IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

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| UNITED STATES OF AMERICA | ) | |
| | ) | |
| v. | ) | 1:13CR423-1 |
| | ) | |
| CHRISTOPHER NOVELL MCCAULEY | ) | |

**MEMORANDUM OPINION AND ORDER**

THOMAS D. SCHROEDER, District Judge.

Before the court is the motion to suppress by Defendant Christopher Novell McCauley. (Doc. 13.) McCauley seeks to suppress evidence seized as a result of a traffic stop on July 18, 2013. The Government has filed a response (Doc. 17), and an evidentiary hearing was held on January 10, 2014. For the reasons set forth below, the motion will be denied.

## I. BACKGROUND

The Government presented the testimony of Sergeant Wesley D. Smith, a sixteen-year veteran of the Rowan County (North Carolina) Sheriff's Department, and Deputy Patrick Jones, a seven-year veteran of the same department. Both officers are tasked to the department's Aggressive Criminal Enforcement Team. The court finds their testimony credible and makes the following findings of fact:

On July 18, 2013,[1] Sgt. Smith received a text message from an unknown number describing a black Ford Taurus automobile driven by

[1] Neither party established the time of day.

a black male that had just left 510 South Deal Street, in Landis (which is in Rowan County), where the driver was suspected of engaging in drug-related activity. The text message also provided the vehicle's license plate number.

Sgt. Smith was aware that the Deal Street area is a high crime area, especially for drug activity, which has prompted several calls and complaints for law enforcement service. The Aggressive Criminal Enforcement Team has been involved in an initiative in the Deal Street area to encourage the reporting of suspected criminal activity. As part of the initiative, officers, including Sgt. Smith, have passed out business cards with their contact information and encouraged residents to report crime. In the week immediately prior to the events at issue, Sgt. Smith had received two to three citizen reports of a black male driving a silver Dodge Charger who was suspected of drug activity in the Deal Street area.

Upon receiving the anonymous tip, Sgt. Smith immediately called Deputy Jones and relayed all the information he had received, including the fact that the report involved a black male driving a black Ford Taurus, the license plate number, and the concern of suspected drug activity on Deal Street. Because of Deputy Jones' work on the Aggressive Criminal Enforcement Team, he also knew that Deal Street was a high crime area and knew of his team's crime-reporting initiative in that community. Within a minute or

two, Deputy Jones advised Sgt. Smith that he had spotted the suspect vehicle on Main Street. The vehicle was less than a mile from Deal Street and travelling from that direction. Jones confirmed that the license plate number matched that in the tip and noted that its only occupant was a black male. Jones continued to observe the vehicle and noted that, over the course of three-quarters of a mile to one mile, it followed a red pickup truck at a distance of less than one car length in a 45 mile per hour zone. Deputy Jones initiated a traffic stop for following too closely, as the suspect vehicle should have allowed four to five car lengths between it and the truck in front of it.

After pulling the suspect vehicle over, Jones advised the driver, McCauley, that he had been stopped for following too closely and asked for his driver's license and paperwork. McCauley offered his driver's license and a rental agreement. Jones has conducted hundreds of drug-related traffic stops and has observed that "more and more" drug traffickers are using rental vehicles instead of their personal vehicles. Jones noted that McCauley was uncooperative and refused to make eye contact with him. He concluded that McCauley was "extremely nervous"; he was breathing heavily, sweating, and in an apparent hurry to leave – more so than the usual driver Jones stops. Jones asked McCauley to stand outside the passenger side of the patrol car while Jones returned to his driver's seat.

Jones immediately sent a message to Sgt. Smith to come right away, using the command "signal nine." "Signal nine" is a police code to dispatch and deploy a K-9 upon arrival at the scene without delay because time is of the essence. At the time, Sgt. Smith was less than two and a half miles from Jones and headed in his direction. Smith immediately accelerated to about 60 miles per hour (exceeding the posted speed limit). It would take Smith less than two minutes to arrive.[2]

Meanwhile, Jones checked on the status of McCauley's driver's license and checked two databases (DCI and CJLEADS) for McCauley's criminal history. Those checks revealed that McCauley had two felony, cocaine-related drug convictions.

After Deputy Jones completed all tasks related to the traffic stop, he stepped out of his vehicle, walked to the passenger side, and returned McCauley's paperwork. Jones then asked for consent to search the vehicle and asked whether there were any illegal weapons or drugs in it. McCauley denied consent to search. Up until this time, approximately five to six minutes had elapsed since the initiation of the traffic stop. Jones then advised McCauley that a K-9 was already on its way, that it would be there in a minute,

[2] Sometime after the stop, Sgt. Smith measured and timed his travel from the place he had received the "signal nine" message to his arrival at the scene. His measurements confirmed his testimony as to time and distance.

and that if it did not alert to the presence of drugs McCauley would be free to go.

When Smith arrived, he saw McCauley standing at Jones' passenger window. Smith immediately deployed the K-9 by first "breaking" the dog (allowing it to relieve itself) and then having the dog sniff McCauley's vehicle. This was done by leading the K-9 around the vehicle twice: once in a clockwise fashion starting from the front of the vehicle, then reversing the movement. The K-9 is a "passive" alert responder and alerted in three ways at the driver's side door on the reverse pass: changing its posture, personality, and breathing. The alert occurred within approximately sixty seconds of the dog's arrival on the scene.

On this record, the court finds that the K-9 alerted in less than three minutes from the time the initial purpose of the traffic stop had concluded and McCauley denied consent to search, and probably closer to two minutes.[3]

As a result of the search of the vehicle, McCauley has been charged with possession of a Glock .40 caliber handgun by a convicted

[3] This is based in part on the fact that Sgt. Smith received Jones' "signal nine" alert before Jones ran a driver's license and criminal history check on McCauley. Because Jones had to complete these tasks while Smith was en route, it is likely that 30 seconds or more elapsed while Jones completed these tasks, exited his vehicle, returned McCauley's documents, and advised him that the purpose of the initial stop was completed. Since the time between the "signal nine" message and the K-9 alert was approximately three minutes, the time between the end of the purpose of the initial stop and the K-9 alert was closer to two minutes.

felon, in violation of 18 U.S.C. § 922(g)(1), and possession with intent to distribute approximately 25 grams of cocaine base, in violation of 21 U.S.C. § 841(a)(1). (Doc. 1.)

**II. ANALYSIS**

The Fourth Amendment guarantees "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. "[T]he underlying command of the Fourth Amendment is always that searches and seizures be reasonable." Wilson v. Arkansas, 514 U.S. 927, 931 (1995) (quoting New Jersey v. T.L.O., 469 U.S. 325, 327 (1985)).

When a police officer stops an automobile and detains the occupants briefly, the stop amounts to a seizure within the meaning of the Fourth Amendment. See Whren v. United States, 517 U.S. 806, 809–10 (1996); United States v. Arvizu, 534 U.S. 266, 273 (2002). "As a general matter, the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred." Whren, 517 U.S. at 810. It is well accepted that an officer may stop a vehicle for a pretextual reason as long as it is a legitimate one. Id. at 813. Where a seizure occurs in the absence of a warrant, the burden is on the Government to prove its reasonableness. United States v. Watson, 703 F.3d 684, 689 (4th Cir. 2013).

In this case, the court finds by a preponderance of the evidence that Deputy Jones legitimately stopped McCauley's vehicle for following too closely in violation of North Carolina's traffic laws. See N.C. Gen. Stat. § 20-152 ("The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon and the condition of the highway.").

Because an ordinary traffic stop is "a limited seizure more like an investigative detention than a custodial arrest," the appropriate standard to determine the limits of police conduct is that set out in Terry v. Ohio, 392 U.S. 1 (1968). United States v. Rusher, 966 F.2d 868, 875 (4th Cir. 1992). Under Terry, after asking whether the officer's action was "justified at its inception," id., the court inquires whether the continued stop was "sufficiently limited in scope and duration." Florida v. Royer, 460 U.S. 491, 500 (1983). With regard to scope, "the investigative methods employed should be the least intrusive means reasonably available to verify or dispel the officer's suspicion in a short period of time." Id. What constitutes a reasonable duration of a traffic stop "cannot be stated with mathematical precision," United States v. Branch, 537 F.3d 328, 336 (4th Cir. 2008), but it should not be longer than the time reasonably required to complete the mission, Illinois v. Caballes, 543 U.S. 405, 407 (2005).

There is no claim here that the traffic stop was unreasonably delayed up to the point that Deputy Jones returned McCauley's license and rental agreement and gave him a verbal warning. Approximately five to six minutes had elapsed during that time.

To prolong a detention "beyond the scope of a routine traffic stop," an officer "must possess a justification for doing so other than the initial traffic violation that prompted the stop in the first place." Branch, 537 F.3d at 336. This requires "either the driver's consent or a 'reasonable suspicion' that illegal activity is afoot." Id.

A precise articulation of what constitutes reasonable suspicion is not possible, but it is a less demanding standard than probable cause. Id. (citations omitted). It is less demanding "not only in the sense that reasonable suspicion can be established with information that is different in quantity or content than that required to establish probable cause, but also in the sense that reasonable suspicion can arise from information that is less reliable than that required to show probable cause." United States v. Perrin, 45 F.3d 869, 872 (4th Cir. 1995) (quoting Alabama v. White, 496 U.S. 325, 330 (1990)). "An anonymous tip, for instance, when combined with other known facts, may be sufficiently reliable" to provide reasonable suspicion, even though it does not provide probable cause. Id.

"[T]o justify a Terry stop [or to prolong an otherwise legitimate stop], a police officer must simply point to specific and articulable facts which, taken together with rational inferences from those facts, evince more than an inchoate and unparticularized suspicion or hunch of criminal activity." Branch, 537 F.3d at 336 (internal quotation marks and citations omitted). Reasonable suspicion is a "commonsense" and "nontechnical conception"; therefore, courts may look at the context of the stop, including when and where it occurred, as well as credit the practical experience of officers. Id.; Ornelas v. United States, 517 U.S. 690, 695 (1996). The Constitution requires that a reasonable suspicion be objective and particularized to the defendant. See United States v. Massenburg, 654 F.3d 480, 487-88 (4th Cir. 2011).

Furthermore, a court's review of the facts and inferences produced by a law enforcement officer to support a Terry stop must be holistic. Courts must look at the "cumulative information available" to the officer, Arvizu, 534 U.S. at 273, and not find a stop unjustified based merely on a "piecemeal refutation of each individual" fact and inference, United States v. Whitehead, 849 F.2d 849, 858 (4th Cir. 1988), abrogated on other grounds by Gozlon-Peretz v. United States, 498 U.S. 395 (1991). A set of factors, each of which was individually "quite consistent with innocent travel,"

could still, "taken together," produce a "reasonable suspicion" of criminal activity. United States v. Sokolow, 490 U.S. 1, 9 (1989).

Based on the totality of the circumstances, the court finds that Deputy Jones[4] objectively had reasonable, articulable suspicion that criminal activity may have been afoot involving McCauley in order to extend the stop momentarily to allow for the K-9 sniff.

Deputy Jones was aware of the anonymous tip that a black male driving a black Ford Taurus with the same license plate as McCauley's had just been seen at 510 Deal Street engaging in suspected drug activity. "Reliance on an anonymous tip may be reasonable where, 'suitably corroborated, [it] exhibits sufficient indicia of reliability.'" Massenburg, 654 F.3d at 486 (quoting Florida v. J.L., 529 U.S. 266, 270 (2000)). In the absence of other corroboration, however, mere presence in the area of the tip is insufficient. Id. at 487. An informant's tip is most reliable when it offers predictive facts that can be corroborated by an officer's independent observation. United States v. Wilhelm, 80 F.3d 116, 119 (4th Cir. 1996) (officers observed tipster's prediction that individual would leave residence within prescribed timeframe and head in certain direction). However, predictive information is

[4] The court considers only what Deputy Jones knew and learned during the course of the traffic stop. Jones cannot rely on knowledge that Sgt. Smith had, except to the extent that Sgt. Smith communicated that knowledge to him. See Massenburg, 654 F.3d at 493-94 (noting that an officer who orders a search cannot rely on the collective knowledge doctrine unless he actually received information or instructions from another officer).

not required, especially when the standard is reasonable suspicion rather than probable cause. See Perrin, 45 F.3d at 872-73. "Corroboration of apparently innocent details of an informant's report tends to indicate that other aspects of the report are also correct." United States v. Lalor, 996 F.2d 1578, 1581 (4th Cir. 1993); but see Wilhelm, 80 F.3d at 120 (anonymous informant's tip found insufficient to support probable cause for search warrant for home where "little or no corroboration [other than verifying directions to house] – to justify searching someone's home" was conducted); United States v. Mendonsa, 989 F.2d 366, 369 (9th Cir. 1993) ("[M]ere confirmation of innocent static details is insufficient to support an anonymous tip."). For "an informant [who] is right about some things . . . [is] more probably right about other facts." Illinois v. Gates, 462 U.S. 213, 244 (1983) (quoting Spinelli v. United States, 393 U.S. 410, 427 (1969)).

Here, Deputy Jones was able to corroborate certain particularized facts, namely a description of the vehicle, its license plate number, and the race of the driver. Thus, the vehicle (with its single occupant) was identified with some precision. Deputy Jones also encountered the vehicle immediately after the text message and reasonably near, and as the vehicle was leaving, the direction of Deal Street. While the tipster did not provide predictive information as such, cf. Alabama v. White, 496 U.S. at

331, he (or she) did claim to have observed the vehicle and occupant engage in suspected drug activity at a specific location – 510 Deal Street – which Deputy Jones personally knew to be a high drug area that had been the source of multiple calls for police assistance. Jones observed the vehicle very close in time to the alleged drug activity and travelling in a direction consistent with the report that the vehicle had just come from there.

Like the anonymous tip in United States v. Perrin, the tip standing alone would not have been enough for reasonable suspicion. 45 F.3d at 872-73. However, the tip, Jones' corroboration of its innocent details, and Jones' independent observation of additional suspicious facts provided him with reasonable suspicion. See id. (finding reasonable suspicion when police officers corroborated innocent details of an anonymous tip and had additional independent knowledge of suspicious facts, including defendant's criminal history).

First, Deputy Jones was aware that McCauley's vehicle was a rental car and he knew that "more and more" drug dealers were using rental cars rather than personal vehicles. The fact that a defendant is driving a rental car provides support for a reasonable suspicion. See United States v. Newland, 246 F. App'x 180, 189 (4th Cir. 2007) (citing United States v. Brugal, 209 F.3d 353, 361-62 (4th Cir. 2000) (en banc), for fact that use of a rental vehicle is a common method

to transport drugs); United States v. Cavazos, __ F. App'x __, Nos. 12-4701, 12-4737, 2013 WL 5648058, at *4 (4th Cir. Oct. 17, 2013) (affirming district court's reliance on rental car as "common practice of drug dealers"); United States v. Contreras, 506 F.3d 1031, 1036 (10th Cir. 2007) (considering, as contributing to reasonable suspicion, the fact that rental cars are often used by narcotics traffickers).

Second, Jones observed McCauley exhibit "extreme nervousness" beyond that which he ordinarily encounters. Jones was able to articulate specific signs of nervousness: he observed McCauley breathing heavily, sweating, and refusing to make eye contact. Nervousness may sometimes be a questionable factor to consider, as even innocent individuals may show some nervousness upon being stopped by law enforcement. However, extreme nervousness supported by particularized indicia can support a finding of reasonable, articulable suspicion. Illinois v. Wardlow, 528 U.S. 119, 124 (2000) ("[N]ervous, evasive behavior is a pertinent factor in determining reasonable suspicion."); United States v. Digiovanni, 650 F.3d 498, 512 (4th Cir. 2011) (defendant's "trembling hands"); United States v. Mason, 628 F.3d 123, 129 (4th Cir. 2010) (nervous and sweating); Branch, 537 F.3d at 338 (shaky hands and refusal to make eye contact); United States v. Vaughan, 700 F.3d 705, 711 (4th

Cir. 2012) (shaky, breathing heavily, and "heart beating through his shirt").[5]

Third, Deputy Jones learned during the traffic stop that McCauley had not one, but two felony, cocaine-related drug convictions. While there was no evidence presented as to the dates of the convictions or whether they were for trafficking or simple possession, knowledge of a defendant's relevant criminal history, when supported by other appropriate factors, can support a finding of reasonable articulable suspicion. See United States v. Foster, 634 F.3d 243, 247 (4th Cir. 2011); United States v. Johnson, 474 F. App'x 347, 348 (4th Cir. 2012). The fact that McCauley was only 30 years old provides further context for the officer to conclude that the convictions could be relevant in his decision making. Additionally, McCauley's criminal record involved convictions, not just arrests. Cf. United States v. Powell, 666 F.3d 180, 188 (4th Cir. 2011) (noting concern over the government's lack of proof whether the prior offenses were convictions).

In addition to these observations, Deputy Jones was aware that the Deal Street area was a high crime area that involved drug activity, given his assignment to the Aggressive Criminal

[5] McCauley urges the court to disregard Deputy Jones' testimony of nervousness and these factors because they were not mentioned in the deputy's report. The court does not find the report's lack of any mention of nervousness to render Deputy Jones' testimony less credible on this point.

Enforcement Team. Knowledge of activity occurring in an area known for high crime is a factor that can be considered. Wardlow, 528 U.S. at 124; United States v. Perkins, 363 F.3d 317, 321 (4th Cir. 2004); United States v. Black, 525 F.3d 359, 365 (4th Cir. 2008). While any of these various factors alone may not have been sufficient to support a reasonable suspicion that McCauley was involved in criminal activity, together they provide particularized indicia to establish a reasonable suspicion that he may have just come from involvement in drug-related activity at 510 Deal Street.

Consequently, the court finds that Deputy Jones did not violate McCauley's Fourth Amendment rights by detaining him for the relatively limited time (less than three minutes and probably closer to two minutes) it took to conduct the K-9 search. Moreover, the search of McCauley's car after the K-9 alerted to its driver's side door did not violate the Fourth Amendment, as the law is settled that a K-9's alert provides probable cause to conduct a search. See United States v. Jeffus, 22 F.3d 554, 557 (4th Cir. 1994); Mason, 628 F.3d at 130.

In view of the court's conclusion, it need not reach the Government's alternative argument that the delay in the K-9's alert after the purpose of the traffic stop concluded constituted a *de minimis* intrusion that did not violate McCauley's Fourth Amendment rights.

## III. CONCLUSION

For these reasons, therefore, the court finds that McCauley was lawfully stopped and the extension of the traffic stop through the K-9 alert did not violate his rights under the Fourth Amendment.

IT IS THEREFORE ORDERED that the motion to suppress by Defendant Christopher Novell McCauley (Doc. 13) is DENIED.

/s/ Thomas D. Schroeder
United States District Judge

January 23, 2014