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DES MOINES, IOWA
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CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF IA

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	Criminal No. 01-122
	)	
vs.	)	
	)	
DENNIS LAVERNE ENGLISH, SR.,	)	ORDER
	)	
Defendant.	)	

On September 4, 2001, defendant filed a motion to suppress evidence. The government resisted the motion on September 10, and the Court held a hearing on September 18. The government submitted a memorandum on September 19, and plaintiff did likewise on September 21. The matter is fully submitted.

I. BACKGROUND

On March 30, 2001 Des Moines Police Officers Brian Stanley[1] and Doug Brown were on patrol in the west district of the city at approximately 2:20 a.m. As they were traveling north in their police marked vehicle on a street within the district, the officers became suspicious of a vehicle in front of them that did not have any registration plates. As the officers approached the vehicle, they noticed that it had an "applied-for" tag in the back window. This vehicle was a 2000 Dodge Stratus, driven by defendant, Dennis English. The officers continued to follow English's vehicle for a brief time, and both vehicles turned west onto Franklin Avenue.

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[1] Officer Stanely testified via telephone at the hearing, as he is now a police officer in Oak Ridge, Tennessee.

At approximately the 300 block of Franklin Avenue, English stopped his vehicle in the travel portion of the west bound lane, in the middle of an intersection, and exited his vehicle. The officers had not signaled for English to stop his vehicle. Upon exiting the vehicle, English began to talk, even though the officers were still in their vehicle and could not hear what he was saying. Officer Stanley and Officer Brown then stopped behind English's vehicle, and exited their vehicle.

Officer Stanley approached English near the driver's side of his vehicle and held a conversation with him. Simultaneously, Officer Brown approached the passenger side of defendant's vehicle, to inspect for others in the car and to ensure the officers' safety. During their conversation, Officer Stanley testified that he could smell alcohol on defendant's breath, his speech was slurred, and he appeared nervous. Officer Stanley reported that English kept talking about how his daughter had stolen a car he owned, but that he was not cooperative in sharing the name of his daughter. After one to two minutes of conversation, Officer Stanley decided to pat-down English for weapons. Officer Stanley reported that he made this decision based upon the time of night, the neighborhood,[2] English's behavior in stopping the vehicle in the middle of the intersection, and upon what he had observed during his conversation with English.[3] Before Officer Stanley performed the pat-down of English, he told English that he was going to do it for English's own safety and for that of the officers.

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[2] Both officers reported that based on their experiences in regularly patrolling the area around the 300 block of Franklin Avenue, it is an area in which they have witnessed numerous arrests.

[3] Officer Brown testified at the hearing that based upon what he observed of English, he would not have performed a pat down for weapons.

In patting English down for weapons, Officer Stanley felt English's outer garments for weapons. In English's coat pocket, Officer Stanley felt two objects that turned out to be crack cocaine pipes. He removed those from English's pocket, and placed him under arrest for the possession of drug paraphernalia.

After he was under arrest, Officer Brown took custody of English and placed him in the patrol car. Officer Stanley then approached English's vehicle. In the vehicle, Officer Stanley observed a crack pipe in the front seat.[4] Officer Stanley then performed a full search of the vehicle, and he discovered a fourth crack pipe, three loose rocks of crack cocaine, and a baggie of crack cocaine.

II. APPLICABLE LAW & DISCUSSION

Defendant requests this Court suppress any evidence as a result of the pat-down search, and from the vehicle search which followed. "The justification for a pat-down search is to ensure the safety of a law enforcement officer." *United States v. Murphy*, __ F.3d __, 2001 WL 921363 (8th Cir. August 16, 2001). A pat-down search is constitutional when "a law enforcement officer 'observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot and that the persons with whom he is dealing may be armed and presently dangerous." *Id.* (citing *Terry v. Ohio*, 392 U.S. 1, 30 (1968)). "'The officer need not be absolutely certain that the individual is armed; the issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger.'" *United States v. Douglas*, 964 F.2d 738, 741 (8th Cir.

[4] Officer Stanley testified he could not recall whether the car door was already open, or whether he opened it himself, before observing the crack pipe in the front seat of the vehicle.

1992) (quoting *Terry*, 392 U.S. at 27). "[F]acts known to the officers must be assessed in light of the officers' experience and expertise . . . ." *See United States v. Abokhai*, 829 F.2d 666, 669 (8th Cir. 1987).

This encounter between the officers and defendant was different from most occasions where officers determine it is necessary to perform a pat-down search, as the officers did not initiate contact with defendant. The Court concludes, however, that Officer Stanley reasonably concluded criminal activity could have been afoot and English could have been in possession of a weapon. It was approximately 2:20 a.m. *See Murphy*, 2001 WL 921363 (finding the time of day, 2:45 a.m., as part of the legal basis for conducting a pat-down search). English's vehicle was not yet licensed, although he had an "applied-for" tag displayed. *See id.* (finding the fact that the vehicle was displaying an out-of-area license plate as a part of the legal basis for conducting a pat-down search). English's behavior in stopping the car in the middle of an intersection was unusual, and also contributes to Officer Stanley's conclusion that the officers' safety was at risk. And finally, the nature of Officer Stanley's conversation with English was unusual enough that, in light of all of the circumstances, a reasonably prudent person would have been warranted to question whether the officers' safety was at risk. *See Douglas*, 964 F.2d at 741.

The fact that Officer Brown testified that he did not believe their safety was at risk at the time Officer Stanley decided to perform the pat-down search of English does not prevent this Court from finding Officer Stanley appropriately decided to conduct the pat-down search. Officer Stanley was carrying on the conversation with English, and it was reasonable for him to protect the safety of himself and his partner after English had so abruptly stopped his

vehicle in the middle of an intersection, carried on a disjointed conversation at such a late hour, and because of his suspicion of alcohol use by English. While at the hearing defendant's counsel questioned why the officers did not arrest English for drunk driving if they believed he had been drinking alcohol, this Court finds that the belief Officer Stanley held that English may be drunk also reasonably contributed to his decision to do the pat-down search for weapons. If English had a weapon, then the fact that he may have been intoxicated made him more of a risk to the safety of the officers.

Additionally, the record does not indicate there was any inappropriate manipulation by Officer Stanley during the pat-down search. *See Minnesota v. Dickerson*, 508 U.S. 366 (1993) (holding that as a product of a pat-down search, an officer may seize non-threatening contraband detected so long as there is not improper manipulation by the officer of the object or objects).

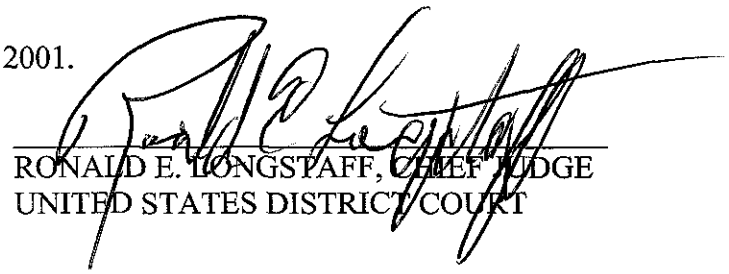
And finally, the Court finds Officer Stanley's behavior with respect to the vehicle was reasonable. English was under arrest and no one else was available to secure the vehicle for English. *See United States v. Snook*, 88 F.3d 605 (8th Cir. 1996) (finding person who has voluntarily exited his vehicle just prior to arrest is still an "occupant" of the vehicle for purposes of searching the vehicle as incident to the arrest, and officer also had obligation to secure vehicle from damage or theft). Officer Stanley was performing a valid post-arrest duty in searching the vehicle, and all evidence obtained was not done so in violation of English's Fourth Amendment rights.

III. CONCLUSION

For the above-stated reasons, defendant's motion to suppress is denied.

IT IS SO ORDERED.

Dated this 21st day of September, 2001.



RONALD E. LONGSTAFF, CHIEF JUDGE
UNITED STATES DISTRICT COURT