APPENDIX

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ENTERED: February 9, 2018

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-4171

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

EDWARD JAIMAAL PRICE,

Defendant - Appellant.

Appeal from the United States District Court for the Western District of Virginia, at Danville. Jackson L. Kiser, Senior District Judge. (4:16-cr-00006-JLK-1)

Submitted: January 18, 2018
Decided: February 9, 2018

Before GREGORY, Chief Judge, and
TRAXLER and AGEE, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Joseph A. Sanzone, SANZONE & BAKER, PC, Lynchburg, Virginia, for Appellant. Rick A. Mountcastle, Acting United States Attorney, Thomas E. Duncombe, Special Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Harrisonburg, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

After the district court denied Edward Jaimaal Price's motion to suppress drug evidence, he entered a conditional guilty plea—pursuant to a written plea agreement—to possession with intent to distribute 28 grams or more of cocaine base, a violation of 21 U.S.C. § 841(a)(1) (2012). Price now appeals the district court's order denying his motion to suppress. For the reasons that follow, we affirm the judgment of the district court.

"When a district court has denied a motion to suppress, we review the court's legal conclusions de novo and its factual findings for clear error[,] . . . view[ing] the evidence in the light most favorable to the government." *United States v. Hill*, 852 F.3d 377, 381 (4th Cir. 2017) (citation omitted). "We owe particular deference to a district court's credibility determinations, for it is the role of the district court to observe witnesses and weigh their credibility

during a pre-trial motion to suppress." *United States v. Patiutka*, 804 F.3d 684, 689 (4th Cir. 2015) (brackets and internal quotation marks omitted).

Price first contends that the arresting officers violated his Fourth Amendment rights by seizing him at gunpoint without probable cause because there was insufficient evidence demonstrating that he was the fugitive the officers thought he was. A vehicle stop constitutes a seizure within the meaning of the Fourth Amendment, *Whren v. United States*, 517 U.S. 806, 809 (1996), and is permissible if the officer has "probable cause to believe that a traffic violation has occurred," *id.* at 810, regardless of the officer's subjective motivations, *id.* at 813-19. "[O]nce a motor vehicle has been lawfully detained for a traffic violation, the police officers may order the driver to get out of the vehicle without violating the Fourth Amendment's proscription of unreasonable searches and seizures." *Pennsylvania v. Mimms*, 434 U.S. 106, 111 n.6 (1977). Furthermore, we have acknowledged that "drawing weapons, handcuffing a suspect, . . . or using or threatening to use force does not necessarily elevate a lawful stop into a custodial arrest," particularly if the "officers reasonably suspect[ ] that [the detainee is] armed and dangerous." *United States v. Elston*, 479 F.3d 314, 320 (4th Cir. 2007) (internal quotation marks omitted). Similarly, officers may lawfully frisk a person during a traffic stop if they "harbor reasonable suspicion that the person subjected to the frisk is armed and dangerous." *Arizona v. Johnson*, 555 U.S. 323, 327 (2009). "In determining whether such reasonable suspicion exists, we examine the totality of the circumstances to determine if the

officer[s] had a particularized and objective basis for believing that the detained suspect might be armed and dangerous." *United States v. George*, 732 F.3d 296, 299 (4th Cir. 2013) (internal quotation marks omitted). In particular, "[a] suspect's suspicious movements [may] . . . be taken to suggest that the suspect may have a weapon." *Id.*

The district court found credible one officer's uncontested testimony that Price was driving with an expired temporary license plate and, therefore, did not err in concluding that the officers lawfully stopped Price regardless of their subjective belief that he was the fugitive. The district court also found credible both officers' testimony that, when they approached Price's vehicle, Price was moving suspiciously, as if he were reaching under his seat, and that he did not comply with their orders to keep his hands up. The court, therefore, did not err in finding that the officers reasonably suspected Price of being armed and dangerous and, therefore, that they lawfully removed Price from his vehicle, handcuffed him, and frisked him for weapons.

Price further contends that the district court erred in finding that the officers searched him pursuant to his valid arrest for possession of marijuana, asserting that the officer who searched him did not testify that he smelled marijuana and that the officers found no marijuana. A warrantless arrest is valid so long as "there is probable cause to believe that a criminal offense has been or is being committed." *Devenpeck v. Alford*, 543 U.S. 146, 152 (2004). "We have repeatedly held that the odor of marijuana alone can provide probable cause to

believe that marijuana is present in a particular place." *United States v. Humphries*, 372 F.3d 653, 658 (4th Cir. 2004). "Thus, if an officer smells the odor of marijuana in circumstances where the officer can localize its source to a person, the officer has probable cause to believe that the person has committed or is committing the crime of possession of marijuana." *Id.* at 659.

The district court found credible one officer's testimony that, upon opening Price's car, he recognized the strong smell of marijuana and that the smell was even stronger on Price's person. A third officer, who arrived at the scene later, corroborated that testimony. Furthermore, despite Price's assertion otherwise on appeal, the presentence report—to which Price did not object - indicated that the officers found a small bag of marijuana in his pants pocket. Accordingly, in the absence of evidence that the searching officer did not smell the marijuana, it was reasonable for the district court to conclude that both arresting officers noticed the smell and that they were both therefore aware of facts that provided probable cause to arrest Price for the possession of marijuana.

The Supreme Court has long held that, upon a lawful warrantless arrest, the officers may conduct a full search of an arrestee's person and personal items in his possession and control without any additional justification. *United States v. Robinson*, 414 U.S. 218, 234-35 (1973). Having concluded that the officers had probable cause to arrest Price for marijuana possession, the district court did not err

in concluding that the search of Price's person was a valid search pursuant to that arrest.

Insofar as the district court denied Price's motion to suppress because the search that led to the drug evidence was pursuant to a valid arrest, it did not err. Accordingly, we affirm. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

ENTERED: February 9, 2018

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-4171
(4:16-cr-00006-JLK-1)

UNITED STATES OF AMERICA

Plaintiff – Appellee

v.

EDWARD JAIMAAL PRICE

Defendant - Appellant

J U D G M E N T

In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

[ENTERED: March 14, 2017]

UNITED STATES DISTRICT COURT
Western District of Virginia

UNITED STATES OF AMERICA

v.

EDWARD JAIMALL PRICE

Case Number: DVAW416CR000006-001

USM Number: 21348-084
Defendant's Attorney: Joseph A. Sanzone, Esquire

JUDGMENT IN A CRIMINAL CASE

The defendant pleaded guilty to Count(s) 1.

The defendant is adjudicated guilty of these offenses:

Title and Section	Nature of Offense	Offense Ended	Count
21 U.S.C. § 841(a)(1)	Possession with intent to distribute 28 grams or more of cocaine base	11/20/2015	1

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The Sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ORDERED that the defendant must notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States Attorney of material changes in economic circumstances.

Signed this 14th day of March, 2017.

/s/
Jackson L. Kiser
United States District Judge

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a Total term of sixty (60) months.

The Court makes the following recommendations to the Bureau of Prisons:

The defendant shall surrender to the U.S. Marshal Service for this district as notified by the United States Marshal.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____ at _____, with a certified copy of this Judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of: four (4) years.

MANDATORY CONDITIONS

You must cooperate in the collection of DNA as directed by the probation officer.

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation officer with in a different time frame.

2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.

3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.

4. You must answer truthfully the questions asked by your probation officer.

5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.

6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.

7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation

officer within 72 hours of becoming aware of a change or expected change.

8. You must not communicate with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony you must not knowingly communicate with that person without first getting the permission of the probation officer.

9. If you are arrested or questioned by a law enforcement officer, you must notify the probation office within 72 hours.

10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers.)

11. You must not act or make any agreement with law enforcement agency to act as a confidential human source of information without first getting the permission of the court.

12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with person and confirm that you have notified the person about the risk. The probation officer may contact that person and confirm that you have notified the person about the risk.

13. You must follow the instructions of the probation officer related to the conditions of supervision.

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall reside in a residence free of firearms, ammunition, destructive devices and dangerous weapons.

2. The defendant shall submit to warrantless search and seizure of person and property as directed by the probation officer, to determine whether the defendant is in possession of firearms or illegal controlled substances.

3. the defendant shall pay any fines or special assessment that is imposed by this judgment.

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the Schedule of Payments on Sheet 6.

	Assessment	Fine	Restitution
TOTALS:	$100.00	$1,000.00	$

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, the total criminal monetary penalties are due immediately and payable as follows:

A. Lump sump payment of $100.00 immediately, balance payable in accordance to F below:

F. During the term of imprisonment, payable in equal monthly (e.g. weekly, monthly, quarterly) installments of $25.00, or 50% of the defendant's income, whichever is less to commence 60 days (e.g., 30 or 60 days after the date of this judgment; AND payment in equal monthly (e.g., weekly, monthly, quarterly) installments of $50.00 during the term of supervised release, to commence 60 days (e.g., 30 or 60 days) after release from imprisonment.

Any installment schedule shall not preclude enforcement of the restitution or fine order by the United States under 18 U.S.C §§ 3613 and 3664(m).

Any installment schedule is subject to adjustment by the court at any time during the period of imprisonment or supervision, and the defendant shall notify the probation officer and the U.S. Attorney of any change in the defendant's economic circumstances that may affect the defendant's ability to pay.

Any criminal monetary penalties shall be made payable to the Clerk, U.S. District Court, 210

Franklin Rd., Suite 540, Roanoke, Virginia 24011, for disbursement.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Any obligation to pay restitution is joint and several with other defendants, if any, against whom an order of restitution has been or will be entered.

Payments shall be applied in the following order: (1) assessment (2) restitution principal (3) restitution interest (4) fine principal (5) fine interest (6) community restitution (7) penalties and (8) costs, including cost of prosecution and court costs.

ENTERED: December 13, 2016

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
DANVILLE DIVISION

UNITED STATES OF AMERICA,	) Case No. 4:16-cr-00006
v.	)
	) **ORDER**
EDWARD JAIMAAL PRICE,	)
	) By: Hon.
Defendant.	) Jackson L. Kiser
	) Senior United
	). States District
	) Judge
	)

On November 28, 2016, Defendant filed a Motion to Suppress all evidence seized by law enforcement as a result of Defendant's arrest on November 20, 2015. [ECF No. 38]. The United States responded on November 29, 2016, [ECF No. 39], and submitted a supplemental response on December 7, 2016. [ECF No. 42]. A hearing was held on December 8, 2016, where I heard testimony and the parties' arguments. With the Court's permission, Defendant submitted a post-hearing brief on December 9, 2016. [ECF No. 47]. The matter is now ripe for disposition. For the reasons stated in the accompanying Findings of Fact and Conclusions of Law, Defendant's Motion to Suppress is **DENIED.**

The Clerk is directed to forward a copy of this Order and accompanying Findings of Fact and Conclusions of Law to all counsel of record.

ENTERED this 13th day of December, 2016.

/s/ Jackson L. Kiser
SENIOR UNITED STATES
DISTRICT JUDGE

ENTERED: December 13, 2016

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
DANVILLE DIVISION

UNITED STATES OF AMERICA,	) Case No. 4:16-cr-00006
v.	)
EDWARD JAIMAAL PRICE,	) **FINDINGS OF FACTS AND CONCLUSION OF LAW**
Defendant.	)
	) By: Hon. Jackson L. Kiser Senior United States District Judge

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On December 8, 2016, I heard arguments related to Defendant's Motion to Suppress. I have considered the briefs, heard testimony and the parties' arguments, and I now make the following findings of fact and conclusions of law.

On November 20, 2015, Deputy Hugh Wyatt, a sworn Task Officer with the U.S. Marshall's Service, was in an unmarked police vehicle, conducting surveillance on a residence located at 623 Wimbish Drive in Danville, Virginia. Deputy Wyatt was conducting surveillance on the house due to information that he had received that Bradley Lamont Price, a fugitive, was spending time at the Wimbish Drive residence. At one point, a man, later known to be Edward Jaimaal Price, but suspected to

be Bradley Lamont Price, exited the residence and left in a 2004 Buick vehicle. At this point, Deputy Wyatt radioed Deputy Todd Carroll, an officer with the Virginia Department of Corrections and member of the Marshall's Task Force, to provide assistance.

Deputy Wyatt began to follow Defendant and, while doing so, noticed that the thirty-day temporary registration on the Buick was expired. Deputy Wyatt effectuated a traffic stop when Defendant pulled into a gas station, parking his vehicle behind Defendant's and activating the vehicle's blue lights. According to testimony, Deputy Carroll caught up to Deputy Wyatt and defendant seconds before Wyatt stopped Defendant. Deputy Carroll parked his vehicle in front of Defendant's to prevent Defendant from leaving.

Deputy Wyatt testified that he exited the vehicle and saw Defendant "slump" in his seat as if he was reaching for something under his seat. For safety purposes, Wyatt drew his weapon and ordered the Defendant to put his hands up. The Defendant only complied for a short while before Wyatt had to again order him to put his hands up. When he again failed to comply, Deputy Wyatt removed the driver from the vehicle for officer safety. Defendant contests this version of events, stating that Wyatt drew his weapon immediately after exiting his vehicle. It is unclear which version of events is correct, but it does not affect my conclusions.

As Deputy Wyatt removed Defendant from his vehicle, Deputy Wyatt smelled a strong odor consistent with unsmoked, raw marijuana coming

from Defendant's person. Defendant was placed on the ground and handcuffed before being brought back up to his feet. Deputy Carroll, in trying to identify Defendant, whom both deputies still suspected may be Bradley Lamont Price, asked Defendant whether he had any identification. Defendant made a slight head motion towards his right front pocket. To confirm, Deputy Carroll touched Defendant's right front pocket. Defendant nodded, and Deputy Carroll asked if he could reach into the pocket to retrieve the Defendant's identification. Defendant nodded. Deputy Carroll testified that he reached into the pocket and removed all contents, finding what was later confirmed to be 74 ounces of crack- cocaine. Defendant was then placed under arrest.

As the Supreme Court has stated, "[s]ubjective intentions play no role in ordinary probable-cause Fourth Amendment analysis." *Whren v. United States*, 517 U.S. 806, 813 (1996). The outdated temporary registration on Defendant's vehicle gave rise to probable cause that a traffic infraction was being committed, giving Deputies Carroll and Wyatt lawful authority to conduct a traffic stop. Defendant was removed from his vehicle during a time where the deputies still believed Defendant to potentially be an armed fugitive, and in his testimony, Defendant did not deny that he failed to keep his hands raised. Their decision to remove Defendant from the vehicle and restrain him was reasonable.

Consent is a well-established exception to the warrant requirement. *Schneckloth v. Bustamonte*, 412 U.S. 218, 219 (1973). Here, Deputy Carroll asked Defendant for identification to ascertain whether Defendant was Bradley Lamont Price. Defendant first gave a slight head nod towards his right front pocket. Deputy Carroll asked Defendant if he was indicating that his identification was in his right front pocket. Defendant again nodded towards his pocket. Deputy Carroll then asked Defendant if he could reach into his pocket to retrieve his identification. Defendant gave an affirmative nod. Given these facts, it is clear that Defendant consented to the search, which led to the discovery of the 74 grams of crack-cocaine. Importantly, Defendant has not contradicted this portion of the government's evidence.

Even if Defendant did not consent, however, the search was a lawful search incident to arrest based on Deputy Wyatt's testimony that he detected a strong odor of marijuana coming from Defendant's person. As the Fourth Circuit has held in *Humphries*, the odor of marijuana is sufficient to establish probable cause that a suspect is in possession of marijuana if the smell can be localized to that specific suspect. *United States v. Humphries*, 372 F.3d 653, 659 (4th Cir. 2004). In this case, Defendant was the sole occupant of the vehicle, and there was no one else in the immediate vicinity of Defendant and law enforcement. The Fourth Circuit has held that a search of a suspect immediately before his formal arrest satisfies the requirement that a lawful search incident to arrest be closely related in time to that arrest. *United States v.*

Miller, 925 F.2d 695, 698–99 (4th Cir. 1991). If, in fact, Defendant did not actually consent to the search, the search can be viewed as a search incident to arrest immediately preceding the arrest based on the probable cause provided by the odor of marijuana.

On the basis of these findings, Defendant's Motion to Suppress the narcotics found on Defendant's person is denied.

ENTERED this 13th day of December, 2016.

/s/ Jackson L. Kiser
SENIOR UNITED STATES DISTRICT JUDGE