

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 14-cr-20290-SHM
)	
QUADRICUS DEAN,)	
)	
Defendant.)	
)	

REPORT AND RECOMMENDATION

Before the court by order of reference is defendant Quadricus Dean's Motion to Suppress, filed on January 31, 2015. (ECF No. 18.) The government filed a response in opposition on January 14, 2015, and an amended response on January 27, 2015. (ECF Nos. 21, 22.) The court conducted a suppression hearing, and subsequently took the motion under advisement. For the reasons below, it is recommended that the Motion to Suppress be denied.

I. PROPOSED FINDINGS OF FACT

The following proposed findings of fact are based on the testimony of the witnesses and exhibits admitted at the hearing. Specifically, the court heard testimony from Memphis Police Department ("MPD") Officers Phillip Beasley and Alfred Neely,

and from Dean's fiancée, Victoria Peeples.¹ The court received into evidence a copy of Dean's arrest ticket, an affidavit of complaint, and two map images showing the area where the traffic stop in question occurred. The court, having carefully considered the testimony and evidence presented at the hearing, finds the officers' testimony to be credible. Therefore, the court adopts their account of the events as its findings of fact.

On August 31, 2013, at approximately 8:00 p.m., MPD Officers Phillip Beasley and Alfred Neely were traveling in separate patrol cars eastbound on Winchester Road in Memphis, Tennessee. Winchester Road runs in an east-west direction, with three lanes of traffic in each direction and a center median lane that allows vehicles to execute left turns. At the time, the officers were in the process of responding to an alarm call. As Officer Beasley approached the intersection of Winchester Road and Kirby Road, a silver Chevrolet Impala exited the parking lot of the Laundry Supercenter located on the north side of Winchester Road. The Impala crossed over the westbound lanes of traffic and merged into the middle eastbound lane in which Officer Beasley's vehicle was traveling. The Impala almost struck Officer Beasley's vehicle, causing Officer Beasley to

¹The transcript of the suppression hearing was filed on April 23, 2015.

slam on his brakes to avoid a collision.² The Impala then quickly maneuvered into the left "fast" lane without signaling, nearly colliding with another vehicle in that lane.³ At that point, Officer Beasley terminated his response to the alarm call, accelerated to catch up to the Impala, and initiated a traffic stop. The Impala turned left onto Kirby Road and came to a stop. Officer Beasley pulled behind the Impala and exited his patrol car. Officer Neely, who had been traveling in front of Officer Beasley's vehicle, turned around to assist his partner with the traffic stop.

Officer Beasley approached the driver's side of the Impala while Officer Neely approached the passenger's side. Officer Beasley told the driver, later identified as defendant Quadricus Dean, that he was being pulled over because he almost caused an

²Officer Beasley testified the Impala "very likely" would have hit his patrol car if he (Officer Beasley) had not applied his brakes.

³Victoria Peeples, Dean's fiancée, testified that she worked at the Laundry Supercenter that evening. Dean met with Peeples for eight to ten minutes in the parking lot of the Laundry Supercenter and then drove out of the parking lot. Peeples testified that she saw Dean turn on his left turn signal, exit the parking lot, and merge onto Winchester Road. She testified that she did not see Dean's vehicle swerve or come into close contact with any other vehicles, including any police vehicles. The court credits Officer Beasley's testimony over Peeples's testimony. The court's credibility determination is based on the witnesses' demeanor as they testified, Peeples's close personal relationship with Dean, and the fact that the officers were in the process of responding to an alarm call and terminated their response in order to stop Dean's vehicle.

accident with the officer's patrol car and nearly hit another car when he turned into the "fast lane" without signaling. The officer asked Dean for his driver's license and proof of insurance. Officer Beasley testified that Dean started trembling, seemed confused, and did not respond to the officer. Officer Beasley "felt kind of uncomfortable with his [Dean's] actions, his demeanor." Officer Neely, while standing on the passenger's side, detected a strong smell of raw marijuana coming from the vehicle. He signaled to Officer Beasley that he smelled marijuana. Officer Neely testified that he could not recall if the windows of the vehicle were up or down.⁴

Officer Beasley then ordered Dean to exit the vehicle, at which time he was handcuffed and placed in the back of Officer Beasley's patrol vehicle. Officer Neely searched the vehicle. In the center console armrest (which was closed), he found approximately one gram of raw marijuana, sixteen grams of crack cocaine, and two grams of powder cocaine in plastic baggies. He also found inside the center console two digital scales, a spoon with cocaine residue, and a black handgun loaded with seventeen rounds of ammunition. No evidence of burnt or smoked marijuana

⁴Officer Neely testified he is familiar with the odor of marijuana based on his "previous experience with law enforcement and dealing with it, and I done arrested several involving intoxicant, marijuana I guess." Officer Beasley testified he did not detect the odor of marijuana because he had a sinus infection that day.

was found in the vehicle. On the floorboard behind the driver's seat, Officer Neely found Dean's driver's license. The officers then placed Dean under arrest. (See Ex. 1, Arrest Ticket.) Dean was later indicted by a federal grand jury for being a felon in possession of a firearm, in violation of 18 U.S.C. § 922(g)(1).

II. PROPOSED CONCLUSIONS OF LAW

In his Motion to Suppress, Dean argues that the court should suppress the evidence found inside his Impala because the traffic stop and the officers' search of his vehicle during the traffic stop violated his Fourth Amendment rights. "In determining the constitutionality of an investigatory detention under Terry v. Ohio, we employ a two-part inquiry that asks whether there was a proper basis for the stop and whether the degree of intrusion was reasonably related in scope to the circumstances of the stop." United States v. Guajardo, 388 F. App'x 483, 487 (6th Cir. 2010) (citing United States v. Caruthers, 458 F.3d 459, 464 (6th Cir. 2006)) (internal citation omitted). "Although 'virtually every other circuit court of appeals has held that reasonable suspicion suffices to justify an investigatory stop for a traffic violation,' this circuit has required probable cause to justify an investigatory stop for *completed* misdemeanor traffic violations." Id. (emphasis in original) (quoting United States v. Simpson, 520 F.3d 531, 540

(6th Cir. 2008)); see also Gregory v. Burnett, 577 F. App'x 512, 516 (6th Cir. 2014) (stating that "[p]robable cause is required for an investigatory stop for completed misdemeanor traffic violations; an investigatory stop for an ongoing violation, no matter how minor, requires only reasonable suspicion."). "The requirements of probable cause are satisfied where the facts and circumstances within their (the officers') knowledge and of which they had reasonably trustworthy information (are) sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed." United States v. Davis, 430 F.3d 345, 352 (6th Cir. 2005) (internal quotation marks omitted).

The court finds that the officers had probable cause to stop Dean's vehicle because Officer Beasley observed Dean commit violations of Tennessee Code Annotated sections 55-8-143(a) and 55-10-205. Section 55-8-143(a) provides that "[e]very driver who intends to start, stop, or partly turn from a direct line, shall first see that that movement can be made in safety, and whenever the operation of any other vehicle may be affected by such movement, shall give a signal required in this section, plainly visible to the driver of the other vehicle of the intention to make such movement." Section 55-10-205 prohibits reckless driving, defined as "willful or wanton disregard for the safety of persons or property" As discussed above,

the court credits Officer Beasley's testimony that when Dean merged onto the eastbound lanes of Winchester Road, he pulled directly in front of Officer Beasley's patrol vehicle, nearly causing a collision. Officer Beasley then observed Dean immediately change lanes without signaling, almost causing a collision with another car. Thus, Officer Beasley had probable cause that traffic violations had occurred, which provided him with a lawful basis to initiate the traffic stop. See United States v. Parker, 530 F. App'x 449, 453-54 (6th Cir. 2013) (finding officer had probable cause to believe driver had violated section 55-10-205 after observing driver crossing and straddling yellow line as driver exited a gas station onto a street); United States v. Mamoth, No. 94-6315, 1997 WL 215511, at *3 (6th Cir. Apr. 29, 1997) (finding officer had probable cause to believe that defendants had violated section 55-8-143(a) when he observed driver of motor home change lanes in the vicinity of another vehicle without signaling).

Dean next challenges the officers' search of his vehicle, arguing that they lacked probable cause. The Sixth Circuit has held that the scent of marijuana emanating from a vehicle provides an officer with probable cause to search the vehicle for drugs. See United States v. Johnson, 707 F.3d 655, 658 (6th Cir. 2013) (quoting United States v. Bailey, 407 F. App'x 27, 28-29 (6th Cir. 2011)) ("[A]n officer's detection of the smell

of marijuana in an automobile can by itself establish probable cause for a search."); United States v. Terrell, 483 F. App'x 161, 163 (6th Cir. 2012) ("In fact, this court has noted on various occasions that the odor of drugs in a vehicle is sufficient to establish probable cause to search that vehicle."); United States v. Crumb, 287 F. App'x 511, 514 (6th Cir. 2008) ("[T]he detection of a narcotic's odor, by itself, is sufficient to provide probable cause to conduct a lawful search of a vehicle."); United States v. Foster, 376 F.3d 577, 588 (6th Cir. 2004) ("[W]hen the officers detected the smell of marijuana coming from Foster's vehicle, this provided them with probable cause to search the vehicle without a search warrant."); United States v. Garza, 10 F.3d 1241, 1246 (6th Cir. 1993) ("[S]melling the marijuana then constituted probable cause to believe that there was marijuana in the vehicle. Once this probable cause existed, a search warrant was not necessary."). Although it is improbable that Officer Neely could have detected the odor of one gram of raw marijuana hidden inside the closed center console, the smell could have come from marijuana that had been recently stored in the Impala. United States v. Hollis, No. 5:14-70-DCR, 2014 WL 5471033, at *7 (E.D. Ky. Oct. 28, 2014) ("the smell [of marijuana] may have been . . . a remnant of marijuana recently in the car. . . . The Court credits that [the officer] did smell marijuana as he claimed under oath (both to

this Court and to the state court) and that he was qualified to make that determination."); United States v. Bohanon, 629 F. Supp. 2d 802, 808, 821 (E.D. Tenn. 2009) (finding officer's testimony that he smelled marijuana emanating from a vehicle to be credible even when only "a small personal use amount of raw marijuana" was found on defendant). While the presence of a larger quantity of raw marijuana would have buttressed Officer Neely's testimony, the absence of that evidence does not necessarily call into question his credibility. The court notes that Officer Neely found other evidence inside the Impala consistent with drug distribution, including two digital scales and a loaded handgun. See Hollis, 2014 WL 5471033 at *7 (commenting that the smell of marijuana may have been a remnant of marijuana recently in the car and stating, "it is not lost on the Court that [defendant] was out at 3:00 a.m., with drugs and a firearm in the car, carrying a bankroll in excess of \$4,000.00."). Because the court credits Officer Neely's testimony that he detected the scent of raw marijuana coming from Dean's vehicle, the court concludes that the officers had probable cause to search the vehicle under the automobile exception to the warrant requirement. United States v. Galaviz, 645 F.3d 347, 355 (6th Cir. 2011) ("The automobile exception allows officers to search a vehicle without a warrant if they have 'probable cause to believe that the vehicle contains

evidence of a crime.'") (citation omitted). Therefore, the search did not violate Dean's constitutional rights.

III. RECOMMENDATION

For the reasons above, it is recommended that the Motion to Suppress be denied.

Respectfully submitted,

s/ Tu M. Pham

TU M. PHAM
United States Magistrate Judge

May 22, 2015

Date

NOTICE

ANY OBJECTIONS OR EXCEPTIONS TO THIS REPORT MUST BE FILED WITHIN FOURTEEN (14) DAYS AFTER BEING SERVED WITH A COPY OF THE REPORT. 28 U.S.C. § 636(b)(1)(C). FAILURE TO FILE THEM WITHIN FOURTEEN (14) DAYS MAY CONSTITUTE A WAIVER OF OBJECTIONS, EXCEPTIONS, AND ANY FURTHER APPEAL.