



including photographs of the site where Washington was arrested as well as the arrest report and a transcript of a February 5, 2019 preliminary hearing held in the Court of Common Pleas of Philadelphia County before this case was adopted by the federal government.

I

The evidence presented by the Government is as follows. On November 5, 2018, Officers Cannon and Wyatt, who were experienced in their jobs, were on patrol in the area of 1400 Chew Avenue in the Olney section of Philadelphia. At approximately 4:00 a.m., the officers, travelling westbound on Chew Avenue in a marked patrol car, encountered Washington in his vehicle with the engine running. The vehicle was parked in a zone with a "No Stopping Anytime" sign and was partially blocking a driveway to a parking lot used for several stores and an after-hours club, the Olney Arts Center. The officers pulled up behind Washington's vehicle without activating their lights or sirens. Officer Cannon approached the driver's side door while Officer Wyatt approached the passenger side door. Both officers were in uniform.

Officer Cannon testified that he smelled marijuana when he was close enough to touch the vehicle. He shined a flashlight into the vehicle and saw Washington sleeping or passed out at the driver's seat. He also observed a small clear

plastic bag containing a green leafy substance, which he believed to be marijuana. The officers awakened Washington with a knock on the car and instructed Washington to roll down his windows. After Washington lowered the windows approximately two to three inches, both officers smelled marijuana. They also saw residue of a green leafy substance on Washington's chest and pants. Officer Cannon stated that he eyed a partially burnt, skinny brown cigarette on Washington's lap that he believed to be marijuana.

Cannon asked for Washington's identification. Washington produced his driver's license but explained that it had been suspended. Cannon also asked Washington to turn off the car and hand over the keys. Washington complied.

At that point, Cannon instructed Washington to exit the vehicle. Cannon explained that he was exercising his discretion not to allow Washington to continue driving given the suspended license and his suspicion that Washington was under the influence of drugs. Washington refused to get out of the vehicle and grabbed hold of the steering wheel. Cannon thereupon reached into the car and opened the door while Wyatt came around the back of the car to join Cannon at the driver's side. Wyatt grabbed Washington and tried to pull him out of the car. Both officers testified that although the car was by that point turned off, it remained in drive or neutral and began to

roll when they attempted to pull Washington out of the vehicle. During the struggle, Washington's buttocks lifted off the seat and Officer Cannon saw a handgun where Washington had been sitting. Cannon alerted Wyatt to the gun and pointed his Taser at Washington. Washington, ceasing any resistance, exited his vehicle. The officers recovered the gun, which was loaded.

According to both officers, they searched Washington and recovered from his pocket a plastic bag containing several vials of a white chunky substance they believed to be crack, as well as several empty vials with a white residue and several vials containing a leafy green substance believed to be marijuana.

They then handcuffed Washington, and Cannon took him to the patrol car. Cannon testified that he asked Washington if he had a permit for the gun, to which Washington responded that he would prefer not to answer. Cannon further stated that Washington followed up by asking him if he could just charge him with the gun possession and throw out the drugs. Meanwhile, Wyatt searched Washington's vehicle. He removed the clear plastic baggie of marijuana from the center console in the car and the firearm from the driver's seat. He also recovered the partially burnt, skinny brown cigarette from the driver's side floorboard. The officers transported Washington to the nearby

police station, logged the evidence seized, and prepared an arrest report.

At the suppression hearing before the court, Washington's version of events diverged significantly. According to Washington, he was parked in a legal parking spot on Chew Avenue and not blocking any driveway when the officers approached them. Washington admitted that he was asleep or passed out in the driver's seat. He further explained that he had gone to the after-hours club on the street with two friends but had been escorted out of the club by the friends after he began to feel unwell, possibly due to a medical condition which has caused him to pass out. The officers awoke Washington by knocking on the window of the vehicle. They asked what Washington was doing in the neighborhood and whether he was okay.

Washington testified that his car was in park with the motor running when the officers approached him. Although he was in the driver's seat, Washington stated that one of his friends had driven his car to the club that night because his driver's license had been suspended. He testified that the vehicle remained in park during the entire encounter and never rolled while the officers attempted to remove him. Washington added that he had not been smoking marijuana, although he conceded that he had on his person a bag containing a small amount of

marijuana that he had been holding for a friend. He denied that there was a bag of marijuana on the console of the car, a marijuana cigarette on his lap, or residue on his person. He further noted that the windows of his vehicle were heavily tinted.

Washington also denied that he was sitting on a firearm. Washington stated he had never before seen the firearm or vials of crack and offered no explanation for how the firearm or narcotics came to be found in his vehicle and on his person. He testified that once in the patrol car, Officer Cannon repeatedly asked him to whom the firearm and narcotics belonged. According to Washington, he remained silent and did not make any request to charge him only with the firearm and not the drugs as Officer Cannon contends.

After reviewing the evidence presented, we credit the officers' version of the events that took place in the early hours of November 5, 2018. Both officers, who were sequestered, offered detailed testimony. Their version of the events was consistent in all material respects. Their testimony before this court was also in accord with the detailed and contemporaneous arrest memorandum that they wrote on the morning of Washington's arrest. The testimony was also consistent with the testimony they offered earlier this year at a preliminary hearing in the Court of Common Pleas of Philadelphia County.

Washington has offered no explanation for how the firearm and narcotics came to be found in his vehicle or on his person. He also has failed to explain why he was in the driver's seat of his vehicle with the motor running if he was not the driver. We find his testimony self-serving and not credible. Accordingly, we will largely rely on the credibility of the officers' testimony when determining whether the search and seizure of Washington was legal.

## II

The Fourth Amendment provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const. amend. IV. The text of the Fourth Amendment thus imposes two requirements. First, all searches and seizures must be reasonable. Kentucky v. King, 563 U.S. 452, 459 (2011). Second, a warrant may not be issued unless probable cause exists and the scope of the search or seizure is set out with particularity. Id. (citing Payton v. New York, 445 U.S. 573, 584 (1980)). Although the Fourth Amendment generally requires a warrant for the government to conduct a search or effect a seizure, this warrant requirement is subject to certain

well-established exceptions. Id. Washington does not argue that a warrant was required here.

We begin with the initial stop of Washington's vehicle. In Terry v. Ohio and subsequent cases, the Supreme Court held that, consistent with the Fourth Amendment, police may stop persons without a warrant and in the absence of probable cause under limited circumstances. See Dunaway v. New York, 442 U.S. 200, 207-11 (1979) (citing Terry v. Ohio, 392 U.S. 1, 20-27 (1968)). In particular, the Supreme Court has held that law enforcement agents may briefly stop an automobile to investigate a reasonable suspicion that its occupants are involved in criminal activity. See United States v. Brignoni-Ponce, 422 U.S. 873, 881 (1975). In determining whether a traffic stop is reasonable a court must make two inquiries: (1) whether the officer's action was "reasonable at its inception"; and (2) "whether it was reasonably related in scope to the circumstances which justified the interference in the first place." Terry, 392 U.S. at 18-20; see also United States v. Green, 897 F.3d 173, 178-79 (3d Cir. 2018). In other words, both the traffic stop itself and the scope and duration of the subsequent detention must be reasonable.

The first inquiry in this case is not difficult. No one claims here that a warrant was necessary for the officers to approach Washington's vehicle. As stated above, it is

well-settled that "a traffic stop is lawful under the Fourth Amendment where a police officer observes a violation of the state traffic regulations." United States v. Moorefield, 111 F.3d 10, 12 (3d Cir. 1997); see also Whren v. United States, 517 U.S. 806, 810 (1996). Here, Officers Wyatt and Cannon observed Washington parked in a "No Stopping Anytime" zone and partially blocking a driveway. They clearly had reason to approach Washington's vehicle.

"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." United States v. Givan, 320 F.3d 452, 458 (3d Cir. 2003) (citing United States v. Johnson, 285 F.3d 744, 749 (8th Cir. 2002)). We determine whether the officers had reasonable suspicion based on the totality of the circumstances and in light of the officers' experience. Id.

Once they approached Washington's vehicle, Officer Wyatt smelled marijuana and could see a clear plastic bag that appeared to contain marijuana. After Washington at the request of Officer Cannon provided his driver's license and partially rolled down the windows, both officers smelled a strong marijuana odor and observed not only the bag of marijuana but

also marijuana residue on Washington's chest and lap. Washington conceded that he had a suspended license. As Officer Cannon explained, he suspected that Washington was driving under the influence of drugs given the fact that Washington was passed out at the driver's wheel with the car running and with marijuana in plain view. The officers also had reason to suspect that Washington was in possession of illegal drugs. Furthermore, the officers had discretion to remove Washington from the vehicle and have it towed based on Washington's admission that he had a suspended license. See 75 Pa. Cons. Stat. Ann. § 6309.2. We thus find that the scope and duration of the vehicle stop were reasonable under the Fourth Amendment.

We next turn to the seizure of the firearm and its ammunition. Officers may make a warrantless seizure of incriminating items when they are in plain view. See Horton v. California, 496 U.S. 128, 133-36 (1990). The application of the plain view doctrine thus turns on three requirements: (1) "the officer must not have violated the Fourth Amendment in 'arriving at the place from which the evidence could be plainly viewed'"; (2) "the incriminating character of the evidence must be 'immediately apparent'"; and (3) "the officer must have 'a lawful right of access to the object itself.'" United States v. Menon, 24 F.3d 550, 559 (3d Cir. 1994) (quoting Horton, 496 U.S. at 136-41). The firearm was discovered during the struggle to

remove Washington from the vehicle. At that point, the officers already had reasonable suspicion sufficient to have Washington exit the vehicle. The firearm was in plain view once Washington was being forcibly removed. Accordingly, the seizure of the firearm was reasonable and did not violate Washington's constitutional rights against an unreasonable seizure.

Once Washington was under arrest, the officers were permitted to search and seize his vehicle. As stated above, a warrantless search is presumptively unreasonable subject only to a few well-established exceptions. See Givan, 320 F.3d at 459. One such exception applies to automobiles. A law enforcement officer may search and seize an automobile without a warrant if "probable cause exists to believe it contains contraband." United States v. Burton, 288 F.3d 91, 100 (3d Cir. 2002) (quoting Pennsylvania v. Labron, 518 U.S. 938, 940 (1996)). Having seen marijuana and a firearm in Washington's vehicle, the officers had probable cause to believe that additional contraband may exist within its confines. Accordingly, the search and seizure of Washington's vehicle did not violate his rights under the Fourth Amendment.

We next consider the search of Washington's person. Among the exceptions to the warrant requirement under the Fourth Amendment is a search incident to a lawful arrest. See Arizona v. Gant, 556 U.S. 332, 338 (2009). This exception derives from

the interests of officer safety and evidence preservation in arrest situations. See United States v. Robinson, 414 U.S. 218, 230-34 (1973). Because Washington was subject to arrest based on probable cause to believe he had committed drug and firearm offenses, the officers were justified to search his person. Therefore, there is no basis to suppress the vials of crack and marijuana that were uncovered from his pocket during that search.

In sum, the motion of Washington to suppress physical evidence, namely the firearm, ammunition, and the drugs recovered in his vehicle and on his person, will be denied. The Government has met its burden to establish by a preponderance of the evidence that there was no violation of Washington's rights under the Fourth Amendment. Thus, there is no basis to suppress the fruits of the search and seizure at issue here. See Wong Sun v. United States, 371 U.S. 471, 484-85 (1963).

### III

We next turn to the motion of Washington to suppress a statement made after his arrest on November 5, 2018. The Fifth Amendment provides in relevant part that no person "shall be compelled in any criminal case to be a witness against himself." U.S. Const. amend V. In accordance with the protections afforded by this provision of the Fifth Amendment, an individual must be informed of his right to remain silent before police may

attempt to interrogate him while in custody. See Miranda v. Arizona, 384 U.S. 436, 467 (1966). Specifically, the accused must be informed as follows:

He must be warned prior to any questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires. Opportunity to exercise these rights must be afforded to him throughout the interrogation.

Id. at 479.

Miranda warnings generally must be provided whenever: (1) a defendant is in custody; and (2) the defendant is subject to government interrogation. Alston v. Redman, 34 F.3d 1237, 1244 (3d Cir. 1994). A defendant is in custody for Miranda purposes when "there is a formal arrest or restraint on freedom of movement of the degree associated with a formal arrest." Maryland v. Shatzer, 559 U.S. 98, 112 (2010) (quoting New York v. Quarles, 467 U.S. 649, 655 (1984)) (internal quotation marks omitted). The term "interrogation," for purposes of Miranda, includes "express questioning or its functional equivalent." Rhode Island v. Innis, 446 U.S. 291, 300-01 (1980). However, a statement made after Miranda warnings are provided is admissible if the defendant waived his right to remain silent and the

waiver was voluntary, knowing, and intelligent. Miranda, 384 U.S. at 479.

In this case, the Government does not dispute that Washington was in custody at the time of the statement at issue. Specifically, Washington had already been handcuffed and placed under arrest and was confined to the backseat of the officers' patrol car. The Government contends, nonetheless, that the statement was a voluntary utterance and not the consequence of any interrogation. The Government bears the burden of proving by a preponderance of the evidence that a challenged statement was made voluntarily. United States v. Walton, 10 F.3d 1024, 1028 (3d Cir. 1993).

The mere fact that an officer speaks to a suspect does not alone amount to interrogation sufficient to trigger the duty to provide Miranda warnings. "[T]he definition of interrogation can extend only to words or actions on the part of police officers that they should have known were reasonably likely to elicit an incriminating response." Innis, 446 U.S. at 302 (emphasis omitted). Volunteered statements are not barred by the Fifth Amendment. Miranda, 384 U.S. at 478. In addition, police may ask "routine booking question[s]" not designed to elicit incriminatory admissions such as a suspect's name, address, height, weight, eye color, date of birth, and current

age without providing Miranda warnings. Pennsylvania v. Muniz, 496 U.S. 582, 601 (1990).

After he was handcuffed and placed into the police car, Officer Cannon asked for the spelling of Washington's name. This was permissible as a routine booking question. See Muniz, 496 U.S. at 601-02. The next question was anything but. Cannon asked Washington if he had a permit for the firearm. Washington first responded that he would prefer not to answer. Cannon then began to do research on his computer. Shortly thereafter, Washington asked Cannon to discard the marijuana and cocaine and to charge him only with a firearm offense.

After considering the evidence presented, we find that the Government has not established by a preponderance of the evidence that Washington's statement was voluntary and not in violation of Miranda. Officer Cannon admits that he asked Washington whether he had a permit for the firearm recovered in his vehicle. This question constituted an interrogation because it was a direct inquiry regarding the legality of Washington's conduct and therefore was "intentionally designed to evoke a confession." See United States v. Rose, 189 F. Supp. 3d 528, 538 (D.V.I. 2016) (quoting United States Bonner, 469 F. App'x 119, 126 (3d Cir. 2012)). Further, Officer Cannon should have reasonably foreseen that this question could elicit an inculpatory response. See id.

While Washington initially refused to answer, it was very shortly thereafter that he made the statement requesting that the officers throw out the firearm charge and simply charge Washington with drug offenses. This statement was not a spontaneous and voluntary utterance but instead was causally connected to Officer Cannon's questioning, which implied that Washington would be charged with a crime if he did not possess a valid license for the firearm. See United States v. Jacobs, 431 F.3d 99, 108 (3d Cir. 2005). Washington was not advised of his Miranda rights before Officer Cannon's question and thus could not have knowingly and voluntarily waived his right to remain silent. We therefore will grant the motion of Washington to suppress the statement as it was obtained in violation of his right under the Fifth Amendment not to be compelled to incriminate himself.

#### IV

Accordingly, the motion of Washington under the Fourth Amendment to suppress evidence seized will be denied, and his motion under the Fifth Amendment to suppress his statement made to Officer Cannon will be granted.

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

UNITED STATES OF AMERICA                   :                   CRIMINAL ACTION  
  :                   :  
  :                   :  
  :                   :  
YASHEAM WASHINGTON                         :                   NO. 19-291

ORDER

AND NOW, this 17th day of July, 2019, for the reasons set forth in the accompanying memorandum, it is hereby ORDERED that:

(1) the motion of defendant Yasheam Washington to suppress (Doc. # 15) is GRANTED in part and DENIED in part;

(2) the motion of defendant under the Fourth Amendment to suppress evidence seized from his vehicle and his person is DENIED; and

(3) the motion of defendant under the Fifth Amendment to suppress his statement made to Officer Cannon is GRANTED.

BY THE COURT:

/s/ Harvey Bartle III

J.