

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

UNITED STATES OF AMERICA	:	CRIMINAL ACTION
	:	
v.	:	
	:	
WILLIAM JOHNSON	:	NO. 19-0606

MEMORANDUM

Bartle, J.

January 14th , 2020

Defendant Willian Johnson ("Johnson") has been charged with one count of possession of a firearm as a felon in violation of 18 U.S.C. § 922(g)(1) and 924(e). Before the court is the motion of Johnson to suppress a handgun found by police near the site of his arrest on the basis that the gun was seized in violation of Johnson's rights under the Fourth Amendment to the United States Constitution.

The court held an evidentiary hearing on the motion. At the hearing, the government presented the testimony of Philadelphia Police Officers John O'Hanlon and Philadelphia Highway Patrol Officers Matthew Lally and James McCullough. The government presented photographs of the site of Johnson's arrest as well as the path of a foot chase on which Johnson took police before his arrest. The government also presented a video from a nearby surveillance camera which shows Johnson running along Allegheny Avenue in Philadelphia. Johnson testified on his own behalf at the hearing.

I

The following are the court's findings of facts. On September 2, 2019, Officer O'Hanlon was on patrol in a marked police vehicle in the 39th police district in Philadelphia. At approximately 6:30 p.m., he and his partner Officer Holmes received a radio dispatch reporting a black male with a gun at an apartment building located at 1508 W. Allegheny Avenue. The dispatcher described the man as a roughly 25 year-old black male wearing grey pants, a black t-shirt, and a multicolor head wrap.¹ Two police vehicles drove to the location to investigate.

Officers O'Hanlon and Holmes arrived first. They spotted a man who fit that description on the southwest corner of 15th Street and Allegheny Avenue. Johnson was with him. The officers pulled up beside the men. Officer Holmes exited the passenger's side of their police vehicle to investigate.

Officers Lally and McCullough also responded to the dispatch. They were right behind Officers O'Hanlon and Holmes in a second police vehicle. Officer McCullough exited the passenger's side of their police vehicle to assist Officer Holmes.

1. Earlier that afternoon, Officer O'Hanlon responded to a dispatch reporting a domestic dispute between a female and male fitting the same description. No gun was reported. Officer O'Hanlon investigated but saw no criminal activity.

Johnson immediately ran eastward on Allegheny Avenue when officer Holmes exited the first car. As he ran, he at times held his waistband with his right hand. Based on Johnson's flight and his grasping of his waistband, Officer Holmes suspected from his experience that Johnson had a gun and proceeded to pursue Johnson on foot. Officer McCullough stayed behind for a few seconds to frisk the other man with the headwrap. Since it turned out the other man was unarmed, Officer McCullough followed Officer Holmes on foot in pursuit of Johnson. Officers O'Hanlon and Lally, who were still in the driver's seat of their respective police vehicles, drove east following Officer Holmes and Officer McCullough in pursuit of Johnson.

Johnson ran one block east on Allegheny Avenue and then turned right onto Carlisle Street with Officers Holmes and McCullough pursuing on foot. Officer O'Hanlon turned his police vehicle right into Carlisle Street to follow Johnson. Officer Lally turned his police vehicle right at Rosewood Street which was just east of Carlisle Street and parallel to it.

Once on Carlisle Street, Johnson promptly veered left into a vacant lot and jumped over a chain-link fence at the rear of the lot into a second vacant lot which fronted Rosewood Street. Together, the two lots form a path between Carlisle and Rosewood Streets. Officer Lally was extremely familiar with the

area and guessed Johnson planned to go through the lots to reach Rosewood Street. Officer Lally was correct. He pulled up to a wood and chain-link fence that fronted the vacant lot on Rosewood Street. Johnson, who had climbed to the top of the fence, saw Officer Lally. He exclaimed an explicative and jumped back into the lot. He attempted to backtrack west but saw Officers O'Hanlon, Holmes, and McCullough behind him in the lot off Carlisle Street. Through an opening in the wood and chain-link fence, Officer Lally, who was now on foot, saw Johnson discard a gun into the lot.

Officer Lally then entered the lot off Rosewood Street by squeezing the opening in the wood and chain-link fence. He brought the gun to the attention of his fellow officers. Officers O'Hanlon and Holmes, who had seen Johnson attempt climb over the wood and chain-link fence from the lot off Carlisle Street, drove around to Rosewood Street to assist Officer Lally. Officer Lally recovered the gun. The officers put Johnson in the back of one of the police vehicles and ran a check for whether he had a permit for the gun. He did not.

Johnson testified on his own behalf at the hearing. He acknowledged fleeing to the lot on Rosewood Street but denied that he ever had a gun. According to Johnson, he ran when he saw the police because he was on probation. We find that

Johnson's statement that he did not possess the gun in question is not credible.

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 imposes two requirements. All searches and seizures must be reasonable. Kentucky v. King, 563 U.S. 452, 459 (2011). And, a warrant may not be issued unless probable cause exists, and the scope of the search or seizure is set out with particularity. Id. 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. Johnson does not argue that a warrant was required for his arrest.

Once a defendant has challenged the legality of a search and seizure, the burden is on the government to prove that they were constitutional. United States v. Johnson, 63 F.3d 242, 245 (3d Cir. 1995). Evidence arising out of an

unlawful search or seizure will be suppressed. Wong Sun v. United States, 371 U.S. 471, 484-85, (1963).

Evidence recovered by police outside of the context of a seizure cannot be suppressed under the Fourth Amendment. See California v. Hodari D., 499 U.S. 621 (1991). Specifically, unless a defendant is seized before fleeing from police, evidence discarded during the flight is not "seized" within the meaning of the Fourth Amendment. Id. at 623-24.

Johnson abandoned the gun as he fled. The pertinent issue is therefore whether Johnson was seized before or after discarding the gun. Id. If Johnson was seized before discarding the gun, its recovery falls within the protection of the Fourth Amendment and we must determine whether the seizure was reasonable. See Id. If Johnson was not seized before he discarded the gun, the gun is considered abandoned and cannot be suppressed on the ground that it was recovered in the context of an unreasonable seizure. See Id.

The parties agree that Johnson was not seized during this initial encounter with police on Allegheny Avenue. The issue is therefore whether Johnson was seized when he saw Officer Lally over the top of the wood fence, expressed an explicative, and jumped back into the vacant lot.

Johnson attempted to continue to flee back through the lot on Carlisle Street after jumping off of the wood and

chain-link fence. At this point, Johnson saw the officers behind him and tried to conceal the gun by throwing it into the lot fronting Rosewood Street. It was only after doing so that he raised his hands, surrendered to police authority, and fell within the protections of the Fourth Amendment. We conclude Johnson abandoned the gun before he was seized. Its recovery did not therefore fall within the protections of the Fourth Amendment. Id. at 624.

For this reason, we will deny the motion of William Johnson to suppress the gun as the fruit of an unlawful seizure.

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ORDER

AND NOW, this 14th day of January, 2020, for the reasons set forth in the accompanying Memorandum, it is hereby ORDERED that the motion of defendant to suppress physical evidence (Doc. # 16) is DENIED.

BY THE COURT:

_/s/Harvey Bartle III_____
J.