

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

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.) No. 13-cr-20029 JPM-tmp
 JASON CASTLE,)
)
 Defendant.)

REPORT AND RECOMMENDATION

Before the court by order of reference is defendant Jason Castle's Motion to Suppress, filed on March 25, 2013. (ECF No. 21.) The government filed a response in opposition on April 8, 2013. On May 13, 2013, the court held a suppression hearing on the motion.¹ The court heard testimony from the following government witnesses: Memphis Police Department ("MPD") Officer Alexander Corder, MPD Detective Michael Goedecke, and MPD Detective Michael Branning.² The defendant called as witnesses Latasha Webb (the driver of the vehicle stopped by the officers in which Castle was a passenger) and Stanley Green (a records custodian for General

¹The suppression hearing was originally scheduled for April 19, 2013, but was continued upon Castle's motion to May 13.

²At the time of the events at issue, Detective Branning was employed with the MPD. He has since left the MPD and is currently a deputy with the Sheriff's Department in DeSoto County, Mississippi.

Sessions Court, Criminal Division for Shelby County, Tennessee). The court also received into evidence the MPD report of Castle's arrest; the misdemeanor citation issued to Webb for operating a vehicle with excessively tinted windows and driving on a suspended license; records of the criminal case disposition from Shelby County General Sessions Court regarding Castle's state charges for the offense at issue; and a Tennessee Department of Safety and Homeland Security record showing that Castle had valid identification at the time of the offense.

For the reasons below, it is recommended that Castle's Motion to Suppress be denied.

I. PROPOSED FINDINGS OF FACT

The court has carefully considered the evidence presented at the hearing, including the witnesses' demeanor as they testified. The court finds the government's witnesses to be credible, and finds the testimony of Latasha Webb to be not credible.³ Therefore, the court adopts the officers' version of events as its

³The court notes that its credibility determination regarding Webb's testimony does not affect the outcome of Castle's motion. Webb did not dispute that the officers had a valid basis for initiating the traffic stop, nor did she offer any testimony relevant to Castle's interaction with the officers. Although she testified that the officers eventually ran narcotics canines around her car and searched her vehicle (which was contrary to the testimony of the three officers), these purported events did not occur until *after* the officers observed Castle with the gun and arrested him for possession of a stolen firearm. Events that may have transpired after Castle's arrest are not pertinent to the issues this court must address: whether the traffic stop was lawful and, if so, whether the officers exceeded the scope of the stop.

findings of fact.

On April 17, 2012, Officer Corder, Detective Goedecke, and Detective Branning were parked in three separate squad cars near the intersection of Breedlove Street and Keel Avenue in Memphis, Tennessee. They were patrolling that area of the city because it had been identified by the MPD as a high crime area. At around 7:30 p.m., Detective Branning observed a white Chevrolet Impala with dark tinted windows traveling on Breedlove Street in the direction of where Officer Corder's and Detective Goedecke's squad cars were parked. Detective Branning radioed the other two officers and alerted them that there was a car with dark tinted windows heading their way.⁴ Officer Corder and Detective Goedecke saw the car drive past them and observed that the tint on the windows was too dark, in violation of state law. They followed the Impala, and within a few seconds, activated their blue lights and initiated a traffic stop.

Officer Corder approached the vehicle from the driver's side, while Detective Goedecke approached from the passenger's side. Officer Corder asked the driver, later identified as Latasha Webb, for her driver's license. Webb produced a Tennessee state

⁴There was a discrepancy between the officers' testimony as to whether Officer Corder or Detective Branning was the first to see the Impala and observe the dark tint of the windows. However, this discrepancy is immaterial, as each of the officers testified that he personally observed the unlawfully tinted windows prior to initiating the traffic stop.

identification card to Officer Corder, who then proceeded to conduct a records check.⁵ While Officer Corder was checking Webb's information, Detective Goedecke interacted with Castle, who was in the front passenger's seat. Detective Goedecke asked Castle for his identification. Castle responded that he did not have any identification on him, but provided his name and social security number. Detective Goedecke instructed Castle to get out of the car, and Castle complied. As Castle stood outside of the car, Detective Goedecke noticed that Castle was wearing baggy pants that were sagging. He also noticed that Castle was standing in an awkward manner: his back was hunched over and his legs were bent in a squatting stance. Detective Goedecke told Castle to pull up his pants. Castle complied, but he then immediately resumed his squatting stance. By this time, Detective Branning had arrived on the scene and was standing at the rear of the Impala. Detectives Goedecke and Branning both testified that they had never before seen anyone interact with officers in such a manner, and Detective Branning testified that it was "obvious" Castle was trying to

⁵Officer Corder testified at the hearing that he recalled Webb producing a Tennessee identification card, although he also testified that it was possible she actually produced her driver's license. Webb testified that it was likely she did not produce anything to Officer Corder upon his initial contact with her, because she frequently left her purse in the trunk while she drove. The court finds this discrepancy between the testimony of Officer Corder and Webb to be immaterial, as it is undisputed that during the traffic stop Officer Corder received some form of identification from Webb and used that information to conduct a records check.

conceal something.⁶

Detective Goedecke, who testified that he was concerned that Castle might have something on him that could hurt the officers, decided to conduct a brief pat down of Castle for officer safety. He did not conduct a full body frisk, which typically would involve patting down a person's upper torso area, waistband and pockets, and both legs. Instead, he only patted down Castle around his waistband and pants pockets. Because Detective Goedecke did not feel anything suspicious, he told Castle to go stand by Detective Branning at the rear of the Impala. As Detective Goedecke gave Castle this verbal command, he tugged on the waistband of Castle's pants near his lower back, in an attempt to motion him toward Detective Branning. When Castle stood up straight and took a step toward Branning, a silver revolver slid down one of his pants legs and fell onto the ground. Castle proceeded to turn and run from the officers. A chase ensued, and Castle was apprehended by the two detectives as he was attempting to escape through a hole in a fence. Detective Goedecke testified that only forty-five seconds to one minute had elapsed from the moment the Impala was stopped to the moment the gun was discovered.

Officer Corder, who at this time had not yet issued a citation to Webb, sent out a radio alert to other officers in the area

⁶During their testimony at the suppression hearing, the detectives stepped down from the witness stand to demonstrate how Castle stood during his encounter with Detective Goedecke.

describing Castle and his direction of movement. He then placed Webb in the back of one of the squad cars. Officer Corder walked to the passenger's side of the Impala and retrieved the gun. He removed the clip from the gun for officer safety and placed it in his car. The officers conducted a records check and discovered that the firearm recently had been reported stolen. The officers, using a tint meter, determined that the Impala's front driver's window had a visible light transmittance of 15%, well below the minimum 35% required by Tennessee law. Upon learning that Webb had a suspended driver's license, the officers had Webb contact a family member to come pick up the car. She was issued a citation for operating a vehicle with excessive window tint and driving on a suspended license.

On January 24, 2013, a federal grand jury returned an indictment charging Castle with being a felon in possession of a firearm, in violation of 18 U.S.C. § 922(g)(1). Castle now moves to suppress the firearm seized by the officers.

II. PROPOSED CONCLUSIONS OF LAW

A. Whether the Officers Had a Proper Basis for the Stop

"The Fourth Amendment's prohibition against unreasonable searches and seizures by the government extend[s] to brief investigatory stops of persons or vehicles that fall short of traditional arrest." United States v. Guajardo, 388 F. App'x 483, 487 (6th Cir. 2010) (quoting United States v. Arvizu, 534 U.S. 266,

273 (2002)) (internal quotation marks omitted). "In determining the constitutionality of an investigatory detention under Terry v. Ohio, 392 U.S. 1 (1968), 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." Id. (citing United States v. Caruthers, 458 F.3d 459, 464 (6th Cir. 2006)). "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. (quoting United States v. Simpson, 520 F.3d 531, 540 (6th Cir. 2008)) (emphasis in original) (internal quotation marks omitted); see also United States v. Jeffries, 457 F. App'x 471, 477 (6th Cir. 2012). However, when the stop is for an *ongoing* violation, no matter how minor, "reasonable suspicion will be sufficient to justify an investigatory stop." Guajardo, 388 F. App'x at 487 (citing Simpson, 520 F.3d at 541); see also Jeffries, 457 F. App'x at 477 (applying probable cause standard to defendant's violation for driving too closely but reasonable suspicion standard to defendant's obstructed licence plate violation, because the latter was an "ongoing" violation that did not cease when defendant was pulled over).

The court finds that the officers were justified in stopping

Webb's vehicle based on their observation that the windows were excessively tinted, in violation of Tenn. Code Ann. § 55-9-107(a)(1). That statute - a violation of which constitutes an "ongoing" violation and thus falls under the reasonable suspicion standard - provides that it is unlawful for any person to operate a motor vehicle in which any window has a visible light transmittance of less than 35%. In deciding whether an officer had reasonable suspicion to stop a vehicle for a traffic violation, the court must determine "whether, at the moment that they initiated the stop, the totality of the circumstances provided the officers with the reasonable suspicion required in order to detain a citizen under Terry." Feathers v. Aey, 319 F.3d 843, 848-49 (6th Cir. 2003); see also Arvizu, 534 U.S. at 273 ("When discussing how reviewing courts should make reasonable-suspicion determinations, we have said repeatedly that they must look at the totality of the circumstances of each case to see whether the detaining officer has a particularized and objective basis for suspecting legal wrongdoing.") (internal quotation marks omitted). Here, the court finds that the officers, who each provided credible testimony about their first-hand observations, had reasonable suspicion to stop Webb's vehicle for a violation of § 55-9-107(a)(1). See United States v. Shank, 543 F.3d 309, 313 (6th Cir. 2008) (holding that officers had reasonable suspicion, based on their experience and estimation that vehicle was tinted substantially darker than

permitted by law, to initiate traffic stop); Weaver v. Shadoan, 340 F.3d 398, 407-08 (6th Cir. 2003) (finding that vehicle stop was justified because officer had reasonable suspicion that vehicle had improperly tinted windows); United States v. Braden, No. 2:11-cr-20192-JPM, 2012 WL 3552851, at *6 (W.D. Tenn. Aug. 16, 2012) (holding that officers were justified in initiating traffic stop of defendant's vehicle based on officers' reasonable suspicion that vehicle's window tint violated § 55-9-207(a)(1)).

B. Whether the Degree of Intrusion was Reasonable

Even if an initial stop is valid, an officer may impermissibly exceed the scope of the stop because "a seizure that is lawful at its inception can violate the Fourth Amendment if its manner of execution unreasonably infringes interests protected by the Constitution." United States v. McColley, No. 3:09-00193, 2011 WL 253166, at *5 (M.D. Tenn. Jan. 25, 2011) (quoting Illinois v. Caballes, 543 U.S. 405, 407 (2005)) (internal quotation marks omitted). Under Terry, a stop must be reasonable in terms of scope and duration. As stated by the Sixth Circuit:

[t]o qualify as reasonable seizures under the Fourth Amendment, Terry detentions must be limited in both scope and duration. Under Terry's duration prong, a stop must last no longer than is necessary to effectuate the purpose of the stop. Under its scope prong, the investigative methods employed should be the least intrusive means reasonably available to verify or dispel the officer's suspicion in a short period of time.

United States v. Everett, 601 F.3d 484, 488-89 (6th Cir. 2010) (internal citations and quotation marks omitted). "To detain a

motorist any longer than is reasonably necessary to issue the traffic citation, however, the officer must have reasonable suspicion that the individual has engaged in more extensive criminal conduct.” United States v. Aquilera-Pena, 426 F. App’x 368, 370 (6th Cir. 2011) (quoting United States v. Townsend, 305 F.3d 537, 541 (6th Cir. 2002)) (internal quotation marks omitted).

The court finds that both the duration and scope of the traffic stop were reasonably limited to the purpose of the stop. There is no evidence that, up until the moment the gun was discovered, the officers engaged in any conduct that prolonged the stop. Upon stopping the vehicle, the officers approached both occupants, asked for their identification, and conducted a records check on Webb. Castle was asked to step out of the car, and shortly thereafter, the gun slid down his pants and onto the ground. Only forty-five seconds to one minute passed from the time the Impala was stopped to the time the gun was discovered. Moreover, the gun was discovered well before Officer Corder issued or reasonably should have issued a citation to Webb.⁷

It was reasonable and well within the scope of the stop for the officers to ask Webb and Castle for their identification, and

⁷Once the officers saw the gun, the stop was reasonably prolonged in order for the officers to take Castle into custody, secure the gun, and investigate whether Castle was in lawful possession of the weapon. Castle does not argue in his motion that the officers violated his Fourth Amendment rights based on their actions following the initial discovery of the gun and his flight from the scene.

for the officers to run a records check on Webb. See Guajardo, 388 F. App'x at 489; see also United States v. Young, 707 F.3d 598, 606 (6th Cir. 2012) (following other circuits in holding that officers do not exceed the permissible scope of a Terry stop by running a warrant check, even when the warrant check is unrelated to the crime); United States v. Smith, 601 F.3d 530, 542 (6th Cir. 2010) ("Nor was it inappropriate for [the officer] to check both whether Williams and Garrett had valid identification and whether they had any outstanding warrants."); United States v. Bell, 555 F.3d 535, 541 (6th Cir. 2009) ("In a traffic stop, an officer can lawfully detain the driver of a vehicle until after the officer has finished making record radio checks and issuing a citation, because this activity would be well within the bounds of the initial stop.") (quoting United States v. Wellman, 185 F.3d 651, 656 (6th Cir. 1999)) (internal quotation marks omitted); United States v. Holt, 264 F.3d 1215, 1221 (10th Cir. 2001) (en banc) ("[A] motorist may be detained for a short period while the officer runs a background check to see if there are any outstanding warrants or criminal history pertaining to the motorist even though the purpose of the stop had nothing to do with such prior criminal history."), abrogated on other grounds as stated in United States v. Stewart, 473 F.3d 1265, 1269 (10th Cir. 2007); United States v. Garrido-Santana, 360 F.3d 565, 573-74 (6th Cir. 2004) (rejecting defendant's contention that reasonable suspicion was necessary to

continue to detain driver after valid stop for speeding in order to complete computer check of driver's license even though citation for speeding had already been issued); United States v. Hill, 195 F.3d 258, 269 (6th Cir. 1999) (holding that driver's license check completed after citation for traffic offense had been issued was within original scope of traffic stop).

Nor did the officers exceed the scope of the stop by ordering Castle out of the vehicle. Once a motor vehicle has been lawfully detained for a traffic violation, officers may order the driver and passengers to exit the vehicle. United States v. Street, 614 F.3d 228, 232 (6th Cir. 2010) (citing Pennsylvania v. Mimms, 434 U.S. 106, 111 (1977)). As the court observed in Street, "[t]raffic stops are 'fraught with danger to police officers,'" and "the Fourth Amendment permits officers to conduct an otherwise-legitimate stop on their own terms - whether by keeping the driver (and occupants) in the car or by asking them to exit the car, depending on what they perceive as safer." Id. (quoting Michigan v. Long, 463 U.S. 1032, 1047 (1983); citing Maryland v. Wilson, 519 U.S. 408, 415 (1997) and Mimms, 434 U.S. at 111); see also United States v. Ware, 465 F. App'x 487, 494 (6th Cir. 2012) (stating that "the legitimate and weighty interest in police officer safety outweighs the *de minimis* additional intrusion of requiring a driver who is already lawfully stopped to get out of the car. . . . The Mimms rule applies to passengers just as it does to drivers.")

The court further finds that Detective Goedecke's frisk of Castle's waistband and pants pockets did not violate Castle's Fourth Amendment rights. "To justify a patdown of the driver or passenger during a traffic stop . . . the police must harbor reasonable suspicion that the person subjected to the frisk is armed and dangerous." Ware, 465 F. App'x at 493 (quoting Arizona v. Johnson, 555 U.S. 323, 327 (2009)) (internal quotation marks omitted). At the time of the stop, the officers were patrolling the area near the corner of Breedlove and Keel specifically because it was a known high-crime area. When Castle stepped out of the vehicle, he awkwardly stood hunched over and in a highly unusual squatting stance. The detectives had never before seen an individual interact with officers in that manner, and Detective Goedecke was concerned that Castle might have something on him that could hurt the officers. Moreover, after Castle pulled up his pants as directed by Detective Goedecke, he immediately went back to his squatting stance. Castle's highly unusual stance, which Detective Branning believed was an "obvious" attempt by Castle to conceal something, was a furtive act. Based on the totality of the circumstances, Detective Goedecke had reasonable suspicion to believe that Castle might have been hiding a weapon, thus justifying the safety frisk.⁸ See United States v. McDaniel, 371

⁸The weapons frisk conducted by Detective Goedecke was particularly reasonable in light of the fact that he limited his frisk to Castle's waistband area and pants pockets, as opposed to a full

F. App'x 617, 621 (6th Cir. 2010) (holding that officer had reasonable suspicion that occupant of parked car was armed, where occupant appeared startled, turned his body away, and made a furtive movement as if he was putting something into his waistband); United States v. Pearce, 531 F.3d 374, 383 (6th Cir. 2008) (finding that officers had reasonable suspicion to conduct investigatory detention, including drawing their weapons on the defendant and conducting a weapons frisk, where defendant was seen exiting a vehicle in a known high-crime area, glancing toward the officers, hunching over, placing his right hand in the small of his back, and starting to back away); United States v. Williams, 76 F. App'x 728, 731 (7th Cir. 2003) ("Thus when [officer] observed [defendant] making movements that suggested - given the totality of the circumstances - that [defendant] was concealing something, [officer] had reasonable suspicion to conduct the pat-down.").

Even assuming, *arguendo*, that Detective Goedecke lacked reasonable suspicion to justify the weapons frisk, suppression is nevertheless not warranted because the frisk was irrelevant to the discovery of the gun, *see* United States v. Dixon, 405 F. App'x 19, 22-23 (6th Cir. 2010), or, at the very least, was not a but-for cause of the gun's discovery. *See* Hudson v. Michigan, 547 U.S. 586, 592 (2006) ("[B]ut-for causality is only a necessary, not sufficient condition of suppression."); Pearce, 531 F.3d at 381

body frisk.

(stating that in order to exclude evidence obtained from an unconstitutional search or seizure, the defendant must show, at a minimum, that the constitutional violation was a "but for" cause of the police's obtaining the evidence). The gun slid down Castle's pants after Detective Goedecke completed his frisk and while Castle was walking toward Detective Branning. The gun was not discovered during the frisk, but rather as a result of Castle's post-frisk movement, which caused the gun to come loose from its hiding place. At the suppression hearing, Castle suggested that Detective Goedecke may have caused the gun to slide down Castle's pants when he tugged on Castle's waistband and motioned Castle to head toward Detective Branning. Even if the detective's tugging motion contributed to the gun sliding down Castle's pants, the tugging was not done as part of the weapons frisk or any other kind of "search" that would implicate the Fourth Amendment.

III. RECOMMENDATION

For the reasons above, the court recommends that the Motion to Suppress be denied.

Respectfully submitted,

s/ Tu M. Pham
TU M. PHAM
United States Magistrate Judge

May 17, 2013
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.