
State of Minnesota,
Plaintiff,

**ORDER GRANTING DEFENDANT'S
MOTION TO SUPPRESS**

vs.

██████████,

Defendant.

Court File Number: ██████████

This matter came before the Honorable ██████████ on ██████████, 2023, for an evidentiary hearing. Defendant, ██████████, appeared and was represented by attorney Ryan Garry. ██████████, Assistant Hennepin County Attorney, represented the State of Minnesota. From the Hennepin County Sheriff's Office, Deputy Jason Wong, Sgt. Steven Lorentz, and Deputy Nick Peterson testified at the hearing. In addition, the defendant, Mr. ██████████, also testified at the hearing. The following exhibits were received into the record:

- Ex 1: Body Worn Camera footage ("BWC") of Off. Wong (Submitted by the State);
- Ex 2: Photo of bag with gun (Submitted by the State);
- Ex 3: Photo of gun in bag (Submitted by the State);
- Ex 4: BWC of Off. Lorentz (Submitted by the State);
- Ex 5: BWC of Off. Peterson (Submitted by the State);
- Ex 6: Flash drive of BWC (Submitted by Defense);
 - 6A - BWC of Off. Wong;
 - 6B - BWC of Off. Peterson;
 - 6C - BWC of Off. Lorentz; and,
 - 6D - BWC of Off. Kirchoff;

- Ex 7: Court Exhibit - Transcript of Off. Wong BWC (Submitted by Defense);
- Ex 8: Court Exhibit - Transcript of Off. Peterson BWC (Submitted by Defense);
- Ex 9: Court Exhibit - Transcript of Off. Lorentz BWC (Submitted by Defense);
- Ex 10: Court Exhibit - Transcript of Off. Kirchoff BWC (Submitted by Defense);
- Ex 11: Driver side interior car photo (Submitted by Defense, formerly Ex. E);
- Ex 12: Driver side interior car photo (Submitted by Defense, formerly Ex. F);
- Ex 13: Driver side interior car photo (Submitted by Defense, formerly Ex. G);
- Ex 14: BWC still photo of flashlight pointing into vehicle, driver's side (Submitted by Defense, formerly Ex. H);
- Ex 15: BWC still photo of flashlight pointing to floor of driver's side (Submitted by Defense, formerly Ex. I);
- Ex 16: BWC still photo of flashlight pointing to floor of driver's side (Submitted by Defense, formerly Ex. J);
- Ex 17: BWC still photo of flashlight pointing into vehicle, driver's side (Submitted by Defense, formerly Ex. K); and,
- Ex: 18 Hennepin County Sheriff's Office Supplemental Report by Deputy Peterson (Submitted by Defense, formerly Ex. L);

The MNCIS court record also contains the court transcript from the [REDACTED], 2023 evidentiary hearing.

Defendant moves to suppress all evidence obtained from the stop and the expansion of the stop in this case. Following testimony received at the evidentiary hearing, the parties elected to file written submissions, with Defense filing its submission on [REDACTED], 2023, and the State filing its submission on [REDACTED], 2023. The Court took the matter under advisement at that time.

FINDINGS OF FACT

I. The Stop.

On [REDACTED], 2022, just after midnight, Deputy Nick Peterson and Deputy Jason Wong were patrolling downtown Minneapolis when they observed a Black man driving a white Jaguar run a red light (Ex. 18, p. 1). There is no squad video of this alleged traffic violation. After observing said traffic violation, Deputy Wong testified he turned around his squad car and conducted a traffic stop (Tr. 11). Deputy Wong approached the vehicle and immediately questioned the driver, Defendant, regarding why he ran the red light (Ex. 1 at 1:07). Deputy Wong asked for and received Defendant's driver's license and then proceeded to have Defendant exit the vehicle. Defendant was almost immediately handcuffed and placed into the squad car, with Deputy Wong telling Defendant he was being detained. Deputy Wong testified to the reasons why Defendant was removed from the vehicle:

Several reasons. To start, this time, uh, [REDACTED] back in of last year there was a lot of violent gun crime in Minneapolis, um, Downtown Minneapolis. Around this time and still up to now there's - it's still a violent place where there's a lot of gun crime. So that, kind of, is always in my mind when I'm doing proactive details or traffic stops around the city of Minneapolis, North Minneapolis, downtown. It's just a little - being a little more - I don't know the word -- a lot more alert of the possibility of firearms and narcotics in and around that area. So that was kind of - that's, kind of, always in the back of my brain when I'm in Minneapolis and in these areas.

On top of that, downtown at bar close around midnight and going forward is, there's alcohol involved with a lot of folks that can contribute to incidences and reckless driving, other decisions that people would make poor choices that wouldn't normally, possibly if they weren't intoxicated.

So, all those things I just mentioned. And then, uh, walking up there, like I said before, smelling the odor of marijuana. I have multiple times in my job encountered the smell of marijuana, seeing marijuana, just encountering narcotics in general.

And then later, uh, later or at some time or at some time finding a firearm. I know that they're used in conjunction fairly often. Also, um, while up -- I think you can see as I step forward and look into his car a little more, I could see shake on the floor, little pieces of marijuana. And then I could see a bag right next to his left leg. It was like a smaller bag. And I have, again in my training and experience, found that - I've located a lot of firearms in those bags. So, when I stepped forward and saw that, that was another factor that made me feel that our safety was a concern.

(Tr. 14-16).

II. Odor of Marijuana.

In short, there was differing testimony at the evidentiary hearing regarding whether law enforcement officers smelled marijuana emanating from Defendant's vehicle at the commencement of the stop and whether that marijuana smell was of burnt or fresh marijuana. Deputy Wong testified that when Defendant "rolled the [driver's side] window down[,] I could immediately smell the odor of marijuana coming from the vehicle." (Tr. 11). He later clarified he believed the odor to be of burnt marijuana (Tr. 33-34). However, Deputy Wong denied finding any evidence of burnt marijuana; specifically, he did not find a joint, a blunt, a one hitter, a pipe, a bong, a can with holes, or any device in the vehicle or on Defendant's person wherein marijuana could have been smoked (Tr. 34). Deputy Wong stated, "I don't know if [Mr. ████████] directly was [smoking marijuana], but someone in that vehicle was at some point" (Tr. 34-35). No marijuana, other than the suspected shake, was found (Tr. 35).

In contrast, Deputy Peterson's police report stated he smelled the odor of marijuana from the passenger side – where there was a female occupant. Also included in that police report was that Deputy Peterson overheard Deputy Wong ask Defendant about the smell of marijuana. However, at the evidentiary hearing – and in body worn camera footage entered as an exhibit therein at the evidentiary hearing – Deputy Peterson testified that Deputy Wong did not ask Defendant about marijuana, contrary his report (Ex. 18, Ex. 7, Tr. 50). Further, nowhere in any of the responding officers' body camera footage are the words "marijuana" or "odor" mentioned prior to the officers removing Defendant from his vehicle. Deputy Peterson testified he smelled both burnt and fresh marijuana (Tr. 53). There was no testimony at the hearing distinguishing between the smells of burnt and fresh marijuana.

III. "Marijuana" Shake.

Deputy Wong testified that prior to ordering Defendant out of the vehicle, he observed what he described as "[m]arijuana shake, pieces of marijuana, on the floorboard" underneath where Defendant was sitting (Tr. 28). Deputy Wong testified,

Attorney Garry: Okay. Did you find any marijuana in the vehicle?

Deputy Wong: Other than the pieces on the floor, no.

Attorney Garry: What pieces on the floor?

Deputy Wong: The pieces that all these cops are going to testify that we saw.

Attorney Garry: Well, did you gather the pieces?

Deputy Wong: No.

Attorney Garry: Did you test the pieces?

Deputy Wong: I didn't.

(Tr. 35). Testimony continues with:

Attorney Garry: I mean for all you know that could have been oregano, grass clippings, correct?

Deputy Wong: I mean, I guess, I don't know.

(Tr. 36). Sgt. Lorentz testified that the minimal shake seen in the vehicle would not have provided an odor of marijuana (Tr. 45). Detective Peterson testified that he did not see any shake in the vehicle (Tr. 54), but that the shake was observed by law enforcement only after Defendant was removed from the vehicle (Ex. 18).

IV. Crossbody Bag/Fanny Pack/Gun Bag.

Deputy Wong testified that when speaking to Defendant, while he was in his vehicle, he saw a "bag right next to his [Defendant's] left leg...I've located a lot of firearms in those bags" (Tr. 16). After Defendant was removed from the vehicle and handcuffed, Sgt. Lorentz re-opened the car door and a crossbody bag fell out of the vehicle. The bag was zipped closed at the time it fell out of the car (Ex. 6C at 2:55). Officers later refer to this bag as a "gun bag".

Defendant was arrested and taken to the Hennepin County Jail and subsequently released. Defendant was later charged with one count of Third-Degree Possession - Cocaine, pursuant to Minn. Stat. § 152.023, and one count of Possession of a Weapon Without a Permit, pursuant to Minn. Stat. § 624.714.

CONCLUSIONS OF LAW

I. Officers Had a Lawful Basis for Initiating a Traffic Stop.

The Fourth Amendment to the United States Constitution and Article I, Section 10 of the Minnesota Constitution protect the “right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” U.S. Const. amend. IV; *see* Minn. Const. art. I, § 10.2. “The temporary detention of a motorist upon probable cause to believe that he has violated the traffic laws does not violate the Fourth Amendment’s prohibition against unreasonable seizures. . . .” *Whren v. United States*, 517 U.S. 806, 806 (1996). A police officer may temporarily seize a person to investigate if the officer reasonably suspects that person of criminal activity. *State v. Cripps*, 533 N.W.2d 388, 391 (Minn.1995). To be considered reasonable, an officer’s suspicion must be based on specific, articulable facts. *Id.* The officer must be able to point to objective facts and may not base his or her conclusion on a mere “hunch.” *Cripps*, 533 N.W.2d at 391–92. In the instance case, officers consistently testified that Defendant was pulled over for allegedly running a red light. Officers had a lawful basis for initiating the traffic stop.

II. Officers Did Not Have Reasonable Suspicion to Expand the Traffic Stop.

In Minnesota, “each incremental intrusion during a stop must be strictly tied to and justified by the circumstances which rendered the initiation of the stop permissible.” *State v. Askerooth*, 681 N.W.2d 353, 364 (Minn. 2004) (quotations omitted). Moreover, the basis for the intrusion must be “particularized” and “individualized to the driver.” *Askerooth*,

681 N.W.2d at 364; *State v. Fort*, 660 N.W.2d 415, 418 (Minn. 2003). An intrusion not strictly tied to the circumstances that made the initial stop permissible must be supported by “at least a reasonable suspicion of additional illegal activity.” *State v. Smith*, 814 N.W.2d 346, 350 (Minn. 2012).

Deputy Wong’s reasoning for expanding the traffic stop involved his overarching concerns regarding violent gun crime in Minneapolis, the timing of being close to bar close (although it was 12:05 a.m.) and, consequently, that there might be intoxicated people around (Tr. 14-16). It is important to note that violent gun crime and the timing of being close in time to bar close are circumstances that are not particularized to Defendant. Further, Deputy Wong testified that Defendant was not suspected of driving under the influence. Deputy Wong testified that the odor of marijuana, the alleged marijuana shake on the floorboard, and the “gun bag” provided reasonable suspicion of illegal activity by Defendant.

Officers initiated this stop based upon the belief that Defendant ran a red light. There were no tips, information, or observations which would lead officers to believe that the vehicle would contain drugs or guns at the time officers initiate the stop. This leaves the Court to rely on officer reports, testimony, body worn camera and other exhibits to determine if there was sufficient reasonable suspicion to extend the traffic stop and reenter the vehicle after detaining Defendant.

The record before this Court does not credibly establish that any of the officers at the scene smelled the odor of marijuana or saw the alleged marijuana shake *prior* to

beginning their search of the vehicle. Officers were also unaware of the presence of the “gun bag” – a fanny pack/crossbody bag later determined to contain a gun – until the door was reopened by Sgt. Lorentz. The reports, body worn camera, and testimony of the officers collectively are wholly contradictory. “Whether certain witnesses are worthy of belief is primarily for the jury and the trial court.” *Dick Weatherston’s Ass’n Mech. Servs. Inc. v. Minnesota Mut. Life Ins. Co.*, 100 N.W.2d 819, 823 (Minn. 1960) (citing *Becker v. Thomson*, 294 N.W. 214, 214 (Minn. 1940)). A district court has “the discretion to draw its own conclusions and make factual findings from its independent review of a video record of a traffic stop.” *State v. Shellito*, 594 N.W.2d 182, 186 (Minn. Ct. App. 1999) (finding it necessary to discount the officer’s testimony due to conflicting evidence and his lack of credibility).

A. The Court Does Not Find Officer Testimony Regarding the Smell of Marijuana to Be Credible.

Deputy Wong testified that he believed he smelled the odor of burnt marijuana (Tr. 33-34). Deputy Peterson testified that he smelled both burnt and fresh marijuana (Tr. 53). Sgt. Lorentz testified that the minimal shake seen in the vehicle – the only alleged marijuana located in the vehicle – would not have provided an odor of marijuana (Tr. 45). It is unclear to this Court what, if anything, was actually smelled by responding officers.

Further calling into question what was smelled, in Deputy Peterson’s police report, he states that while on the scene, he overheard Deputy Wong asking defendant about marijuana. However, we know from Deputy Peterson’s own corrective testimony, and body worn camera, that his police report was inaccurate and that conversation never

occurred (Ex. 18, Ex. 7, Tr. 50). Nowhere in any of the body camera footage received into evidence are the words “marijuana” or “odor” mentioned by any of the officers involved in the stop of Defendant. The sole mention of marijuana odor is in Deputy Peterson’s report – which was inaccurate and corrected by the officer on the witness stand. The odor of marijuana is a critical aspect of the expansion of the stop that the Court is unable to corroborate independently, as the Court is unable to smell what officers smelled at the time of the incident – burnt or unburnt (or no) marijuana – and the testimony provided by multiple officers is conflicting. Further, no officer testified to finding any evidence of burnt marijuana – not a joint, a blunt, a one hitter, a pipe, a bong, a can with holes, or any device in the vehicle or on Defendant’s person (Tr. 34). Further, Sgt. Lorentz testified that the amount of alleged marijuana shake located by officers would not have produced a smell of marijuana (Tr. 53). While other evidence can be seen on body camera or collected as evidence, this Court relies upon officer reports and testimony when determining the existence of marijuana odor. And, in this instance, the evidence is wholly contradictory.

While the court commends Deputy Petersen in correcting the record about the police report, *supra*, this casts doubt upon the validity of the entire report. Deputy Petersen was only aware of the error by reviewing body camera footage prior to the hearing. This creates concerns that there may be other areas of the report that are inaccurate but cannot be confirmed or discredited with body camera footage. Under the totality of the circumstances and in light of the dearth of facts, and inconsistent facts,

regarding the alleged marijuana odor, this Court finds the expansion of the stop to not be based on reasonable suspicion or probable cause.

B. The Court Finds Testimony Regarding Shake to Be in Contrast with What Is Visible on Body Worn Camera Footage.

Deputy Wong testified that prior to ordering Defendant out of the vehicle, he observed what he described as “[m]arijuana shake, pieces of marijuana, on the floorboard” (Tr. 28). Deputy Wong denied seeing any other contraband (Tr. 28). It wasn’t until after finding the gun that Sgt. Lorentz got close to the floor of the car and narrated for his body camera that there was “shake” on the floor by the driver’s seat (Ex. 6C at 4:01). Notably, the shake was documented on the body worn camera footage only after Defendant was removed from the vehicle (Ex. 18). However, Exhibits 11-17 show little to nothing on the black carpet. These exhibits are paused sections of the body worn camera footage from Sgt. Lorentz’s body camera and show black carpet with a few very small pieces of debris. These tiny pieces of debris or alleged marijuana shake on a dark colored floorboard – combined with the dark, late hour of night – are hardly visible to the Court in a picture taken by a responding officer who is shining a flashlight in close proximity to the floorboard. It is simply inconceivable to this Court that the responding officers would have been able to see the shake – at midnight, in the dark, and with a full-grown man in the driver’s seat of the vehicle and on top of the alleged shake and obscuring its view – prior to having Defendant exit the vehicle. Furthermore, the debris or alleged marijuana was not collected from the vehicle, nor tested, thereby requiring the Court to rely on testimony and exhibits.

Officers' testimony is also unclear about whether the suspected shake is actually marijuana shake. The alleged shake was not collected by officers (and thus also not tested), and even unseen by at least one testifying officer. Detective Peterson testified that he did not see any shake in the vehicle (Tr. 54). When pressed by Defense counsel regarding the shake, Deputy Wong testified that he believed all of the officers would testify to the same thing he was testifying to, stating "the pieces that all these cops are going to testify that we saw" (Tr. 35). This testimony is of concern to the Court as it raises suspicions as to whether there was an effort by officers to bolster the case by having consistent testimony. This lack of corroboration and contradictory information diminishes the officers' credibility. As such, the Court finds the testimony regarding the suspected marijuana shake to not be credible.

C. The Gun Bag Was Located Through an Illegal Search of Defendant's Vehicle and Will Be Suppressed.

After Defendant is handcuffed, Sgt. Lorentz initiates a search of Defendant's vehicle by reopening the driver's side door, at that time a fanny pack bag falls out of the vehicle (Ex. 6C at 2:55). The bag is zipped closed at the time it falls out of the car. The bag is not visible from any of the officer's body camera until it falls out of the vehicle. Officers later refer to this bag as a "gun bag". However, there is nothing about the bag found that would lead someone to believe there was a gun in it without holding or looking into the bag. While Detective Wong's testimony states, "I have many times in my job seen similar bags that had guns in them," (Tr. 28-29), the same could be said about backpacks, as law enforcement often locate guns in backpacks. The bag at issue here was of a brown leather

material, and the size was large enough where someone would not be able to tell the bag contained a gun by simply looking at it. It is unreasonable for officers to have seen the bag inside the vehicle well enough to make a conclusive determination that the closed bag contained a gun.

It is concerning to the Court that an officer would consider a bag—later determined to contain a gun—to be labeled as a “gun bag.” Yet, this crossbody bag/fanny pack bag is routinely worn by teenagers, mothers, and athletes, as well as multiple persons caught on officers’ body worn camera that same night—all without raising officers’ suspicions. For example, multiple people pass by officers with similar bags without arousing the same suspicion that same evening. On Officer Wong’s body camera, a man with a blue and white striped shirt can be seen walking past wearing a similar crossbody bag (Ex. 6A at 3:33). A few minutes later an additional person with a pink top is seen wearing a crossbody bag (Ex. 6A at 7:11). Over the course of the 15 minute stop—in the same spot and time of night (so, in downtown Minneapolis and around bar close with intoxicated people milling about) as where and when Defendant was pulled over—at least two people with what officers consider “gun bags” are seen passing by multiple officers. None of the officers are concerned that any of those bags may contain guns and no stop is initiated. Part of Detective Wong’s reasoning for expanding the stop of Defendant was concerns about violent gun crime, that it was bar close and there were intoxicated people milling about. Yet, all of those concerns would be equally applicable

to the people walking past those officers with “gun bags”, but those officers did not appear to have concerns about any of those bags containing guns.

D. Officer Reports Are Inconsistent Regarding the Female Passenger.

While information regarding the passenger does not have a direct connection to the Court’s analysis of reasonable suspicion, it is the conflicting information relating to the passenger that is of interest to the Court. The passenger is seen on Sgt. Lorentz’s body worn camera being grabbed at the wrist and removed from the vehicle by Deputy Peterson (Ex. 6C at 2:45). Sgt. Lorentz does not open the driver door for another 10 seconds (*Id.* at 2:55). Upon picking up the bag he announces, “we’ve got a gun in here” (*Id.* at 3:01). At this point the passenger has been standing outside of the car for 15 seconds. This is in contrast to Deputy Peterson’s report, which states “Sgt. Lorentz arrived to our stop and approached the driver’s side of the vehicle and I could hear him say ‘Gun’, do [sic] to the fact that there was not a firearm in the car, I asked the female passenger to step out of the car due to the fact that there is a gun in the car” (Ex. 18). This is yet another inconsistency in officer reports that is only found when closely comparing body worn camera. This additional inconsistency further supports the Courts findings that the officers’ testimony regarding the smell of marijuana and suspected shake are not credible.

E. Conclusion

After lawfully stopping Defendant for a traffic violation, officers illegally expanded the scope of the stop by searching the vehicle. The gun recovered was the fruit of the poisonous tree and any evidence subsequently discovered will be suppressed.

ORDER

1. Defendant's Motion to Suppress is hereby **GRANTED**.
2. The next court date is an omnibus hearing via Zoom on [REDACTED] at [REDACTED].
before Judge [REDACTED].

BY THE COURT:

Dated: [REDACTED], 2023

[REDACTED] 2023
[REDACTED]

[REDACTED]
Judge of District Court