

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH :
 :
 vs. : No. CR- 1535-2015
 :
 RICKY MOORE, :
 :
 Defendant : Omnibus Pretrial Motion

OPINION AND ORDER

Defendant is charged by Information filed on September 25, 2015 with one count of firearms not to be carried without a license, a felony of the third degree; one count of receiving stolen property, a felony of the second degree; one count of recklessly endangering another person, a misdemeanor of the second degree; disorderly conduct, a misdemeanor of the third degree; and possession of drug paraphernalia, an ungraded misdemeanor.

Defendant filed an omnibus pretrial motion on October 28, 2015. The court held a hearing on motion on December 16, 2015.

The charges against Defendant are based on evidence found in a van that was stopped by police on August 29, 2015 in the city of Williamsport. Defendant was a passenger in the van. Defendant contends that the stop of the van was without the “requisite reasonable suspicion” and, accordingly, all evidence obtained from the van must be suppressed.

The parties stipulated that in considering the motion to suppress, the court could consider a detailed stipulation of facts that was gathered from a hearing in connection with another individual allegedly involved, and the transcript from the preliminary hearing,

as well as additional testimony presented at this hearing.

Officer Jason Dockey of the Williamsport Bureau of Police was on duty on August 29, 2015 patrolling in a marked unit. At approximately 7:45 a.m., he was dispatched to the 500 block of Lycoming Street in the area of the Timberland Apartments for “shots fired.”

Upon investigating the incident, he spoke with several witnesses. Witnesses stated that one black male and one black female were arguing in the parking lot and that shortly afterwards a white van came down the street “firing rounds.” One witness, identified as Sally Fuentes, heard a disturbance and then heard “shots.” She indicated that a white van with a red decal on the back “might be involved.” She further indicated that the white van drove away. Officer Dockey also spoke with Fajjah Burks, who admitted being the female involved in the “fight.” She was fighting with Defendant, her boyfriend. Ms. Burks did not incriminate Defendant in the shooting but admitted that he had access to a gun. Ms. Burks stated that Defendant drives a white van and is normally in the 400 block of Louisa Street near where his mother lives. She stated that he normally “hangs out” there.

Another witness indicated that after the fight occurred, a white van came speeding down the roadway. Officer Dockey searched the general area of the alleged shooting and found a spent .45 caliber casing in the street.

Officer Dockey traveled to 427 Louisa Street. He went to that area because of what he was told by Ms. Burks.

He arrived there approximately 45 minutes after the first dispatch. He saw a

white van that was parked on the side of the roadway. He drove by the van. He traveled approximately five feet from the van. The windows were down and he could not see any occupants. As well, he could not see any seats.

He passed by the van, went around the block and then took up a surveillance position waiting for backup. While going around the block, he lost sight of the van.

His surveillance position was approximately 100 feet from the van. He was facing the back of the van but could not see the rear portion of it. Within approximately a minute after he took up his surveillance position and stopped, the van drove away.

The van pulled out traveling west on Louisa Street and then south on Cherry Street. Officer Dockey followed the van and observed a red decal on the back portion of it. He immediately stopped the van for further investigation. He explained that he was specifically looking for Mr. Moore to talk with him about his involvement in the alleged shooting, that all of the witnesses pointed to a white van being involved in the shooting, that Mr. Moore was known to drive a white van and was at the scene during the shooting and that the suspected white van specifically had a red decal on it. Furthermore, Mr. Moore had access to a gun and was known to “hang out” on Louisa Street near his mother’s home.

If a police officer is making a traffic stop for an offense where he has a reasonable expectation of learning additional evidence related to the suspected activity, the stop needs to be supported by reasonable suspicion. *Commonwealth v. Feczko*, 10 A.3d 1285, 1290-91 (Pa. Super. 2010).

In order to establish reasonable suspicion, the officer must be able to point to

specific and articulable facts and reasonable inferences drawn from those facts that lead the officer to believe that criminal activity is afoot. *Commonwealth v. Cook*, 558 Pa. 50, 735 A.2d 673, 677 (1999).

Reasonable suspicion is a less stringent standard than probable cause necessary to effectuate a warrantless arrest. *Commonwealth v. Brown*, 602 Pa. 198, 996 A.2d 473, 477 (2010). “In order to determine whether the police had a reasonable suspicion, the totality of the circumstances – the whole picture – must be considered. Based upon that whole picture, the detaining officer must have a particularized and objective basis for suspecting the person stopped of criminal activity.” *In the Interest of D.M.*, 566 Pa. 445, 781 A.2d 1161, 1163 (2001) (citations and internal quotation marks omitted).

The reasonable suspicion standard strikes a balance between providing an individual a measure of privacy while in his or her vehicle and permitting an officer to shed light on relevant matters that the stop would be expected to produce. *See Commonwealth v. Chase*, 599 Pa. 80, 960 A.2d 108, 119-120 (Pa. 2008). Further, a “combination of circumstances, none of which taken alone would justify a stop, may be sufficient to achieve reasonable suspicion.” *Commonwealth v. Riley*, 715 A.2d 1131, 1135 (Pa. Super. 1998). As stated earlier, in order to establish reasonable suspicion, the officer must be able to point to specific and articulable facts and reasonable inferences drawn from those facts that lead the officer to believe that criminal activity is afoot. *Commonwealth v. Cook*, 558 Pa. 50, 735 A.2d 673, 677 (1999).

Under the circumstances of this case, the court concludes that Officer Dockey

had specific and articulable facts as well as reasonable inferences to be drawn from those facts giving rise to a reasonable suspicion that Defendant was involved in the prior shooting. His reasonable suspicion was far more than a hunch.

A shooting was reported to have occurred near the Timberland Apartments. Numerous witnesses identified the fact that a white van may have been involved. One witness described the white van as having a red decal on the back. A shell casing was found in the area of where the alleged shooting occurred.

Defendant was identified as being present at the scene and having engaged in a fight with his girlfriend. He also was known to drive a white van and have access to a gun.

Defendant's girlfriend told Officer Dockey that Defendant would regularly hang out near his mother's home on Louisa Street. Approximately 45 minutes after the incident occurred, Officer Dockey located a white van on Louisa Street near Defendant's mother's address. While he did not see anyone in the van, he drove around the block and took a surveillance position. Shortly after he stopped, the van started moving and Officer Dockey observed the red decal on the back of the van.

All of these facts and the reasonable inferences drawn from those facts justifiably lead Officer Dockey to believe that Ricky Moore was involved in the shooting at the Timberland Apartments 45 minutes earlier. These facts articulate something more than an inchoate or unparticularized suspicion or hunch. *Commonwealth v. Williams*, 2015 PA Super 216, 2015 Pa. Super. LEXIS 581, *16 (October 6, 2015), citing *United States v. Sokolow*, 490 U.S. 1, 7 (1989). These facts clearly supported the traffic stop in order that

Office Dockey could gather information necessary to determine whether Mr. Moore was present and if so whether he was involved in the shooting.

ORDER

AND NOW, this __ day of December 2015, following a hearing and argument, the court denies Defendant's motion to suppress.

By The Court,

Marc F. Lovecchio, Judge

cc: Tony Ciuca, Esquire (ADA)
Joshua M. Bower, Esquire (APD)
Gary Weber, Esquire, Lycoming Reporter
Work file