

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

UNITED STATES OF AMERICA : CRIMINAL ACTION
 :
 v. : NO. 06-617
 :
 DANIEL JAMES NAYLOR :

MEMORANDUM AND ORDER

Juan R. Sánchez, J.,

April 12, 2007

Daniel James Naylor seeks to suppress two firearms seized from his car's glove box and his statement both firearms belonged to him. Naylor argues seizure of the firearms resulted from an unreasonable search and the incriminating statements were made while he was in custody without proper *Miranda* warning.¹ The Government argues Naylor's arrest and the subsequent search of the vehicle were reasonable, and it also argues Naylor's admissions were voluntary, not the product of interrogation. I agree with the Government's position.

FINDINGS OF FACT

1. On April 11, 2006 at approximately 5:00p.m., Chester City Police Officer Joseph Greenwalt saw a white Chevrolet Lumina parked over the middle line of Highland Avenue blocking traffic.
2. In Officer Greenwalt's five years with Chester City Police, the vicinity of Highland Avenue, Hayes Avenue, and Route 291 has been known as a high crime area because of rampant narcotics and firearms.
3. Defendant Daniel James Naylor and James Nasir Hudson stopped talking to a group of

¹A grand jury indicted Naylor for being a felon in possession of a firearm, violating 18 U.S.C. § 922(g)(1).

individuals and dispersed once they saw Officer Greenwalt in his marked police van.

4. Naylor made eye contact with Greenwalt and began driving down Highland Avenue to the traffic light which intersected with Route 291.
5. Officer Greenwalt drove the marked police van next to the Lumina and, from his elevated perspective, he noticed the Lumina's tinted windows and expired emission and inspection stickers.
6. After these observations, Officer Greenwalt fell in behind the Lumina, following it down Highland Avenue.
7. The Lumina turned onto Route 291.
8. From Route 291, Naylor made a right onto Hayes without signaling and continued on Hayes until the dead end near the 100 block; Greenwalt followed and called for back up.
9. Naylor made a three point U-turn when approaching the dead end and parked outside a residence.
10. While Naylor was turning, Greenwalt observed Hudson motion towards the glove box area as if he were opening and closing it.
11. Naylor and Hudson left the car, and the two refused to heed Greenwalt's order to return to the Lumina because Greenwalt had not "pull[ed them] over the right way."
12. Greenwalt then told both Naylor and Hudson to put their hands on the Lumina, and both men complied.
13. Based on Greenwalt's experience as a police officer, he observed marijuana "fuzz" on Hudson's black T-shirt.
14. Greenwalt asked Hudson if he had anything on him, and Hudson admitted he had cocaine and weed.
15. Greenwalt patted Hudson down and recovered from Hudson's pocket the lose marijuana and a small clear zip lock cocaine bag.
16. Greenwalt arrested Hudson. Officer Rosinski arrived on the scene and patted Naylor down, but recovered nothing from his person.
17. While Rosinski patted Naylor down, Greenwalt approached the Lumina and looked through the Lumina's tinted windows.

18. Greenwalt saw in plain view through the Lumina's tinted windows, three to five marijuana buds on the front two seats and a box for a digital scale on the floor of the driver seat.
19. In Greenwalt's experience, digital scales have been used to calculate exact measurements for drug distribution.
20. Rosinski did not recover anything from Naylor's pat down, but Greenwalt told him to arrest Naylor because of the marijuana buds and scale.
21. After receiving the approval from his supervisor, Greenwalt called for a tow truck to impound the Lumina.
22. While awaiting the tow truck, Greenwalt searched the Lumina for any valuable or harmful items following Chester City Police Department vehicle inventory search procedures.
23. Greenwalt searched the glove box and recovered one Bryco Arms .38 caliber semi-automatic pistol and one Phoenix Arms .22 caliber semi-automatic pistol.
24. Officer James Carr and his canine partner, Nero, also responded to the scene.
25. Nero alerted police to a jean jacket located in the back passenger seat; Officer Rosinski recovered three small clear sandwich bags containing marijuana from Naylor's jean jacket.
26. Greenwalt drove Naylor and Hudson to the station in the police van.
27. During the drive to the police station, Naylor and Hudson asked why they were being brought down for only the marijuana, and Greenwalt informed them it was because of the guns found in the Lumina.
28. At the Chester City Police Department, Greenwalt booked Naylor and observed Hudson, who was approximately five to seven feet away, angrily staring at Naylor.
29. Greenwalt then told Hudson he had two guns, two men, and would have to charge both of them for gun possession.
30. Naylor responded, "Yo, man, both guns are mine."

DISCUSSION

This suppression motion presents me with several Fourth and Fifth Amendment issues. First, I must consider whether Officer Greenwalt lacked reasonable suspicion to stop the Chevy Lumina and its occupants, Naylor and Hudson. Next, I must evaluate whether Officer Greenwalt after the stop had the necessary probable cause to arrest Naylor without a warrant. Naylor also challenges the validity of the search of the Chevy Lumina incident to his arrest is also questioned because his arrest was warrantless and because Officer Greenwalt did not abide by the Chester City Police inventory search guidelines. Finally, I also must consider whether Officer Greenwalt intended to elicit an incriminating response when he informed Hudson he had to charge both Hudson and Naylor of firearms possession while he booked Naylor. I find Officer Greenwalt had reasonable suspicion to stop the Chevy Lumina, probable cause to arrest Naylor without a warrant, lawfully searched the Lumina, and did not intend to elicit an incriminating statement when informing Hudson of the pending charges.

With regard to the traffic stop, a police officer must have a reasonable articulable suspicion that criminal activity is afoot prior to conducting an investigatory stop. *United States v. Goodrich*, 450 F.3d 552, 559 (3d Cir. 2006) (citing *Terry v. Ohio*, 392 U.S. 1, 30 (1968)); *United States v. Delfin-Colina*, 464 F.3d 392, 397 (3d Cir. 2006) (requiring police officers have reasonable suspicion to conduct traffic stops). In evaluating the police officer's decision to stop individuals suspected of engaging in criminal activity, the Court must consider the "totality of the circumstances" specifically the trained and experienced officer's observation and articulation of objective facts. *Id.* at 560-51 (citing 6 Wayne R. LaFave, *Search and Seizure: A Treatise on the Fourth Amendment* Section 9.5(g) (4th ed. 2004)). Officer Greenwalt, had more than reasonable

suspicion to stop the Chevy Lumina because Naylor violated three Pennsylvania Motor Vehicle Code regulations, specifically 75 Pa.C.S.A. § 4107 (Unlawful Activities, Violation of Vehicle Equipment Standards),² and 75 Pa.C.S.A. § 4703 (Operation of Vehicle without Certificate of Inspection).³ Greenwalt also observed Naylor, the driver, make a right-hand turn without

²Relevant section reads:

(a) Violation of vehicle equipment standards.--

(1) It is unlawful for any person to sell, offer for sale, lease, install or replace, either separately or as part of the equipment of a vehicle, any item of vehicle equipment affecting the operation of the vehicle which does not comply with this title or regulations promulgated thereunder, or which does not comply with an applicable Federal motor vehicle safety standard adopted by regulation by the department.

(2) Any person convicted of violating this subsection shall be subject to a civil penalty of not more than \$100 for each violation. Each violation of the provisions of this subsection shall constitute a separate violation with respect to each motor vehicle or item of motor vehicle equipment or with respect to each failure or refusal to allow or perform an act required thereby, except that the maximum civil penalty shall not exceed \$10,000 for any related series of violations.

75 Pa.C.S.A. § 4107

³ Relevant section reads:

(a) General rule.--Except as otherwise provided in this section, no motor vehicle required to bear current registration plates issued by this Commonwealth and no farm vehicle with a gross weight or gross vehicle weight rating of greater than 17,000 pounds for which a Type I biennial certificate of exemption has been issued shall be driven and no trailer required to bear current registration plates issued by this Commonwealth shall be moved on a highway and no mass transit vehicle shall be operated unless the vehicle displays a currently valid certificate of inspection issued under this chapter. . . .

. . . .

. . (f) Authority of police.--Any police officer may stop any motor vehicle, mass transit vehicle or trailer and require the owner or operator to display an official certificate of inspection for the vehicle being operated. A police officer may summarily remove an unauthorized, expired or unlawfully issued certificate of inspection from any vehicle or mass transit vehicle. For the purposes of administering the requirements of regulations

signaling, violating 75 Pa.C.S.A. § 3334 (Turning Movements and Required Signals).⁴ These three violations justify Officer Greenwalt stopping the Chevy Lumina and its occupants, Naylor and Hudson. *Terry*, 390 U.S. at 24; *Delfin-Colina*, 464 F.3d at 397.

Naylor next argues Officer Greenwalt lacked probable cause to arrest him without a warrant. The Government asserts the digital scale box found underneath the driver seat along with the three to five marijuana buds found on the driver and passenger seat gave Officer Greenwalt probable cause to arrest Naylor for narcotic distribution. I agree Officer Greenwalt had sufficient probable cause to arrest Naylor.

Law enforcement does not need a warrant to arrest in a public place as long as they have “probable cause to believe that person has committed a felony.” *U.S. v. McGlory*, 968 F.2d 309, 342 (3d Cir. 1992). *See United States v. Watson*, 423 U.S. 411, 421 (1976). Probable cause to arrest exists if the totality of circumstances cause a “prudent person to believe that a crime has been committed and the person to be arrested committed it.” *U.S. v. Stubbs*, 281 F.3d 109, 122 (3d Cir. 2002) (citing *Beck v. Ohio*, 379 U.S. 89, 91 (1964); *Paff v. Kaltenbach*, 204 F.3d 425,

promulgated by the department, a qualified Commonwealth employee or an authorized department representative may remove an unauthorized, expired or unlawfully issued certificate of inspection from any vehicle.

75 Pa.C.S.A. § 4703

⁴ Relevant Section reads:

(b) Signals on turning and starting.--At speeds of less than 35 miles per hour, an appropriate signal of intention to turn right or left shall be given continuously during not less than the last 100 feet traveled by the vehicle before turning. The signal shall be given during not less than the last 300 feet at speeds in excess of 35 miles per hour. The signal shall also be given prior to entry of the vehicle into the traffic stream from a parked position.

75 Pa.C.S.A. § 3334

436 (3d Cir. 2000)). Further, the Court must evaluate “knowledge and information which the officers possessed at the time of arrest, coupled with the factual occurrences immediately precipitating the arrest” in determining if probable cause existed. *Id.* (citing *United States v. Harris*, 482 F.2d 1115, 1117 (3d Cir. 1973)).

When Officer Greenwalt arrested Naylor, he observed in plain view through the tinted windows between three to five buds of marijuana on both the driver seat, where Naylor had just been sitting a few minutes earlier, and the front passenger side. He also observed an empty digital scale box underneath the driver seat. While Officer Rosinski did not recover anything from Naylor’s person, Officer Greenwalt’s observations of marijuana and drug paraphernalia in the Chevy Lumina, which Naylor had just operated minutes earlier, gave Greenwalt probable cause to believe Naylor had just committed a felony, involved in drug distribution. Additionally, the Chevy Lumina’s “ready mobility” as evidenced by Naylor and Hudson’s attempt to flee Officer Greenwalt while parked on Highland Avenue, coupled with one’s reduced expectation of privacy in a car, provides an exigent circumstance justifying the warrantless arrest. *Id.* (citing *Pennsylvania v. Labron*, 518 U.S. 938, 940 (1996) and referencing *United States v. Bivens*, 445 F.2d 1064, 1069 (3d Cir. 1971)).

Naylor argues the warrantless search of the Lumina was unreasonable, while the Government asserts it was a valid search incident to a lawful arrest. The constitutional validity of a search incident to an arrest depends on the arrest’s constitutional validity. *Stubbs*, 281 F.3d at 122 (citing *United States v. Kithcart*, 134 F.3d 529, 531 (3d Cir. 1998) and *Beck v. Ohio*, 379 U.S. 89, 91 (1964)). Officer Greenwalt had probable cause to arrest Naylor; I find the search of the Chevy Lumina incident to the lawful arrest valid.

Naylor further argues the firearms should be suppressed because Officer Greenwalt's inventory search of the Lumina was not within the scope of the Chester City Police Department policy. Police may conduct a warrantless inventory search of a vehicle as long as they abide by "standardized criteria or established routine." *United States v. Salmon*, 944 F.2d 1106, 1120 (3d Cir. 1991) (citing *Colorado v. Bertine*, 479 U.S. 367, 374 (1987)).⁵ The standardized criteria dictates whether the police officer should search a vehicle and if so, what is the appropriate scope of the search. *Id.* at 1120-21 (referencing *Florida v. Wells*, 110 S.Ct. 1632, 1635 (1990); *Bertine*, 479 U.S. at 374 & n. 6; *United States v. Frank*, 864 F.2d 992,1003 (3d Cir. 1988); *United States v. Bush*, 647 F.2d 357, 370-71 (3d Cir. 1981)).

Officer Greenwalt testified to the standardized criteria under the Chester City Police inventory search policy. The purpose behind the policy is to account for all the vehicle's valuable items and to protect the tow truck driver's safety from dangerous or threatening items. While awaiting the tow truck, Officer Greenwalt searched the Lumina's glove box for valuable and dangerous items. In his experience, the glove box is a place where a car owner may place valuable and threatening/dangerous items. His search of the glove box produced two firearms:

⁵ The Third Circuit in *Salmon* further explained:

The requirement that inventory searches be conducted according to such criteria or routine strikes a balance between the government's legitimate interests in such searches and the owner's legitimate expectation of privacy in the contents of the seized vehicle. On a more practical level, the requirement insures that "police officer[s] ... not be allowed so much latitude that inventory searches are turned into 'a purposeful and general means of discovering evidence of crime,' " and "guide[s] police officers, who have only limited time and expertise to reflect on and balance the social and individual interests involved in the specific circumstances they confront."

Salmon, 944 F.2d at 1120 (footnotes and citations omitted).

Bryco Arms .38 caliber semi-automatic pistol and one Phoenix Arms .22 caliber semi-automatic pistol. Officer Greenwalt's search of the glove box was within the scope of the inventory search. The two firearms were lawfully seized.

Naylor finally argues his admission the firearms were his should be suppressed because Officer Greenwalt's statements during the booking procedure were intended to elicit an incriminating statement prior to giving Naylor his *Miranda* warnings. The Government argues merely informing defendants of charges is insufficient to suppress Naylor's admission. I agree with the Government's position.

Miranda warnings are required when law enforcement has an individual in custody and is interrogating him/her. *Miranda v. Arizona*, 384 U.S. 436 (1966). Interrogation includes the law enforcement's direct questions to the individual regarding the alleged criminal activity as well as the "functional equivalent," which refers to words or conduct "the police should know are reasonably likely to elicit an incriminating response from the suspect." *Rhode Island v. Innis*, 446 U.S. 291, 301 (1980); see *United States v. Benton*, 966 F.2d 642, 644 (3d Cir. 1993). Providing an arrestee information regarding potential charges does not by itself violate *Miranda*. *Benton*, 966 F.2d at 644.

There is no dispute both men were in custody, thus, I must examine Officer's Greenwalt statement to determine if he said it intending to elicit an incriminating statement. Officer Greenwalt testified while booking Naylor, he observed Hudson, who was five to seven feet away, angrily staring at Naylor. To alleviate the tension, Greenwalt told Hudson he had two guns, two men, and both were being charged. Greenwalt was not speaking to Naylor when Naylor blurted out he owned both firearms.

I find Officer Greenwalt did not have a reason to believe informing Hudson of the charges would elicit an incriminating statement from Naylor. Naylor contends Greenwalt's statement did intend to elicit an incriminating statement because both men were handcuffed at the time and Greenwalt took advantage of the tension he perceived between Hudson and Naylor. While both men were handcuffed and Greenwalt did speak to alleviate the tension between the two arrestees, Greenwalt still was merely informing Hudson of the charges being brought against both of them. Further, no evidence was presented demonstrating Officer Greenwalt knew of any close relationship between the two arrestees that informing one would elicit a confession from the other, nor was any evidence presented that such a close relationship between the two arrestees even existed. *Cf. Benton*, 966 F.2d at 644 (police implicating an accused's family member with crime could be seen as eliciting an incriminating statement). Thus, Naylor's statements are admissible because Greenwalt merely informing Hudson of the potential charges he and Naylor were facing did not elicit Naylor's incriminating statements and did not violate *Miranda*.

CONCLUSIONS OF LAW

1. Officer Greenwalt had reasonable suspicion to stop Defendant Naylor and Hudson in the Chevy Lumina for violating three Pennsylvania Motor Vehicle Code regulations.
2. Officer Greenwalt had probable cause to arrest Defendant Naylor because of the drug paraphernalia and marijuana buds in plain view of the Chevy Lumina.
3. Incident to Naylor's arrest, Officer Greenwalt conducted a lawful search of the Chevy Lumina in which he recovered two firearms from the glove box.
4. Officer Greenwalt conducted an inventory search pursuant to the Chester Police Department policy standardized criteria limiting the officer's scope to search the vehicle for valuable or harmful items prior to the car's impoundment.
5. During Naylor's booking, Officer Greenwalt did not make comments intending to elicit

incriminating statements from Naylor by informing Hudson both he and Naylor would be charged with possession of the firearms. Instead, Naylor volunteered those statements.

6. Officer Greenwalt's informing Hudson of the charges was not interrogation or a comment intending to elicit an incriminating response, and Greenwalt was not required to read Naylor *Miranda* warnings.

An appropriate order follows:

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UNITED STATES OF AMERICA	:	CRIMINAL ACTION
	:	
v.	:	NO. 06-617
	:	
DANIEL JAMES NAYLOR	:	

ORDER

And now this 12th day of April, 2007, Defendant's Motions to Suppress Physical Evidence (Document Number 19) and Statements (Document Number 20) are DENIED.

BY THE COURT:

/s/Juan R. Sánchez, J.

Juan R. Sánchez, J.