

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

DESHAUN JONES,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

**On Petition for Writ of Certiorari to the United States Court of Appeals for
the Third Circuit**

APPENDIX

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

DESHAUN CURTIS JONES,

Defendant.

Criminal No. 2:21-cr-17 - 1

Hon. William S. Stickman IV

MEMORANDUM OPINION

WILLIAM S. STICKMAN IV, United States District Judge

Defendant DeShaun Curtis Jones (“Jones”) filed a Motion to Suppress Evidence arguing that the stop of the vehicle he was driving was unlawful, and his continued detention was not supported by reasonable suspicion or probable cause.¹ (ECF No. 58). The Government filed a response arguing that the initial stop of the vehicle Jones was operating was supported by reasonable suspicion. It further contended that the officer had sufficient justification to extend the traffic stop to investigate additional criminal activity. (ECF No. 63). The Court held an evidentiary hearing on Jones’s motion. The parties were given the opportunity to submit additional briefing, which they did. (ECF Nos. 66, 70 and 75). After careful consideration of the record, the evidence, and the parties’ arguments, the Court will deny Jones’s motion for the following reasons.

¹ The Court has jurisdiction over Jones’s suppression motion under 18 U.S.C. § 3231.

I. RELEVANT FACTS²

On January 21, 2020, North Huntingdon Township Police Officer Shane Rebel (“Officer Rebel”) was parked ten feet from the side of Route 30 in his marked police vehicle, a Ford Explorer, which was equipped with high powered headlights. He had the vehicle’s high beams activated and he was monitoring vehicles for violations of the Pennsylvania Motor Vehicle Code. Around 8:30 p.m., a gold BMW passed his location in the right lane heading eastbound with heavily tinted windows. Officer Rebel was unable to see anybody in the front seats. He knew the BMW was violating the Pennsylvania Motor Vehicle Code, specifically Section 4524(e)(1).³ (May 11, 2023 Suppression Hearing Transcript (“Tr.”), pp. 28-30, 54, 56-57).

Officer Rebel pulled onto Route 30 and began following the BMW.⁴ He activated his vehicle’s emergency lights, and the BMW slowed down, but it did not stop for nearly one-half of a mile. As Officer Rebel was following the BMW, he ran its registration through JNet using the computer inside his vehicle and learned it was registered to Keyoka Akins (“Akins”). The BMW passed by numerous parking lots, streets, and well-lit areas that it could have safely pulled into

² This section encompasses the Court’s findings of fact as well as its credibility determinations. When ruling on a suppression motion, the Court takes on the role of fact finder and thus “is responsible for assessing the credibility of the testifying witnesses, weighing the evidence, and reaching any ‘inferences, deductions and conclusions to be drawn from the evidence.’” *United States v. Cole*, 425 F. Supp. 3d 468, 473 (W.D. Pa. 2019) (quoting *United States v. Harris*, 884 F. Supp. 2d 383, 387 n.2 (W.D. Pa. 2012)).

³ The Court can take judicial notice of the applicable Pennsylvania Motor Vehicle Code provisions. See *Lamar v. Micou*, 114 U.S. 218, 223 (1885) (“The law of any State of the Union, whether depending upon statutes or upon judicial opinions, is a matter of which the courts of the United States are bound to take judicial notice, without plea or proof.”); *Est. of Rockwell v. Comm’r*, 779 F.2d 931, 936 n.5 (3d Cir. 1985) (“We take judicial notice of the law of Pennsylvania as expressed in statutes and court decisions.”); *Dean v. Specialized Sec. Response*, 876 F. Supp. 2d 549, 556 n.4 (W.D. Pa. 2012) (“Federal courts are required to take judicial notice of state statutes.”).

⁴ The Court has reviewed video footage from Officer Rebel’s vehicle introduced into evidence as Government Exhibits 4 (excerpt of footage) and 9 (entire footage).

and stopped. Officer Rebel notified dispatch that he did not know if the vehicle would stop. At one point, Officer Rebel hit the emergency siren. After approximately one minute, the BMW pulled onto the shoulder of Route 30 instead of pulling into a parking lot with numerous empty parking stalls. (*Id.* at 5, 30, 32-33, 58-59; Government Exhibits 4 and 9, 19:47:42-19:48:27). Officer Rebel's "awareness was heightened." (*Id.* at 33). The BMW's failure to pull over despite numerous opportunities to do so was an indicator of criminal activity to Officer Rebel. Additionally, based on his training and experience, what the BMW did was consistent with "white-lining," which occurs when a subject wants an "officer to be off of their game" and pay more attention to the traffic behind them. (*Id.* at 33, 59-60).

Officer Rebel's supervisor, Sergeant Justin Wardman ("Sergeant Wardman"),⁵ arrived with his K-9 partner. He heard Officer Rebel's dispatch report and was in the area of Route 30 traveling west. Both vehicles actually passed him. According to Sergeant Wardman, the windows of the BMW were "pretty much blacked out," so that "[y]ou cannot see anybody inside." (*Id.* at 4-5, 7, 10; Government Exhibit 2).

Officer Rebel approached the front passenger window of the BMW and was still unable to see inside. He knocked on the window to get the BMW's occupant(s) to roll down the window. As the window lowered, Officer Rebel immediately smelled the odor of raw marijuana emanating from inside.⁶ Jones was the driver, and a female was sitting in the front passenger

⁵ Sergeant Wardman has been employed with the North Huntingdon Township Police Department for sixteen years. In 1996, he began working as a police officer for the City of Uniontown. After that, he worked for Elizabeth Township. (*Id.* at 4). The Court has reviewed video footage from his vehicle's dashcam introduced into evidence as Government's Exhibits 2 (excerpt of footage) and 7 (entire footage)).

⁶ Officer Rebel has been a police officer for over five and a half years. He has initiated hundreds of traffic stops for violations of Pennsylvania's Motor Vehicle Code. Primarily, he investigates narcotics and he has extensive training to do so. (Tr. at 26-28). In his career, Officer Rebel has

seat. (*Id.* at 34-35). Officer Rebel asked for Jones's license, registration, and proof of insurance. Jones only gave Officer Rebel a Pennsylvania identification card. This immediately raised Officer Rebel's suspicion that Jones did not have a valid driver's license. Officer Rebel then asked the female to identify herself, and she identified herself as Akins and provided a change of address card. Officer Rebel again asked for the registration and insurance. Jones pulled out a title from the center console. Officer Rebel continued to ask for the required documents – i.e., registration and proof of insurance. By two and half minutes into the traffic stop, Officer Rebel still had not obtained the requested documents.⁷ Akins eventually located the registration in the glove box. During all of this, Officer Rebel observed that Jones was more nervous than drivers he typically encounters during traffic stops. When Akins closed the glove box, Officer Rebel noticed a brick wrapper between her legs at her feet. It was packaging paper for heroin with a blue Popeyes stamp.⁸ (*Id.* at 38-42, 44, 60). He knew the heroin packaging material was a violation of "Title 35 780-113A32 paraphernalia." (*Id.* at 43).

At that point, which was only three minutes from when Officer Rebel first approached the vehicle on foot, Officer Rebel asked Jones to step out of the BMW and come to the rear of the vehicle. Officer Rebel asked if Jones had any weapons on him. Jones stated that he did not.

conducted over several hundred narcotics related arrests and investigations at least half of which involved marijuana. (*Id.* at 26-27). He became familiar with the odor of marijuana during his youth – nearly everyone in his neighborhood smoked marijuana. He's smelled raw or unburnt marijuana, which has a particular odor, thousands of times. According to Officer Rebel, burnt marijuana has a smoky smell, similar to a log being burned. (*Id.* at 28, 26, 61-62).

⁷ Officer Rebel provided credible testimony as to the typical course of events during a traffic stop, which usually lasts fifteen minutes. (*Id.* at 35-38).

⁸ Officer Rebel participated in numerous undercover narcotics purchases in his career, and he has personally bought bricks of heroin (i.e., 50 stamp bags containing heroin or fentanyl). The Popeyes logo on the paper was significant to him because less than one month before, on December 28, 2020, a fatal overdose occurred in North Huntingdon and stamp bags with the exact same logo were found lying next to the deceased. (*Id.* at 40-41, 61).

When asked if he would consent to a pat-down, Jones said yes. A pat-down was conducted and no weapons were found on Jones. Officer Rebel then ran the vehicle information through dispatch as well as an inquiry into whether Jones had a valid driver's license. Almost seven minutes into the entire encounter (from the point at which Officer Rebel began to follow the vehicle), dispatch notified Officer Rebel that Jones's license was expired (and suspended), and that he did not have a concealed carry permit for a firearm. On the other hand, dispatch notified Officer Rebel that Akins had a valid driver's license and a valid permit to carry a concealed firearm. (*Id.* at 44:46, 63; Government Exhibit 9, 19:48:46-19:54:20).

Officer Rebel left Jones at the rear of the vehicle and returned to the passenger side to ask Akins if she had located the BMW's insurance information. She replied no. He then asked her about the odor of marijuana in the vehicle, if there was marijuana in the vehicle, if they had been around anyone who had or smoked marijuana, and if she had a medical marijuana card. Akins said no to all of Officer Rebel's questions. Akins was asked to exit the vehicle, and she complied. When Officer Rebel asked Jones the same questions, he replied no. Then, when asked for consent to search the vehicle, Jones said no. (*Id.* at 47:48, 63; Government Exhibit 9, 19:54:32-20:01:02).

Approximately thirteen minutes after Officer Rebel pulled over the BMW, the K-9 officer, Rocco, walked around the vehicle with Sergeant Wardman to conduct a sniff. Rocco positively alerted to narcotics on the driver's side door seam between it and the rear passenger door.⁹ As a result of military service, Sergeant Wardman cannot smell anything. He notified Officer Rebel of Rocco's positive alert to the odor of narcotics from the vehicle. (*Id.* at 9:13, 16-19, 67; Government Exhibit 9, 20:01:03 – 20:01:34).

⁹ Rocco's certification was valid, and he has no history of giving false alerts. (Tr. at 13-15, 24-25; Government Exhibit 6).

Officer Rebel then handcuffed Jones and advised him that he was under arrest. Officer Rebel asked Akins if there was anything illegal inside the vehicle. She said that Jones had illegal items inside the vehicle, but she did not know what they were. Akins gave verbal and written consent to search the vehicle. Prior to the search commencing, Jones called Officer Rebel to where he was standing and said that he had illegal items inside the vehicle and that everything belonged to him. (*Id.* at 48-49, 64). More specifically, Jones said that he had cocaine, heroin, and marijuana, and that it was located in the glove box and backseat of the BMW. Contraband was recovered from the vehicle, including .342 grams (approximately three-quarters of a pound) of marijuana from the backseat in a garbage bag – it was not vacuum-sealed. (*Id.* at 50-51).

II. ANALYSIS

The Fourth Amendment safeguards the “right of the people to be secure . . . against unreasonable searches and seizures.” U.S. Const. amend. IV.¹⁰ “As a general rule, the burden of proof is on the defendant who seeks to suppress evidence.” *United States v. Johnson*, 63 F.3d 242, 245 (3d Cir. 1995) (citation omitted). The starting point is to determine whether the seizure

¹⁰ Article 1, Section 8 of the Pennsylvania Constitution is the state analogue to the Fourth Amendment of the federal constitution. The Pennsylvania Supreme Court has recognized that Article I, Section 8 of the state constitution provides broader protections than the Fourth Amendment. *Commonwealth v. DeJohn*, 403 A.2d 1283 (Pa. 1979). Jones does not allege any violation of his right to privacy based upon Article I, Section 8 of the Pennsylvania Constitution. This is because the United States Court of Appeals for the Third Circuit has held that a defendant’s state-secured rights, constitutional or otherwise, are of no consequence when the defendant is prosecuted by the federal government. *United States v. Rickus*, 737 F.2d 360, 363–64 & n.1 (3d Cir. 1984); *United States v. Bedford*, 519 F.2d 650, 653–54 & nn.1–3 (3d Cir. 1975); *United States v. Scolnick*, 392 F.2d 320, 323–26 (3d Cir. 1967); *cf. United States v. Shaffer*, 520 F.2d 1369, 1372 (3d Cir. 1975); *United States v. Armocida*, 515 F.2d 49, 51–52 (3d Cir. 1975); *United States v. Stiver*, 9 F.3d 298, 300 (3d Cir. 1993) (“Evidence obtained in accordance with federal law is admissible in federal court—even though it was obtained by state officers in violation of state law.” (quoting *Rickus*, 737 F.2d at 363–64)). The Court must judge the officers’ conduct solely under federal standards as it must decide evidence questions on the basis of federal, rather than state, law.

occurred without a warrant. When a defendant, like Jones, asserts that the Government seized him without a warrant, he easily clears his initial burden. “The burden then shifts to the government to prove by a preponderance of the evidence that the officer’s seizure of the defendant reflected the protections of the Fourth Amendment.” *United States v. Wilburn*, No. 18-115, 2021 WL 1310423, at *22 (W.D. Pa. Apr. 8, 2021) (citations omitted). As there is no dispute that Jones was seized without a warrant (through the traffic stop), the Government bears the burden of showing that the Fourth Amendment was not violated. The Court finds that it did so for the following reasons of law and fact.

A. A valid traffic stop occurred.

“A traffic stop is a ‘seizure’ within the meaning of the Fourth Amendment, ‘even though the purpose of the stop is limited and the resulting detention quite brief.’” *United States v. Delfin-Colina*, 464 F.3d 392, 396 (3d Cir. 2006) (quoting *Delaware v. Prouse*, 440 U.S. 648, 653 (1979)). Further, “[i]t is well-established that a traffic stop is lawful under the Fourth Amendment where a police officer observes a violation of the state traffic regulations.” *United States v. Moorefield*, 111 F.3d 10, 12 (3d Cir. 1997) (citations omitted). It need only be supported by reasonable suspicion that a traffic violation occurred.¹¹ *United States v. Green*, 897 F.3d 173, 178 (3d Cir. 2018) (citations omitted). In other words, while reasonable suspicion is “a generally undemanding standard,” a police officer bears the “initial burden of providing . . . specific, articulable facts to justify a reasonable suspicion to believe that an individual has

¹¹ This standard is “a less demanding standard than probable cause and requires a showing considerably less than preponderance of the evidence.” *Delfin-Colina*, 464 F.3d at 396 (citations omitted). In assessing reasonable suspicion, a court must examine the totality of the circumstances, *United States v. Silveus*, 542 F.3d 993, 1000 (3d Cir. 2008), through the lens of officer training and experience, *see United States v. Cortez*, 449 U.S. 411, 418 (1981). The Third Circuit has given considerable deference to police officers’ determinations of reasonable suspicion. *See, e.g., United States v. Nelson*, 284 F.3d 472, 482 (3d Cir. 2002).

violated the traffic laws.” *Delfin-Colina*, 464 F.3d at 397 (cleaned up) (citations omitted). “[A]ny technical violation of a traffic code legitimizes a stop, even if the stop is merely pretext for an investigation of some other crime.” *United States v. Mosley*, 454 F.3d 249, 252 (3d Cir. 2006) (citing *Whren v. United States*, 517 U.S. 806 (1996)); *see also United States v. Lewis*, 672 F.3d 232, 237 (3d Cir. 2012) (“[P]retextual traffic stops supported by reasonable suspicion do not run afoul of the Fourth Amendment.”).

The Court holds that a valid traffic stop occurred. Officer Rebel observed the BMW drive past him while he was monitoring traffic on Route 30. Its windows were so darkly tinted that he was unable to see any occupants inside, which Officer Rebel knew to be a violation of Section 4524(e)(1) of Title 75 of the Pennsylvania Code.¹² That section of the Pennsylvania Motor Vehicle Code states that it is a violation to drive a vehicle “with any sun screening device or other material which does not permit a person to see or view the inside of the vehicle through the windshield, side wing or wide window of the vehicle.” 75 Pa. C.S. § 4524(e)(1). In addition to Officer Rebel’s observations, (1) Sergeant Wardman observed that the windows of the BMW were “pretty much blacked out,” so that “[y]ou cannot see anybody inside.” (Tr. at 4-5, 7, 10; Government Exhibit 2); (2) the dash cam videos from Officer Rebel and Sergeant Wardman’s

¹² Officer Rebel need not have been factually accurate in his belief that a Pennsylvania traffic law had been violated. So long as he held a particularized and objective basis for suspecting a traffic violation, the stop does not offend the Constitution. *Heien v. North Carolina*, 574 U.S. 54, 60-61 (2014) (“To be reasonable is not to be perfect, and so the Fourth Amendment allows for some mistakes on the part of government officials, giving them ‘fair leeway for enforcing the law in the community’s protection.’” (citation omitted)). The Court finds that Officer Rebel reasonably believed a violation of the Pennsylvania Motor Vehicle Code had occurred. *See Delfin-Colina*, 464 F.3d at 399-400 (“an officer’s Fourth Amendment burden of production is to (1) identify the ordinance or statute that he believed had been violated, and (2) provide specific, articulable facts that support an objective determination of whether any officer could have possessed reasonable suspicion of the alleged infraction. As long as both prongs are met, an officer’s subjective understanding of the law at issue would not be relevant to the court’s determination.”).

vehicles captured the blacked-out state of the front passenger window (Government Exhibits 2, 4, 7, 8 and 9); and (3) even in the well-lit police garage, it was nearly impossible to see through the BMW’s windows (ECF No. 63-3 at 2 and 3; Government Exhibit 3; Tr. at 51-52). The Court holds that the stop of the vehicle Jones was operating was reasonable under the Fourth Amendment as it was a lawful traffic stop. *See Whren*, 517 U.S. at 810; *Moorefield*, 111 F.3d at 12.

B. Sufficient justification existed to extend the traffic stop.

In his post-hearing brief, Jones advances no argument other than that “the stop was illegal.” (ECF No. 75, p. 4). However, in his motion, Jones also argued that “all evidence obtained after Rebel requested a dog sniff was obtained in violation of Mr. Jones’s constitutional rights [. . .].” (ECF No. 58, pp. 12-13). As such, evidence was adduced at the suppression hearing regarding what transpired during the traffic stop. The Court is unclear as to whether Jones is now only challenging the stop of the BMW. Regardless, it holds that Officer Rebel had reasonable suspicion (and probable cause) to extend the traffic stop.

“After a traffic stop that was justified at its inception, an officer who develops a reasonable, articulable suspicion of criminal activity may expand the scope of an inquiry.” *United States v. Givan*, 320 F.3d 452, 458 (3d Cir. 2003). As “[t]he Supreme Court has repeatedly recognized,” “traffic stops are dangerous encounters that result in assaults and murders of police officers.” *Moorefield*, 111 F.3d at 13 (citations omitted). It is well-settled that a police officer executing a valid traffic stop “may exercise reasonable superintendence over the car and its passengers.” *United States v. Bonner*, 363 F.3d 213, 216 (3d Cir. 2004). Thus, after a car has been legally stopped, “the police may ‘escalate’ the encounter by visually inspecting the

interior of the car, and checking credentials and asking questions of the occupants.” *Mosley*, 454 F.3d at 252.

“[A] seizure lawful at its inception can nevertheless violate the Fourth Amendment because its manner of execution unreasonably infringes possessory interests protected by the Fourth Amendment’s prohibition on ‘unreasonable seizures.’” *United States v. Jacobsen*, 466 U.S. 109, 124 (1984). “[T]he tolerable duration of police inquiries in the traffic-stop context is determined by the seizure’s ‘mission’—to address the traffic violation that warranted the stop, and attend to related safety concerns.” *Rodriguez v. United States*, 575 U.S. 348, 354 (2015) (internal citations omitted). “Authority for the seizure thus ends when tasks tied to the traffic infraction are—or reasonably should have been—completed.” *Id.* “In describing what inquiries qualify as ‘unrelated,’ *Rodriguez* drew a distinction between ‘ordinary inquiries incident to’ a traffic stop, which serve the purpose of enforcing the traffic code, and other measures aimed at detecting criminal activity more generally.” *United States v. Green*, 897 F.3d 173, 179 (3d Cir. 2018) (citing *Rodriguez*, 575 U.S. at 355) (internal citation omitted). Ordinary inquiries “involve checking the driver’s license, determining whether there are outstanding warrants against the driver, and inspecting the automobile’s registration and proof of insurance.” *Rodriguez*, 575 U.S. at 355. “To lawfully extend a stop beyond when tasks tied to its initial mission are completed or reasonably should have been completed, an officer must have an objectively reasonable and articulable suspicion that illegal activity had occurred or was occurring.” *United States v. Garner*, 961 F.3d 264, 271 (3d Cir. 2020) (citing *Rodriguez*, 575 U.S. at 355; *United States v. Clark*, 902 F.3d 404, 410 (3d Cir. 2018)). If an officer possesses reasonable suspicion of criminal activity prior to extending the traffic stop, no violation of the Fourth Amendment has occurred. *See id.*

Here, as soon as Officer Rebel approached the BMW and Akins rolled down the passenger's side window, Officer Rebel smelled the odor of raw marijuana emanating from inside the vehicle. "It is well settled that the smell of marijuana alone, if articulable and particularized, may establish not merely reasonable suspicion, but probable cause." *United States v. Registe*, 830 F. App'x 708, 710 (3d Cir. 2020) (explaining that Third Circuit case law recognizes that the smell of marijuana can provide probable cause (citing *United States v. Ramos*, 443 F.3d 304, 308 (3d Cir. 2006))); *see also United States v. Jackson*, 682 F. App'x 86, 87–88 & n.1 (3d Cir. 2017) (recognizing that an officer has probable cause to arrest "[s]o long as an officer smells the odor of marijuana and can localize its source with sufficient particularity"). Thus, the smell of marijuana alone provided reasonable suspicion for Officer Rebel to extend the traffic stop, particularly when it was combined with Jones not immediately pulling the BMW over and then "white-lining" when he eventually stopped the vehicle.

Officer Rebel developed further reasonable suspicion. In response to Officer Rebel's request for Jones's driver's license, registration, and proof of insurance, Jones only gave Officer Rebel a Pennsylvania identification card. This caused Officer Rebel to suspect that Jones did not have a valid driver's license. Then, it took minutes for Jones and Akins to locate the registration and insurance documents. During that time, Officer Rebel believed Jones was acting more nervous than drivers he encounters during typical traffic stops. When Akins located the registration in the glove box and closed it, Officer Rebel noticed a brick wrapper between her legs at her feet, which he knew to be packaging paper for heroin. At that point, the totality of circumstances were such that Officer Rebel had sufficient reasonable suspicion of criminal activity beyond the traffic violation. In fact, Officer Rebel had probable cause that the vehicle contained evidence of a crime – possession of drug paraphernalia. Officer Rebel removed Jones

from the vehicle, patted him down and ran his information through dispatch only to discover that Jones did not have a valid driver's license.

As to the *Rodriguez* moment, the Court finds that it occurred when Officer Rebel returned to the vehicle and asked Akins about the odor of marijuana emanating from the vehicle, if there was marijuana in the vehicle, if they had been around anyone who had or smoked marijuana, and if she had a medical marijuana card. She said no to all of Officer Rebel's questions. When Officer Rebel asked Jones the same questions, he too replied no. Prior to this point, Officer Rebel never veered away from the on-mission tasks associated with a traffic stop. Any delay in Officer Rebel conducting his routine traffic stop tasks was due to Jones's and Akins's failure to locate any of the necessary documents thus preventing Officer Rebel from checking Jones's driver's license, determining whether there were any outstanding warrants for him (or Akins), and inspecting the BMW's registration and proof of insurance. The Court finds that Officer Rebel was reasonably diligent; there is no evidence to suggest that he deviated from the mission of his traffic stop or that he purposefully delayed tasks related to the traffic stop. During the traffic stop he developed reasonable suspicion of criminal activity beyond the traffic violation. What's more, what occurred established the requisite probable cause that the vehicle contained evidence of a crime. Extending the stop to conduct a dog sniff was lawful.¹³

III. CONCLUSION

For the foregoing reasons of law and fact, the Court concludes that Jones's Fourth Amendment rights were not violated. The initiation and execution of the traffic stop was

¹³ A canine sniff is not aimed at ensuring the safety of vehicles on the road but at "detect[ing] evidence of ordinary criminal wrongdoing." *Rodriguez*, 575 U.S. at 355 (quoting *City of Indianapolis v. Edmond*, 531 U.S. 32, 40–41 (2000)). It is well established that Rocco's positive alert while sniffing the exterior of the car provided the officers with probable cause to search the car without a warrant. *United States v. Pierce*, 622 F.3d 209, 213 (3d Cir. 2010); *see also United States v. Johnson*, 742 F. App'x 616, 622 (3d Cir. 2018).

constitutional. Jones's Motion to Suppress Evidence (ECF No. 58) will be denied. An Order of Court will follow.

BY THE COURT:

William S. Stickman

WILLIAM S. STICKMAN IV
UNITED STATES DISTRICT JUDGE

8-24-2023

Date

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

DESHAUN CURTIS JONES,

Defendant.

Criminal No. 2:21-cr-17 - 1

Hon. William S. Stickman IV

ORDER OF COURT

AND NOW, this 24 day of August 2023, for the reasons set forth in the Memorandum Opinion filed this same day, IT IS HEREBY ORDERED that Defendant Deshaun Curtis Jones's Motion to Suppress Evidence (ECF No. 58) is DENIED.

BY THE COURT:

24/8/23

WILLIAM S. STICKMAN IV
UNITED STATES DISTRICT JUDGE

NORTH HUNTINGDON TWP PD

Incident Report Form

WEAPONS OFFENSES

agreed. Once at the rear of the vehicle, Jones was asked if he would consent to a pat down for weapons, to which he verbally agreed. A pat down was conducted with no weapons located. Jones and Akins OLN's were then ran through dispatch. Jones was asked if he had a valid license, to which he replied "You know I don't, you see I gave you an ID Card." While waiting for the information to return Jones was asked where they were currently coming from, to which he stated that he and Akins were at a Chinese restaurant in Penn Hills and were currently going home. When asked where they currently reside at, he stated that they live in Port Vue. Officer Rebel knows Port Vue shows a McKeesport address with a zipcode of 15133. Around this time Officers Popovich and Jandric arrived on scene to assist with the traffic stop. Dispatch notified Officers that Jones license was suspended and Akins license was valid. Jones was asked to wait at the rear of the vehicle while Officer Rebel went and spoke with Akins. Upon speaking with Akins at the front passenger side window she was asked where they were coming from, to which she stated that they were at a Chinese restaurant in Penn Hills and stated that they were on their way home to Port Vue. She was asked about the odor of marijuana coming from inside of the vehicle. She was asked if either her or Jones had smoked marijuana or had been around someone that had marijuana on them earlier in the day, to which she replied "No." She was asked if she had a medical marijuana card, to which she replied "No." She was then asked if she would exit the vehicle to speak with Officer Rebel at the front of the vehicle, to which she agreed.

Once at the front of the vehicle she was advised that Officer Rebel knew that she had a valid Concealed Carry Permit because it came across the radio earlier when dispatch notified that her Driver's License was valid. She stated that she did not have a firearm on her person or inside of her vehicle. She was asked for consent to pat her down by Officer Jandric for weapons, to which she verbally agreed. A pat down was conducted with no weapons located. Officer Rebel then went back to Jones and asked if he or Akins had smoked or been around anyone that had Marijuana on them earlier in the day, to which he stated "No." Jones was asked if there was any Marijuana or any illegal narcotics inside of the vehicle, and again replied "No." Jones was told that Officer Rebel could smell the odor of Marijuana coming from inside of the vehicle. Jones was asked if he had a medical Marijuana card, to which he replied "No." Officer Rebel then asked for consent to search the interior of the vehicle for illegal contraband, to which Jones replied "Nope, I am not giving you consent." Officer Rebel then requested Sergeant Wardman use K-9 Rocco to do an exterior sniff of the vehicle, for the odor of narcotics. An exterior sniff of the vehicle was conducted and Officer Rebel was advised by Sergeant Wardman that K-9 Rocco gave a positive alert for the odor of narcotics. Officer Rebel then detained Jones using handcuffs and explained that the K-9 gave a positive alert on the vehicle for narcotics and he did not want Jones to flee. He was advised that he was not under arrest. Akins was also placed into handcuffs and she was advised that she was only being detained and not under arrest. She was again advised that she was not under arrest, to which she stated that she understood. Officer Rebel asked Akins if she knew if Jones had something illegal inside of the vehicle, to which she stated "Yes", but she stated that she did not know what it was. Officer Rebel then asked Akins if she would consent to a search of the vehicle for illegal narcotics. Akins was advised that she had the absolute right to refuse consent and she was advised that in that instance a search warrant would be applied for and if granted by a Judge a search of her vehicle would be conducted.

After a short period of time Akins verbally consented to a search of her entire vehicle, inside and out and all containers located inside that could contain contraband. Officer Rebel then went and retrieved a NHTPD Consent to Search Form which again advised her of her right to refuse the consent search. The form stated that she was consenting to "Everything inside and outside, any containers or anything that could contain contraband, bumper to bumper, my vehicle, Gold BMW, PA registration LJR9140." At approximately 2035 hours Akins printed, signed and dated the form to search her vehicle. As officers Rebel and Popovich were walking to the vehicle to begin the search Jones yelled to Officer Rebel "I need to talk to you." Jones then advised Officer Rebel that he did have some illegal things inside of the vehicle. Officer Rebel asked if he had cocaine, heroin or marijuana, to which Jones replied "I got everything." Jones then stated that everything illegal inside of the vehicle was his and did not belong to Akins. Jones then stated that he had illegal items

NORTH HUNTINGDON TWP PD

Incident Report Form

WEAPONS OFFENSES

inside of the glove box and on the back seat. Sergeant Wardman then placed Jones under arrest and into the rear of Squad Car 9. A search of the interior of the BMW yielded, a black Glock 23 .40 Caliber firearm serial # TVB369, a purple Crown Royal bag containing numerous bricks of heroin, crack cocaine, cocaine and Marijuana located inside of the glove box. **On the back driver's side seat a black garbage bag which had a strong odor of marijuana coming from it was located. Upon opening the bag a large partially sealed bag of Marijuana was located.** Two cell phones were seized from the center console area in front of the gear shift (1 black Motorola and 1 Iphone). A check of the firearm through dispatch showed the firearm to be stolen out of Shaler Township. All evidence was collected and later transported to NHTPD for processing.

Officer Rebel then went to the rear of Squad Car 9 and read Jones his Miranda Warnings, to which Jones stated that he wanted to remain silent. At that point no questions were asked. Officer Rebel then advised Officer Jandric to place Akins into custody, to which she did. Officers Rebel and Sergeant Wardman then conducted a vehicle inventory of the vehicle and filled out a vehicle inventory form to document any items of value left inside of the vehicle. Officer Jandric transported Akins to NHTPD and Officer Rebel followed by Officer Popovich, transported Jones to NHTPD for processing. Sergeant Wardman waited with the BMW until the vehicle was towed to their yard by Lenhart's Towing. Once at NHTPD Officers checked Cells 3 and 6 for any illegal contraband or weapons, with none found. Officer Rebel searched Jones incident to arrest for any further contraband, which yielded \$990.00 of U.S. Currency in his right pants pocket. Jones was then placed into Cell 3. Officer Jandric searched Akins incident to arrest with no further contraband located on her person. She was then placed into cell 6. All evidence was logged, photographed and placed into the evidence room. It was determined that a total of 1,086 stamp bags containing suspected Heroin / Fentanyl were recovered from inside of the purple Crown Royal bag (533- stamp bags stamped "Chucky" in red ink, 502- stamp bags stamped "Popeye" in blue ink and 51- stamp bags stamped "Last Blood" in red ink). Also located inside of the Crown Royal bag was approximately 5 grams of Cocaine, approximately 19 grams of Crack Cocaine and approximately 4 grams of marijuana all individually wrapped in clear baggies. A digital scale containing suspected cocaine residue was also located inside of the Crown Royal bag. The Marijuana inside of the trash bag was partially sealed in a clear bag with a sticker "Gorilla Glue", containing approximately 342 grams of Marijuana. The stolen Glock 23 .40 Cal firearm serial # TVB369 had an extended 30 round magazine seated in the firearm, which contained 25 rounds (14-"FL" S&W .40 Cal. ball rounds and 11-"RP" S&W .40 Cal. hollow point rounds).

Officers with the North Huntingdon Township Police Department, along with several other Police Department in Western Pennsylvania are currently aware of numerous heroin related overdoses and overdose deaths, resulting from Heroin stamp bags stamped "Chucky" in red ink. This information has been disseminated to local Police Departments from the FBI and the DEA recently. Officers determined it best to contact the FBI TOC West Task Force Pittsburgh to assist with the investigation. Officer Rebel contacted Agent Norm Locke and advised him of the findings. Locke then traveled to NHTPD to attempt an interview with Jones. Upon Locke arrival Jones was moved into the interview room. Agent Locke read Jones his Miranda Warning and Jones stated he wanted to remain silent. Jones was then placed back into Cell 3. It was determined that the U.S. Attorney's Office will charge Jones Federally for these offenses. A criminal history on Jones showed him to be a persons not to possess a firearm. Jones was then transported to Butler County Jail By Officer Rebel and Agent Locke in Squad Car 9. Upon arrival at Butler County Jail a Federal Hold was placed on Jones. Officer Rebel and Agent Locke then traveled back to NHTPD. Once back at NHTPD Agent Locke Interviewed Akins in the interview room. Akins read, signed and dated a Miranda Warnings Form and agreed to speak with Agent Locke. Akins also signed and dated a Advisement as to Laws Pertaining to False Statements Form. Akins then made a written voluntary statement which states that upon being pulled over nothing inside of the vehicle was hers other then her take out food. It was determined to release Akins from custody. She was advised that she will receive charges via mail at the address she provided to Officers and was warned that a failure to respond would result in a warrant for her arrest, to which she stated that she understood. A hold was placed on the BMW through Lenhart's Towing, by the

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 24-1558

UNITED STATES OF AMERICA

v.

DESHAUN CURTIS JONES,
Appellant

On Appeal from the United States District Court
for the Western District of Pennsylvania
District Court No. 2:21-cr-00017-001
District Judge: The Honorable William S. Stickman, IV

Submitted under Third Circuit L.A.R. 34.1(a)
January 24, 2025

Before: HARDIMAN, AMBRO, and SMITH, *Circuit Judges*

(Filed: February 21, 2025)

OPINION*

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

SMITH, *Circuit Judge*

I.

While driving, Deshaun Jones was stopped by police for a suspected window tint violation. After a subsequent dog sniff indicated the presence of narcotics, officers searched the vehicle and seized drugs and a firearm. Jones moved to suppress the fruits of the search, which the District Court denied. He entered a conditional plea of guilty to possession with intent to distribute fentanyl, in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(C), and possession of a firearm in furtherance of a drug trafficking crime, in violation of 18 U.S.C. § 924(c)(1)(A)(i). Jones now challenges the District Court's denial of his suppression motion. For the following reasons, we will affirm.

II.

At the suppression hearing, Detective Shane Rebel testified that he was sitting in a police car on the side of State Route 30 with his high-beams on when he observed a BMW with heavily tinted windows pass by. According to Detective Rebel, the tint was such that it prevented the detective from seeing the vehicle's occupants. Detective Rebel followed the BMW, which did not immediately pull over, activated his emergency lights, and initiated a traffic stop. He testified during the suppression hearing that Jones was the driver, and that after he knocked on the vehicle's passenger window it was lowered. Detective Rebel said he was immediately met with the odor of raw marijuana.

Detective Rebel asked Jones for his license, registration, and proof of insurance. Jones handed him a Pennsylvania identification card, rather than a valid driver's license. The passenger, who identified herself as Keyoka Akins, began to retrieve the vehicle

registration from the glove box. While waiting for the requested documents, Detective Rebel noticed that Jones was unusually nervous. After Akins closed the glove box, Detective Rebel saw packaging paper he recognized as a “brick wrapper” for heroin between Akins’s feet on the floor of the vehicle. The item resembled packaging he had seen just weeks before while investigating a case involving a fatal overdose. While Detective Rebel spoke with Jones at the rear of the vehicle, police dispatch advised the detective that Jones’s license was both “expired” and “suspended.” SA87.

In the meantime, Detective Rebel’s supervisor, Sergeant Justin Wardman, arrived on scene with his K-9 partner. Sergeant Wardman had heard Detective Rebel advise dispatch that he was not certain the driver intended to pull over. Sergeant Wardman also noted that he saw Detective Rebel pursuing Jones’s vehicle, and that he observed that the vehicle’s windows were “pretty much blacked out.” SA 48.

Detective Rebel returned to the passenger-side window and asked Akins if there was marijuana in the vehicle. She replied there was not, and Jones agreed. When Jones refused to consent to a search of the vehicle, Sergeant Wardman conducted a dog sniff around the vehicle. The K-9 alerted, after which Detective Rebel handcuffed Jones and Akins. At that point, Akins provided verbal and written consent to search the vehicle. Detective Rebel found a partially opened bag, wrapped in a garbage bag, located in the back seat. It contained 342 grams of marijuana. He also found what he believed to be heroin, cocaine, and a firearm in the vehicle. Jones admitted to Officer Rebel that the contraband belonged to him, not Akins.

Facing federal drug and firearms charges, Jones moved to suppress the contraband seized from the vehicle. The District Court denied Jones's motion, concluding that the traffic stop was valid and that Detective Rebel had reasonable suspicion to extend the traffic stop to conduct a dog sniff. Jones timely appealed. His plea agreement preserved his right to appeal the denial of his suppression motion.

III.¹

We review the District Court's factual findings underlying its denial of a suppression motion for clear error, and we exercise plenary review of the District Court's legal conclusions. *United States v. Kramer*, 75 F.4th 339, 342 (3d Cir. 2023). "Because the District Court denied the suppression motion, we view the facts in the light most favorable to the Government." *Id.*

Jones argues that Detective Rebel stopped him illegally and then unreasonably extended the stop. He further claims that the District Court erred in crediting Detective Rebel's testimony that he was unable to see through the vehicle's windows and that he smelled raw marijuana emanating from the vehicle. We disagree.

The Fourth Amendment protects the public from "unreasonable searches and seizures[,]" including traffic stops. U.S. Const. amend. IV; *Delaware v. Prouse*, 440 U.S. 648, 653 (1979). The Supreme Court has explained that "an officer may, consistent with the Fourth Amendment, conduct a brief, investigatory stop when the officer has a reasonable, articulable suspicion that criminal activity is afoot." *Illinois v. Wardlow*, 528

¹ The District Court had jurisdiction under 18 U.S.C. § 3231; we have jurisdiction pursuant to 28 U.S.C. § 1291.

U.S. 119, 123 (2000) (citing *Terry v. Ohio*, 392 U.S. 1, 30 (1968)). To meet this “generally undemanding” reasonable suspicion standard, an officer must point to specific, articulable facts that reasonably support a suspicion “that an individual has violated the traffic laws.” *United States v. Delfin-Colina*, 464 F.3d 392, 397 (2006). “[A]ny technical violation of a traffic code legitimizes a stop[.]” *United States v. Mosely*, 454 F.3d 249, 252 (3d Cir. 2006) (citing *Whren v. United States*, 517 U.S. 806 (1996)).

We agree with the District Court that Detective Rebel reasonably suspected a violation of 75 Pa. Cons. Stat. § 4524(e)(1). That provision prohibits “any sun screening device or other material which does not permit a person to see or view the inside of the vehicle[.]” The District Court noted both Detective Rebel’s testimony that he was unable to see the vehicle’s occupants when Jones drove by and Sergeant Wardman’s observation that the vehicle’s windows were “‘pretty much blacked out[.]’” A30 (quoting Tr. 7 (SA48)). In addition to this testimony, the District Court stated that the dash cam videos of the two law enforcement officers “captured the blacked-out state of the front passenger window” and that even in the photographs of the vehicle taken in a “well-lit police garage, it was nearly impossible to see through” the vehicle’s windows. A31.

We conclude that the District Court did not err by crediting Detective Rebel’s testimony. And we will not disturb the District Court’s determination that Detective Rebel’s initiation of the traffic stop did not violate the Fourth Amendment. *See Delfin-Colina*, 464 F.3d at 396; *United States v. Harrell*, 268 F.3d 141, 148–49 (2d Cir. 2001).

We further conclude that Detective Rebel did not unlawfully extend the traffic stop. A lawful traffic stop can be unreasonably extended in violation of the Fourth Amendment

if an officer prolongs the stop ““beyond the time reasonably required”” to complete its traffic-related mission in order to investigate other crimes. *Rodriguez v. United States*, 575 U.S. 348, 350, 355–57 (2015) (quoting *Illinois v. Caballes*, 543 U.S. 405, 407 (2005)). Our analysis proceeds in two steps. We must first determine if and when the stop was extended—*i.e.*, the “*Rodriguez* moment[.]” *United States v. Green*, 897 F.3d 173, 179 (3d Cir. 2018) (internal quotations omitted). If we conclude the stop was extended, we then assess whether the facts available to the officer “at that time were sufficient to establish reasonable suspicion[.]” *Id.* If the officer has reasonable suspicion of other criminal wrongdoing before “engag[ing] in any unrelated investigation[,]” “there is no Fourth Amendment violation.” *United States v. Garner*, 961 F.3d 264, 271 (3d Cir. 2020).

Here, the earliest plausible “*Rodriguez* moment” occurred when Detective Rebel asked Akins if there was marijuana in the vehicle. Before that inquiry, however, Detective Rebel had sufficient reasonable suspicion of separate criminal activity when he smelled raw marijuana emanating from the vehicle immediately after the vehicle’s window was lowered.² See *United States v. Ramos*, 443 F.3d 304, 308 (3d Cir. 2006). Moreover, as the District Court noted, in response to Officer Rebel’s request for driver’s license, registration, and proof of insurance, Jones did not produce a valid driver’s license, but only a Pennsylvania identification card. The Court also noted Officer Rebel’s belief that Jones

² We reject Jones’s assertion that the District Court clearly erred in crediting Detective Rebel’s testimony that he was able to smell the 342 grams of marijuana in the bag on the back seat from the passenger window. The District Court specifically noted Detective Rebel’s testimony that he recognized the odor because he had smelled it thousands of times both as a youth and in the course of his duties conducting narcotics investigations. See *United States v. Igbonwa*, 120 F.3d 437, 441 (3d Cir. 1997).

was very nervous. And there is the fact that Officer Rebel observed what he knew to be packaging paper for heroin in the vehicle, prompting reasonable suspicion of a violation of Pennsylvania's drug paraphernalia statute. *See* 35 Pa. Stat. Ann. § 780-113(a)(32). These observations provided reasonable suspicion not just for Detective Rebel's marijuana-related questions, but also for the subsequent dog sniff. *See Green*, 897 F.3d at 186–87.

For the foregoing reasons, we will affirm the judgment of the District Court.