v. Bonner*, 363 F.3d 213, 216 (3d Cir. 2004) (“A police officer who observes a violation of state traffic laws may lawfully stop the car committing the violation.” (citation omitted)). “[A]ny technical violation of a traffic code legitimizes a stop, even if the stop is merely pretext for an investigation of some other crime.” *Mosley*, 454 F.3d at 252; *see also Whren v. United States*, 517 U.S. 806, 813 (1996) (“Subjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis.”); *United States v. Comegys*, 504 F. App’x 137, 142 (3d Cir. 2012) (rejecting argument that police officer’s “subjective motivation negates the reasonable suspicion” required to conduct a traffic stop).

Here, the traffic stop of Martin was lawful. The Officers observed Martin violating a traffic law. As the driver of the car, Martin was responsible for ensuring that the car was validly registered. *See* 75 Pa. Cons. Stat. Ann. § 1301(a) (“No person shall drive or move . . . upon any highway any vehicle which is not registered in this Commonwealth”). Officer Harris was able to see that the registration tag was expired before Martin was pulled over. This is not in dispute. Therefore, the Officers had reasonable suspicion to justify a traffic stop and investigation into the expired registration.

**B. The Prolonged Detention of Defendant After The Registration Investigation Concluded Was Lawful**

Martin argues that even if the Officers were legally justified in stopping him for the expired registration, once the Officers concluded their investigation into the expired registration tag, there was no longer any legal justification to continue to detain him for further investigation.

Police may lawfully extend a traffic stop for investigative purposes only if they have a reasonable, articulable suspicion that the occupants of the vehicle are engaged in criminal activity. *United States v. Givan*, 320 F.3d 452, 458 (3d Cir. 2003) (“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 beyond the reason for the stop and detain the vehicle and its occupants for further investigation.”); *see also Rodriguez v. United States*, 135 S. Ct. 1609, 1611 (2015) (holding that absent reasonable suspicion, “[a]uthority for the seizure . . . ends when tasks tied to the traffic infraction are—or reasonably should have been—completed”); *Illinois v. Caballes*, 543 U.S. 405, 407 (2005) (“A seizure that is justified solely by the interest in issuing a warning ticket to the driver can become unlawful if it is prolonged beyond the time reasonably required to complete that mission.”).

The Government and Martin do not dispute that the Officers had concluded their investigation into the expired registration prior to investigating the contents of the trash bags. The Government argues however that the Officers lawfully extended the duration of the detention beyond what was required to investigate the expired registration tag based on a reasonable suspicion that Martin was engaged in criminal activity. The Government contends that the fact that the windows of Martin's car were down on this hot day but the air conditioner was on, the fact that there were a number of air fresheners in the vehicle, the fact that Martin became more nervous when asked about the bags in the rear of the vehicle, and the fact that Martin told Harris that the bags contained trash but that there was no trash odor, together with Harris's law enforcement experience, created reasonable suspicion that Martin was engaged in criminal activity.

Reasonable suspicion is an objective standard based on the totality of the facts and circumstances. *United States v. Mathurin*, 561 F.3d 170, 174 (3d Cir. 2009). It requires a police officer to point to "specific articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." *Terry v. Ohio*, 392 U.S. 1, 21 (1968). It must be based on "something more substantial than an 'inchoate and unparticularized suspicion or hunch.'" *Johnson v. Campbell*, 332 F.3d 199, 206 (3d Cir. 2003) (quoting *Terry*, 392 U.S. at 27). "The principal components of a determination of reasonable suspicion . . . will be the events which occurred leading up to the stop or search, and then the decision whether these historical facts, viewed from the standpoint of an objectively reasonable police officer, amount to reasonable suspicion . . . ." *Mathurin*, 561 F.3d at 174 (3d Cir. 2009) (quoting *Ornelas v. United States*, 517 U.S. 690, 696 (1996)). "Though the individual factors giving rise to reasonable

suspicion may be innocent in isolation, together they must serve to eliminate a substantial portion of innocent travelers.” *Id.* (internal quotation omitted).

The presence of air fresheners suggests a desire to mask the odor of contraband, a suggestion which is strengthened by the presence of multiple air fresheners placed throughout a vehicle. *See United States v. Pena-Gonzalez*, 618 F. App’x 195, 199 (5th Cir. 2015) (holding that four air fresheners placed throughout an SUV supported a finding of reasonable suspicion of drug trafficking); *United States v. Roubideaux*, 357 F. App’x 801, 802 (9th Cir. 2009) (noting that an officer’s knowledge that air fresheners are used to mask drug odor supported a finding of reasonable suspicion where officer observed two air fresheners wedged around car’s control panels); *United States v. Anderson*, 114 F.3d 1059, 1066-67 (10th Cir. 1997) (noting that presence of air freshener scent along with other indicia of criminal activity supports further investigation). Officer Harris began to grow suspicious of criminal activity when he first observed the multiple air fresheners placed throughout the Expedition along with the presence of the large, black, square-shaped trash bags. Based upon his experience, Harris knew that this was consistent with drug packaging and trafficking methods. The fact that Martin had all of the Expedition’s windows rolled down and had the air conditioning on during a hot day in August added to this suspicion.

It is also significant that Officer Harris, an experienced police officer and member of a select enforcement unit, observed Martin become visibly more nervous when asked about the contents of the trash bags. *See, e.g., United States v. Brown*, 448 F.3d 239, 251 (3d Cir. 2006) (reasonable suspicion is supported where “[a] suspect behaves in a way that conforms to police officers’ specialized knowledge of criminal activity”); *Illinois v. Wardlow*, 528 U.S. 119, 124 (2000) (noting that “nervous, evasive behavior is a pertinent factor in determining reasonable

suspicion”). Although “[i]t is not unusual for drivers, even innocent ones, to be nervous when stopped by police officers,” *United States v. Cox*, 2017 WL 2404914, at \*6 (E.D. Pa. June 2, 2017), given the other circumstances present here, and the fact that Martin’s nervousness increased when asked about the trash bags, Harris’s characterization of Martin’s nervous demeanor clearly supports the finding of reasonable suspicion.

Finally, Martin’s use of a rental car also supports a finding of reasonable suspicion when viewed in context with the other circumstances present here. *See, e.g., United States v. Frierson*, 611 F. App’x 82, 85-86 (3d Cir. 2015) (holding that defendants’ use of a rental car contributed to finding of reasonable suspicion that defendants were engaged in drug trafficking).

We are satisfied based on Officer Harris’s testimony that there were more than sufficient specific articulable facts which, taken together with the rational inferences to be drawn from those facts, reasonably warranted a prolonged investigation and detention of Martin to allow a drug detection unit to come and inspect the Expedition. Given the short duration of the stop overall – a total of approximately thirty minutes from the time Martin was pulled over to when the dog indicated to the presence of drugs and Martin was arrested – and the shorter amount of time that the stop was prolonged to conduct the additional investigation, only apparently fifteen minutes, we find that the Officers’ actions were justified by an objectively reasonable suspicion and therefore lawful under the Fourth Amendment.<sup>1</sup>

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<sup>1</sup> Defense Counsel argued at the Motion Hearing that Officer Harris’s opening of the rear tailgate door and subsequent visual inspection and smelling of the bags constituted an illegal search. While Officer Harris did have reasonable suspicion to prolong the stop for further investigation, he did not have probable cause to search the cargo area, nor could he rely on the search incident to arrest vehicle exception, as Martin had not yet been arrested. *Arizona v. Gant*, 556 U.S. 332, 351 (2009). However, the cargo area inspection did not add anything to the finding of reasonable suspicion other than to further confirm that Harris could not detect any “trash” odor. Excising that information from the reasonable suspicion analysis (as we do above) does not alter our conclusion, nor does it affect the subsequent warrant application in this case.

Accordingly, Martin's Motion to Suppress the marijuana found in the Expedition will be denied.

**C. The Good Faith Exception Extends to Officers Who Act in Good Faith in Procuring and Acting Upon A Validly Issued Warrant**

The Government argues that regardless of whether the Officers acted with reasonable suspicion or probable cause when detaining Martin, because the marijuana was recovered pursuant to a valid search warrant, the good faith exception should apply and the marijuana should not be suppressed. This raises a question not addressed by the Government here and not yet addressed by the Third Circuit: When a magistrate issues an otherwise valid warrant based on an affidavit containing information obtained in violation of the Fourth Amendment, can an officer rely in good faith on that warrant regardless of its unlawful basis and thus avoid the exclusionary rule?

The seminal good faith case is *United States v. Leon*, 468 U.S. 897, 921 (1984), which held that evidence obtained in objectively reasonable reliance on a subsequently invalidated search warrant should not be subject to the exclusionary rule. The Third Circuit has identified only four situations discussed in *Leon* where suppression would be appropriate, even where officers were acting pursuant to a warrant:

1. Where the magistrate issued the warrant in reliance on a deliberately or recklessly false affidavit;
2. Where the magistrate abandoned his or her judicial role and failed to perform his or her neutral and detached function;
3. Where the warrant was based on an affidavit so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable; or
4. Where the warrant was so facially deficient that it failed to particularize the place to be searched or the things to be seized.

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*See United States v. Yusuf*, 461 F.3d 374, 383-84 (3d Cir. 2006) (noting that courts are required to analyze the sufficiency of warrants containing false information or omissions by first excising any falsehoods).

*United States v. Sarraga-Solana*, 263 F. App'x 227, 231 (3d Cir. 2008). None of those situations address the circumstances of this case.

The majority of circuits that have addressed the issue before us have extended the rationale of *Leon* to the circumstances present here. Those courts have all essentially held that where the warrant itself is procured, issued, and relied on in objective good faith, then the evidence recovered pursuant to that warrant will not be suppressed under the exclusionary rule.

In *United States v. Hopkins*, 824 F.3d 726, 733 (8th Cir. 2016), the Eighth Circuit held that the good faith exception will apply to evidence recovered pursuant to a warrant based on information obtained in violation of the Fourth Amendment if the officer's pre-warrant conduct is close enough to the line of validity to make the officer's belief in the validity of the warrant objectively reasonable. The officer in *Hopkins* directed his K-9 drug-sniffing dog to smell the individual apartment doors of a multi-unit apartment building while in the building's outdoor common area, and then used the results of the sniff search to get a search warrant for the defendant's apartment. *Id.* at 729-30. The court ruled that this dog search in the "curtilage" did violate the defendant's Fourth Amendment rights, but that the officer had a good faith belief that he had not run afoul of Fourth Amendment law. *Id.* at 732-33. The officer had disclosed all of the legally relevant facts about the dog sniff to the issuing magistrate, including the fact that it was conducted from the building's common area. *Id.* at 734. The Eighth Circuit held that the legal error rested with the magistrate, not the officer, and that the trial court did not err in applying the good faith exception to deny suppression of the evidence recovered pursuant to the warrant. *Id.*; see also *United States v. Bain*, 874, F.3d 1, 21-22 (1st Cir. 2017) (noting that majority of circuits agree with *Hopkins* and adopting *Hopkins* formulation to analyze whether officer's conduct was close enough to the line of validity to reasonably believe it was lawful for

application of good faith exception); *United States v. Ganius*, 802 F.3d 199, 222-23 (2d Cir. 2016) (holding that good faith exception applies where officer had objectively reasonable belief that his pre-warrant behavior was constitutional and disclosed all crucially legal facts to issuing magistrate); *United States v. Massi*, 761 F.3d 512, 527-28 (5th Cir. 2014) (holding similar); *United States v. McClain*, 444 F.3d 556, 564-66 (6th Cir. 2005) (holding similar); *but see United States v. Vasey*, 834 F.2d 782, 789-90 (9th Cir. 1987) (holding that evidence illegally obtained by an officer puts the constitutional error at the officer's feet, noting that the magistrate's role is to only evaluate whether there is probable cause based on the unchallenged word of the officer, and refusing to apply the good faith exception under those circumstances).

We agree with the majority of circuits that have analyzed this issue and hold that where an officer obtains information in violation of the Fourth Amendment but does so with an objectively reasonable belief that his conduct was not unconstitutional, then in good faith discloses that illegally obtained information and all other legally relevant information to a neutral magistrate and acts pursuant to a validly issued warrant, the fruits of that warrant search will not be subject to the exclusionary rule.

Applying that rule here, even if the Officers lacked reasonable suspicion to prolong the detention of Martin and investigate the contents of the trash bags in the Expedition, they had an objectively reasonable belief that their conduct was in fact constitutional. In 2005, the Supreme Court held that a dog sniff conducted during a lawful traffic stop does not violate the Fourth Amendment. *Caballes*, 543 U.S. at 410. Although the Court in *Caballes* did note that “[a] seizure that is justified solely by the interest in issuing a warning ticket ... can become unlawful if it is prolonged beyond the time reasonably required to complete that mission,” *id.* at 407, it was not until 2015, seven years after the Officers here stopped Martin, that the Court explicitly

held that “a dog sniff conducted after the completion of a traffic stop . . . violates the Constitution’s shield against unreasonable seizures” when the seizure was “justified only by a police-observed traffic violation.” *Rodriguez*, 135 S.Ct. at 1612. Considering the state of the law in 2008, the rather short duration of the entire incident, and the other relevant facts set forth above, Officer Harris had an objectively reasonable belief that he was not violating Martin’s constitutional rights by prolonging the stop to investigate the contents of the trash bags.

We note that the Mouzon Affidavit filed in support of the warrant did not inform the magistrate that Harris had opened the rear tailgate of the Expedition without the consent of Martin. It is unclear if Officer Mouzon left that detail out of his Affidavit or if Officer Harris neglected to tell Mouzon about it. In either event, as we noted above, the opening of the rear tailgate did not lead to any information or evidence relevant to the finding of reasonable suspicion. It was essentially inconsequential. Therefore, we are satisfied that it would not have made any difference in the magistrate’s determination. Furthermore, because it was inconsequential, its omission does not undercut the Officers’ objectively reasonable belief that they were acting in good faith in procuring and then acting on the warrant.

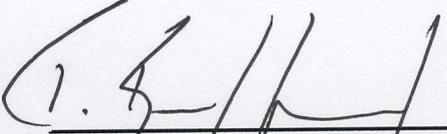
Accordingly, we find that even if the Officers lacked reasonable suspicion to prolong the detention of Martin for investigation unrelated to the expired registration, the good faith exception would apply here and prevent the suppression of the marijuana recovered from the Expedition.

**IV. CONCLUSION**

For these reasons, Defendant's Motion to Suppress Physical Evidence will be denied.

An appropriate Order follows.

**BY THE COURT:**



**R. BARCLAY SURRICK, J.**

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

UNITED STATES OF AMERICA

v.

MALIK MARTIN

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CRIMINAL ACTION

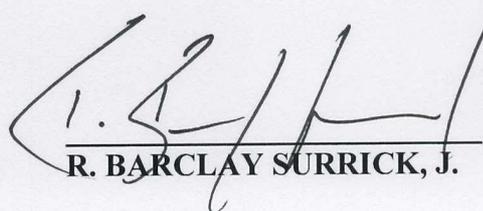
NO. 16-218-12

**ORDER**

AND NOW, this 24<sup>th</sup> day of July, 2018, upon consideration of Defendant's Motion to Suppress Physical Evidence (ECF No. 617), and all documents submitted in support thereof and in opposition thereto, and after a hearing in open Court, it is **ORDERED** that the Motion is **DENIED**.

**IT IS SO ORDERED.**

**BY THE COURT:**

  
R. BARCLAY SURRICK, J.