

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PA

vs.

**JOSHUA COBB,
Defendant**

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: No. CR-603-2012

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:

: Motion to Suppress

OPINION AND ORDER

Defendant is charged by Information filed on May 4, 2012 with Receiving Stolen Property, Persons not to Possess Firearms, Firearms not to be Carried without a License and Possessing Instruments of Crime. The charges arise out of an incident that allegedly occurred on February 12, 2012 when the Defendant's vehicle was stopped and he was subsequently searched.

On July 16, 2012, Defendant filed a Motion to Suppress alleging that Defendant's arrest following the stop of his vehicle was unlawful as it was not supported by probable cause (Motion to Suppress, paragraph 14).

A hearing on the Motion to Suppress was held before the Court on September 28, 2012.

Agent Stephen Sorage of the Williamsport Bureau of Police first testified.

On February 12, at approximately 10:00 a.m., he was at his office in City Hall doing work on his own time. At approximately 10:11 a.m. he heard a radio transmission regarding a shooting.

The dispatch indicated that there were shots fired and that a person was shot at a house on 1164 Memorial Avenue. The individuals involved were described as "two black kids" who were seen leaving the residence, jumping into a newer model blue Nissan Sentra four-door vehicle, and leaving the scene at a high rate of speed.

Agent Sorage soon made contact with Lieutenant Duck, a duty shift supervisor who requested that Agent Sorage handle the investigation. Agent Sorage then made contact with Officer Dockey who had been on the scene, talked with witnesses and neighbors, and went to the hospital to see “the shooting victim.”

Officer Dockey informed Agent Sorage of his investigation and the information he obtained that a black male and a black female were seen leaving the scene immediately following the shooting and jumping into a newer, blue Nissan Sentra four-door vehicle. They apparently “peeled out,” running a stop sign and traveling at a high rate of speed westbound on Memorial Avenue.

Agent Sorage subsequently went to the hospital and spoke with Officer Dockey as well as the victim’s brother. It was advised that the victim told another individual that his wife Shakira shot him.

In attempting to determine where Shakira may have gone, Agent Sorage was provided information that Shakira had a relative who lived in the 1600 block of West Fourth Street across from the Kiss FM radio station. The relative’s name was identified as “Aunt Iris.” A subsequent investigation determined that an Irish Griffin lived at 1546 West Fourth Street within 100 yards of the Kiss FM building. Ms. Griffin’s house was within six blocks of the residence where the shooting allegedly occurred. As a result, Agent Sorage decided to go to Ms. Griffin’s address.

On their way to Ms. Griffin’s address, the police noticed a blue Nissan that was parked in front of 423 Stevens Street. Through their investigation, they determined that this

was not the vehicle involved in the alleged shooting. Among other things, it was not a newer model, the hood and the tailpipe were cold, it did not appear to have been recently moved, and it was registered to the owner of the residence it was parked in front of.

Upon approaching the intersection of Stevens Street and West Fourth Street while facing in a southerly direction near Ms. Griffin's residence, Agent Sorage noticed a newer blue Nissan Sentra four-door vehicle traveling eastbound on Fourth Street. He "took note" of the driver and identified him as Defendant.

Defendant's vehicle turned left in front of Agent Sorage's vehicle and traveled north on Stevens Street. While Defendant's vehicle was passing Agent Sorage's vehicle, Defendant and Agent Sorage made eye contact. Defendant's expression immediately changed to what Agent Sorage described as an "oh shit look."

The Defendant then drove north on Stevens Street and then took a right in an easterly direction down an alley which ran behind Griffin's residence. The conditions on the surface in the alley were ice and frozen slush and somewhat slippery. Agent Sorage attempted to catch up to the vehicle but "was not gaining on Defendant."

Agent Sorage followed Defendant's vehicle as it turned north on Berger Street to the intersection of Scott Street. Agent Sorage lost contact but turned east on Scott Street. Soon thereafter, Officer Dockey radioed Agent Sorage to indicate that Defendant's vehicle was stopped on Scott Street, to the west of where Agent Sorage turned.

Agent Sorage responded. When Agent Sorage arrived, Defendant was sitting in the driver's seat.

Agent Sorage asked Defendant to step out of the vehicle and to keep his hands in sight. At the time, Agent Sorage had his hand on his holstered weapon and did not think he had drawn his weapon. He indicated, however, that Officer Dockey “might have had” his firearm “out.”

Upon Defendant exiting the vehicle, he was immediately patted down for safety reasons. He was asked his name and asked where Shakira was. Defendant indicated that Shakira was “at Keema’s place.” Defendant indicated as well after being questioned that Keema had an apartment across from the Finish Line.

Defendant was “put in restraints” and then placed in Officer Dockey’s patrol vehicle.

Defendant’s vehicle was stopped at approximately 12:10 p.m. He was placed in custody shortly after his brief conversation with Agent Sorage. By 12:30 p.m., Defendant had been transported and was “secured” at City Hall.

Shakira was taken into custody shortly after 1:00 p.m. She too was transported to City Hall. Agent Sorage along with Agent Kontz interviewed Shakira for approximately 45 to 60 minutes. The interview began at approximately 2:00 p.m.

During the interview, Shakira admitted that she shot the victim. She explained why she shot the victim. She also indicated that Defendant gave her the handgun which she utilized and that Defendant drove her away from the residence after the shooting.

Trent Peacock next testified on behalf of the Commonwealth. He is an agent with the Williamsport Bureau of Police and assisted in the investigation.

Among other things, he assisted Agent Kontz in the interview of Defendant. Prior to Defendant speaking with the agents, he was given his Miranda warnings and signed a written waiver that was admitted as Commonwealth's Exhibit 1.

During Defendant's interview which occurred after Shakira was interviewed, Defendant admitted to supplying Shakira with the gun that she used to shoot the victim.

Following the hearing, Defendant requested, and the Court granted, an oral Motion to amend the Suppression Motion to allege that the arrest of Defendant occurred when he was removed from the vehicle. Accordingly, Defendant argued that, in the alternative, he was arrested when he was immediately removed from the vehicle or at the very minimum when he was placed in handcuffs and put in the police cruiser. The Commonwealth argued that Defendant was not arrested until he was placed in handcuffs and put in the police cruiser. The Commonwealth asserted that the police had sufficient probable cause to arrest at that point. Alternatively, if Defendant was under arrest at the time he was removed from the vehicle, the Commonwealth contended that there was sufficient probable cause for an arrest at that point. Lastly, the Commonwealth claimed that Defendant's statements made following his waiver of Miranda rights should not be suppressed as the fruit of the poisonous tree, as they were not the result of any illegality and were independently obtained.

There are three levels of contact between citizens and police recognized in Pennsylvania law.

The first [level of interaction] is a "mere encounter" (or request for information) which need not be supported by any level of suspicion, but also carries no compulsion to stop or respond. The second, an "investigative detention" must be supported by reasonable suspicion; it subjects a suspect to a stop and period of detention, but does not involve such coercive conditions as to constitute the functional equivalent of

arrest. Finally, an arrest or “custodial detention” must be supported by probable cause.

Commonwealth v. Bryant, 866 A.2d 1143, 1146 (Pa. Super. 2005), app. denied, 583 Pa. 668, 876 A.2d 392 (2005), quoting Commonwealth v. Phinn, 761 A.2d 176, 181 (Pa. Super. 2000)(citation omitted).

The issues in this case involve when Defendant was placed under arrest and whether said arrest was supported by probable cause. While Defendant concedes that there was reasonable suspicion to stop his vehicle, he contends that when he was first approached by the police officers and asked to exit the vehicle he was under arrest and that said arrest was without probable cause. Alternatively, Defendant argues that once he was placed in handcuffs, he was arrested and such arrest was not supported by probable cause.

“An encounter becomes an arrest when, under the totality of the circumstances, a police detention becomes so coercive that it functions as an arrest.” Commonwealth v. Charleston, 16 A.3d 505, 515 (Pa. Super. 2011), quoting Commonwealth v. Stevenson, 894 A.2d 759, 770 (Pa. Super. 2006). “The key difference between an investigative and a custodial detention is that the latter ‘involves such coercive conditions as to constitute the functional equivalent of an arrest.’” Commonwealth v. Goldsborough, 31 A.3d 299, 306 (Pa. Super. 2011), quoting Commonwealth v. Gonzalez, 979 A.2d 879, 887 (Pa. Super. 2009).

In determining if an encounter is an investigatory detention or an arrest, the Court must consider the totality of the circumstances including the basis for the detention; the duration; the location; whether the suspect was transported against his will, how far, and why; whether restraints were used; the show, threat or use of force; and the method of investigation

used to confirm or dispel suspicion. Goldsborough, 31 A.3d at 306.; Charleston, 16 A.3d at 515.

Defendant contends that when he was first stopped and approached by the police and directed to exit the vehicle, he was under arrest. Defendant further argues that the determinative factor involved one officer drawing his weapon and another officer having his hand on his holstered weapon. The Court cannot agree with Defendant's contention.

An investigatory stop is not turned into an arrest simply because an officer draws his weapon. Commonwealth v. Ferraro, 237 Pa. Super. 268, 352 A.2d 548, 551 (1975). Indeed, under the circumstances of this particular case, it would have foolhardy for the police not to take the action that they did. They were investigating a shooting and had strong reason under all of the circumstances to believe that the vehicle that was stopped was involved in the shooting. Obviously as they approached the car, they could not see if the driver was in possession of a weapon.

“Our law enforcement officers are not required to take any more risks than already inherent in stopping a [shooting] suspect, particularly one in an automobile.” Commonwealth v. Johnson, 849 A.2d 1236, 1239 (Pa. Super. 2004). Indeed, “[w]hile we ask our police officers to take risks, we do not ask them to be suicidal. It is both prudent and safe for an officer to draw his firearm when approaching a vehicle in a criminal investigation (as opposed to a routine traffic stop).” Id. Further, there is a strong public policy in favor of permitting police to respond to reports of crime, to investigate and to prevent any injuries. Commonwealth v. Dennis, 289 Pa. Super. 305, 433 A.2d 79, 82 (1981), citing Commonwealth v. Daniels, 280 Pa. Super. 278, 421 A.2d 721 (1980).

The initial duration of the stop prior to Defendant being handcuffed was a brief period. It occurred on a public street. While Defendant was directed to exit the vehicle, he was not transported against his will. No restraints were used. While there was certainly a show of force, there is no evidence to indicate that the guns were pointed at Defendant. No threats were made to Defendant by the officers and certainly no force was used. The police stopped the vehicle, directed Defendant to exit, patted him down for safety reasons and then made further inquiries.

Considering the totality of all of these circumstances, the Court concludes that this was initially an investigative detention and not an arrest. Defendant concedes that there was reasonable suspicion to support this investigatory detention. Accordingly, Defendant's Motion to Suppress on this ground will be denied.

Alternatively, Defendant argues that he was clearly arrested when he was handcuffed, placed in the police cruiser and then transported to City Hall. The Commonwealth does not contend otherwise. The issue is whether there was probable cause to justify this arrest.

"Probable cause is made out when the facts and circumstances which are within the knowledge of the officer at the time of the arrest, and of which he has reasonably trustworthy information, are sufficient to warrant a [person] of reasonable caution in the belief that the suspect has committed or is committing a crime. The question we ask is not whether the officer's belief was correct or more likely true than false. Rather we require only a probability, and not a prima facie showing of criminal activity. In determining whether probable cause exists, we apply a totality of the circumstances test." Goldsborough, 31 A.3d at

306, quoting Commonwealth v. Williams, 2 A.3d 611 (Pa. Super. 2010) (en banc), app. denied, 610 Pa. 585, 19 A.3d 1051 (2001).

Under the totality of the circumstances, the facts and circumstances within the knowledge of the officers at the time of Defendant's arrest, and of which they had reasonably trustworthy information, were sufficient to warrant a person of reasonable caution in the belief that the Defendant had committed a crime.

A shooting had recently taken place. The shooter was identified as the victim's girlfriend Shakira. Both a female and a male were seen leaving the scene of the shooting in a newer blue Nissan four-door Sentra. They were traveling at a high rate of speed.

Shakira had a relative living at an address on West Fourth Street where she possibly could have gone following the shooting. While traveling to this residence, the police found one blue Nissan Sentra which clearly was not involved in the incident. It was older, registered to the individual who lived at the residence where it was parked, its engine was cold, and it appeared not to have been moved in quite some time.

While near the West Fourth Street residence, the police spotted a newer blue four-door Nissan Sentra traveling toward the West Fourth Street residence. Upon traveling in front of a police officer and apparently noticing his presence, the driver, who was a black male gave a look that he realized the presence of the officer which he did not expect. The driver then accelerated away from the police officer and then traveled in the alley behind the West Fourth Street residence. While the police officer drove quickly in an attempt to apprehend the vehicle, he was unable to gain on the vehicle.

The Defendant drove in a manner likely to evade apprehension. Not only did he accelerate and continue to drive at a higher rate of speed but he also frequently changed directions over a short distance. He traveled north approximately half a block, east approximately a block, north approximately half a block and then west approximately half a block until he was apprehended by a different police officer.

Upon being stopped and asked the location of Shakira, he knew precisely where she was.

Accordingly, Defendant's Motion to Suppress on this ground will be denied.

The Commonwealth argues further that the challenged evidence should not be inadmissible under the circumstances because any statements made by the Defendant during his interrogation by the police were not the product of any initial illegality and were obtained by means sufficiently distinguishable to purge the primary taint. The Court need not address this issue in light of its previous ruling.

ORDER

AND NOW, this ____ day of October 2012, following a hearing and argument, the Court **DENIES** Defendant's Motion to Suppress.

BY THE COURT,

Marc F. Lovecchio, Judge

cc: Kenneth Osokow, Esquire (ADA)
Nicole Spring, Esquire (APD)
Gary Weber, Esquire (Lycoming Reporter)
Work File