

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

JOHN MICHAEL MURPHY — PETITIONER

VS.

UNITED STATES — RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES FIFTH CIRCUIT COURT OF APPEALS
APPENDIX TO PETITION FOR WRIT OF CERTIORARI

Douglas Lee Harville # 27235
The Harville Law Firm, LLC
P.O. Box 52988
Shreveport, Louisiana 71135-2988
Telephone: (318) 222-1700
Telecopier: (318) 222-1701
lee.harville@theharvillelawfirm.com
APPELLATE ATTORNEY FOR
JOHN MICHAEL MURPHY,
DEFENDANT/APPELLANT/PETITIONER

INDEX TO APPENDICES

	<u>Page:</u>	
APPENDIX A	Report and Recommendation to deny the motion to suppress and Order adopting Report and Recommendation, <i>United States v. Murphy</i> , 2023 U.S. Dist. LEXIS 4215, 2023 WL 2471374 (W.D. La. Jan 26, 2023) (report and recommendation), adopted by <i>United States</i> <i>v. Murphy</i> , 2023 U.S. Dist. LEXIS 41016, 2023 WL 2464980 (W.D. La. Mar. 10, 2023).	1
APPENDIX B	Decision of the United States Fifth Circuit Court of Appeals, <i>United States v. Murphy</i> , 2024 U.S. App. LEXIS 9830, 2024 WL 1736345 (5th Cir. Apr. 23, 2024)	8

APPENDIX A

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

UNITED STATES OF AMERICA

CASE NO. 22-cr-00148

VERSUS

JUDGE S. MAURICE HICKS, JR.

JOHN MICHAEL MURPHY (01)

MAGISTRATE JUDGE HORNSBY

REPORT AND RECOMMENDATION

Introduction

John Michael Murphy (“Defendant”) is charged in a one-count indictment with possession with intent to distribute methamphetamine. The charge arose out of a controlled buy and surveillance operation conducted by the Sabine Parish Sheriff’s Office. Before the court is Defendant’s Motion to Suppress. Doc. 19. For the reasons that follow, it is recommended that the motion be denied.

Factual Background

An evidentiary hearing was held on October 25, 2022. The following facts were established. Lt. Jesse Branam and others in the Sabine Parish Sheriff’s Office conducted controlled buys of methamphetamine from Defendant. The officers were told by a CI that Defendant was traveling from Many, Louisiana to Natchitoches Parish, Louisiana to get more methamphetamine. Tr. 4-5. Branam issued a “be on the lookout” (BOLO) for a white Chevy Cobalt in which Defendant was a passenger. Officers with the sheriff’s office had dealt with Defendant before, and he was known to carry firearms. Tr. 7.

Patrol Deputy Samuel Beason received the BOLO and positioned himself on the highway to look for the Chevy Cobalt. The deputy had been told that the driver of the vehicle, Jaci Craig, was driving with a suspended license. Tr. 18. When Beason saw the Chevy Cobalt, it was traveling too close to the vehicle in front of it. Tr. 17. Deputy Beason initiated a traffic stop.

Deputy Beason approached the Chevy Cobalt on the passenger side. He identified himself and the reason for the stop. Ms. Craig was unable to produce a valid driver's license. Tr. 19.

Beason knew Ms. Craig before the stop because he had a couple of run-ins with her on traffic stops and in other situations. The deputy also knew Defendant because Defendant had been housed in the detention center when Beason was working there, and he had a few incidents with Defendant in the past. Tr. 20. Beason asked Ms. Craig for consent to search the vehicle, and she granted verbal consent. Tr. 22.

Sgt. Nick Sandel arrived on the scene for backup. Sandel was the sergeant over patrol on the day of the traffic stop. He had heard about the BOLO issued by Lt. Branam, and he understood Defendant was supposed to be going to Natchitoches Parish to get narcotics and bring them back to Many. Tr. 36.

After Sandel arrived, Beason began to search the vehicle. Sandel stood nearby and talked with Defendant and Ms. Craig during the search. Defendant began to exhibit unusual behavior. He pulled Ms. Craig into him several times, and Sandel feared that they could be trying to hide or pass something between themselves. Tr. 37-38. Because of that behavior, Sandel asked Defendant if Beason had already patted him down. Defendant

replied that he had not been patted down. Tr. 37, 42. Sandel asked Defendant if he had any weapons, and Defendant produced a pocketknife from his pocket. Tr. 42-43. Sandel then conducted the pat down and felt a “hard crystal in [Defendant’s] pants.” Tr. 52. [Note: The item was not in Defendant’s pocket, which likely made Sandel even more suspicious, because he immediately placed Defendant in handcuffs.] The object did not feel like a weapon. Sandel did not know what it was until the object was pulled out. Tr. 52.

Sandel was not wearing gloves, so he asked Beason, who was wearing gloves during the vehicle search, to come and remove the object. Beason stuck his hand down in Defendant’s pants (Tr. 29-30) “in between [Defendant’s] legs” to remove it. Tr. 23. The object turned out to be 136 grams of pure methamphetamine. Tr. 44.

The Motion to Suppress

Defendant does not challenge the validity of the initial traffic stop. Indeed, he could not. The deputies knew that the driver had a suspended license, and Lt. Branam saw the vehicle following another vehicle too closely. Both are violations of Louisiana law. Instead, Defendant argues there was no reason for a Terry pat down because the deputies did not believe Defendant was carrying a weapon on his person.

Law and Analysis

An officer may frisk a suspect if he has articulable reason to fear for his safety. Terry v. Ohio, 392 U.S. 1 (1968). Limited pat-down searches are permissible for the protection of the police officer, where he has reason to believe that he is dealing with an armed and dangerous individual regardless of whether he has probable cause to arrest the individual for a crime. United States v. Williams, 880 F.3d 713, 721 n. 6 (5th Cir. 2018).

During the frisk, the officer may remove an item only if it feels like a weapon, unless the “plain feel” exception applies. Minnesota v. Dickerson, 508 U.S. 366, 275-76 (1994).

The officers had prior knowledge of Defendant’s drug trafficking activities and his propensity for carrying weapons. Furthermore, Deputy Sandel felt a crystal-like substance inside Defendant’s pants (between his legs, not in a pocket). Even though he was not sure what it was, Sandel immediately handcuff Defendant. When the item was removed, it was confirmed to be pure methamphetamine. A picture of the methamphetamine was introduced into the record as Government Exhibit 1. See United States v. Borne, 239 Fed. App’x 185, 187 (6th Cir. 2007) (officer properly performed pat down search for weapons of suspected drug trafficker after traffic stop and permissibly found methamphetamine rock under “plain feel” doctrine).

Conclusion

The deputies knew that Defendant was a drug trafficker who sometimes carried weapons. Deputy Sandal saw Defendant and Ms. Craig behaving suspiciously while Deputy Beason searched the car. Accordingly, a Terry pat down was proper, and the methamphetamine was properly removed from inside Defendant’s pants under the plain feel doctrine.

Accordingly,

It is recommended that Defendant’s Motion to Suppress (Doc. 19) be denied.

Objections

Under the provisions of 28 U.S.C. § 636(b)(1)(C) and Fed. R. Crim. P. 59(b)(2), parties aggrieved by this recommendation have **fourteen (14) days** from the date of this

report and recommendation to file specific, written objections with the Clerk of Court, unless an extension of time is granted under Fed. R. Crim. P. 45(b). A party may respond to another party's objections within **fourteen (14) days** from the filing of the objections. Counsel are directed to furnish a paper copy of any objections or responses to the District Judge at the time of filing.

A party's failure to file timely written objections to the proposed findings, conclusions and recommendation set forth above shall bar that 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. See Douglass v. U.S.A.A., 79 F.3d 1415 (5th Cir. 1996) (en banc).

THUS DONE AND SIGNED in Shreveport, Louisiana, this 26th day of January, 2023.



Mark L. Hornsby
U.S. Magistrate Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

UNITED STATES OF AMERICA

CASE NO. 22-cr-00148

VERSUS

JUDGE S. MAURICE HICKS, JR.

JOHN MICHAEL MURPHY (01)

MAGISTRATE JUDGE HORNSBY

ORDER

For the reasons assigned in the Report and Recommendation (Record Document 32) of the Magistrate Judge previously filed herein, and having thoroughly reviewed the record, including the written objections filed (Record Document 33), and the response thereto (Record Document 34), and concurring with the findings of the Magistrate Judge under the applicable law;

IT IS ORDERED that Defendant's Motion to Suppress (Record Document 19) is **DENIED**.

THUS DONE AND SIGNED at Shreveport, Louisiana, this the 10th day of March, 2023.



S. MAURICE HICKS, JR.
UNITED STATES DISTRICT JUDGE

APPENDIX B

United States Court of Appeals for the Fifth Circuit

No. 23-30610
Summary Calendar

United States Court of Appeals

Fifth Circuit

FILED

April 23, 2024

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

JOHN MICHAEL MURPHY,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 5:22-CR-148-1

Before WIENER, STEWART, and DOUGLAS, *Circuit Judges.*

PER CURIAM:*

Defendant-Appellant John Michael Murphy conditionally pleaded guilty to intent to distribute 50 grams or more of methamphetamine and was sentenced to 151 months of imprisonment. He argues that the district court erred in denying his motion to suppress evidence discovered during a pat down performed at the traffic stop that led to his arrest.

* This opinion is not designated for publication. *See 5TH CIR. R. 47.5.*

No. 23-30610

“When reviewing a denial of a motion to suppress evidence, [we] review[] factual findings for clear error and the ultimate constitutionality of law enforcement action *de novo*.” *United States v. Robinson*, 741 F.3d 588, 594 (5th Cir. 2014). Evidence is viewed in the light most favorable to the prevailing party, and “the clearly erroneous standard is particularly strong” where the district court’s ruling is based on live oral testimony. *United States v. Gibbs*, 421 F.3d 352, 357 (5th Cir. 2005) (internal quotation marks and citation omitted). We will uphold a district court’s ruling on a motion to suppress “if there is any reasonable view of the evidence to support it.” *United States v. Massi*, 761 F.3d 512, 520 (5th Cir. 2014) (internal quotation marks and citation omitted).

Under *Terry v. Ohio*, 392 U.S. 1, 27 (1968), an officer conducting an investigatory stop may pat down a suspect for weapons if “a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger.” During a *Terry* pat down, an officer may remove and seize an item based on a reasonable belief that it may pose a danger. *See United States v. Majors*, 328 F.3d 791, 795 (5th Cir. 2003). Moreover, in some circumstances an officer may seize other contraband. *Minnesota v. Dickerson*, 508 U.S. 366, 374 (1993). To this end, if an officer “feels an object whose contour or mass makes its identity immediately apparent, there has been no invasion of the suspect’s privacy beyond that already authorized by the officer’s search for weapons.” *Id.* “[T]he dispositive question . . . is whether the officer who conducted the search was acting within the lawful bounds marked by *Terry* at the time he gained probable cause to believe that [the item] was contraband.” *Id.* at 377.

“To have probable cause, it is not necessary that the officer know that the discovered [item] is contraband or evidence of a crime, but only that there be a practical, nontechnical probability that incriminating evidence is involved.” *United States v. Turner*, 839 F.3d 429, 433 (5th Cir.

No. 23-30610

2016) (internal quotation marks and citations omitted) (addressing plain view doctrine). “When reviewing probable cause determinations, we consider the totality of the circumstances—including the officers’ training and experience as well as their knowledge of the situation at hand.” *Id.* (internal quotation marks and citations omitted).

To any extent that Murphy challenges the district court’s finding that the pat down itself was constitutionally permissible, his argument fails. The officer who conducted the pat down articulated specific facts supporting a reasonable belief that Murphy could be armed and dangerous. *See Terry*, 392 U.S. at 27; *United States v. Michelletti*, 13 F.3d 838, 840–41 (5th Cir. 1994) (en banc).

Moreover, Murphy fails to show error in the district court’s determination that it was constitutionally permissible for the officer to have a bag of methamphetamine removed from Murphy’s pants during the pat down. In this regard, the record supports the district court’s implicit finding that the officer had probable cause to believe that the object he felt in Murphy’s pants was contraband. *See Dickerson*, 508 U.S. at 374, 377; *Turner*, 839 F.3d at 433.

AFFIRMED.