

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

UNITED STATES OF AMERICA	:	CRIMINAL ACTION
	:	
	:	
v.	:	
	:	
JAMEL HURTT	:	No. 19-196
	:	

MEMORANDUM

PRATTER, J.

October 18, 2019

A Chevy pick-up truck failed to stop at a stop sign before making an illegal left turn at the intersection of 21st and Spencer Streets on February 23, 2019. Philadelphia Police Officers Lance Cannon and Daniel Gonzalez pulled the vehicle over and discovered a semiautomatic weapon on the person of passenger Jamel Hurtt. The Government charged Mr. Hurtt with felon in possession of a firearm.

Mr. Hurtt moves to suppress the gun that was seized, as well as seven live rounds of ammunition found in the gun. He also asks the Court to suppress alleged incriminating statements made at the scene of the traffic stop and after Mr. Hurtt’s arrest while at the stationhouse. Following an evidentiary hearing and oral argument, and upon review of the briefing and applicable case law, the Court denies in part Mr. Hurtt’s motion to suppress and grants only as to Mr. Hurtt’s statement about his prior arrest.

FINDINGS OF FACT¹

During the early morning hours of February 23, 2019, Officers Cannon and Gonzalez were patrolling the 35th District in a marked police car. Just before 2:00 A.M., while traveling northbound on 21st Street, the officers saw a red Chevy pick-up truck roll through a stop sign and

¹ The Court finds the following facts based on evidence presented at the evidentiary hearing.

turn left onto Spencer Street without using a turn signal. The officers pulled the Chevy over about two blocks from the intersection, at the intersection of Spencer Street and Beechwood Street.

The officers approached the vehicle, Officer Cannon approaching the driver's side and Officer Gonzalez approaching the passengers' side. They could smell a strong odor of alcohol coming from inside the vehicle. The officers retrieved the occupants' identifications. Smelling alcohol on the driver, Officer Cannon decided to conduct a field sobriety test to investigate a potential DUI. Officer Gonzalez had the necessary training to conduct such a field sobriety test, so Officer Cannon asked the driver to step out of the vehicle and handed the driver off to Officer Gonzalez. Officer Gonzalez escorted the driver to the rear of the truck. The driver then admitted to having had an alcoholic drink, a "Long Island iced tea." Mr. Hurtt asserts Officer Gonzalez frisked the driver.

Meanwhile, Officer Cannon engaged the two passengers. One passenger was seated in the front seat, and Mr. Hurtt was seated in the back seat. Leaning and shining his flashlight into the truck, Officer Cannon saw tools, debris, and a five-gallon bucket in the back seat of the truck. The officer instructed the passengers to keep their hands visible at all times. More than once, Officer Cannon viewed the passengers move their hands and put their hands in their pockets contrary to his order. At some point, both the front seat passenger, who was heavily intoxicated, and Mr. Hurtt said they were moving their hands because it was cold outside.

The location where the officers stopped the Chevy was known by the officers to be a high-crime area, involving frequent violent and drug-related crimes. Knowing this and having viewed the passengers repeatedly move their hands in a furtive manner, Officer Cannon decided to search the passengers. To get a better view of the back seat of the truck, Officer Cannon moved to the passenger side of the vehicle. When Officer Cannon came around to the passenger side, again the

passengers did not have their hands visible. The officer instructed the passengers to keep their hands where he could see them. Mr. Hurtt had his back to Officer Cannon, and Officer Cannon saw Mr. Hurtt reach toward the bucket in the back seat. Again, the officer instructed Mr. Hurtt to show Officer Cannon his hands. Mr. Hurtt responded, "I'm cool," and put his hands up.

During this time, Officer Gonzalez placed the reluctant driver in the back of the police cruiser, and told the driver he was not under arrest. Officer Gonzalez had not yet completed the DUI investigation of the driver and testified that he placed the driver in the back seat in order to assist Officer Cannon with the two passengers. Officer Gonzalez approached the front seat passenger, who was beginning to step out of the vehicle and almost fell over, and caught him.

After the front seat passenger was removed from the truck, Officer Cannon again saw Mr. Hurtt turn his body away and reach towards the bucket. Officer Cannon believed that Mr. Hurtt was trying to deposit a weapon into the bucket. In response, the officer pushed the front passenger seat up, and grabbed Mr. Hurtt's arm to inquire what Mr. Hurtt was reaching for. Mr. Hurtt pulled his hand out of the bucket, appeared shaken, and moved his hands to his waist.

Officer Cannon ordered Mr. Hurtt out of the vehicle and told him to raise his hands. Again, Mr. Hurtt failed to comply, and the officer placed Mr. Hurtt's hands on the truck. The officer frisked Mr. Hurtt and on his waist discovered a black and silver Bersa Thunder .380 ACP caliber semiautomatic handgun. When Officer Cannon found the handgun, the officers had not yet finished the investigation of the traffic stop or the DUI. Body-worn camera footage shows Officer Cannon reprimanding Mr. Hurtt for reaching for his gun.

During this time, Officer Gonzalez placed the front seat passenger in the rear of the police cruiser. Before doing so, the officer frisked that passenger. Video footage reflects Officer Gonzalez returned to the truck, and Mr. Hurtt told the officers he moved the bucket.

The officers secured the vehicle occupants in the rear of the police cruiser and called for back-up. After back-up arrived, the officers completed the open traffic and DUI investigations. The officers verified the car's ownership and license of the front seat passenger and the driver. Officer Gonzalez conducted an abbreviated field sobriety test on the driver that consisted of the officer checking the driver's eyes. Although the driver had a suspended license, the officers released the driver to take the front seat passenger home believing that the driver could safely drive. Officer Gonzalez testified that because the officers were dealing with a gun possession, they did not issue any traffic tickets. Approximately six and a half minutes had elapsed from the time the officers first left the cruiser to discovering the gun. Mr. Hurtt did not have a license to carry the firearm and was arrested and transported to the stationhouse about 15 minutes after the gun was seized.

Immediately after the firearm was seized, Mr. Hurtt made several statements to the officers at the scene of the traffic stop, including that: (1) he was sorry and knew he messed up, (2) he did not know he had a round-chambered gun on him, and (3) he had a prior arrest for possession of narcotics.

Mr. Hurtt also made the following statements at the stationhouse: (1) he should have stayed home that night; (2) his friends made him go out to a bar, and he should have left the gun at home; (3) he had not been in trouble in years and wished he could leave to return to his pregnant girlfriend; (4) his friend (the driver) was driving poorly because they were arguing about burying their friend; and (5) he did not have a permit to carry a gun, and he purchased it on the street.²

² The record shows this last statement was the only statement made at the stationhouse after Mr. Hurtt was read his *Miranda* rights.

DISCUSSION

Mr. Hurtt moves to suppress the Bersa Thunder, ammunition, and alleged incriminating statements made at the scene of the traffic stop and post-arrest. The Court addresses the suppression of each in turn.

I. Suppression of the gun and ammunition

Mr. Hurtt argues that while initially the traffic stop may have been lawful, the stop was extended unlawfully. Mr. Hurtt argues that the DUI investigation had ended when Officer Gonzalez had ample time to determine the driver's sobriety yet decided not to perform a field sobriety test on the driver. Mr. Hurtt argues that the officers detoured from the initial stop's mission when the driver was frisked and temporarily detained, Officer Cannon partially entered the truck to conduct a search of the vehicle, and Mr. Hurtt was searched. Mr. Hurtt also argues that the Court should disregard the testimony of the officers because other evidence contradicts the officers' testimony that the traffic stop was made in a high-crime area and that Mr. Hurtt moved or otherwise engaged in furtive conduct. Alternatively, Mr. Hurtt contends that even if the stop was extended lawfully, the officers lacked reasonable suspicion to search Mr. Hurtt because (1) there was no bulge in Mr. Hurtt's waistband, (2) the officers' testimony about the furtiveness of Mr. Hurtt is not credible, and (3) the officers engaged in several constitutional violations, including the frisk of the driver and front seat passenger.

In response, the Government asserts that the officers did not need reasonable suspicion to justify the search of Mr. Hurtt, and even if the officers did, they had it. As to the first argument, the Government asserts that the search of Mr. Hurtt occurred only approximately six minutes after the Chevy was pulled over, and while the occupants of the vehicle remained under investigation related to the traffic stop and potential DUI. According to the Government, Officer Gonzalez

temporarily detained the driver in order for Officer Gonzalez to assist Officer Cannon with the passengers. The Government also asserts Officer Cannon leaning into the truck is immaterial to the present issue as there is no nexus between the officer's conduct and Mr. Hurtt's frisk. In the alternative, the Government contends that the furtive and non-compliant conduct of Mr. Hurtt provided reasonable suspicion for a search of Mr. Hurtt.

A. Whether the officers lawfully extended the traffic stop.

“Like a *Terry* stop, the tolerable duration of police inquiries in the traffic-stop context is determined by the seizure's ‘mission’— to address the traffic violation that warranted the stop . . . and attend to related safety concerns.” *Rodriguez v. United States*, 135 S. Ct. 1609, 1614 (2015) (finding that the traffic stop had ended when the officer had checked the driver's license, the passenger, and issued a warning for the traffic offense). “Authority for the seizure thus ends when tasks tied to the traffic infraction are—or reasonably should have been—completed.” *Id.* While “[a]n officer . . . may conduct certain unrelated checks absent reasonable suspicion ordinarily demanded[,]” *id.*, “[o]n-scene investigation into other crimes . . . detours from that mission. . . . [That is], highway and officer safety are interests different in kind from the [g]overnment's endeavor to detect crime in general[.]” *Id.* at 1616.

Here, despite Mr. Hurtt's contentions otherwise, the evidence shows that neither the traffic stop nor the DUI investigation had ended when Officer Cannon searched Mr. Hurtt. Traffic stops can be, and are often, wrought with danger, *Michigan v. Long*, 463 U.S. 1032, 1047 (1983), and the officers testified to the location of the traffic stop being in a dangerous locale. Thus, the Court credits Officer Gonzalez's testimony that he placed the driver in the police cruiser to return and aid Officer Cannon. The Court also rejects Mr. Hurtt's argument that Officer Cannon conducted an unlawful search because the officer was justified in looking into the vehicle to maintain the

safety of the officers and passengers during the open investigations. Mr. Hurtt's reportedly evasive and non-compliant conduct constituted the traffic-related "safety concerns" contemplated in *Rodriguez*. Thus, the frisk of Mr. Hurtt was part of a lawful extension of the traffic stop to secure the safety of the individuals involved, and the officers did not need further reasonable suspicion to conduct the frisk.

B. Whether the officers had reasonable suspicion to frisk Mr. Hurtt.

However, even if the traffic stop was not lawfully extended (which it was), the Court finds that the officers did have reasonable suspicion to conduct the frisk of Mr. Hurtt. Non-compliance and evasive or furtive conduct together can constitute suspicious activity sufficient to give rise to reasonable suspicion. *See U.S. v. Moorefield*, 111 F.3d 10, 14 (3d Cir. 1997). In *Moorefield*, officers pulled the defendant over for a traffic stop. An officer had repeatedly instructed that the defendant remain in the vehicle with his hands in view. Despite the instruction, the defendant attempted to exit the vehicle and lowered his hands several times. Instead, the defendant leaned back and appeared to push something towards his waist, and the officer testified that the defendant behaved consistently with someone trying to conceal something. Noting that an officer need not be absolutely certain that an individual is armed, the court determined that under the circumstances, the police were justified in conducting a *Terry* pat-down search. *Id.*

When the officers stopped the Chevy pick-up, Officer Cannon repeatedly told the passengers in the vehicle to make their hands visible. However, Mr. Hurtt failed to comply, turning his back to the officer and moving his hands towards his pockets or near the bucket repeatedly. Officer Cannon believed Mr. Hurtt was acting consistently with an attempt to conceal something. Furthermore, the officers had pulled Mr. Hurtt and his companions over in a high crime area (35th

District) around 2:00 A.M. in the morning. The circumstances liken to those in *Moorefield*.³ Under the totality of the circumstances, Officer Cannon was justified in conducting a *Terry* search.⁴

II. Suppression of Mr. Hurtt's statements

Mr. Hurtt also seeks to suppress statements made to police officers at the scene of the traffic stop and then later at the stationhouse. In support of suppression, Mr. Hurtt only argues that the statements are tainted fruits of an unlawful frisk and arrest and that no Miranda warnings severed the “causal chain . . . between the unlawful extension of the traffic stop” and his statements. (Def.’s Motion to Suppress, Doc No. 27, p. 13). In response, the Government contends that only one statement should be suppressed because the remainder were either proffered outside of a custodial interrogation or were provided after Mr. Hurtt was informed of his *Miranda* rights.⁵ Because the

³ Mr. Hurtt relies on *U.S. v. Austin*, 269 F. Supp. 2d. 629 (E.D. Pa. 2003) where the court held that officers lacked reasonable suspicion to search the defendant and his vehicle during a traffic stop. *Id.* at 631. There, the defendant had handed over his license and registration after being pulled over. The defendant also attempted to exit the vehicle while reaching under the driver’s seat with his hand. However, the officer grabbed the defendant’s arm and uncovered a cell phone in the defendant’s hand. The officer then pulled the defendant out of the car and searched his person and the vehicle. The court noted that the search was conducted after detaining the defendant in the police car and despite the defendant not showing any signs of being armed or dangerous after the discovery of the cell phone. Rather, “[t]he danger had passed when Officer Williams observed the cell phone prior to the search.” *Id.* The court rejected the government’s argument that the defendant’s nervousness in part justified the search. The court determined that the defendant exhibited nervousness after he was pulled from the car and frisked, and understandably so, because of the prior cell phone incident. The court also noted the defendant was not violent after his phone was discovered. *Id.* at 631, 634.

⁴ Mr. Hurtt paints a picture of alleged inconsistencies in the evidence to try to demonstrate that the frisk was unlawful. For example, Mr. Hurtt describes the interactions between the officers and the vehicle occupants as cordial and argues that Officer Cannon never yelled or acted in distress. Additionally, according to Mr. Hurtt, any testimony to the contrary is contradicted by other evidence from the incident. The question before the Court is the legality of the frisk of Mr. Hurtt. The Court has reviewed all the evidence presented. The officers testified that the traffic stop was made in a high-crime area and to Mr. Hurtt’s continued furtive movements and failure to comply with directions. These facts sufficiently give rise to reasonable suspicion. To the extent that Mr. Hurtt argues that evidence contradicts the officers’ testimony, these arguments go to the weight of the evidence and do not persuade the Court that the officers should be disbelieved.

⁵ Specifically, the Government concedes that the statement about Mr. Hurtt’s prior arrests should be suppressed as provided during custodial interrogation without Mr. Hurtt first being *Mirandized*.

Court has found that Mr. Hurtt's frisk was lawful, the Court denies Mr. Hurtt's challenge to the other alleged incriminating statements. The statements (except that referencing Mr. Hurtt's prior arrest) will be admissible at trial.⁶ *See U.S. v. Faison*, No. 05-440, 2007 WL 2916160, at *2-3 (E.D. Pa. Oct. 5, 2007) (denying motion to suppress a statement alleged to be the fruit of an unlawful search and seizure where the officer had reasonable suspicion to extend the traffic stop).

CONCLUSION

For the reasons set forth in this Memorandum, the Court denies in part and grants in part Mr. Hurtt's motion to suppress. An appropriate order follows.

BY THE COURT:

/s/ Gene E.K. Pratter
GENE E.K. PRATTER
UNITED STATES DISTRICT JUDGE

⁶ The Court will not exclude any statements related to Mr. Hurtt being "sorry"; Mr. Hurtt not "knowing he had a round-chambered gun"; that he "should have stayed home that night"; his "friends made him go out to a bar", and he "should have left the gun at home"; that he "had not been in trouble in years and wished he could leave to return to his pregnant girlfriend"; and that his "friend, the driver, was driving poorly because they were arguing about burying their friend" on the basis that Mr. Hurtt made those statements during a custodial interrogation without being read his *Miranda* rights. There is no evidence that the statements were proffered within the walls of a custodial interrogation. *See Miranda v. Arizona*, 384 U.S. 436, 444 (1966) ("By custodial interrogation, we mean questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way.")

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ORDER

AND NOW, this 18th day of October, 2019, upon consideration of Mr. Hurtt’s Motion to Suppress (Doc. No. 27), the Government’s response thereto (Doc. No. 30), the Government’s supplemental briefs (Doc. Nos. 34 and 38), Mr. Hurtt’s supplemental brief (Doc. No. 35), and following a hearing held on September 24, 2019, and September 25, 2019, **IT IS ORDERED** that Mr. Hurtt’s Motion to Suppress (Doc. No. 27) is **DENIED IN PART** and **GRANTED IN PART** only with respect to Mr. Hurtt’s statement about a prior arrest.

BY THE COURT:

/s/ Gene E.K. Pratter
GENE E.K. PRATTER
UNITED STATES DISTRICT JUDGE