

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	: No. CR-986-2010
vs.	:
	: Order Re Defendant's Motion
GARY COLEMAN,	: To Suppress
Defendant	:

OPINION AND ORDER

Defendant is charged by Information filed on July 30, 2010 with one count of Possession with Intent to Deliver Crack Cocaine, one count of Possession of a Small Amount of Marijuana, one count of Possession of Cocaine and one count of Possession of Drug Paraphernalia. The Commonwealth alleges that on June 6, 2010 in the city of Williamsport, two witnesses observed the Defendant selling suspected narcotics to another person. Police officers soon arrived in the area and eventually stopped a vehicle in which the Defendant was a passenger. The witnesses identified the Defendant as the individual who shortly before sold the narcotics. A search warrant was approved and executed on the vehicle resulting in the seizure of six baggies of crack cocaine and a baggie of marijuana.

On October 22, 2010, Defendant filed a Motion to Suppress. On October 25, 2010, the Commonwealth filed a Motion in Opposition to Defendant's Motion to Suppress requesting that the Court dismiss Defendant's Motion to Suppress as untimely. Following a hearing and argument and by Opinion and Order dated November 24, 2010, the Court denied the Commonwealth's Motion in Opposition to Defendant's Motion to Suppress Evidence.

Defendant's Motion to Suppress raises three issues. First, Defendant contends that his negative response to a question regarding whether he was addicted to any type of narcotic, while he was being booked at the police station should be suppressed because he was not Mirandized.

Second, Defendant asserts that the stop of the vehicle in which he was a passenger was not supported by probable cause or reasonable suspicion and therefore any evidence derived from the allegedly unlawful stop should be suppressed.

Lastly, Defendant argues that the “show up” identification of him by two witnesses must be suppressed as being unduly suggestive.

Two hearings were held in this matter. The first hearing was held on December 17, 2010. At that hearing, the Commonwealth played a copy of a 911 tape and presented the testimony of Officer James Douglas of the Williamsport Bureau of Police and Officer David Pletz of the Penn College Police Department.

On February 1, 2011, the Commonwealth presented the testimony of Assistant Chief James Bies, also of the Penn College Police Department.

On June 2, 2010, the Lycoming County Communications Center received a 911 call from Angela Hill, a resident of 687 Fourth Avenue. Ms. Hill reported “watching” drug transactions from her front porch that were occurring on the 600 block of Fourth Avenue between Park Avenue and High Street. Ms. Hill indicated that there were two different vehicles involved in the transaction. She provided a plate number on the one vehicle which she described as a silver type Lexus Sedan. While she could not describe the other vehicle, she noted that it was gold in color. She further noted that the individual utilizing the gold color car was a black male with dreadlocks, blue pants and a white wife beater t-shirt. Ms. Hill identified herself and provided her phone number and address to the 911 operator.

Ms. Hill’s husband, Charles Hill then got on the phone. He indicated that the two vehicles left but that the Lexus returned. A black male with a shaved head, a black or blue wife beater t-shirt and jeans then got in a verbal altercation with him. This black male threatened Mr. Hill saying that he was going to “shoot” or “pop” him while simultaneously

holding his hand up like a gun and “trigger.” He indicated that the Lexus was not silver but rather a toned down gold color.

While the license registration that was provided apparently came back on a Cadillac, Mr. Hill noted that it was a Lexus and that “some people” got out of the vehicle prior to it leaving.

On June 2, 2010 at approximately 11:00 a.m., Sergeant David Pletz of the Penn College Police Department was on patrol. He overheard a dispatch describing a drug deal and the participants allegedly involved. He recalls hearing over the radio that a gold Lexus and “maybe a Cadillac” were mentioned and that a black male with a white wife beater t-shirt, blue pants and dreadlocks was involved. Sergeant Pletz subsequently heard on the radio that Assistant Chief Bies also of the Penn College Police Department was following a vehicle that matched the description and was going to “possibly make a stop on it.”

Assistant Chief Bies ended up stopping the vehicle near the intersection of Isabella Street and Fifth Avenue. Sergeant Pletz arrived on the scene in a marked police car.

Upon arriving at the scene, Sergeant Pletz noticed that the Defendant was out of the car and that Assistant Chief Bies was giving him commands. The Defendant was wearing blue pants and white wife beater t-shirt. Additionally, Defendant had a dreadlock hairstyle.

At the time Sergeant Pletz arrived, he did not notice any other occupied cars in the area and in addition to the unmarked unit that Assistant Chief Bies was driving and Sergeant Pletz marked unit, Agent Sorage and Captain Kontz of the Williamsport Police Department also “rolled in” in a city unit.

At the time of this initial stop, there were three police units, at least one of which was marked, four different law enforcement officers, a black female and the

Defendant who was “on the street.”

Officer Douglas was also on duty on June 2, 2010. He was following the radio dispatch and shortly after the initial call, he arrived at the Hills’ residence and escorted them in his vehicle to where the Defendant had been stopped by Assistant Chief Bies. Upon meeting with the Hills, he indicated to them that they were going to “go look at a car, a person, and that they would look at the person” and the Hills would tell him if “that person was involved or not.”

Upon arriving at the scene with the Hills in the back of his patrol unit, Officer Douglas parked the unit approximately 30 feet from where the Defendant was being detained. The Defendant was standing outside of the car and one police unit was behind the vehicle the Defendant was previously in. The Hills pointed out the Defendant as the individual who was involved in the “hand to hand.” Further, the Hills identified the vehicle as the gold “Cadillac,” even though the vehicle was “actually a Lincoln.” At the time of the identification, Officer Douglas recalled that there were at least two police vehicles near the gold Lincoln with one “right behind the car.”

Assistant Chief Bies testified that he was also on duty on June 2, 2010. He overheard a radio dispatch regarding a possible drug deal that occurred at the 600 Block of Fourth Avenue. He overheard a description of an involved black male with dreadlocks, blue pants and a white wife beater t-shirt. Although the dispatch was somewhat confusing, it was obvious to Assistant Chief Bies that they were talking about two different people and two different vehicles, one being a gold Cadillac and the other being a Lexus.

While traveling west on Memorial Avenue near the area of the alleged drug deal, Assistant Chief Bies noticed an individual leaving 1024 Memorial Avenue. This individual was a black male with dreadlocks, bright blue pants and a white wife beater t-

shirt. Assistant Chief Bies contacted dispatch to confirm the description of the individual allegedly involved, which matched that of the Defendant or more specifically a black male with dreadlocks, blue pants and white wife beater t-shirt in a gold Cadillac.

Assistant Chief Bies noticed a black female leave 1024 Memorial Avenue. The black female and black male spoke with each other, entered the vehicle and began driving away.

As Assistant Chief Bies was following the vehicle, it pulled over near the intersection of Isabella Street and Fifth Avenue. The black male got out of the passenger seat and approached the Assistant Chief and started yelling at him wanting to know why the Assistant Chief was following them and what he wanted with the black male.

Assistant Chief Bies notified the Defendant that he wanted to talk with him yet the Defendant attempted to get back into the car. Chief Bies ordered him not to get back into the car and to stay put. Defendant refused the order and returned to the car. Upon the Defendant refusing the order to “stay put,” Assistant Chief Bies pulled his weapon and ordered the Defendant out of the car. At about this time, Captain Kontz and Agent Sorage arrived on the scene.

With respect to Defendant’s Miranda issue, the Commonwealth conceded that the Defendant should have been Mirandized prior to being asking during his booking whether he was addicted to any type of narcotic. Accordingly, the Court will grant the Defendant’s Motion to Suppress Defendant’s answer to said question.

Defendant next argues that the stop of his vehicle was not supported by probable cause or reasonable suspicion.

In order to conduct an investigative detention, police officers must have reasonable suspicion. To meet this standard, the police must point to specific and articulable

facts which, together with the rational inferences therefrom, reasonably warrant the intrusion.

Commonwealth v. Nagle, 451 Pa. Super. 16, 678 A.2d 376, 378 (1996)(citations omitted).

The officers need not personally observe the illegal or suspicious conduct, but may rely upon information supplied by third parties, including tips from citizens. Commonwealth v. Schwartz, 787 A.2d 1021, 1024 (Pa. Super. 2001)(en banc); Commonwealth v. Lohr, 715 A.2d 459, 461 (Pa. Super. 1998).

In the absence of special circumstances, identified citizens who report their observations of criminal activity to police are assumed to be trustworthy, since a known informant places himself at risk of prosecution for filing a false claim, whereas an unknown informant faces no such risk. Commonwealth v. Barber, 889 A.2d 587, 593 (Pa. Super. 2005). To determine whether the information provided is sufficient, the Court must assess the information under the totality of the circumstances. Relevant to this analysis are the specificity and basis of the citizen's knowledge. Commonwealth v. Korenkiewicz, 743 A.2d 958, 964 (Pa. Super. 1999)(en banc), citing Commonwealth v. Allen, 555 Pa. 522, 725 A.2d 737 (1999).

The Court finds the police had reasonable suspicion to believe Defendant was engaged in drug dealing in the 600 block of Fourth Avenue. Two citizens who identified themselves by name, telephone number and address called County Communications to report a drug transaction that they had just witnessed. The individuals provided a partial description of two vehicles that were involved, one of which was a silver or light gold Lexus and the other which was gold and in which a black male with dreadlocks, a white wife beater t-shirt and blue pants was traveling.

The witnesses described the drug transaction and specifically described the black male with dreadlocks as the one who actually sold the items. Moreover, during the 911

call, the one vehicle returned and one of the occupants actually threatened Mr. Hill with seriously bodily injury or death by claiming that he would shoot or pop him.

Within 10 to 15 minutes of the original dispatch, a police officer patrolling the area noticed the Defendant coming out of a residence. He confirmed that the Defendant matched the description of the individual apparently involved in the drug transaction. More specifically, the Defendant was a black male, was sporting dreadlocks¹ and was wearing a white wife beater t-shirt and bright blue pants. As well, the Defendant was getting into a gold vehicle.

Upon following the Defendant for a short period of time, the Defendant's vehicle stopped with Defendant exiting the vehicle and confronting the police officer about why the police officer was following him. At this point, the police officer certainly had reasonable suspicion to believe that the Defendant was involved in the criminal activity reported by the Hills and was legally justified in detaining the Defendant.²

The final issue concerns whether the show up identification of the Defendant was unduly suggestive.

“In reviewing the propriety of identification evidence, the central inquiry is whether, under the totality of the circumstances, the identification was reliable.” McElrath v. Commonwealth, 405 Pa. Super. 431, 592 A.2d 740, 742 (1991). The purpose of a “one on one” identification is to enhance reliability by reducing the time elapsed after the commission of the crime. Commonwealth v. Bullock, 259 Pa. Super. 467, 393 A.2d 921 (1978). “Suggestiveness in the identification process is

¹ The Defendant asserts that his hairstyle was not dreadlocks, but braids. Although the Defendant's hair was braided at the time of hearings in this case, there is nothing in the record to show that the Defendant had braids instead of dreadlocks on June 2, 2010. Moreover, in light of the evidence in this case, it is a distinction without a difference. The Hills described the perpetrator as having dreadlocks and immediately identified the Defendant as the perpetrator. Assistant Chief Bies also testified that he followed the Defendant because he matched the description of one of the individuals involved in the drug transaction.

² The Commonwealth asserts that Assistant Chief Bies engaged in a mere encounter with the Defendant because the Defendant stopped on his own and made contact with Assistant Chief Bies. While the situation may have begun as a mere encounter, it quickly escalated into an investigative detention when Assistant Chief Bies prohibited the Defendant from getting back into the vehicle and leaving the area.

but one factor to be considered in determining the admissibility of such evidence and will not warrant exclusion absent other factors.” McElrath, 592 A.2d at 742. As this Court has explained, the following factors are to be considered in determining the propriety of admitting identification evidence: “the opportunity of the witness to view the perpetrator at the time of the crime, the witness’ degree of attention, the accuracy of his prior description of the perpetrator, the level of certainty demonstrated at the confrontation, and the time between the crime and confrontation.” McElrath, 592 A.2d at 743 (citations omitted). The corrupting effect of the suggestive identification, if any, must be weighed against these factors. Commonwealth v. Sample, 321 Pa.Super. 457, 468 A.2d 799 (1983). Absent some special element of unfairness, a prompt “one on one” identification is not so suggestive as to give rise to an irreparable likelihood of misidentification. Commonwealth v. Brown, 417 Pa.Super. 165, 611 A.2d 1318 (1992).

Commonwealth v. Meachum, 711 A.2d 1029, 1034 (Pa.Super. 1998), appeal denied, 556 Pa. 689, 727 A.2d 1119 (Pa. 1998).

Mr. and Mrs. Hill had ample opportunity to view the perpetrator at the time of the crime. It is apparent from the 911 tape that the Hills viewed the entire drug transaction from their porch. It was approximately 11:00 a.m. so it was light outside, and there was no evidence presented that the Hills view was obstructed in any way.

The Hills paid a high degree of attention to the drug transaction. Not only did they supply a description of the two black males involved in the drug transaction, but they also provided the registration plate number of one of the vehicles.

Although the Hills may not have gotten the right make of the vehicles in which the perpetrators left the area, the Hills provided an accurate description of the Defendant and the color of the vehicle in which the Defendant left the scene of the crime.

The Hills were certain the Defendant and his vehicle were involved in the drug transaction that they observed. Officer Douglas transported the Hills to the place where the Defendant and his vehicle were being detained and parked approximately 30 feet away. Almost immediately, the Hills pointed out the Defendant and his vehicle as being involved in

the drug delivery.

The Hills identified the Defendant approximately 20 minutes after they witnessed the crime.

The Court finds that these factors outweigh any suggestiveness of the identification procedures utilized in this case, rendering the Hills identification admissible at trial. This ruling, however, does not preclude the defense from arguing any element of suggestiveness as affecting the weight of the Hills' identification testimony.

ORDER

AND NOW, this ____ day of March 2011 following a hearing and argument, the Court grants in part and denies in part Defendant's Motion. The Court **GRANTS** the Defendant's Motion to Suppress Defendant's Statement in response to the booking question of whether he was addicted to any type of narcotics. The Court **DENIES** Defendant's Motion to Suppress the evidence obtained from the Defendant after he was detained by Assistant Chief Bies. The Court also **DENIES** Defendant's Motion to Suppress the show up identification of him by witnesses, Angela and Charles Hill.

By The Court,

Marc F. Lovecchio, Judge

cc: A. Melissa Kalaus, Esquire (ADA)
Nicole Spring, Esquire (APD)
Work file
Gary Weber, Esquire (Lycoming Reporter)