

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

<b>UNITED STATES OF AMERICA</b>  v.  <b>HAMID MURDOCK</b>	<b>CRIMINAL ACTION</b>  <b>NO. 19-254</b>
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**MEMORANDUM**

**Baylson, J.**

**February 14, 2020**

**I. Introduction**

During a routine traffic stop in the city of Philadelphia, a police officer saw Defendant Hamid Murdock, a passenger in the car, reach quickly for his jacket pocket. The officer interposed his hand and discovered what felt like vials of marijuana. Murdock admitted that he possessed marijuana, and the officer had Murdock step outside of the car and frisked him. That frisk revealed a loaded firearm. Murdock told the officer, “You got me, you got me, just don’t fuck me up.”

Now Murdock seeks to suppress the marijuana, firearm, ammunition, and statements. Because the Court concludes that the searches which revealed the marijuana, firearm, and ammunition, and prompted the statements, were proper, it will DENY Murdock’s suppression motion.

**II. Procedural History**

The Government filed an indictment in this matter on May 2, 2019. ECF 1. Murdock was arraigned before Magistrate Judge Jacob P. Hart on May 7. ECF 4. At his arraignment, he pleaded not guilty. *Id.* On June 27 and September 12, the Government filed superseding indictments, ECF 12, 15, and he was re-arraigned on July 2 and September 18, ECF 14, 17.

On October 8, Murdock filed the Motion to Suppress currently under consideration. ECF 19.<sup>1</sup> On November 26, the Government responded. ECF 27. An evidentiary hearing and oral argument took place on December 17. ECF 28. At the evidentiary hearing, Officer Bakos and his partner testified, and the Court concluded that both were credible. Following the hearing, Murdock and the Government each provided supplemental briefs. ECF 33, 34.

### **III. Record Evidence**

During a routine nighttime traffic stop for a broken taillight in the 22nd District of the city of Philadelphia, Officer Bakos<sup>2</sup> observed that one passenger, Murdock, seemed nervous because he was breathing heavily. Officer Bakos also smelled unburnt marijuana. When Officer Bakos asked Murdock for identification, Murdock told him he did not have identification on him. Murdock then made a quick movement towards one of his jacket pockets.<sup>3</sup>

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<sup>1</sup> The Motion was untimely filed. On October 10, this Court granted Murdock leave to file out of time. ECF 20, 22.

<sup>2</sup> Officer Bakos and his partner, Officer Lee, work in the city's highway patrol unit, an anti-gun violence unit which patrols the entire city of Philadelphia. Before his current assignment, Officer Bakos spent around ten years working as a patrol officer in the city's 15th District, which covers Mayfair, Tacony, Bridgesburg, and Frankford. He and his partner, Officer Lee, have been partners for some time, and had worked in the highway patrol unit for about six months before the night in question.

<sup>3</sup> Officers Bakos and Lee disagreed on which jacket pocket Murdock reached for. Because the Court found Officer Bakos credible, and it was Officer Bakos who actually placed his hand on the pocket, the Court accepts Officer Bakos's testimony on this point. In any event, what is most important is that Officer Bakos perceived Murdock reaching for a pocket, quickly interposed his hand over the pocket, and felt vials of marijuana there. The parties appear to agree. See ECF 33, "Gov't Supp. Br." at 2 & n.1; ECF 34, "Def. Supp. Br." at 6 n.3.

The pocket was about five inches in size. Officer Bakos testified that he did not know how deep to pocket was until he unzipped it, and he has found firearms in pockets of that size in the past.

Officer Bakos, fearing that Murdock might be reaching for a concealed weapon, interposed his open hand. With his hand on Murdock's jacket pocket, Officer Bakos felt vials that, based on his experience, he believed to be marijuana packaging. Murdock admitted to the officers that he possessed marijuana.

On direct examination, Officer Bakos testified that after he found the marijuana, he no longer feared that Murdock possessed a firearm. He let Murdock reach into the same jacket pocket to extract a health insurance card, which Murdock gave Officer Bakos in place of identification. Officer Bakos then had Murdock step out of the car and frisked him. That frisk revealed a loaded firearm in Murdock's waistband. Murdock told Officer Bakos, "You got me, you got me, just don't fuck me up."<sup>4</sup> Officer Bakos and his partner secured the gun and placed Murdock into custody.

Ultimately, the United States charged Murdock with being a felon in possession of ammunition in violation of 18 U.S.C. § 922(g)(1).<sup>5</sup>

#### **IV. Legal Standard: Stops and Frisks under Terry v. Ohio**

"[U]nder the 'narrowly drawn authority' of Terry v. Ohio, 392 U.S. 1, 27 (1968), an officer without a warrant 'may, consistent with the Fourth Amendment, conduct a brief, investigatory stop when the officer has a reasonable, articulable suspicion that criminal activity is afoot.'" United

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<sup>4</sup> At some point after Officer Bakos found the firearm, Murdock also admitted that he did not have a permit to carry a firearm. In his original Motion to Suppress, Murdock sought to have this statement suppressed. In its most recent briefing, the Government has informed the Court that it does not intend to offer that statement at trial. Gov't Supp. Br. at 7. This moots the motion as to this statement.

<sup>5</sup> The Government did not charge Murdock with possession of a firearm because it cannot show interstate commerce. Tr. 22:10–23:3.

States v. Robertson, 305 F.3d 164, 167 (3d Cir. 2002) (quoting Wardlow, 528 U.S. at 123). A Terry stop may include “a reasonable search for weapons” for the officer’s protection. United States v. Gatlin, 613 F.3d 374, 378 (3d Cir. 2010) (quoting Terry, 392 U.S. at 27). “The purpose of a Terry frisk for weapons ‘is not to discover evidence of crime, but to allow the officer to pursue his investigation without fear of violence.’” Gatlin, 613 F.3d at 378 (quoting Adams v. Williams, 407 U.S. 143, 146 (1972)). “If the lawful bounds marked by Terry are exceeded, any evidence obtained from the stop or the weapons search must be suppressed.” Id. (quoting United States v. Johnson, 592 F.3d 442, 447 (3d Cir. 2010)).

Pursuant to Terry, “[t]o justify a patdown of the driver or a passenger during a traffic stop . . . the police must harbor *reasonable suspicion* that the person subjected to the frisk is armed and dangerous.” Arizona v. Johnson, 555 U.S. 323, 327, 330–32 (2009) (emphasis added). “In determining whether there was reasonable suspicion, [courts] consider the totality of the circumstances.” Gatlin, 613 F.3d at 378 (citing United States v. Valentine, 232 F.3d 350, 353 (3d Cir. 2000)). The totality of the circumstances includes “the police officer’s knowledge, experience, and common sense judgments about human behavior.” Robertson, 305 F.3d at 167. However, “‘reasonable suspicion’ is measured before the search; information acquired subsequent to the initial seizure cannot retroactively justify a Terry” stop or frisk.” See United States v. Goodrich, 450 F.3d 552, 559 (3d Cir. 2006) (citing Florida v. J.L., 529 U.S. 266, 271 (2000)); see also United States v. Foster, 891 F.3d 93, 104 (3d Cir. 2018) (citing Goodrich, 450 F.3d at 559). “[T]he ‘reasonable suspicion’ analysis is objective; subjective motive or intent is not relevant for Terry purposes.” Goodrich, 450 F.3d at 559 (citing Terry, 392 U.S. at 21–22); see also id. at 563 n.10; United States v. Mitchell, 454 Fed. App’x 39, 42 (3d Cir. 2011); United States v.

Sanchez, 398 Fed. App'x 840, 842 n.3 (3d Cir. 2010). In determining whether an investigatory stop or frisk is legal, the court also considers its relative intrusiveness. Goodrich, 450 F.3d at 558 n.6 (citing United States v. Ruckus, 737 F.2d 360, 366 (3d Cir. 1984)).

## V. The Parties' Contentions

Because the December 17 hearing sharpened the factual and legal issues in the case, the Court's review of the parties' arguments will focus on the contentions appearing in their post-hearing briefing.

### a. **Murdock's Supplemental Brief**

Murdock argues that Bakos did not have a reasonable suspicion that he was armed and dangerous to support the initial frisk.<sup>6</sup> As Murdock sees it, the Government's case for admission rests on the fact that Defendant was "nervous" and made "furtive movements" in a high-crime area, and that the car smelled like marijuana. Def. Supp. Br. at 13. However, Murdock argues, these are poor indicators of criminality, especially for African-American suspects, as demonstrated by data obtained through litigation over stop-and-frisk in Philadelphia. Id. at 14–16 (citing Plaintiff's Ninth Report to Court and Monitor on Stop and Frisk Practices; Fourth Amendment Issues, United States v. Bailey, Civil Action No. 10-5952 (ECF 82)). Moreover, the smell of marijuana was generalized and not associated with any particular occupant of the vehicle, id. at 17; the officers in this case could not articulate what made Murdock seem nervous except for his "heavy breathing," and nervousness when facing a police officer is understandable, particularly

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<sup>6</sup> Defendant does not contest the legality of the initial traffic stop. Def. Supp. Br. at 10–11; see also United States v. Blanding, Criminal Action No. 18-249-3, 2019 WL 2610887 (E.D. Pa. June 24, 2019) (Baylson, J.) (finding that officer had reasonable suspicion that defendant committed a traffic violation, justifying traffic stop).

for African-Americans facing Caucasian officers as happened here, id. at 18–19 (in part, quoting United States v. Alvin, 701 Fed. App’x 151, 155 (3d Cir. 2017)); and his movement towards his jacket pocket was not enough to justify the frisk, id. at 20–21.

Finally, his statements must be suppressed because the searches that provoked them were unlawful; the searches were the “fruit of the poisonous tree.” Id. at 23–24.

**b. The Government’s Supplemental Brief**

The Government defends the first frisk by arguing that Officer Bakos had reasonable suspicion that Murdock was armed and dangerous because Officer Bakos smelled marijuana, noticed that Murdock appeared nervous and was breathing heavily, and saw Murdock move his hand “quickly” towards a jacket pocket after telling Officer Bakos that he did not have identification on him. Gov’t Supp. Br. at 6. The Government further argues that, although the movement could have been innocent, that does not dispel Officer Bakos’s reasonable suspicion. Id. at 4.

The Government defends the second frisk by arguing that once Officer Bakos felt vials that he reasonably believed to be marijuana, he had a further reasonable suspicion that Murdock might be armed and was therefore entitled under Terry to conduct a full patdown. Id. at 6–7.

Since it contends that both searches were proper, the Government does not believe that Murdock’s statements should be suppressed. Id. at 9.

## VI. Discussion

### a. The Searches

#### i. The Frisk of Murdock's Coat Pocket

Officer Bakos lawfully frisked Murdock when he placed his hand on Murdock's jacket pocket. Five factors, in combination, lead the Court to this conclusion.

First, there was Murdock's quick movement of his hand to his jacket pocket. Such movements support a reasonable suspicion that a suspect is armed and dangerous. See United States v. Yamba, 506 F.3d 251, 255–56 (3d Cir. 2007) (holding that “quick and furtive [hand] movements” was one factor justifying Terry frisk).

Second, there was Murdock's apparent nervousness, indicated by his heavy breathing. “[N]ervous behavior” factors into the totality-of-the-circumstances analysis. Johnson v. Campbell, 332 F.3d 199, 206 (3d Cir. 2003) (discussing standards for Terry stops); accord United States v. White, 425 Fed. App'x 184, 186–87 (3d Cir. 2011). Here, it supports a finding of reasonable suspicion that Murdock was armed and dangerous.

Third, the stop occurred in a high-crime area. “The fact that [a] stop occur[s] in a ‘high crime area’ [is] among the relevant contextual considerations in a Terry analysis.” Illinois v. Wardlow, 528 U.S. 119, 125 (2000) (citing Adams, 407 U.S. at, 144, 147–48). Certainly, “[a] description of a neighborhood as a ‘high crime area’ is not a magic talisman police can use a prop to justify every search and seizure in certain parts of the city.” Def. Supp. Br. at 18. But that argument does not speak to this case. As the Court stated at the hearing, there is no question that the 22nd District is a high-crime area for these purposes. Tr. 58:12–14. And there are other factors making this seizure reasonable.

Fourth, the smell of marijuana emanating from the car bolsters the reasonableness of Officer Bakos's suspicion that Murdock was armed and dangerous.<sup>7</sup> See United States v. Anderson, 859 F.3d 1171, 1177 (3d Cir. 1988) (holding that officer's suspicion of car occupants' involvement in drug trade, based on finding bag of cash in car, provided grounds for frisking all occupants of the car); cf. United States v. Ramos, 443 F.3d 304, 308 (3d Cir. 2006) (quoting United States v. Humphries, 372 F.3d 653, 658 (4th Cir. 2004)) ("It is well settled that the smell of marijuana alone, if articulable and particularized, may establish not merely reasonable suspicion, but probable cause."); Blanding, 2019 WL 2610887, at \*3 (quoting Ramos, 443 F.3d at 308) (same).

Fifth and finally, the frisk, limited to the exterior of Murdock's jacket pocket, was the least significant intrusion on Murdock's person that could address Officer Bakos's fear. In other words, it was "reasonably related in scope to the circumstances which justified the interference in the first place," Terry, 392 U.S. at 20. This supports the conclusion that the search was reasonable.

Murdock's quick movement, and his heavy breathing, may not be as dramatic as in some leading cases where courts have held that reasonable suspicion existed. Compare, e.g., United States v. Moorefield, 111 F.3d 10, 14 (3d Cir. 1997) (defendant made repeated hand movements contrary to officer's orders, including shoving something towards his waist, creating reasonable suspicion), with United States v. Harrison, Criminal Action No. 17-228, 2018 WL 4405892, at \*9 (E.D. Pa. Sept. 17, 2018) (Schiller, J.) (defendant's "slowly moving his arm toward his thigh and

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<sup>7</sup> The Court acknowledges Defendant's argument that the smell of unburnt marijuana may be a less strong indicator of criminality than it was prior to Pennsylvania's legalization of medical marijuana. Def. Supp. Br. at 17. However, the smell of marijuana is relevant to, but not the critical element of, the totality-of-the-circumstances analysis in this case.

towards the door while looking at the officer,” and “generally nervous demeanor” did not create reasonable suspicion). Nonetheless, viewing the totality of the circumstances, the frisk was reasonable. The traffic stop took place in a high-crime area, and the car smelled of marijuana. Even if the smell was not obviously attributable to any particular occupant of the car, it made any suspicion that criminal activity was afoot more reasonable. And, importantly, Officer Bakos’s search was minimally intrusive.

It is not relevant that Murdock may in fact have been reaching for his pocket to produce his medical insurance card. Information not available to Officer Bakos at the time of the frisk is irrelevant to the Court’s review of the totality of the circumstances. Goodrich, 450 F.3d at 559. And “reasonable suspicion may be ‘based on acts capable of innocent explanation.’” United States v. Whitfield, 634 F.3d 741, 744 (3d Cir. 2010) (quoting United States v. Valentine, 232 F.3d 350, 356 (3d Cir. 2000)); accord United States v. Graves, 877 F.3d 494, 499 (3d Cir. 2017).<sup>8</sup> At the time of the first frisk, Officer Bakos knew that Murdock did not possess identification, and that Murdock was reaching quickly for his pocket. He did not know that pocket contained alternative identification, and no weapon. Those facts are therefore irrelevant. The possible or even likely

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<sup>8</sup> The Government twice quotes Whitfield for the following proposition: “[T]he mere possibility of an innocent explanation ‘does not create an issue of fact as to the reasonableness of the suspicion.’” Gov’t Opp. Br. at 8; Gov’t Supp. Br. at 4. The portion quoted by the Government appears to actually originate in a discussion of the standards for summary judgment on qualified immunity in Holeman v. City of New London, 425 F.3d 184, 191 (2d Cir. 2005). The Government cited Holeman after Whitfield in its original opposition brief, but not its supplemental brief. As used in the Government’s brief, the quoted language suggests that the possibility of an innocent explanation is fully irrelevant to the totality-of-the-circumstances analysis. Although Whitfield does support the Government’s case, the Court does not read Whitfield to stand for such a strong proposition.

innocence of Murdock’s reaching for his pocket is clear only in hindsight. Therefore it does not undermine the lawfulness of the frisk.

Finally, the data Murdock cites from Bailey v. City of Philadelphia, Civil Action No. 10-5952, Def. Supp. Br. at 14–16, does not require a different outcome. The data do not supersede the controlling caselaw cited above on the bounds of “reasonable suspicion.” Moreover, the statistics Murdock cites on the low number of firearms discovered during frisks justified by “furtive movements,” “presence in a high crime or high drug area,” or “officer protection or safety” do not speak to the effectiveness of frisks justified by multiple factors, as this one was.

ii. The Full-Body Patdown

The full-body patdown that revealed Murdock’s gun was also lawful. Reasonable suspicion that an individual is involved with drugs provides reasonable suspicion that the individual is armed and dangerous.<sup>9</sup> See Anderson, 859 F.2d at 1177; Sanchez, 398 Fed. App’x at 843 (applying Anderson, upholding protective frisk where “reasonable suspicion existed that the [defendants] were drug dealers”); cf. United States v. Murray, 821 F.3d 386, 393 (3d Cir. 2016) (upholding protective frisk where officers had credible information that subject of frisk “was a drug dealer who was running a prostitution operation”). In Anderson, a police officer engaged in a routine traffic stop “observed a bag on the front seat which he discovered contained a large amount of cash.” Anderson, 859 F.3d at 1777. Suspicious that the cash might be “drug money,” and “concerned for his safety because persons involved with drugs often carry weapons,” he asked

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<sup>9</sup> Although Officer Bakos testified that he did not actually harbor this suspicion, “the ‘reasonable suspicion’ analysis is objective; subjective motive or intent is not relevant for Terry purposes.” Goodrich, 450 F.3d at 559 (citing Terry, 392 U.S. at 21–22).

all of the car's occupants to step out and patted each down. Id. The patdowns yielded cash, which one defendant, Taylor, unsuccessfully sought to suppress. Id. at 1176–77. On appeal, the Third Circuit approved the patdowns, saying that it was “the very essence of the practice sanctioned by Terry v. Ohio.” Id. at 1177. In this case, Officer Bakos had more evidence that Murdock was ‘involved with drugs’ than the Anderson officer did with respect to Taylor. The Anderson officer searched all of the car's occupants based only on seeing a bag of cash and “bec[o]m[ing] suspicious that it might be drug money.” Id. Officer Bakos, by contrast, knew that a specific individual, Murdock, was in present possession of more than a trivial quantity of drugs. Under Anderson, this provided reasonable suspicion that Murdock was armed and dangerous. Because Officer Bakos had reasonable suspicion that Murdock was armed and dangerous, the full-body patdown was lawful.

The Court will therefore DENY Murdock's motion to suppress the marijuana, firearm, and ammunition.

**b. The Statements**

Because the frisks were lawful, Murdock's statements will not be suppressed. Murdock argues that the statements must be suppressed because he made them only because of the unlawful frisks. Def. Supp. Br. at 23. It is true that “the exclusionary rule . . . prohibits the introduction of derivative evidence, both tangible and testimonial, that is . . . acquired as an indirect result of the unlawful search.” Murray v. United States, 487 U.S. 533, 536–37 (1988). But because Officer Bakos's frisks of Murdock were lawful, this prohibition is irrelevant.

The Court will therefore DENY Murdock's motion to suppress his statements to the officers.

**VII. Conclusion**

For the foregoing reasons, Murdock's Motion to Suppress will be DENIED in its entirety.

An appropriate order follows.

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<b>HAMID MURDOCK</b>	

**ORDER RE: MOTION TO SUPPRESS**

**AND NOW**, this 14th day of February, 2020, following an evidentiary hearing on December 17, 2020, and upon consideration of Defendant's Motion to Suppress, ECF 19, the Government's response, ECF 27, and post-hearing supplemental briefing, ECF 33, 34, it is hereby ordered that the Motion is **DENIED**.

**BY THE COURT:**  
*/s/ Michael M. Baylson*

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**MICHAEL M. BAYLSON, U.S.D.J.**