

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

UNITED STATES OF AMERICA : CRIMINAL ACTION  
 :  
 v. :  
 :  
 JAMAL HART :  
 a/k/a MARK MAJOR :  
 a/k/a MICHAEL GORDEN : NO. 97-21

**MEMORANDUM AND ORDER**

HUTTON, J.

September 4, 1997

Presently before this Court is the Defendant's Motion to Suppress (Docket No. 23) and the Government's response thereto.

**I. BACKGROUND**

On October 11, 1996, officers of the Philadelphia Police Department arrested the defendant and seized a .357 magnum Smith and Wesson handgun from his person during a routine traffic stop in North Philadelphia. On January 21, 1997, a grand jury indicted and charged the defendant with one count of possession of a firearm by a convicted felon, in violation of 18 U.S.C. § 922(g)(1). Following his indictment, the defendant filed the instant motion to suppress the handgun. On May 19, 1997, this Court held a suppression hearing.

## II. DISCUSSION

The Fourth Amendment of the United States Constitution guarantees that "[t]he 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 . . . ." U.S. Const. amend. IV. Therefore, when someone is searched without a warrant, the Court must determine whether the search violates the prohibitions of the Fourth Amendment.

In this case, the defendant maintains that the police illegally stopped, searched, and arrested him on the night in question. As a result, the defendant requests that the Court suppress the weapon seized from the defendant's person. The government rejects the defendant's contentions, and argues that because the police officers' conduct did not violate the Fourth Amendment, the weapon should not be suppressed.

Because the police officers lacked a warrant, this Court must examine the legality of the stop, search, and arrest. If the Court concludes after its three step inquiry that the police violated the Fourth Amendment, then the weapon must be suppressed.

### **A. Probable Cause to Stop**

It is well settled that the protections of the Fourth Amendment apply to automobile stops. See United States v. Johnson, 63 F.3d 242, 245 (3d Cir. 1995) (citing cases), cert. denied, 116 S. Ct. 2528 (1996). The United States Supreme Court has determined that:

[t]emporary 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 this provision. An automobile stop is thus subject to the constitutional imperative that it not be "unreasonable" under the circumstances. As a general matter, the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred.

Whren v. United States, 116 S. Ct. 1769, 1772 (1996) (citations omitted); see United States v. Moorefield, 111 F.3d 10, 12 (3d Cir. 1997) ("It is well-established that a traffic stop is lawful under the Fourth Amendment where a police officer observes a violation of the state traffic regulations."). Moreover, "a stop to check a driver's license and registration is constitutional when it is based on an 'articulable and reasonable suspicion that . . . either the vehicle or an occupant,' has violated the law." Johnson, 63 F.3d at 245 (quoting Delaware v. Prouse, 440 U.S. 648, 663 (1979)).

If an individual believes that the police lacked probable cause to stop and search him, he may move to suppress

the evidence seized during the unlawful search. When a defendant seeks to suppress evidence, he bears the initial burden of "establish[ing] a basis for his motion, i.e. the search or seizure was conducted without a warrant . . . ." Johnson, 63 F.3d at 245. Once the defendant makes this prima facie showing, the burden shifts to the government to demonstrate that the search and seizure was reasonable. Id.

In this case, it is undisputed that the police stopped the defendant's automobile without a search warrant. (Def.'s Mot. Suppress ¶ 3; Gov't Resp. ¶ 4.) Therefore, the defendant has met his initial burden of proof by establishing a basis for his motion. Therefore, the burden shifts to the government to show the search was reasonable.

To meet its burden, the government argues that the police stopped the defendant after he violated a Pennsylvania traffic law. At the suppression hearing, one of the arresting officers, Ralph Maldonado, testified on direct examination that he stopped the defendant after observing him drive through a stop sign:

QUESTION: Officer Maldonado, on the evening of October 11th, what car -- can you describe, generally, the car that the defendant was driving?

ANSWER: The owner of the vehicle was a Chevy Celebrity, gray. I cannot recall the license plate off the top of my head. The vehicle was traveling on Chew Avenue, heading

towards Broad Street, which is westbound.

QUESTION: Officer Maldonado, where were you when you first saw the gray Chevy?

ANSWER: I was northbound on 13th Street and making a left turn, also heading west on Chew Avenue behind the vehicle.

\* \* \*

QUESTION: Officer Maldonado, I've put in front of you what's marked as Government Exhibit 5. Have you seen that before?

ANSWER: Yes, ma'am.

QUESTION: Does that map accurately depict the vicinity of 13th and Chew, that you were just describing?

ANSWER: Yes, it's very accurate. This is 13th Street, it's one-way north. I'm about here, making a left turn. This is going west on Chew Avenue. These block -- from here to here -- is a, like, a quarter of a block, it's not a long block, it's very short. The vehicle is going this direction, west, without stopping at these -- a stop sign here -- and proceeded west on Chew towards Broad Street.

QUESTION: Okay. Just so the record is clear, when you say, the vehicle was going west and went through a stop sign, was that your words?

ANSWER: Yes, ma'am, that's correct. I observed -- as I made my left turn here -- I didn't see any lights coming, brake lights and the

vehicle. If you would step on the brake, the rear lights would come on. The vehicle was not going very fast, however, it never stopped at the stop sign. And I wanted to -- I started to follow the vehicle to pull him over for traffic violations.

QUESTION: Okay. When you say, it didn't go -- it didn't stop for the stop sign, is that -- what's that intersection that you're pointing at?

ANSWER: This is 13th Street and Chew Avenue. The intersection where he went through the stop sign is Chew Avenue and Park Avenue and he's traveling west. This is a two-way street, East and West Chew.

(Tr. at 17-19) (emphasis added).

Officer Maldonado stopped the defendant after Officer Maldonado observed the defendant violate a traffic regulation. See 75 Pa. Cons. Stat. Ann. § 3323(b) (establishing a duty to stop at a stop sign). Officer Maldonado had an articulable and reasonable suspicion that the defendant was in violation of Pennsylvania law. Therefore, the stop was reasonable under the Fourth Amendment. Johnson, 63 F.3d at 245; Moorefield, 111 F.3d at 12.

#### **B. The Lawfulness of the Search**

In U.S. v. Moorefield, the United States Court of Appeals for the Third Circuit discussed the standard required for a lawful pat-down for weapons during a traffic stop. Moorefield, 111 F.3d at 13-14. The court began by considering the dangers associated with traffic stops:

The Supreme Court has repeatedly recognized that traffic stops are dangerous encounters that result in assaults and murders of police officers. . . . [T]he risk of danger to a police officer conducting a traffic stop is "likely to be greater when there are passengers in addition to the driver in the stopped car."

Moorefield, 111 F.3d at 13 (quoting Maryland v. Wilson, 117 S. Ct. 882, 886 (1997)) (citations omitted). The court continued by reviewing the requirements for a lawful pat-down, under Terry v. Ohio, 392 U.S. 1 (1968):

In Terry v. Ohio, the Supreme Court held that a police officer may conduct a reasonable search for weapons for his own protection "where he has reason to believe that he is dealing with an armed and dangerous individual." The Court stated that a pat-down for weapons can occur only where the officer is "able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion."

Moorefield, 111 F.3d at 13 (citations omitted).

The court then recognized that "[i]n order to minimize the dangers faced by police officers conducting traffic stops, the [Supreme] Court has extended the constitutional principles in

Terry to situations involving officers and motorists." Id. Thus, the court explained that where an officer lawfully stops a driver for a state traffic violation, and the officer can point to "'specific and articulable facts which, taken together with rational inferences from those facts,' reasonably warrant[s] the pat-down," the search is reasonable under the Fourth Amendment. Id. at 14 (quoting Terry, 392 U.S. at 21).

In Moorefield, the defendant tried to leave his car, elevated and lowered his hands numerous times, and "shove[d] something down towards his waist," despite an officer's demands that the defendant stay in the car with his hands in the officer's sight. Id. The court stated that the defendant's "furtive hand movements and refusal to obey the officers' orders constituted suspicious behavior." Id. The court noted that the officer performing the search testified that based on his experiences the defendant's conduct "was consistent with the behavior of a person trying to conceal something." Id. Although the searching officer, "was not sure whether [the defendant] was attempting to hide narcotics or a firearm," the court reiterated that, "an 'officer need not be absolutely certain that the individual is armed; the issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger.'" Id. (quoting Terry, 392 U.S. at 27). Based on this standard and the above mentioned

facts, the court held that the pat-down search was reasonable under the Fourth Amendment. Id.

The facts in Moorefield cannot be distinguished from the case presently before this Court. Here, the defendant failed to stop his vehicle in accordance with Officer Maldonado's instructions, even after the officer used his horn, flashed blinking lights, and physically signaled the defendant to pull over. (Tr. at 20, 43). It was not until Officer Maldonado "cut [his] police vehicle on an angle . . . kind of cutting [the defendant] off a little bit . . . [that the defendant] stopped." (Tr. at 20).

Moreover, when Officer Maldonado walked towards the defendant's car, he saw the defendant, "moving his hands, like, when someone is nervous towards his waistband." (Tr. at 22). Although the officer "screamed at him . . . not to move his hands . . . [the defendant] continued to do this." (Tr. at 22). Officer Maldonado instructed the defendant and the passenger to put their hands on the dashboard, and though the defendant complied for a brief moment, the defendant "moved back, again, to his waistband or towards his lap area." (Tr. at 23). The defendant failed to place his hands on the dashboard despite several demands from Officer Maldonado, and the officer saw a bulge in the defendant's jacket. (Tr. at 24). Although Officer Maldonado was unsure what the defendant was reaching for, the

officer reached inside the car and placed his hand on the bulge. (Tr. at 24, 51). At that moment, the officer "noted that it was a gun." (Tr. at 24). Another officer responded to Officer Maldonado's call for help and grabbed the defendant's gun from his waistband. (Tr. at 26).

Here, as in Moorefield, the defendant's attempt to reach toward his waist, where the officer saw a bulge in the defendant's jacket, despite several demands by an officer that the defendant keep his hands on the dashboard, "constituted suspicious behavior." Moorefield, 111 F.3d at 14. Although the officer was unsure whether the defendant was attempting to reach for a firearm, "an 'officer need not be absolutely certain that the individual is armed; the issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger.'" Id. (quoting Terry, 392 U.S. at 27). Here, based on the specific facts listed above, Officer Maldonado reasonably believed the defendant was reaching for a gun and was justified in reaching towards the defendant's waist. See Pennsylvania v. Mimms, 434 U.S. 106, 111-12 (1977) (finding "little question" that police officer was justified in a pat-down search of a driver where the officers noticed a "bulge" in the driver's jacket). Thus, the pat-down search was reasonable under the Fourth Amendment.

When a search occurs prior to an arrest but pursuant to a lawful pat-down, the search can be upheld under a Terry v. Ohio analysis. See Mimms, 434 U.S. at 111-12; Moorefield, 111 F.3d at 13-14. These searches need not be justified as a lawful search incident to arrest.

Defendant argues that the evidence concerning the weapon seized from him by the officers should be suppressed because there was no probable cause to arrest the defendant and because the officers were not acting pursuant to an arrest warrant. (Def.'s Mot. to Suppress at ¶¶ 2, 3). This argument fails, however, because the officers conducted the pat-down prior to the arrest. Therefore, the admissibility of the evidence is determined by the legality of the stop and the pat-down, not the legality of a search incident to the subsequent arrest. As stated above, the stop and the pat-down were both lawful.

An appropriate Order follows.

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O R D E R

AND NOW, this 4th day of September, 1997, upon consideration of the Defendant's Motion to Suppress (Docket No. 23), IT IS HEREBY ORDERED that Defendant's Motion is **DENIED**.

BY THE COURT:

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HERBERT J. HUTTON, J.