

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA	:	CRIMINAL NO. 04-659
	:	
v.	:	
	:	
LAMONT COKER	:	

MEMORANDUM OPINION

Savage, J.

August 22, 2005

The defendant Lamont Coker, who is charged in a one count indictment with illegal possession of a firearm by a convicted felon, has moved to suppress the gun which was seized from the glove compartment of a vehicle in which he was a passenger after it had been stopped by the police. He also seeks suppression of an unwarned oral statement he made to the arresting police officer and a written statement to detectives later at the police station. He argues that the search of the vehicle was illegal because there was no probable cause for the stop in the first instance and the ensuing search was not incident to a lawful arrest. The written statement, he claims, was the fruit of the poisonous tree. The initial oral statement was made without the benefit of *Miranda* warnings.

The government, on the other hand, contends that the police had probable cause to stop the vehicle. It maintains that the subsequent search of the interior of the vehicle was supported by probable cause and incident to a lawful arrest. Thus, the government argues, the gun and the statements are admissible.

At the suppression hearing, the government presented the testimony of the police officer who received the initial information which was relied upon by other officers in stopping the vehicle, the arresting officer to whom the defendant made the challenged statement, and the officer who participated in stopping the vehicle and retrieved the gun

from the glove compartment. The parties stipulated to the admission of a transcript of the police radio calls relating to the events leading up to the stop and the search of the vehicle. The defense presented no evidence.

Background Facts

At noontime on July 20, 2004, Policemen Donald Liebsch and Rahim Montgomery were in their police vehicle at Germantown Avenue and Clearfield Street in Philadelphia when they heard gunshots. They proceeded to the area from which the sound of the gun fire had emanated. As they came to Germantown and Allegheny Avenues, Liebsch saw a black male standing on the running board of a Cadillac Escalade and firing a gun.

Pointing his gun at the man, Liebsch ordered him to drop the gun. The shooter complied and was immediately placed on the ground and handcuffed. While Liebsch was restraining him, the man, later identified as Jorge Prado, pointed to a Crown Victoria automobile and pleaded with Liebsch to “get those guys,” exclaiming that they were trying to get him. As a Gold Taurus with Georgia tags was driving by the scene, Prado also pointed it out, saying that its occupants were also involved.

Using the mobile police radio attached to his lapel, Liebsch transmitted a message essentially repeating what Prado had told him regarding the involvement of the Taurus in the shootout. His message was broadcast over the police radio band.

Montgomery and a third police officer had taken the occupants of the Crown Victoria into custody and retrieved guns from the car at the scene of the shooting. Considering this information, Liebsch sent another message over police radio, warning that the occupants of the Taurus should be considered “armed and dangerous.”

Within two minutes of Liebsch’s broadcast, Policeman Chauncey Ellison observed

a male who was walking from the area of the shootout get into a gold Taurus parked at 12th Street and Allegheny Avenue. As he approached the Taurus, Ellison noted that the car had Georgia license tags. He and his partner, who were in an unmarked vehicle and in plain clothes, followed the Taurus as it drove away from the area.

While in headquarters, Policeman Patrick Sitek and other officers heard the radio call reporting the shootout, describing the Taurus with Georgia tags as being involved, and warning that the occupants of the car should be considered armed and dangerous. Sitek and his fellow officers joined the pursuit of the Taurus. They encountered the Taurus near the intersection of Rising Sun Avenue and Marshall Street where they maneuvered their vehicle to block its passage.

Sitek ran to the Taurus and jumped onto the hood with his gun drawn, instructing the occupants to raise their hands. He saw both the driver and the passenger move their hands below the dashboard and make furtive movements as if they were hiding something. They eventually raised their hands and were removed from the vehicle.

Coker was handcuffed and placed in a police vehicle where he was interviewed by Ellison. Prior to seeking biographical information from him, Ellison did not give *Miranda* warnings to Coker. While Ellison was taking the information, Coker asked if he was being arrested for weapons possession.

After Coker was transferred to the police station, he was interviewed by Detective Glenn Via, to whom he made an inculpatory statement. Before giving the statement to Via, Coker was given his *Miranda* rights which he waived. He does not contest the voluntariness of this statement.

Analysis

The Search and the Seizure

Police may search a vehicle's interior incident to and contemporaneous with the arrest of a recent occupant. *New York v. Belton*, 453 U.S. 454 (1981). They may also search an automobile incident to a warrantless arrest where "there is a fair probability that contraband or evidence of a crime will be found in a particular place." *Illinois v. Gates*, 462 U.S. 213 (1983). In other words, probable cause that the vehicle contains contraband or evidence of a crime justifies a warrantless search of the vehicle. *United States v. Burton*, 288 F.3d 91, 100 (3d Cir. 2002).

Our inquiry starts with the validity of the stop. We must first determine why the police stopped the car. In evaluating the justification for the police stop of the vehicle, we must consider "the totality of the circumstances." *United States v. Valentine*, 232 F.3d 350, 353 (3d Cir. 2000). "Probable cause requires only a probability or substantial chance of criminal activity, not an actual showing of such activity." *Illinois v. Gates*, 462 U.C. 213, 243 n.13 (1983). In considering whether reasonable suspicion exists, the court must look to the totality of circumstances and give deference to the observations and judgments of trained law enforcement officers. *United States v. Arvizu*, 534 U.S. 266, 268 (2002). In doing so, the court must examine the events leading up to the arrest through the perspective of an objectively reasonable police officer. *Maryland v. Pringle*, 540 U. S. 366, 371 (2003).

Considering the totality of the circumstances in this case, the police had a reasonable suspicion to believe that the occupants of the Taurus had been involved in the shootout and that the vehicle contained evidence of their participation in it. Specifically, the officer who transmitted the initial broadcast had heard gunshots and had observed a

person shooting a gun. The shooter excitedly and immediately identified two vehicles as having been involved in the incident. The occupants of one of the vehicles, the Crown Victoria, were quickly arrested and guns were retrieved from that vehicle. It was reasonable to suspect, based upon what the officer had seen and had been told, that the occupants of the other vehicle, the Taurus, also had weapons and had been involved in the shooting. The first officer to spot the Taurus, with its distinctive Georgia license tags, away from the scene saw a male coming from the area of the shootout and get into it. The description given by Prado specifically pointed out the Taurus enabling the police to identify the color of the Taurus and the Georgia tags.

The information provided by Prado was reliable. It was given almost simultaneously with the actual event by a person who was excited and reacting to the shooting. The same indicia of reliability of similar victims' hearsay statements was present. See Fed. R. Evid. 803(2). Prado's exclamations coupled with his own observations of what was happening gave Liebsch justification to relay the detailed description of the car, the fact that its occupants had been involved in the shootout and that they were to be considered armed and dangerous.

There were ample facts to lead Liebsch to conclude that the occupants of the Taurus had committed and were still committing a crime. See *United States v. Walton*, 423 U.S. 411, 418 (1976). Other officers, hearing the radio transmissions, had probable cause to stop the Taurus and a reasonable apprehension for their safety. In other words, the officers who stopped the car were justified in relying on Liebsch's report which was based upon the requisite facts and circumstances to support a finding of probable cause.

The defendant argues that the police went beyond the permissible scope of a *Terry*

investigatory stop when they blocked the car and approached it with drawn guns. Even if the police did not have probable cause to arrest the car's occupants, the officers' conduct when they stopped the car was not impermissible. In similar circumstances, blocking a suspect's car and approaching it with guns drawn does not constitute an arrest *per se*. *United States v. Edwards*, 53 F.3d 616, 619-20 (3d Cir. 1995).

Even if the police did not have sufficient facts rising to the probable cause level, they did have enough reason to suspect that the car and its occupants had been involved in the shooting incident. Hence, the police were justified in stopping the Taurus to investigate.

During an investigatory stop, the police may order the driver and any passengers out of the car. *United States v. Bonner*, 363 F.3d 213, 216 (3d Cir. 2002). Indeed, the police may frisk a vehicle's occupants and search the passenger compartment if they have reasonable suspicion that the occupants might be armed and dangerous. *Michigan v. Long*, 463 U.S. 1032, 1049-50 (1983). Thus, given the content of the radio transmissions, the police action of searching the glove compartment was legal.

Although the government has not raised it, the issue of Coker's standing to challenge the search must be addressed. A passenger who neither owns nor leases the car has no standing to challenge a search of it. *Rakas v. Illinois*, 439 U.S. 128, 132-34 (1978); *United States v. Baker*, 221 F.3d 438, 441-42 (3d Cir. 2000). Under the circumstances, Coker had no standing to challenge the search and seizure of the gun. Although the gun was in close proximity to where he had been seated, Coker was not in possession of it. Nor was he the owner or driver of the car. Accordingly, he has no standing to contest the search of the interior of the car.

The Statements

Coker argues that the statement made by him at the scene of the stop should be suppressed because the police subjected him to a custodial interrogation without informing him of his *Miranda* rights while he was in the police vehicle. As to the statement given at police headquarters to the investigating detectives, Coker contends that it should be suppressed as the “fruit of the poisonous tree.” Specifically, he contends that the statement was derived from an illegal search of the vehicle.

Voluntary statements without *Miranda* warnings that are not instigated by any interrogation while in police custody are admissible with or. *United States v. Fioravanti*, 412 F.2d 407, 413 (3d Cir. 1969). A statement is the product of police interrogation if it is the result of questioning by law enforcement officers after the suspect has been taken into custody. *Miranda v. Arizona*, 384 U.S. 436, 444 (1966). However, statements regarding “biographical data necessary to complete booking or pretrial services” are not subject to the *Miranda* Rule. *Pennsylvania v. Muniz*, 496 U.S. 582, 601 (1990). Consequently, police may ask a suspect routine questions for the purpose of obtaining biographical information without obtaining a waiver of the suspect’s *Miranda* rights.

While Policeman Ellison was taking biographical information from Coker, Coker asked whether he was going to be charged with weapons possession. Certainly this question could be interpreted as an inculpatory statement evidencing guilty knowledge. However, because it was volunteered and not the product of any police interrogation on the issue, it is not barred by the Fifth Amendment. Therefore, it will not be suppressed.

As to the later detailed confession given to the detectives, Coker does not challenge its voluntariness. Rather he maintains that it should be suppressed because it was the

product of an illegal search and seizure. Because we have found the search and seizure constitutional, the statement will not be suppressed.

Conclusion

Viewed in light of the totality of the circumstances, the police stopping the Taurus had both a reasonable suspicion to investigate and probable cause to arrest the occupants for criminal offenses involving firearms. In addition, the defendant has no standing to challenge the search of the car which he neither owned nor leased. Therefore, his motion to suppress must be denied.

TIMOTHY J. SAVAGE, J.