

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA--**

**COMMONWEALTH OF PENNSYLVANIA,**

**v.**

**QU MAR MOORE,  
RAYMARR ALFORD,  
Defendant**

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**CR: 1971-2012; 1969-2012**

**CRIMINAL DIVISION**

**OPINION AND ORDER**

Raymarr Alford (Alford) filed an Omnibus Pre-trial Motion on December 21, 2012. Qu Mar Moore (Moore) filed an Omnibus Pre-trial Motion on February 27, 2013. A hearing on both motions was held April 9, 2013. Due to the numerous issues raised, only the issues relating to the Motion to Suppress were addressed at the hearing.

***Background***

On July 9, 2012, at around 7:00 PM Kevan James Connelly (victim) was shot to death at Flanigan Park, 707 Memorial Avenue. Following the shooting, the victim's brother, Braheem Connelly (Connelly), was taken to Williamsport City Hall by the Williamsport Bureau of Police (WBP). The majority of Connelly's interaction with police at City Hall was recorded and, by stipulation of the parties, viewed outside the presence of the jury by this Court following the hearing. In addition, Connelly testified at the hearing in regards to his identification of the Defendants as the shooters of the victim.

Approximately two months prior to the shooting, Connelly became friends with a woman that was an ex-girlfriend of Moore. The woman warned Connelly that Moore in the past had problems with other men hanging out with her and showed him a Facebook picture of Moore. Connelly testified that he looked at the photograph for approximately seven (7) seconds and took

note because he knew there would be a problem in the future. One month later, the woman showed Connelly another picture of Moore and told him that he was her ex-boyfriend.

Prior to the night of the shooting on either July 3, 2012 or July 4, 2012, Connelly saw Moore at a basketball court. Connelly stated that he was going to fight Moore but that he was with his child. As a result, no altercation resulted from this interaction. Connelly was able, however, to see Moore for a couple of minutes.

Later, on July 7, 2012, at approximately 5:00-6:00 PM, Connelly and the victim were walking around High Street when they were approached by eight (8) individuals, one being Moore. Connelly was later able to identify another individual as Alford, who he had never seen prior to this date.<sup>1</sup> The victim exchanged words with Moore and they began fighting. Connelly began fighting for a couple of minutes until he saw Alford pull a gun and point it at his face. Alford or someone else also hit the victim with the gun. Connelly got his brother and they left the scene. A witness called police and Connelly and the victim were questioned by the WBP. Connelly and the victim were released and no charges were filed.

On July 9, 2012, Connelly met the victim after work at Flanagan Park, which was filled with a couple hundred people. Connelly and the victim were playing basketball when Connelly noticed one of the individuals he had been fighting on July 7, 2012. Connelly began to look around the park and saw Moore and Alford with two other individuals approaching him and the victim. As the Defendants walked toward Connelly they were patting their waists, which Connelly stated was a way to communicate that they were possessing firearms.

The Defendants began to argue with Connelly and the victim. After about forty (40) seconds, Alford pulled out a gun followed by Moore. Alford fired approximately four (4) shots,

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<sup>1</sup> After the shooting death of the victim, Connelly identified Alford in a photo array but did not know his name.

while Moore fired approximately two (2) shots. The Defendants then fled the scene and Connelly went to the aid of his brother, who had received a gunshot wound to the chest.

Following the shooting, Connelly was taken to Williamsport City Hall. Connelly was in leg shackles because he had engaged in a fight with another individual after the police and ambulance had arrived at the shooting scene. Connelly stated that there were two shooters but that he did not know who they were and that he had never seen them before. Connelly stated that one of the shooters was a black male wearing a white shirt with jeans. The male had dark skin, short hair, a mustache, 5'7" to 5'8", and was thin. The other shooter was described as wearing a black shirt with jeans, shorter than the other shooter, and roughly between the ages of 21-23. In addition, Connelly was questioned by police about the fight that happened on July 7, 2012. Connelly stated that he did not know who was involved in the fight or why it had happened.

Based on reports from the crime scene, it was believed that an individual named "Mar Mar" was involved in the shooting. Agent Trent Peacock of the WBP prepared a photo array with Raymarr Alford, whose street name was believed to be "Mar Mar." The photo array consisted of six photos other than Alford. The photo used of Alford depicts a dark skinned black male with a mustache/facial hair, with short hair, and wearing a hoodie sweatshirt. Four (4) of the photographs in the array also consisted of dark skinned black males with facial hair, short hair, and wearing a hoodie sweatshirt. The two remaining photographs depicted similar individuals; however, they were wearing shirts and not sweatshirts. Connelly was shown the photographs, where he first flipped through them and then placed them all on the ground so he could look at them at the same time. After viewing the photo array, Connelly stated that he could not identify anyone and he also could not positively rule anyone out.

Following Connelly not being able to identify the shooter in the photo array, WBP informed him that the victim was deceased. Connelly was noticeably distraught and requested repeatedly to be allowed to leave City Hall. Connelly asked that his boss from work Jeffrey Shaffer (Shaffer) be contacted so that he could talk to him. Shaffer and Richard King (King), who was another boss of Connelly, arrived at City Hall.<sup>2</sup> When Shaffer first arrived he saw Connelly briefly and told him to do the right thing and not do anything on his own, which he believed was his mindset at the time. Connelly and King talked in an interrogation room, which was not recorded. King testified that he told Connelly to tell the police who the shooters were and not to do anything rash. After a few minutes, Connelly requested that King have the police bring the photo array back into the room. King was not aware of the photo array at the time and got police to bring it into the room. The police then began to record the interrogation room, which showed the police bring the photo array into the room and Connelly flip through a few of the photographs and immediately pull out one, which was of Alford. Connelly said the photo was of the shooter with the white shirt. When asked to sign the photograph Connelly first refused and then complied after being reminded that his brother was the victim.<sup>3</sup>

Police exited the interrogation room and left Connelly and King in the room. After police left, King gave his cell phone to Connelly and he made a phone call. Based on the conversation, it appears that Connelly called his cousin and he tells them that he talked to police and that he needs to see them. The conversation on the cell phone does not indicate any communication that would discredit Connelly's identifications of the Defendants.

Following the phone call, Connelly went outside to get air with King, Shaffer, and a police officer. Based on the video, it appears that the police officer outside was Agent Leonard

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<sup>2</sup> Shaffer had contacted King to go to City Hall with him.

<sup>3</sup> Connelly originally said that he just could not sign the photo and that he would not be appearing at court.

Dincher of WBP. King stated that the officer outside did not say anything and that the name of the second shooter was given to Shaffer. Shaffer testified that it was quiet and that Connelly said unprompted “Qu Mar.” Connelly was then taken back to the interrogation room where he discussed how he knew Moore and stated his full name as “Qu Mar Moore.” Connelly was then showed a photo of Moore, which he identified as the second shooter.

At the hearing, Connelly stated that there were many reasons for him not initially telling police that he knew the shooters. First, Connelly did not trust the police and believed that they were not telling him the truth about the victim’s status. Second, Connelly said that it was the victim’s decision on whether they should talk to police and that he was going to wait until he could talk to him. Third, Connelly testified that where he comes from in Philadelphia, people get killed for talking to the police. Finally, Connelly stated that he wanted to talk to King and Shaffer before he told police the names of the shooters.

***Whether the Photo Array of Raymarr Alford Was Unduly Suggestive***

The Defendants argue that Connelly’s identification of Alford and Moore was the result of an improper photo array. “[A] photographic identification is unduly suggestive if, under the totality of the circumstances, the identification procedure creates a substantial likelihood of misidentification.” Commonwealth v. Kendricks, 30 A.3d 499, 504 (Pa. Super. 2011).

Whether an out-of-court identification is to be suppressed as unreliable, and therefore violative of due process, is determined from the totality of the circumstances. We will not suppress such identification unless the facts demonstrate that the identification procedure was so impermissibly suggestive as to give rise to a very substantial likelihood of irreparable misidentification.

Id. (citing Commonwealth v. Burton, 770 A.2d 771 (Pa. Super. 2001)). A photo array is not unduly suggestive if the suspect’s photo does not stand out more than others and each person depicted in the array are of similar facial characteristics. Id. (citing Commonwealth v. Fisher,

769 A.2d 1116, 1126 (Pa. 2001). “The photographs in the array should all be the same size and should be shot against similar backgrounds.” Id. (citing Commonwealth v. Thomas, 575 A.2d 921 (Pa. Super. 1990)).

This Court has reviewed the photos used in the photo array of Alford. There are six (6) photographs besides the one of Alford. As stated above, Alford has dark skin, short hair, and a mustache/facial hair. Every photo in the array had individuals with dark skin, short hair, and a mustache/facial hair. All the photographs are of the same size and have a blue background. The only true distinguishable feature of all the photographs is the clothing the individuals are wearing.<sup>4</sup> The Court finds that the photo array is not unduly suggestive and does not create a substantial likelihood of misidentification.

In addition, the Defendants allege that Connelly did not have an independent basis for an in-court identification if the out-of-court identification was deemed tainted. “The factors a court should consider in determining whether there was an independent basis for the identification include: (1) the opportunity of the witness to view the criminal at the time of the crime; (2) the witness’s degree of attention; (3) the accuracy of the witness’s prior description of the criminal; (4) the level of certainty demonstrated by the witness during the confrontation; and (5) the length of time between the crime and the confrontation. Id. at 506. As the Court did not find the out-of-court identification to be suggestive, this issue will not be addressed by the Court.

The Defendants would like to emphasize that Connelly first stated that he did not know who the shooters were and that he was in contact with other individuals besides police prior to making the identifications. First, there is no indication or evidence that Connelly was told to identify the Defendants, either from the police or from a civilian. Second, any suggestion that

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<sup>4</sup> Two (2) of the photographs have individuals wearing shirts, while the remaining photographs have individuals in hooded sweatshirts.

Connelly's identification is not reliable is a question for the trier of fact. The Court is evaluating the identification procedure used by WBP and not whether Connelly is a reliable witness.

Therefore, after considering all the evidence presented at the suppression hearing, the Court will not suppress Connelly's identification of the Defendant.

***Whether the Photo Array of Qu Mar Moore Was Unduly Suggestive***

The Defendants argue that the police giving a single photo of Moore was unduly suggestive and should be suppressed. This is not a situation where the witness saw the assailant but did not know who the individual was. Connelly had identified "Qu Mar Moore" as the second shooter. Connelly supplied police with the full name and detailed multiple occasions where he had seen Moore, besides on the day of the shooting. Connelly's identification of Moore was unprompted by any questions made by police and was independent of a photo array. Connelly had identified Moore prior to being shown a single photograph of him. Therefore, the Court cannot find that the identification of Moore was unduly suggestive.

**ORDER**

AND NOW, this \_\_\_\_\_ day of May, 2013, based upon the foregoing Opinion, the Court finds that the identifications by Braheem Connelly of Qu Mar Moore and Raymarr Alford were not unduly suggestive. Therefore, the Defendant's Motion to Suppress is hereby DENIED.

By the Court,

Nancy L. Butts, President Judge

xc: DA  
PD  
Don Martino, Esq.  
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