

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

UNITED STATES OF AMERICA : CRIMINAL ACTION  
 :  
 v. :  
 :  
 RANDOLPH SANDERS : NO. 97-591

**MEMORANDUM AND ORDER**

HUTTON, J.

February 17, 1998

Presently before this Court is the Defendant's Motion to Suppress Evidence (Docket No. 14) and the Government's response thereto.

**I. BACKGROUND**

On January 17, 1997, officers of the Philadelphia Police Department arrested the defendant and recovered 489 grams of cocaine, a loaded .9mm caliber pistol, a loaded gun magazine cartridge, and \$790.00 from the defendant. On October 30, 1997, a grand jury indicted and charged the defendant with: 1) one count of possession with intent to distribute a controlled substance, in violation of 21 U.S.C. § 841(a)(1); 2) one count of possession of a firearm by a convicted felon, in violation of 18 U.S.C. § 922(g)(1); 3) one count of possession of a firearm in relation to a drug trafficking crime, in violation of 18 U.S.C. § 924(c)(1); and 4) the criminal forfeiture of the \$790.00 and .9mm firearm, pursuant to 21 U.S.C. § 853. Following his indictment,

the defendant filed the instant motion to suppress the cocaine, the handgun, the magazine cartridge, the money, and certain statements the defendant made to an officer. On February 5, 1998, 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 evidence seized by the officers. The government rejects the defendant's contentions, and argues that because the police officers' conduct did not violate the Fourth Amendment, the evidence should not be suppressed.

Because the police officers lacked a warrant, this Court must examine the legality of the stop, arrest, and

subsequent searches. If the Court concludes after its three step inquiry that the police violated the Fourth Amendment, then the evidence 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 ¶ 7. Accordingly, 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, Dennis Clair, testified on direct examination that he stopped the defendant after observing him drive through a red light:

QUESTION: Sir, why did you happen to notice the other car coming in the opposite direction?

ANSWER: What caught my eye was that the vehicle was traveling at a high rate of speed, fast, west on Glenwood. What actually caught my attention was the fact that the vehicle actually [made] like a rolling stop. It stopped, but didn't come to a complete stop and then continued through the red light.

QUESTION: Sir, is it a violation of any law that you know of to fail to stop at a red light in the Commonwealth of Pennsylvania?

ANSWER: Yes. Disregard of a red signal.

\* \* \*

QUESTION: Sir, were you surprised, when the car went through the red light?

ANSWER: To be honest with Your Honor, I couldn't believe that . . . would happen with myself and Officer Ortiz being right there.

QUESTION: Did you make any comments, when the car went through the red light?

ANSWER: I instructed Ortiz as to what I saw, . . . he then made a u-turn and attempted to stop the vehicle.

QUESTION: And what did you say to Officer Ortiz?

ANSWER: I just remember saying, I can't believe this guy's doing that with us sitting right here.

\* \* \*

QUESTION: Do you see that individual  
in the courtroom today?

ANSWER: Yes. The defendant, Your  
Honor, with the blue  
sweater.

(Tr. at 7-9, 14-15) (emphasis added).<sup>1</sup>

Officer Clair was a passenger in a police vehicle driven by Officer Heriberto Ortiz. Officer Michael Trask, seeing the other officers in pursuit, joined in the chase. (Tr. at 79-80). Officer Ortiz ordered the defendant to pull over, but, after stopping briefly at a red light at the next intersection, the defendant also drove through that red light and away from the officers. (Tr. at 57).<sup>2</sup> The defendant drove through two stop signs and several traffic lights with the officers in pursuit. (Tr. at 12, 58). After a brief, low speed chase, the defendant pulled into a parking space on the 1200 block of Huntingdon

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1. The defendant contends that Officer Clair's testimony regarding the defendant's initial traffic violation should be discounted, because Officer Clair "offered no explanation for the reason of his looking backward at the intersection at that particular time." Def.'s Mem. at 2. In fact, Officer Clair testified at the suppression hearing that the vehicle's "high rate of speed," coupled with "the fact that the vehicle actually [made] a rolling stop," caught his attention. (Tr. at 7, 8).

2. The defendant states that Officer Ortiz and Officer Clair gave conflicting accounts of what happened when they signaled the defendant to pull over. See Def.'s Mem. at 2 ("Officer Ortiz . . . stated that the Jeep stopped for a red light at the intersection of Germantown and Glenwood, as compared to Officer Clair's testimony that the Jeep went through that red light.") In fact, both officers testified that the defendant first stopped at the light. (Tr. at 9-10; 56-57). However, when the officers pulled beside the defendant's car, the officers both stated that he then proceeded through that red light. Id. Thus, their testimony did not conflict. Moreover, Officer Trask's testimony corroborated the testimony of the other two officers. (Tr. at 81).

Street. (Tr. at 13). The defendant fled the vehicle, and Officers Clair and Ortiz pursued the defendant on foot. (Tr. at 15). A passenger remained in the defendant's car. Id. After running through an alleyway, the defendant attempted to climb a wall to avoid the officers. Id. Officer Clair tackled the defendant and pushed him to the ground. Id.

Thus, the officers attempted to stop the defendant after Officer Clair observed the defendant violate a traffic regulation. See 75 Pa. Cons. Stat. Ann. §§ 3111(a) & 3112(a)(3)(I) (establishing duty to stop at a red light). While following the defendant, the officers witnessed the defendant make several other traffic violations. See 75 Pa. Cons. Stat. Ann. § 3323(b) (establishing a duty to stop at a stop sign); 75 Pa. Cons. Stat. Ann. § 3733(a) (refusal to stop at the direction of a pursuing police officer is a misdemeanor of the second degree). Officer Clair had an articulable and reasonable suspicion that the defendant was in violation of Pennsylvania law.<sup>3</sup> Therefore, the stop was reasonable under the Fourth Amendment. Johnson, 63 F.3d at 245; Moorefield, 111 F.3d at 12.

#### **B. Lawfulness of the Arrest**

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3. The defendant argues that Officer Ortiz never saw the defendant drive through a red light. Def.'s Mem. at 2, 3. Officer Ortiz testified that he never saw the defendant drive through the light; instead, Officer Clair informed Officer Ortiz that the defendant had done so. (Tr. at 68). Thus, this Court is able to rely on Officer Clair's testimony to establish the defendant's traffic violation.

It is well established that in order for a warrantless arrest to be lawful it must be based on probable cause. United States v. Watson, 423 U.S. 411, 422 (1976); Beck v. Ohio, 379 U.S. 89, 91 (1964); United States v. Bronowski, 575 F. Supp. 668 (W.D. Pa. 1983). In Watson, 423 U.S. at 417, the court held that probable cause for a warrantless arrest exists when the officer has reasonable grounds to believe that an offense has been or is being committed. The existence of probable cause is based on a flexible "totality of the circumstances" standard. United States v. De Los Santos, 810 F.2d 1326 (5th Cir.), cert. denied, 484 U.S. 978 (1987). Furthermore, in United States v. Wajda, 810 F.2d 754, 758 (8th Cir.) cert. denied, 481 U.S. 1040 (1987), the court held that police may use their special training and experience to draw reasonable inferences of criminal activity from circumstances which the general public may find innocuous.

As explained above, the police officers were authorized to stop the defendant after he committed a traffic violation. When the defendant fled from his car, Officers Clair and Ortiz saw that he was carrying a "clear bag" containing "a white chunky substance." (Tr. at 15, 63). As Officer Clair tackled the defendant, the defendant either threw or dropped the bag. (Tr. at 16, 63).<sup>4</sup>

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4. Officer Ortiz retrieved the bag, which the officers later found to contain approximately 489 grams of cocaine. (Tr. at 63).

The officers had probable cause to arrest the defendant for two reasons. First, the defendant willfully failed to stop his vehicle after he was given a visual sign and verbally instructed to do so by police officers. (Tr. at 10, 56-57); See Pennsylvania v. Scattone, 672 A.2d 345, 347-48 (Pa. Super. Ct. 1996) (discussing elements of conviction and arrest under 75 Pa. Cons. Stat. Ann. § 3733(a) for failure of driver to stop his vehicle at officer's command). Second, when the defendant ran from his car, Officer Clair saw the defendant carrying a clear bag filled with a "white chunky substance." (Tr. at 15); See Horton v. California, 496 U.S. 128, 140-42 (1990) (discussing plain view doctrine); United States v. Thompson, No. CRIM.A.93-494, 1996 WL 480864, at \* 1 (E.D. Pa. Aug. 23, 1996) (applying plain view doctrine where defendant discarded evidence and ran from officers). Given the defendant's failure to stop his vehicle and subsequent attempt to flee, the officers had reasonable grounds to believe that an offense had been committed. Accordingly, the officers had probable cause to arrest the defendant.

**C. Search Incident to Arrest**

After making a lawful arrest, the police may conduct a warrantless search incident to that arrest to secure weapons and to prevent the concealment or destruction of evidence. United States v. Robinson, 414 U.S. 218, 234-235 (1973); Chimel v. California, 395 U.S. 752, 763 (1969). As the United States Supreme Court stated in Robinson, "[a] custodial arrest of a suspect based on probable cause is a reasonable intrusion under the Fourth Amendment; that intrusion being lawful, a search incident to the arrest required no additional justification." Robinson, 414 U.S. at 235.

As stated above, the officers lawfully arrested the defendant. Moreover, Officer Trask testified:

ANSWER: Officer Clair and I had [the defendant]. We were trying to cuff him up. There was a mild resisting. He was resisting a little bit like not giving us his hands, fighting, getting behind him, at which time Officer Clair was cuffing him. And as he was cuffing him, I pulled the weapon from his waistband.

QUESTION: Sir, you searched the defendant pursuant to the arrest; is that right?

ANSWER: Yes, sir, I did.

QUESTION: And you pulled a weapon. Do you know where you pulled this weapon from?

ANSWER: His waistband, sir.

QUESTION: Do you know where in the waistband it was?

ANSWER: The front.

(Tr. at 84-85). Accordingly, Officer Trask's search of the defendant's waistband was incident to the lawful arrest. Thus, the search itself was also lawful.

#### **D. Inventory Search**

Police officers may lawfully conduct an inventory search, "as part of the routine procedure incident to incarcerating an arrested person." Illinois v. Lafayette, 462 U.S. 640, 648 (1983). This search includes any "article in [the person's] possession, in accordance with established inventory procedures." Id. (footnotes omitted). The governmental interests justifying such a search include protecting the station house from theft and the arrestee, officers, and others from harm. Id. at 646-47.

After the defendant was transported to the station house, Officer Ortiz searched the defendant:

QUESTION: And did you happen to search the defendant back at the station-house?

ANSWER: Oh, yes.

QUESTION: Did you find anything on the defendant?

ANSWER: That is correct.

QUESTION: What did you find?

ANSWER: He had, as I'm patting him down, he had a very large bulge. He had close to \$800 in United States currency. He had a loaded clip that belonged to a gun.

\* \* \*

QUESTION: Sir, is it also standard practice . . . to search a defendant when he is placed in a cell room?

ANSWER: Absolutely.

QUESTION: And why is that?

ANSWER: Well, that's the way it was taught to me. I believe it's for his safety, other prisoners' safety, as well as the officers' safety. We're to take his belt off, shoelaces, pat him down for weapons, take any kind of . . . cigarette lighters, things of this nature, pens, anything that could be used for any kind of weapon or anything.

(Tr. at 64-66). It is clear from Officer Ortiz's testimony that the station house search was conducted pursuant to "established

inventory procedures." Lafayette, 462 U.S. at 648 (footnote omitted). Accordingly, the inventory search was proper.<sup>5</sup>

An appropriate Order follows.

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5. The defendant states that Officer Clair "did not mention recovering a loaded magazine" during the search at the police station. Def.'s Mem. at 3. However, this is easily explained by the fact that Officer Ortiz, not Officer Clair, conducted the search at the station. (Tr. at 65-66).

Furthermore, while at the station the defendant made statements to the Officer Ortiz. (Tr. at 65). The defendant argues that these statements "were the result of an illegal stop, search and seizure, and should be suppressed as fruit of the poisonous tree." Def.'s Mem. at 6. However, because this Court finds that the stop, search, and seizure were all legal, the defendant's argument is rejected.

