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

UNITED STATES OF AMERICA	:	**CRIMINAL ACTION**
	:	
v.	:	
	:	
KENNETH BLAKENEY	:	**No. 19-632**
	:	

MEMORANDUM

PRATTER, J. MARCH 10, 2020

Philadelphia Police Officers Clayton Baker and David Escamilla stopped a silver Chevrolet Impala at the intersection of Broad Street and Erie Avenue on March 19, 2019 after observing an inoperable brake light. While Officer Baker was questioning driver Kenneth Blakeney, Officer Escamilla observed a firearm in plain view in the vehicle. Officer Baker pressed Mr. Blakeney to produce a permit for the firearm, at which point Mr. Blakeney drove off and abandoned the vehicle a few blocks away, fleeing on foot. The officers retrieved the firearm and had the Impala towed. The Government charged Mr. Blakeney as a felon in possession of a firearm.

Mr. Blakeney moves to suppress the firearm that was seized, arguing that the officers' reason for stopping him is not credible. Following an evidentiary hearing that permitted the Court's assessment of the witnesses' credibility and the inherent plausibility of the events in question and oral argument, and upon review of the briefing and applicable case law, the Court denies Mr. Blakeney's motion to suppress.

FINDINGS OF FACT[1]

On March 19, 2019, Officers Baker and Escamilla were patrolling the 39th District while in uniform and in a marked police van. Officer Baker was driving while Officer Escamilla worked as the recorder. Between the start of their shift at midnight and approximately 1:00 a.m., Officers Baker and Escamilla were in the area of Broad Street and Erie Avenue when Officer Baker observed a silver Chevrolet Impala with an inoperable brake light. Officer Baker activated the police van's lights, at which point the Impala turned the corner onto Erie Avenue and pulled over to the side of the street.

Officer Baker turned the police van onto Erie Avenue and parked. Both officers got out and approached the Impala. Officer Baker approached the driver's side window to speak with the driver while Officer Escamilla circled to the passenger side and used a flashlight to look into the Impala's windows, checking for weapons for officer safety and any illegal contraband in plain view. Officer Baker asked the driver, who was later identified as Mr. Blakeney, for his license and registration. No one else was in the vehicle. Before Mr. Blakeney could comply, Officer Escamilla observed through the rear passenger window the handle of a silver and black firearm under the passenger seat. Officer Escamilla signaled to Officer Baker that there was a gun in the car, at which point Officer Baker grabbed Mr. Blakeney's left arm and asked him why there was a gun in the car. Mr. Blakeney responded that he had a permit. However, when Officer Baker asked him to produce it, Mr. Blakeney produced only his driver's license. Officer Baker asked Mr. Blakeney again for his firearm permit, at which point Mr. Blakeney put the car in drive and took off westbound down Erie Avenue. While the exchange between Mr. Blakeney and Officer Baker was taking place, Officer Escamilla had opened the rear passenger door to retrieve the

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

firearm, and when Mr. Blakeney drove off, the gun was knocked out of Officer Escamilla's hand and fell into the backseat of the Impala.

The officers returned to the police van and radioed that a vehicle was in flight, gave a description of the Impala, and explained the events that had taken place. The officers followed the Impala and saw the vehicle turn off of Erie Avenue northbound onto 17th Street. After Officer Baker turned the police van onto 17th Street, Officer Baker saw Mr. Blakeney fleeing on foot and the Impala stopped in the middle of the intersection of 17th Street and Pulaski Avenue.

Officer Baker stopped the police van and both officers got out to surveil the area for Mr. Blakeney. Additional officers arrived on the scene and at least one officer remained with the Impala, which had been abandoned in the middle of the intersection with the driver's side door open and the engine still running. After Mr. Blakeney could not be located, Officer Baker—who was still holding Mr. Blakeney's driver license—returned to the Impala and recovered the gun from the back of the vehicle.

Officers Baker and Escamilla called the Northwest Detective Division for further instruction. Northwest Detectives personnel instructed them to have the car towed, using a rotational tow company, and to turn in the firearm and Mr. Blakeney's driver's license along with the proper paperwork. The officers complied, and Joseph's Towing, LLC towed the Impala.

DISCUSSION

The Fourth Amendment of the United States Constitution prohibits unreasonable searches and seizures. U.S. CONST. amend. IV. The touchstone of Fourth Amendment analysis is "the reasonableness in all the circumstances of the particular governmental invasion of a citizen's personal security." *Pennsylvania v. Mimms*, 434 U.S. 106, 108–09 (1977) (quoting *Terry v. Ohio*, 392 U.S. 1, 19 (1968)). Reasonableness depends "on a balance between the public interest and the

individual's right to personal security free from arbitrary interference by law officers." *Id.* at 109 (quoting *United States v. Brignoni-Ponce*, 422 U.S. 873, 878 (1975)). If "the search or seizure was conducted without a warrant, the burden shifts to the government to show that the search or seizure was reasonable." *United States v. Johnson*, 63 F.3d 242, 245 (3d Cir. 1995) (citing *United States v. McKneely*, 6 F.3d 1447, 1453 (10th Cir. 1993)).

Temporary detention of individuals during the stop of an automobile by the police, even if only for a brief period and for a limited purpose, constitutes a "seizure" of "persons" within the meaning of the Fourth Amendment. *Whren v. United States*, 517 U.S. 806, 809–10 (1996). "[A] traffic stop will be deemed a reasonable 'seizure' when an objective review of the facts shows that an officer possessed specific, articulable facts that an individual was violating a traffic law at the time of the stop." *United States v Delfin-Colina*, 464 F.3d 392, 398 (3d Cir. 2006). The law "requires only an articulable and reasonable *suspicion* that the car was in violation of Pennsylvania law." *Johnson*, 63 F.3d at 245. "Reasonable, articulable suspicion is a 'less demanding standard than probable cause and requires a showing considerably less than preponderance of the evidence.'" *Delfin-Colina*, 464 F.3d at 396 (quoting *Illinois v. Wardlow*, 528 U.S. 119, 123 (2000)).

An officer's belief that a traffic law was violated need not be factually accurate; rather, the officer "need only produce facts establishing that she reasonably believed that a violation had taken place." *Id.* at 398; *see also United States v. Fleetwood*, 235 F. App'x 892, 895 (3d Cir. 2007) ("[N]o traffic law need actually have been broken, nor does the stopping officer have to be correct regarding the facts."). "Consequently, a reasonable mistake of fact 'does not violate the Fourth Amendment.'" *Delfin-Colina*, 464 F.3d at 398 (quoting *United States v. Chanthasouxat*, 342 F.3d

1271, 1276 (11th Cir. 2003)). There is no requirement that the traffic law at issue or the attendant events be of a dire or immediately dangerous nature.

Mr. Blakeney claims that the firearm evidence must be suppressed because it was obtained as the result of an illegal seizure. He argues that Officers Baker and Escamilla did not have reasonable suspicion to stop him on March 19, 2019 because his brake lights were fully operable, making their reason for stopping him not credible. He supports this argument with a July 25, 2019 letter from the general manager of Joseph's Towing stating that the Impala towed to Joseph's Towing four months earlier on March 19, 2019 was inspected on or around March 22, 2019 and had working brake and taillights at the time of inspection.[2]

However, Mr. Blakeney's argument is unavailing. Even if the Impala's lights were fully functional, an officer's belief that a traffic law was violated need not be factually accurate; rather, the officer "need only produce facts establishing that she reasonably believed that a violation had taken place." *Delfin-Colina*, 464 F.3d at 398. Here, Officer Baker testified that he observed conditions that led him to believe that Mr. Blakeney's Impala was in violation of the Pennsylvania Motor Vehicle Code. Although Officer Baker could not recall on the stand exactly what led him to conclude that the Impala was in violation of the Vehicle Code, he testified that he thought either one of the Impala's rear lights was inoperable or Mr. Blakeney had failed to use his turn signal:[3]

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[2] The Court notes that this letter is hearsay. "Hearsay," of course, is an out-of-court statement offered for the truth of the matter asserted. FED. R. EVID. 801(c). Here, the letter was written prior to the evidentiary hearing, was written by a non-party, was not written under penalty of perjury, and is being offered for its truth, i.e., that the Impala's brake and taillights were tested in March 2019 and operable. However, the Government did not object when the defense offered the letter into evidence at the evidentiary hearing.

It is also worth noting that the general manager of the towing company took the stand at the evidentiary hearing and disavowed the contents of the letter, explaining that no such inspection or test ever took place. But the Court need not detangle this web because, as explained in the remainder of this Memorandum, the truth of the letter in question is immaterial to the issue at hand.

[3] Either an inoperable rear light or a failure to use a turn signal would violate Pennsylvania's Motor Vehicle Code. *See* 75 PA. CONS. STAT. § 4303(b) (pertaining to "Rear lighting"); *id.* at § 3334 (pertaining to "Signals on turning and starting").

Government: Why did you pull the defendant over that night?

Officer Baker: He had—he had—he was in some violation of the Motor Vehicle Code. Something was wrong, I believe, with his rear lights. I don't remember exactly what it was, but I know there was something with his vehicle.

Government: Okay. Were his rear lights inoperable?

Officer Baker: One of them was. You have multiple lights back there. One of his lights was not in accordance and he was in violation of the Motor Vehicle Code. So, yes, at that point, we pulled him over at that corner. You're coming off Broad Street going onto Erie, so it could have been also a turn signal, as well, but something with the rear end of his vehicle. I don't recall exactly.

Feb. 20, 2020 Hr'g Tr. 9:10–22.

This testimony is consistent with the police investigation report, which stated that the police observed the Impala with an inoperable passenger side brake light. Furthermore, the events Officer Baker was asked to recall on the stand occurred on March 19, 2019, almost a year prior to the evidentiary hearing, providing some not implausible explanation for Officer Baker's inability to recall with great detail the precise infraction in light of the officer's continued service on patrol for the last year.

Upon consideration of all the documentary evidence and testimony presented, the Court finds Officer Baker's testimony credible and accepts that he believed Mr. Blakeney's Impala was in violation of the Pennsylvania Motor Vehicle Code when he made the decision to flash the police van's lights and pull over Mr. Blakeney. Therefore, the Government has met its modest burden to prove that the officers had reasonable suspicion to stop Mr. Blakeney and the ensuing seizure was reasonable. *See Johnson*, 63 F.3d at 245 ("The trooper testified that he stopped Defendant's vehicle because, based on what he saw, he believed it was in violation of the Pennsylvania Vehicle Code. As we read the district court's memorandum decision, it accepted this testimony. This finding of fact exceeds the showing required of the government to justify the traffic stop under *Prouse*, which requires only an articulable and reasonable *suspicion* that the car was in violation

of Pennsylvania law. Because this finding is not clearly erroneous, we conclude that the district court correctly determined that the trooper's basis for the stop, standing alone, met Fourth Amendment requirements.") (citations omitted).

Because the Government has met its burden to prove that the officers' initial seizure was reasonable, there is no basis for the Court to suppress the firearm evidence where Officer Escamilla credibly testified that he observed the firearm in plain view following a lawful car stop and the firearm was later recovered in Mr. Blakeney's Impala, which Mr. Blakeney had abandoned when he left it open and running in the middle of a public street and fled from police. *See United States v Falsey*, 566 F. App'x 864, 867 (11th Cir. 2014) (holding that the defendant abandoned his vehicle when, "believing that he was being pursued by the police, [he] sped into the parking lot of a business park and then sprinted into the woods, leaving his car unlocked with the key still inside of it," and "[h]is 'only conceivable purpose' for doing so was . . . to disassociate himself from the vehicle and the narcotics that were in it") (quoting *United States v. Williams*, 569 F.2d 823, 826 (5th Cir. 1978)); *see also United States v. Smith*, 648 F.3d 654, 660 (8th Cir. 2011) (holding that the defendant abandoned his vehicle where he left it open in a public area with the keys still in the ignition and the motor running and fled on foot from the police); *United States v. Vasquez*, 635 F.3d 889, 892, 894 (7th Cir. 2011) (finding that the defendant abandoned his vehicle where he drove away from police, left the vehicle in a Walmart parking lot, and continued to flee on foot); *United States v. D'Avanzo*, 443 F.2d 1224, 1225–26 (2d Cir.1971) (upholding finding of abandonment where the defendant parked vehicle on a residential street and then fled from the police into a nearby wooded area, and noting that "[a]fter [the FBI agent] had observed [the evidence] in plain view . . . probable cause existed for the more thorough search of the truck").

CONCLUSION

For the foregoing reasons, the Court denies Mr. Blakeney's motion to suppress. An appropriate order follows.

BY THE COURT:

GENE E.K. PRATTER
UNITED STATES DISTRICT JUDGE

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ORDER

AND NOW, this 10th day of March, 2020, upon consideration of Mr. Blakeney's Motion to Suppress (Doc. No. 16), the Government's response thereto (Doc. No. 19), and following a hearing held on February 20, 2020, it is **ORDERED** that Mr. Blakeney's Motion to Suppress (Doc. No. 16) is **DENIED** as outlined in the Court's accompanying Memorandum.

BY THE COURT:

GENE E.K. PRATTER
UNITED STATES DISTRICT JUDGE