

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

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 17-cr-20362-SHL
)	
TERRANCE JACKSON,)	
)	
Defendant.)	

REPORT AND RECOMMENDATION

Before the court by order of reference is defendant Terrance Jackson’s Motion to Suppress Evidence, filed on February 19, 2018. (ECF Nos. 24; 25.) For the reasons below, it is recommended that the motion be denied.

I. PROPOSED FINDINGS OF FACT

The following proposed findings of fact are based on the suppression hearing testimony of Memphis Police Officer David Hallum, who the court finds to be credible, and the audio-video recording from Officer Hallum’s body camera, which documented his entire encounter with the defendant. (ECF No. 29, Exhibit No. 3.)

At approximately 11:15 a.m. on June 28, 2017, Officer Hallum received a request from Shelby County Sheriff’s Deputy Richard Henderson to serve an arrest warrant on a fugitive. (Hr’g Tr. at 6-7; 18.) Deputy Henderson informed Officer Hallum that the fugitive, Heather Harrison, was wanted on drug charges and could be

found at a residence located at 1013 Par Avenue in Memphis, Tennessee. (Id. at 19.) Officer Hallum was familiar with 1013 Par because he had been to that residence in the past to recover stolen vehicles and arrest other wanted parties. (Id. at 11.) Around five minutes after receiving the call from Deputy Henderson, Officer Hallum pulled up to 1013 Par in his patrol car, at which time he activated his body camera and began recording. (Id. at 19.) As he approached the residence, he saw a silver four-door Kia sedan parked in the driveway with two occupants inside. (Id. at 7.) Officer Hallum could not see if anyone was in the back seat. (Id. at 7-8.) As Officer Hallum approached the driveway, the Kia's horn "started blowing," and Officer Hallum "didn't know if the people inside the vehicle were signaling that the police were here." (Id. at 8.) Officer Hallum wanted to look in the car to see if Harrison was inside. (Id.) The Kia began backing out of the driveway, and in response Officer Hallum pulled behind it and blocked the driveway, to "secure the scene, make sure no one left until we could make sure no one was in the vehicle that we were looking for." (Id.) Officer Hallum got out of his car, approached the Kia, and yelled "don't hit my car" several times. (Id. at 21.) Officer Hallum approached the Kia and could see that neither of the occupants met the physical description of Harrison and that nobody was in the back seat. (Id. at 21-22.) The driver of the Kia, later identified as Terrance Jackson, opened his door and stated

that he was there to buy a Lincoln Navigator. (Id. at 9.) Immediately, Officer Hallum could smell "a strong odor of marijuana that was coming out of the car as soon as he opened the door." (Id.) When Officer Hallum asked for identification, Jackson stated that he did not have any and then proceeded to close his door. (Id. at 9-10.) Officer Hallum then saw Jackson take a plastic baggie and hand it to the female passenger, later identified as Shari Evans. (Id. at 10.) Officer Hallum believed the plastic baggie might have contained drugs, possibly marijuana. (Id.)

Upon seeing this, Officer Hallum asked Jackson to step out of the car and place his hands on the hood. (Id.) He walked Jackson to his patrol car and, as he walked back to the Kia, Officer Hallum noticed Evans stuff something inside her pants. After back-up officers arrived, Officer Hallum placed Evans in the back seat of one of the police vehicles, at which time he confronted Evans with what he had observed her do while inside the Kia. She retrieved plastic baggies containing marijuana, heroin, methamphetamine, and fentanyl from inside her pants and turned it over to Officer Hallum. Officer Hallum later discovered that Jackson had an outstanding warrant for a parole violation. (Id.) The officers eventually went inside 1013 Par, and the resident advised them that Jackson was there to deliver heroin. (Id. at 12-13.) The officers found digital scales inside the Kia.

On November 21, 2017, a federal grand jury returned a three-

count indictment against Jackson, alleging unlawful possession with intent to distribute heroin, fentanyl, and methamphetamine, in violation of 21 U.S.C. § 841(a)(1). (ECF No. 1.)

II. PROPOSED CONCLUSIONS OF LAW

The Fourth Amendment provides, in part, that “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated[.]” U.S. Const. amend. IV. “[W]henver a police officer accosts an individual and restrains his freedom to walk away, he has ‘seized’ that person.” Terry v. Ohio, 392 U.S. 1, 16 (1968). “A warrantless search or seizure is ‘per se unreasonable under the Fourth Amendment - subject only to a few specifically established and well-delineated exceptions.’” United States v. Roark, 36 F.3d 14, 17 (6th Cir. 1994) (quoting Katz v. United States, 389 U.S. 347, 357 (1967)). In general, “there are three types of permissible encounters between police and citizens: consensual encounters in which contact is initiated by a police officer without any articulable reason whatsoever and the citizen is briefly asked questions; a temporary involuntary detention or Terry stop, which must be predicated upon ‘reasonable suspicion;’ and arrests which must be based on probable cause.” United States v. Alston, 375 F.3d 408, 411 (6th Cir. 2004) (quoting United States v. Bueno, 21 F.3d 120, 123 (6th Cir. 1994)). The Sixth Circuit has held that an individual is seized under the Fourth Amendment when

police use a marked patrol car to block in an individual's car "to determine the identity of the occupants and maintain the status quo while obtaining this information." United States v. See, 574 F.3d 309, 313 (6th Cir. 2009) (internal quotations omitted); see also United States v. Gross, 662 F.3d 393, 399 (6th Cir. 2011). The propriety of a Terry stop is analyzed under a two-prong test. See Gross, 662 F.3d at 400; See, 574 F.3d at 313; see also United States v. Davis, 514 F.3d 596, 608 (6th Cir. 2008) (stating that for a Terry stop to be constitutionally proper, (1) a proper basis for the stop must exist and (2) the degree of intrusion must be reasonably related in scope to the situation at hand).

However, this Terry analysis does not necessarily apply to all seizures that fall short of a traditional arrest. The Supreme Court has stated that "a warrant to search for contraband founded on probable cause implicitly carries with it the limited authority to detain the occupants of the premises while a proper search is conducted." Michigan v. Summers, 452 U.S. 692, 705 (1981). The "authority to detain incident to a search is categorical; it does not depend on the 'quantum of proof justifying detention or the extent of the intrusion to be imposed by the seizure.'" Muehler v. Mena, 544 U.S. 93, 98 (2005) (quoting Summers, 452 U.S. at 705 n.19); see also Bailey v. United States, 568 U.S. 186, 196-97 (2013). The Sixth Circuit has recognized that "police have the limited authority to briefly detain those on the scene, even wholly

innocent bystanders, as they execute a search or arrest warrant.”¹ Cherrington v. Skeeter, 344 F.3d 631, 638 (6th Cir. 2003) (citing Summers, 452 U.S. at 705) (emphasis added); see also United States v. Ocean, 564 F. App’x 765, 770 (6th Cir. 2014) (citing Cherrington); United States v. Enslin, 327 F.3d 788, 797 n.32 (9th Cir. 2003) (finding that Summers applies in the context of a consent search to execute an arrest warrant). Individuals detained during the execution of a search or arrest warrant are seized under the Fourth Amendment, and in such instances “involving seizures short of a traditional arrest, the courts should be guided by ‘the ultimate standard of reasonableness embodied in the Fourth Amendment.’” Cherrington, 344 F.3d at 638 (quoting Summers, 452 U.S. at 699-700). The seizure of such individuals may be reasonable under the Fourth Amendment if the detention would prevent flight, minimize the risk of harm to officers and others, or facilitate the orderly completion of the arrest. See Summers, 452 U.S. at 702-03; Cherrington, 344 F.3d at 638 (citing Burchett,

¹In the context of executing search warrants, the Sixth Circuit has further extended police officers’ authority under Summers to include the ability to briefly detain: (1) nonresidents who are present at the scene of the search when police arrive, see United States v. Fountain, 2 F.3d 656, 663 (6th Cir.), *overruled on other grounds*, Trepel v. Roadway Express, Inc., 194 F.3d 708, 717 (6th Cir. 1999); (2) individuals who arrive at the scene of a search, even if they were not inside the residence or present when the police first arrived, see United States v. Bohannon, 225 F.3d 615, 616 (6th Cir. 2000); and (3) an individual who approaches a property being searched pursuant to a warrant, pauses at the property line, and flees when the officers instruct him to get down, see Burchett v. Kiefer, 310 F.3d 937, 943-44 (6th Cir. 2002).

310 F.3d at 943).

As an initial matter, the court finds that Jackson was "seized" when Officer Hallum parked his vehicle at the driveway's exit and prevented the Kia from backing out. The parties do not dispute this point, and this determination comports with Sixth Circuit precedent. See Gross, 662 F.3d at 399; See, 574 F.3d at 313.

The court next finds that the constitutionality of this seizure should be analyzed under the general reasonableness standard and the considerations identified in Summers, 452 U.S. at 702-03. Law enforcement officers have the limited authority to briefly detain those on the scene - even wholly innocent bystanders - as they execute a warrant.² See Cherrington, 344 F.3d at 638; Ocean, 564 F. App'x at 770; Enslin, 327 F.3d at 797 n.32. The authority to detain individuals pursuant to the execution of a warrant does not involve the type of analysis typically required under Terry. See Bailey, 568 U.S. at 196-97; Muehler, 544 U.S. at 98. Instead, Officer Hallum's seizure of Jackson was lawful under the Fourth Amendment if it was reasonable, and it was reasonable if the seizure would prevent flight, minimize the risk of harm to officers and others, or facilitate the orderly execution of the warrant. See Summers, 452 U.S. at 702-03; Cherrington, 344 F.3d at

²Jackson does not challenge the validity of the arrest warrant for Harrison or the officers' authority to execute the arrest warrant at 1013 Par.

638 (citing Burchett, 310 F.3d at 943).

The court finds that it was reasonable for Officer Hallum to temporarily detain Jackson by blocking in his car. Officer Hallum arrived at 1013 Par within minutes of being informed of the arrest warrant. Upon arriving, Officer Hallum noticed the silver Kia in the driveway. Officer Hallum testified that he blocked the Kia in order to secure the scene and ensure that no one left until he could determine whether Harrison was inside that car. Blocking the car thus facilitated the execution of the arrest warrant, and further inhibited the flight of the occupants which, as far as Officer Hallum knew at the time he pulled behind the Kia, could have included Harrison.

Officer safety concerns also justified the brief detention. Officer Hallum knew that stolen vehicles had been recovered and wanted parties had been arrested from that residence in the past. Furthermore, Officer Hallum testified that as he drove up, the Kia's horn was honking, and he was concerned that the occupants of the vehicle were warning the residents inside the home that the police had arrived. Attempting to effectuate an arrest warrant at a location where criminal activity has occurred, and where the occupants of a house may be on alert that police are approaching, raises legitimate concerns for officer safety.

Upon approaching the Kia, Officer Hallum immediately detected the odor of marijuana when Jackson opened the driver's door. The

Sixth Circuit has held that an officer's detection of the smell of marijuana in an automobile can by itself establish probable cause for a search. United States v. Garza, 10 F.3d 1241, 1246 (6th Cir. 1993). Officer Hallum further noticed Jackson hand a plastic baggie to Evans, which he suspected contained marijuana. At this point, Officer Hallum had, at the very least, a reasonable articulable suspicion that criminal activity was afoot. Additional investigation was thus appropriate. Officer Hallum's subsequent actions, including removing Jackson from the Kia and placing him in the patrol car, asking for identification, and searching for outstanding warrants, were reasonable steps taken by Officer Hallum to investigate the suspected criminal activity. Once the drugs were recovered from Evans's person and the officers found the warrant for Jackson's arrest based on a parole violation, the officer had probable cause to arrest him. Accordingly, Jackson was not subjected to an unreasonable seizure in violation of the Fourth Amendment.

III. RECOMMENDATION

For the above reasons, it is recommended that Jackson's Motion to Suppress Evidence be denied.

Respectfully submitted,

s/ Tu M. Pham

TU M. PHAM
United States Magistrate Judge

May 25, 2018

Date

NOTICE

ANY OBJECTIONS OR EXCEPTIONS TO THIS REPORT MUST BE FILED WITHIN FOURTEEN (14) DAYS AFTER BEING SERVED WITH A COPY OF THE REPORT. 28 U.S.C. § 636(b)(1)(C). FAILURE TO FILE THEM WITHIN FOURTEEN (14) DAYS MAY CONSTITUTE A WAIVER OF OBJECTIONS, EXCEPTIONS, AND ANY FURTHER APPEAL.