USA v. Saul

2016 | Cited 0 times | E.D. Virginia | June 3, 2016

COURT FOR OF

STATES OF

SAUL,

MEMORANDUM OPINION On 2016,

20.) On 2016, United

On 2016, United

On

U IN THE UNITED STATES DISTRICT

THE EASTERN DISTRICT VIRGINIA

Richmond Division UNITED AMERICA v. Case No. 3:15cr184 TREVELL MAURICE

Defendant.

March 4, the Court granted Defendant Trevell Maurice Saul leave to file a motion to suppress. (ECF No. March 14, Saul filed his Motion to Suppress. (ECF No. 21.) The States filed a response in opposition. (ECF No. 22.) Saul filed a reply in support ofhis Motion. (ECF No. 23.) April27, both Saul and the States placed supplemental filings on the record. (ECF Nos. 26, 27.) The Court held a hearing on the pending motion. After submitting evidence, the parties argued their positions. The Court took the matter under advisement. After careful review of the evidence submitted, including repeated review of the video evidence, the Court will deny the Motion to Suppress. (ECF No. 21.)

I. Procedural Background and Findings of Fact A. Procedural Background

November 17,2015, the grand jury returned a one-count indictment against Saul, charging him with possession of a firearm by a convicted felon, in violation of 18 .S.C.

USA v. Saul

2016 | Cited 0 times | E.D. Virginia | June 3, 2016

1

Saul

State Reed" State

States.

1

U.S.C.

Oath

U.S. IV.

State Police 500

State 2014 1000 100 150 § 922(g)(1). (ECF No. 1.) filed a Motion to Suppress, arguing this Court must suppress the evidence against him because it was obtained pursuant to an unlawful pat-down in violation of his Fourth Amendment 2

rights. The Court held a hearing on the Motion to Suppress. Virginia Trooper Matthew Reed 3

("Trooper or "Reed") and Virginia Trooper Joseph Rylan 4

("Trooper Hylan" or "Rylan") testified for the United Based on the evidence and briefing presented by the parties, the Court makes the following factual findings.

18 § 922(g)(l) states, in pertinent part: (g) It shall be unlawful for any person--

(1) who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce. 18 u.s.c. § 922(g)(l).

2 The Fourth Amendment states: The 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 or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. Canst. amend.

3 Trooper Reed has served as a state trooper with the Virginia for four years. Trooper Reed estimated he had conducted around traffic stops prior to the stop at issue here.

4 Trooper Hylan has served as a state trooper with the Virginia Police for three years. Beyond his training to become a trooper, Rylan estimated that, at the time he participated in the December stop, he had conducted approximately traffic stops, to of which involved drugs, primarily marijuana.

2

11:00 2014,

40

50

(U.S. 2:40.) Saul "Okay,

I'm (U.S. Saul

States 740 United

Saul 40 2015). B. Findings of Fact Around p.m. on December 18, Trooper Reed stopped a white Mercedes Benz for traveling 64 miles per hour in a zone with a posted speed limit of miles per hour. 5

Reed approached the car on the passenger's side, and spoke over the passenger to the driver, now known to be Saul. Both the passenger's and driver's side windows were fully open. Reed asked Saul for his identification, which Saul provided. When Reed asked where Saul was going in such a hurry, Saul said that he was heading to Callao, Virginia, that he thought he was going about miles per hour, and that he was giving the passenger a ride home.

Trooper Reed testified that he smelled the strong odor of marijuana upon approaching the car. Reed stated, and the recording of the encounter confirmed, that after discussing Saul's speed for about one minute, Reed asked the occupants, "Where' s the marijuana at?" Ex. 1, at denied having marijuana in the car. Reed followed up by asking, so if I search the car, not going to find any marijuana in the car?" Ex. 1, at 2:50.) Reed testified that responded again that the car contained no marijuana. Reed determined that he needed to search the car, but, given the time of night, the isolated location, and the fact that the two occupants outnumbered him, he returned to his patrol unit to radio for back up. The video shows that, among other things, Reed called into the dispatcher a code that signified that drugs might be involved in the stop.

5 Saul rightly does not challenge the initial stop of his car, nor does he suggest Reed pulled his car

over for any pretextual reason. "'When an officer observes a traffic offense however minor-he [or she] has probable cause to stop the driver of the vehicle."' United v. Williams, F.3d 308, 312 (4th Cir. 2014) (quoting States v. Hassan El, 5 F.3d 726, 730 (4th Cir. 1993)). Trooper Reed observed driving 64 miles per hour in a miles per hour zone, a Class I misdemeanor of reckless driving in violation of Virginia Code Ann. § 46.2- 878 (West

3

Saul's

Saul Upon Saul's

Saul Saul

50 Saul's 50

Saul

Saul's

Saul

Saul

Saul Saul

Saul

(U.S. 12:00.) Saul

Saul Saul Saul

Saul,

So Trooper Hylan arrived at the stop in approximately ten minutes. car can be seen from Reed's dashboard camera during this wait. Both the driver's and passenger's windows remained open during the wait. Nothing suggested non-cooperative conduct by the occupants. Both officers testified that generally answered politely while he was still in his car.

arrival, Trooper Rylan approached side of the car, and can be heard on the video introducing himself and asking if he knew why he was stopped. said he was told he was speeding, but he thought he was

going about miles per hour. statement that he thought he was going miles per hour struck Hylan as a lie, Rylan testified, because Trooper Reed told Rylan that the appropriately calibrated radar clearly showed traveling at 64 miles per hour. While neither officer overemphasized its import, Reed also found response about speed unbelievable.

told Hylan that he was giving his passenger a ride home because the passenger had been drinking. confirmed that he was driving his mother's car, that he was from Loudon, Virginia, and that he was giving his passenger a ride home because the passenger's brother asked. When asked if had anything in the car Hylan needed to know about, said he had nothing. In a fast staccato, Hylan asked whether or his passenger had any "drugs, knives, grenades, bombs, dead bodies; you all didn't kill your girlfriend and stick them in the back?" Ex. 2, at again said he was taking his passenger home and denied they had anything. Hylan told he would feel safer if cut the car off, which did.

Hylan credibly testified that, although he did not say so to he also smelled a strong odor of marijuana emanating from the car as he approached it. Instead, Hyland said to Saul, "That trooper over there tells me he smells marijuana in the car, okay? who's got the

4

(U.S. 16:40; U.S. Saul

Saul "up "dudes"

(U.S. U.S. 12:40.)

Saul Saul "Yes

(U.S. 17:00; U.S. :00.) Saul

"Well, Saul "You So,

(U.S. 0; U.S. :05.) Saul "I'm (U.S. Saul "All Saul

"blunt." Saul's Saul Saul Saul's

"hyped Saul Saul

Saul marijuana on them?" 6

Ex. 1, at Ex. 2, at 12:35.) said they did not have marijuana in the car, but when prompted by Hylan to respond honestly, confirmed they had been at the shop" around three or four other who had been

smoking, but that they had not smoked. Ex. 1, at 16:45; Ex. 2, at Rylan said the smell might be on their clothes and asked if minded ifhe searched the car. responded, I do mind because, if you don't have no ... we don't got nothing." Ex. 1, at Ex. 2, at 13 During the interaction, repeatedly said he was just driving his passenger home.

Rylan then said, let me tell you this, okay? In the state of Virginia, because we smell marijuana .... " finished his sentence: got the right to search the car. I mean, you can search the car." Ex. 1, at 17:1 Ex. 2, at 13 Rylan told to come out of the car and said, gonna lightly pat you down, okay?" Ex. 1, at 17:15.)

said, right." Rylan again said he was going to pat down for weapons. Hylan testified that while guns were less often present in stops involving marijuana, knives were a safety concern because hunting knives, box cutters, or pocket knives were often used to slice down the side of a store-bought cigar to replace the tobacco with marijuana, creating a Rylan stated that he thought he was conducting a consent search given statements.

Just seconds after Rylan told to get out of the car and tum around, Rylan talked to about his hand placement. left hand is not visible from the dash camera, but Rylan

6 During the stop, Rylan's demeanor affected an officious tone, but his interaction remained professional rather than intimidating. This tenor changed to some degree after the gun was found. Without exercising force, Rylan later can be heard saying he had gotten up" because had failed to tell him about the weapon when asked. At the same time, became less compliant, demanding a cigarette and kicking his legs and pulling down his pants in the patrol car where, subsequently, the magazine to the gun was found on the floor. The Court cannot, and does not, consider any of this subsequent interaction when analyzing the decision to pat down in the first instance.

5

(U.S. 17:30.)

Saul 17:34; U.S. Saul (U.S. U.S. 13:20.) Saul

"What

Saul Saul

Saul

United

U.S.

650. United Ohio, U.S. credibly testified that Saul moved his hand to his body toward his waist band. Ex. 1, at The video-which Rylan had not seen prior to this hearing-confirms this. Simultaneous to Saul turning around, Rylan can be heard telling not to reach for his pockets. (U.S. Ex. 1, at Ex. 2, at 13:18.) repeatedly responded, "my bad, my bad." Ex. 1, at 17:36; Ex. 2, at As Trooper Rylan patted down, and as he reached Saul's waistband, he felt something and asked Saul, is that?" Rylan identified the object he felt as a gun, retrieved it from Saul's waistband, and placed it on the back windshield of the car. (U.S. Ex. 2, at 13:33.) Trooper Rylan then handcuffed and ordered Reed to place the passenger in handcuffs. Rylan told both and his passenger that they were being detained for safety and were not under arrest. After checking Saul's criminal record, the officers determined that was a convicted felon and placed him under arrest.

II. Analysis The Court will deny the Motion to Suppress. The States bears the burden of establishing the admissibility of evidence obtained as the result of a warrantless search or seizure by a preponderance of the evidence. United States v. Matlock, 415 164, 177 n.14 (1974). A number of well-known exceptions to the warrant requirement exist, two of which the Court must examine in its determination of the facts at bar. First, a search pursuant to consent is a well established exception to the warrant requirement. Lattimore, 87 F.3d at The second exception, known as a Terry search pursuant to the Supreme Court of the States' ruling in Terry v. 392 1 (1968), allows a police officer to temporarily detain a person based on specific and articulable facts, that "criminal activity may be afoot," and frisk the person for weapons based on reasonable, articulable suspicion that the person is "armed and presently

6

U.S. 30.

Show Saul

Saul

States Saul

States

U.S.

U.S.

650.

United 2001); U.S. dangerous to the officer or to others." Terry, 392 at 24, The Court examines these two exceptions seriatim.

A. The Totality of the Circumstances Does Not that Gave

Consent to Search The totality of circumstances demonstrate a near equal likelihood that consented, or that he merely acquiesced, to the search of the car or the pat-down of his person. Thus, the United has not met its burden of proof regarding consent. The Court will not find that

gave knowing, voluntary consent for the pat-down search.

1. Applicable Law: Consent Searches When the United asserts that a search was valid based on consent, the government must show "that the consent was, in fact, freely and voluntarily given." Schneckloth v. Bustamonte, 412 218,222 (1973) (citation omitted). "This burden cannot be discharged by showing no more than acquiescence to a claim of lawful authority." Bumper v. North Carolina, 391 543, 548-49 (1968). In the analysis of whether consent was freely and voluntarily given, the Court must look to the totality of the circumstances and make a fact-based determination. Lattimore, 87 F.3d at The Court may consider, among other facts, the "characteristics of the accused," including his or her age and experience with the criminal justice system, and the "conditions under which the consent to search was given, 'such as the officer's conduct, the number of officers present, and the duration, location, and time of the encounter.'" !d. (citations omitted). The Court may also look to whether the accused knew he or she had the right to refuse consent, but this factor cannot be dispositive. States v. Boone, 245 F.3d 352, 362 (4th Cir. see also Schneckloth, 412 at 231 (rejecting any proposed

7

Saul

Saul

Saul Saul

United States Saul

U.S. "consent"

Saul's

500 U.S.

Some Saul's Saul "all right" Saul,

U.S.C. Saul See "suggest[Saul

Saul

Saul. requirement of advising a subject of his or her right to refuse consent before eliciting such consent).

2. The Court Will Not Find that Gave Consent While many factors suggest it could, the Court will not rest its decision on having given voluntary consent for the pat-down search. The Court finds that the facts could show that Hylan commanded to get out of the car and told that he would conduct a pat-down for safety. 7

Thus, in the Court's consideration ofthe burden of proof, the has failed to show under a totality of the circumstances that consented, rather than merely acquiesced to, Rylan's show of authority. When an officer announces that he or she has lawful authority to conduct a search, when in fact none exists, 8

mere acquiescence to that authority does not support a finding of consent. Bumper, 391 at 549 (holding that to search given when an officer claims to have a warrant but does not is constitutionally invalid). Here, statement that he thought the trooper had the right to search his car, and his ambiguous response to the notice regarding a pat-down, falls close to, but just short of, meeting the government's burden to establish a consent search. Rylan's subjective belief otherwise is not determinative. Florida v. Jimeno, 248,251 (1991) ("The standard for measuring the scope of a suspect's consent

7

of characteristics and the nature of the conditions under which said suggest that consent may not have been a product of coercion. First, an adult, likely understood his rights. The charged offense, possession of a firearm by a convicted felon, in violation of 18 § 922(g)(l), implies that has some experience in the criminal justice system. Boone, 245 F.3d at 362 (noting that the defendant's previous felony convictions ed] that he was not a newcomer to the law"). Indeed, knew enough to initially decline a search of his car. After that, stated that he knew that the law gave the trooper the right to search the car, and told him he could search the car.

8 The Court finds here, of course, that the officers did have lawful authority to conduct a pat-down of (See infra Part II. B.)

8

Totafitv

U.S. 30.

201,206 under the Fourth Amendment is that of 'objective' reasonableness .... "). The Court will thus not find that the search was lawful pursuant to Saul's consent. However, because the facts establish that Hylan' s pat-down search occurred as a result of a different exception to the warrant requirement, namely, through a lawful Terry stop, the Motion to Suppress will be denied.

B. The of the Circumstances Justifies the Pat-Down Conducted The totality of the circumstances supports reasonable, articulable suspicion, based on specific, articulable facts, that Trooper Hylan properly conducted a pat-down for officer safety after he and Trooper Reed smelled marijuana in the car.

l. Applicable Law: Terry Frisks A police officer may temporarily detain a person based on specific and articulable facts that "criminal activity may be afoot," and then frisk the person for weapons based on reasonable and articulable suspicion that the person is "armed and presently dangerous to the officer or to others." Terry, 392 at 24, In deciding whether justification for a frisk exists, the court looks to the "'totality of the circumstances to determine if the officer had a particularized and objective basis for believing that the detained suspect might be armed and dangerous."' United States v. Robinson, 814 F.3d (4th Cir. 2016) (quoting United States v. George, 732 F.3d 296, 299 (4th Cir. 2013)). Because the standard is an objective one, the officer's "subjective impressions are not relevant" to the analysis. !d. (citing George, 732 F .3d at 299).

2. The Officers Had Reasonable, Articulable Suspicion that Saul's

Vehicle Contained Marijuana The totality of the circumstances, and particularly the smell of marijuana confirmed by two state troopers, amply supports the reasonable, articulable suspicion that Saul's vehicle contained illegal drugs. The Fourth Circuit repeatedly has held that "[a]n officer's detection of

9

activity" See, 2016 2016) 300 2002)). 9

See Sakyi, 160 "when

"In

Saul

See, 2016 2009) States 2004)). 10

H S.3d 2013).

See States 160

10 marijuana odor [emanating from a vehicle] is sufficient to establish ... probable cause" "to believe the vehicle contains evidence of criminal and therefore provides a basis for a legal search of the vehicle. e.g., United States v. Palmer,--- F.3d ---, WL 1594793, at *6-*7 (4th Cir. Apr. 21, (citing United States v. Carter, F.3d 415,422 (4th Cir.

Here, Trooper Rylan and Trooper Reed credibly testified that they smelled the odor of marijuana emanating from the vehicle.

The Fourth Circuit does not require particular suspicion as to one occupant versus the other when officers smell marijuana inside a vehicle. 10

F.3d at 169 (noting that drugs are suspected in a vehicle and the suspicion is not readily attributable to any particular person in the vehicle, it is reasonable to conclude that all occupants of the vehicle are suspect"). the case of a search, when the [marijuana] odor emanates from a confined location such as an automobile or an apartment, ... officers may draw the conclusion that marijuana is

9

contends that the mere odor of marijuana, with no other facts to suggest that the narcotic exists, cannot support reasonable, articulable suspicion. This argument is belied by numerous Fourth Circuit cases holding to the contrary. e.g., Palmer, WL 1594793, at *6-*7; United States v. Kellam, 568 F.3d 125 (4th Cir. (citing United v. Humphries, 372 F.3d 653, 659 (4th Cir.

Saul argued in his pre-hearing memoranda that, during an investigatory stop of three males standing in a high crime area, the smell of marijuana surrounding a group of individuals as opposed to a specific person cannot support reasonable, articulable suspicion particularized to a person. Saul cites an opinion from the Florida Court of Appeals. D. v. State, 121 76, 82 (Fla. App. That Florida state court found unpersuasive testimony that a puff of smoke and the strong odor of marijuana, absent other indicia, justified a pat-down search of one member of the group.

First, as discussed above, the Fourth Circuit has found otherwise. United v. Sakyi, F.3d 164, 169 (4th Cir. 1998). Second, this non-binding authority involves a materially different factual scenario. Here, two occupants sat in a car smelling of marijuana after it had been pulled over for reckless driving by speed. Two different officers, approaching either side of the car at different times, credibly testified that they smelled a strong odor of marijuana from the car. The odor emanated from a confined space. In any event, this shows, by proximity, the connection of the odor with each occupant.

United 2004).

160 Saul

Saul Saul

Saul's

U.S. Pat-Down

Saul

160

United States 204, 210 2010) ("[A]n present in the automobile or the apartment." States v. Humphries, 372 F.3d 653, 659 (4th Cir.

Here, two separate officers smelled marijuana emanating from inside the car, even though the car windows remained open for approximately ten minutes. This alone gave reasonable, articulable suspicion that the vehicle contained illegal drugs. Sakyi, F.3d at 169. Moreover, after initially denying marijuana presence, subsequently backtracked by admitting he had earlier been near others who had smoked. While was polite, a reasonable officer could conclude that was, at the least, obfuscating. This behavior further supported the officers' testimony that they believed vehicle could contain marijuana. These facts led to the reasonable, articulable suspicion that criminal activity was afoot. Terry, 392 at 24.

3. The Brief for Safety Was Justified Here The totality of the circumstances, including the smell of marijuana during a traffic stop, also supports reasonable, articulable suspicion that was armed and dangerous, allowing Trooper Hylan to conduct a brief pat-down for safety purposes.

The Fourth Circuit plainly has held that when an "officer has reasonable suspicion that illegal drugs are in the vehicle, the officer may, in the absence of factors allaying his safety concerns, order the occupants out of the vehicle and pat them down briefly for weapons to ensure the officer's safety and the safety of others." Sakyi, F.3d. at 169. Numerous courts have confirmed the lawfulness of a limited pat-down search upon the detection of marijuana during a traffic stop. See v. Rooks, 596 F.3d (4th Cir. officer who has reasonable suspicion to believe that a vehicle contains illegal drugs may order its occupants out of the vehicle and pat them down for weapons. Because [the police officer] detected

11

United 2007)

"indisputable

officer").

Under

Saul

Saul's United 201 2016), Saul

Saul

State (Supp'l Supp. Saul 20

Saul "crime "fairly general."

Saul. See 702. marijuana in the [vehicle], he was authorized to conduct a pat-down for weapons."); States v. Henderson, 237 F. App'x 834, 837 (4th Cir. (finding pat-down constitutional when the officer frisked a suspect after he denied, but then admitted possessing marijuana, citing the nexus between drugs and guns" that "presumptively creates a reasonable suspicion of danger to the

Here, a lawful traffic stop for reckless driving had been conducted late on a December night. Two officers testified to smelling marijuana. Rylan credibly testified that he had considerable experience retrieving knives and other weapons during marijuana stops. 11 the facts of this case and binding Fourth Circuit precedent, Trooper Hylan had ample objectively reasonable bases to do exactly what he said he would-briefly pat down for safety purposes.

Finally, heavy reliance on the Fourth Circuit decision in States v. Robinson, 814 F.3d (4th Cir. does not persuade. First, this Court cannot apply the aspect of the decision urges it to because the Fourth Circuit granted a rehearing en bane, vacating the

11

In a Supplemental Memorandum, in an attempt to discredit any Fourth Circuit precedent that narcotics can suggest dangerousness, places before the Court certain arrest data for Northern Neck counties as reported by the Virginia Police. Mem. Mot. 2-3, ECF No. 26.) claims these data demonstrate that only percent of"narcotics" arrests also show weapons arrests in representative Northern Neck counties. (/d.) The Court rejects such a conclusion.

No record of how these statistics were compiled exists. admits these statistics" are (/d. at 2.) They lack any showing about methodology using reliable principles and methods, reliably applied. The

"narcotics" data cannot, with specificity, be tied to marijuana arrests. And this Court has no way to determine these data include instances when weapons were recovered, but not charged. Trooper Hylan testified that he often recovers knives when he finds marijuana during a traffic stop. While he stated that all the knives posed potential danger to the officers' safety, not all of the weapons were illegal, explaining some of the discrepancy between the frequency of narcotics and weapons arrests in the data presented by

This Court cannot evaluate the admittedly general material. Fed. R. Evid.

12

14-4902 2016);

204.

Saul

Saul Saul Saul panel decision. Robinson, No. (4th Cir. April25, 4th Cir. R. 35(c). More pertinently, the circumstances in Robinson are not analogous. There, the officers acted on an anonymous tip that a person in a Toyota Camry leaving a high crime area was carrying a weapon that he concealed once he entered the car. Finding a Camry matching that description, the officers pulled over the car after noticing that the occupants were not wearing seatbelts. Noting that West Virginia law did not prohibit carrying concealed weapons, the Court held that the officers had no further facts to show that Robinson was also presently dangerous. "Because the carrying of a concealed firearm is not itself illegal in West Virginia, and because the circumstances did not otherwise provide an objective basis for inferring danger, [the Court] must conclude that the officer who frisked Robinson lacked reasonable suspicion that Robinson was not only armed but also dangerous." Robinson, 814 F.3d at

Citing Robinson, Saul urges this court to take into account the time and context of the behavior that poses a threat to officer safety. (Mot. Suppress 5 n.2, ECF No. 21.) Noting that Robinson rested on newer laws that legalized carrying a concealed weapon, argues that his "traffic stop and pat down happened after several states, including Maryland, had legalized or decriminalized all marijuana possession and numerous other states had legalized medical marijuana possession." Id But does not contend that marijuana had been legalized or decriminalized in Virginia, where was stopped. does not argue that the presence of marijuana in his car would be legal in Virginia, nor could he. 12

Robinson does not pertain, legally or factually.

12

This is true whether or not the marijuana at issue was "burnt" or "non-burnt," a distinction these

officers could not swear to following extensive, and somewhat perplexing, questioning by defense counsel. If the marijuana were burnt, an objective officer in Virginia

13

Saul's

Order

b-3-/0

See Va.

See 18.2-250.l(A).

III. Conclusion For the foregoing reasons, the stop and seizure of Saul fell within constitutional bounds. Trooper Reed had probable cause to execute the traffic stop. Troopers Hylan and Reed had reasonable, articulable suspicion that Saul possessed illegal drugs, permitting the minimal intrusion of a pat-down for the safety of Saul and the officers. The Court will deny Motion to Suppress. (ECF No. 21.)

An appropriate shall issue.

Richmond, Virginia Date:

could reasonably suspect that the driver might be operating the vehicle under the influence, an illegal act. Code§ 18.2-266. If the marijuana were non-burnt, an objectively reasonable officer in Virginia might conclude that the occupants knowingly (because of the smell) possessed marijuana in the car illegally. Va. Code§

14