USA v. Jarod Douglas Turner

2023 | Cited 0 times | W.D. Texas | January 25, 2023

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS

SAN ANTONIO DIVISION

UNITED STATES OF AMERICA vs.

JAROD TURNER, Defendant.

§ § § § § § § § §

NO. 5-21-CR-00356-FB

REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE To the Honorable United States District Judge Fred Biery:

This Report and Recommendation concerns Defendant Motion to Suppress. See Dkt. No. 26 (motion); Dkt. No. 31 response). The District Court referred the motion, and this Court held a hearing on October 12, 2022. Dkt. Nos. 34 (motion to continue by Defendant), 40 (hearing minute entry), 42 (hearing transcript). Defendant and the Government each filed briefing after the hearing. See Dkt post- -hearing brief). Jurisdiction for this Report and Recommendation derives from 28 U.S.C. § 636(b)(1). See also Local Rule CR-58; App. C to Local Rules.

For the reasons discussed below, the Motion to Suppress, Dkt. No. 26, should be DENIED.

Background over the car driven by Defendant Jarod Turner. Events escalated, lea

the chase, officers found a loaded gun magazine in his pocket. In his car officers found a pistol

and an unopened cartridge of THC oil in the center console as well as several ounces of marijuana in the trunk.

Starting back at the beginning, the scenario began with Deputy Calderon sitting in his parked patrol car on the side of Villa Street in San Antonio. As passed by, Calderon noticed it lacked a registration sticker . Tr. at 6:18-20, 67:10-12. After Turner drove past, Calderon pulled his patrol car around and onto the road to follow Turner. See Tr. at 65:19-66:10. According to Calderon, and a stop sign, rolled

through the stop sign, and then turned right onto Montgomery. Tr. at 6:23-25.

Turner testified that he stopped at the stop sign completely before turning onto Montgomery. Tr. 66:9-10. nce Calderon was on Montgomery behind Turner, Calderon turned lights on and directed Turner to pull over. Turner pulled off the road and into the parking lot for a tire shop on Montgomery. Tr. at 7:1-7, 66:10-15.

Calderon got out of his patrol car Although equipped with a body- activate the camera at this time. Tr. at 24:15-17. Calderon testified that as he approached car, he rner] of the vehicle to step

Tr. at 7:17-21. Turner testified that Calderon simply walked up to [Calderon] -19. Calderon

but instead moved immediately to secure Turner. Tr. 24:18-25.

Turner initially complied and got out of his car. Calderon then began to place him in handcuffs. It is at this point, as Turner exited his car and turned around to be handcuffed, that -worn camera began to record, albeit without sound for the first 30 seconds. See

Ex. 2A. According to Calderon, he explained at this point to Turner that Tr. at 8:2-3. But a not greet him, did not explain why he had been pulled over, and did not explain why he was

Mot. at 3; see also Tr. at 66:17-22.

And although Turner initially complied wit Calderon s and moved to secure the other in the cuffs, Tr. at 8:14; see Ex. 2A at 0:00:08. Turner testified that he noticed at the time that t asked for his tell me why he was trying to put handcuffs on me -65:3. As this happened, Turner explained at the hearing, he

-9.

a struggle ensued, and Calderon took Turner to the ground. Tr. at 9:4. The two men then wrestled, perhaps for a minute or a minute and a half . Tr. at 9:5-8. The video body-worn camera shows a struggle that appears to last approximately one minute. See 2A-1 at 0:00:15-0:01:16. A delivery driver was present and witnessed Tr. at 9:10-11. After wrestling for some time, Turner was able to shed

his shirt and flee on foot -1 at 0:01:16.

At this point, backup arrived in the form of Officer Campos, who pulled up in his patrol car. See video from Campos body-worn camera) at 0:00:38. Campos drove up to the scene just as Turner took off running down the road. Campos immediately got out of his car and gave chase on foot. Id. at 0:00:42. As Campos ran after Turner, Campos repeatedly ordered

Turner to get on the ground. Id. at 0:00:42-50. Turner ignored Campos and continued running. Turner made his way into a nearby residential neighborhood, and Campos followed behind with Turner in sight. Id. at 0:00:50-0:01:44.

Calderon then arrived once again, pulling up to join the chase in his patrol car and stopping it as Turner moved into the carport area of a home. Id. at 0:01:44. Campos arrived on foot at the carport seconds later, and he and Calderon then confronted Turner in the carport. As Campos approached, Calderon drew his taser and pointed it at Turner. Id. at 0:01:44-0:02:13. The officers ordered Turner to the ground and within a few seconds Calderon walked up to Turner and fired his taser; the taser can be heard discharging at around 1 minute 53 seconds into the video from -worn camera. Id Id. at 0:02:05-12. The other prong appears in the video to have lodged in the front of Tur thigh. Id. at 0:03:38. The officers soon handcuffed Turner and patted him down. They discovered Tr. at 13:24-25. At that point Calderon directed another -11. When officers discovered a pistol the entire car, including the trunk. And at that point officers discovered the marijuana in the trunk. See generally Mot. at 5 (providing timeline).

Turner filed the instant motion to suppress, seeking to suppress the evidence discovered during the office rner and his car.

Analysis A. The Warrantless Searches of Turner and His Car Were Authorized. Although the search of Turner and Tur were warrantless, they were nonetheless authorized under the circumstances. Automobiles may be searched without a warrant if there is

United States v. McSween, 53 F.3d 684, 686 (5th Cir. 1995); accord Arizona v. Gant, 556 U.S. 332, 347 United States v. Ross, 456 U.S. 798, 820-821 . . . (1982), authorizes a search of any area of the

vehicle in which the evidence might be fo Whether an officer has probable cause to search a vehicle depends on the totality of the circumstances viewed in light of the observations, Id. (quotation omitted). A warrantless search of a person may be conducted pursuant to a lawful arrest. Bey v. Prator Chimel v. California, 395 U.S. 752, 762-

63 (1969)).

regarding probable cause to believe the car contained contraband or other evidence of a crime at the time officers searched it. Just before this search, officers discovered a loaded gun m s pocket after they subdued and arrested him following his fight with and flight from Calderon. See United States v. Fiesco, 21 F.3d 1108, 1994 WL 171614 at * 4 (5th Cir. 1994) (per curiam, unpublished but precedential) (inference of guilty knowledge can be , United States v. Bonner, 363 F.3d 213, 218 (3d Cir. 2004) (officers had reasonable suspicion to stop defendant for further investigation following his flight from lawful traffic stop); see Tex. Penal Code § 38.03(a). At that point, Turner had m in handcuffs, ignored police commands to stop and get on the ground, and fled from police. There is no

state-law right to physically resist even an unlawful arrest in Texas. See Tex. Penal Code § It is no defense to prosecution under this section that the arrest or search was unlawful. Moreover,

Calderon also testified that he , if credible, alone likely justified a search for the presence of drugs. See e.g., McSween, 53 F.3d at 686-87 (citing United States v. Reed, 882 F.2d 147, 149 (5th Cir.1989), United States v. Henke, 775 F.2d 641, 645 (5th Cir.1985), United States v. Gordon, 722 F.2d 112, 114 (5th Cir.1983), and United States v. McLaughlin, 578 F.2d 1180, 1183 (5th Cir.1978), for the proposition that the smell . Once Turner resisted and fled, officers were justified in searching his pockets after they caught up to him, subdued him, and secured him in handcuffs. See Chimel, 395 U.S. at 762- it is reasonable for the arresting officer to search the person arrested in order to remove any weapons that the latter might seek to use in order to resist arrest or effect his escape see also Riley v. California, 573 U.S. 373, 383 (2014) (same).

B. Officer Initial Attempt to Handcuff Turner and the Eventual Use

of a Taser Do Not Warrant Suppression of Evidence. excessive force, or the alleged initial illegal seizure and/or arrest, as a predicate to suppress

evidence insufficiently connected to those alleged constitutional violations. Typically, a Fourth Amendment violation results in evidence suppression when the violation is connected to the acquisition of the evidence and where exclusion vindicates the interests protected. See Hudson v. Michigan, 547 U.S. 586, 592-93 (2006). For example, when a warrantless search unsupported by probable cause yields incriminating evidence, the evidence can be subject to suppression.

But suppression of evidence is not an available remedy for an alleged Fourth Amendment violation where there is no causal connection . . . between the alleged police misconduct and the United States v. Watson, 558 F.3d 702, 705 (7th Cir. 2009), see also United States v. Edmonds, 606 Fed. Appx. 656, 660 n.3 Because there is no causal connection between the search and seizure and the

force used, the exclusionary rule does not provide Edmonds a basis to obtain suppression ; cf. United States v. Edwards, 666 F.3d 877, 886-87 (4th Cir. 2011) (declining to adopt but-for test t requested by the Government and holding that where sexually invasive search was performed in an unconstitutionally dangerous manner suppression of the evidence was appropriate). the rule alleged to have been violated. See New York v. Harris, 495 U.S. 14 (1990).

Further, suppression of evidence is not an available remedy when the causal connection between the alleged Fourth Amendment violation and the discovery of the evidence is too attenuated. United States v. Mendez, 885 F.3d 899, 909 (5th Cir. 2018). is evident even as he invokes his alleged initial de facto arrest by Calderon, which Turner claims then set off a chain of events ultimately leading up to the search and seizure of evidence. Even a but-for causal connection between a Fourth Amendment violation and the act of obtaining evidence is not necessarily sufficient to warrant suppression. Id.

(citing Hudson, 547 U.S. at 592- 93). development of probable cause to justify a previously unlawful arrest is an important attenuating factor See id. at 910 (discussing other factors to consider in context of incriminating statements obtained

after illegal arrest) (quotation omitted). In evaluating whether the causal connection is too attenuated to justify suppression of evidence, courts consider temporal proximity of the misconduct relative and flagrancy of the official misconduct Utah v. Strieff, 579 U.S. 232, 239 (2016) (citing Brown

v. Illinois, 422 U.S. 590, 603-04 (1975) causal

Id. at 238).

Here, the evidence was not obtained because excessive force was allegedly used or even because Turner was placed under de facto arrest. Other key events were far more significant in the after Calderon says he smelled marijuana as he approached the car during an indisputably lawful stop, after Turner resisted Calderon physically, after Turner fled and ignored repeated instructions to stop and get to the ground, and after As described in the section above, o pt to handcuff him, the officers had probable cause to arrest Turner for resisting, and to search Turner and his car all of which are significant intervening circumstances.

And this analysis change even if a hypothetical seizure or arrest at the time Turner was initially pulled over been unlawful, because no such unlawful seizure actually took place. , physical attempt to handcuff him. See United States v. Wright, No. 21-4089, ---F.4th ----, 2023

WL 240687, *5 (5th Cir. Jan. 18, 2023) (selected for publication) (noting assertion of authority alone may constitute seizure if defendant submitted to that authority). It is clear from the undisputed facts that no seizure was completed until after officers caught up with the fleeing Turner and placed him in handcuffs. Simply put, a fleeing man is not seized until he is physically overpowered. Id. (quoting Brendlin v. California, 551 U.S. 249, 262 (2007)). It was the events emanating from the arrest following flight that ultimately culminated in the discovery of the evidence at issue here. Those events caused the search that resulted in evidence being found, not the initial decision to place Turner in handcuffs (or even the decision to deploy the taser). Finally, to the extent the decision to place Turner in handcuffs was the first in a chain of events leading to the search of the car, that decision was at worst legally dubious and certainly does not

Turner s resistance and flight, necessitates a finding that suppression is not warranted here.

The cases Turner invokes in support of his suppression efforts do not alter th conclusion. For example, in United States v. Muse, No. CR 18-75, 2018 WL 6523383, at *1 (E.D. La. Dec. 12, 2018), unlike here, de facto arrest and the search that revealed incriminating evidence. And had Calderon successfully handcuffed Turner and then proceeded, without more, to search Turner and his car,

things might be different for his efforts at suppression. 1

But that is not what happened. Instead, the chain of causation here tions, possession of a loaded magazine in his pocket. Muse also did not involve a lawful traffic stop; it

instead involved officers who only smelled marijuana on the street and then arrested the suspect based on nothing else. Id. at *7. -hearing briefing. See Dkt. No. 46 at 4-6.

C. The Propriety of the Initial Handcuffing and Later Use of a Taser Need Not

Be Addressed at This Juncture. Having concluded that suppression is not an appropriate remedy here, it bears noting that Turner raises significant arguments about the degree and type of force used. It is not clear to the Court whether Calderon was justified in attempting to handcuff Turner initially. As the

1 Such a sequence of events would put Turner more in line with the fact pattern in Wright, 2023 WL 240687, another case Turner has cited. See Dkt. No. 54 (advisory). In that case, the Fifth Circuit found the defendant had been seized when the officer pulled behind his car with emergency lights and ordered him to remain in his vehicle. Although the defendant did not comply fully with attempt to flee or terminate the enco Wright, 2023 WL 240687, *6. The Court then proceeded to analyze whether that seizure was lawful and whether the resulting evidence should be suppressed.

the circumstances and whether they amounted to a de facto arrest. See -Hearing Br at 2;

see also Turner Post-Hearing Br. at 6-7. Calderon warranted placing Turner in handcuffs at the outset of the interaction. Given that a search of the car for drugs justified due to the scent of marijuana Calderon says he detected, and given that the roadway was a busy one, the Government may be correct. But Turner points out that there were individuals close to the traffic stop who were smoking, see Tr. at 26:5- 10, necessarily coming from the car and not from those individuals, see Tr. at 7:17-21; 24:17-20.

The propriety of the use of a taser is also raised. It is true that Turner fought Calderon and then ran from him. But Turner was exhausted from running when Calderon and Campos caught up to him, and Turner appeared in the various videos to be in the process of surrendering when the taser was deployed. But events transpired quickly, as the video evidence reveals. Calderon testified hand. It turned out it was a phone. The video evidence is not conclusive, as far as the Court can tell. The Court need not get to the bottom of this because the United States v. Wijetunge, No. CRIM.A. 15-144, 2015 WL 5098667, at *5 (E.D.

La. Aug. 31, 2015) (citing United States v. Garcia Hernandez, 659 F.3d 108, 114 (1st Cir. 2011), Watson, 558 F.3d at 704-05). See also Edmonds, 606 Fed. Appx. at 660 n.3 the amount of force used, the

officers had reasonable suspicion to engage in a Terry stop and the Here, for the reasons stated above, the search of Turner following his apprehension was lawful, and the outcome of the present motion to suppress would not be altered even

Conclusion For the reasons stated above, the Motion to Suppress, Dkt. No. 26, should be DENIED.

Instructions for Service and Notice of Right to Object/Appeal The United States District Clerk shall serve a copy of this report and recommendation on all parties by either (1) electronic transmittal to all parties represented by attorneys registered as a requested, to those not registered. Written objections to this report and recommendation must be

filed within fourteen (14) days after being served with a copy of same, unless this time period is modified by the district court. 28 U.S.C. § 636(b)(1); Fed. R. Crim. P. 59. The objecting party shall file the objections with the Clerk of the Court, and serve the objections on all other parties. A party filing objections must specifically identify those findings, conclusions, or recommendations to which objections are being made and the basis for such objections; the district court need not cons the proposed findings, conclusions, and recommendations contained in this report shall bar the

party from a de novo determination by the district court. Thomas v. Arn, 474 U.S. 140, 149-52 (1985); Acuña v. Brown & Root, Inc., 200 F.3d 335, 340 (5th Cir. 2000). Additionally, failure to timely file written objections to the proposed findings, conclusions, and recommendations contained in this report and recommendation shall bar the aggrieved party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the district court. , 79 F.3d 1415, 1428-29 (5th Cir. 1996) (en banc).

IT IS SO ORDERED. SIGNED this 25th day of January, 2023.

RICHARD B. FARRER UNITED STATES MAGISTRATE JUDGE