

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA

v.

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MOTION TO SUPPRES

Introduction

The Defendant, [REDACTED], by and through his attorneys, moves this Honorable Court for an Order pursuant to Rule 12(b)(3) of the Federal Rules of Criminal Procedure suppressing as evidence in the trial of this action any and all items, of whatever form, seized from the Defendant, and any statements made by Defendant to law enforcement officers as a result of the unlawful detention and seizure of the Defendant by law enforcement officers on or about [REDACTED] [REDACTED] [REDACTED], and any evidence obtained as a result of the unlawful the unlawful stop and seizure.

This motion is based upon the fact that the stop of the vehicle in which the defendant was a passenger, the subsequent seizure of the occupants of the vehicle, and search were conducted in violation of the Defendant's Fourth Amendment right against unreasonable search and seizure, and the evidence obtained in this case was the direct result of that illegal stop and seizure. In support of this Motion, the Defendant shows unto the Court the following:

Facts

On June 26, 2007, at 10:40 a.m., the [REDACTED] Police Department communications received a phone call from an anonymous caller who stated that there was a maroon colored four-door vehicle in the parking lot of [REDACTED] at the corner of [REDACTED] [REDACTED] [REDACTED] and [REDACTED] [REDACTED] [REDACTED], North Carolina. The caller stated that the vehicle was occupied by a group of people consisting of white males and white females who were selling guns out of the trunk of the vehicle.

Corporal [REDACTED] of the [REDACTED] Police Department informed communications that he saw said vehicle. He exited his vehicle and moved to a location where he could better observe the vehicle. While conducting surveillance on the vehicle, he observed a vehicle occupied by a black male pull into the carwash. The occupant exited his vehicle and approached the suspect vehicle. The black male remained at the suspect vehicle just for a few minutes and then left the carwash. Corporal [REDACTED] continued observing the suspect vehicle and observed a white female exit the vehicle and throw a black plastic bag into a trash dumpster and return to the vehicle. Shortly thereafter, a white male exited the vehicle and threw what appeared to be a box into a dumpster. Corporal [REDACTED] then observed the suspect vehicle leaving the parking lot of the [REDACTED]. Corporal [REDACTED] returned to his vehicle and attempted to overtake the suspect vehicle. He advised over police

radio that the vehicle had left the [REDACTED]. Corporal [REDACTED] of the [REDACTED] Police Department advised over the radio that the vehicle was pulling into the parking lot of the Wal-Mart at [REDACTED]. Corporal [REDACTED] then initiated a traffic stop of the vehicle. A felony vehicle stop was initiated, and the occupants of the vehicle were ordered to remain in the vehicle until instructed out. Once they were instructed out of the vehicle, they were immediately placed in handcuffs and placed in police vehicles. The Defendant was sitting in the right rear passenger seat of the vehicle.

Law and Argument

The United States Supreme Court has long recognized that when a police officer has a reasonable suspicion "that criminal activity may be afoot and that the persons with whom he is dealing may be armed and presently dangerous . . . he is entitled for the protection of himself and others in the area to conduct a carefully limited search of the outer clothing of such persons in an attempt to discover weapons which might be used to assault him." Terry v. Ohio, 392 U.S. 1, 30 (1968). The Supreme Court explained that an anonymous tip that a person is carrying a gun does not, without more, provide the reasonable suspicion necessary for such a "stop and frisk." Florida v. J.L., 529 U.S. 266, 274 (2000). The United States Court of Appeals for the Fourth Circuit has since had several occasions to examine whether an anonymous tip that a person

has a gun, coupled with some additional information, does provide the reasonable suspicion necessary for a stop and frisk under Terry v. Ohio and Florida v. J.L. The Fourth Circuit has concluded that an anonymous tip that "a black male wearing a T-shirt and blue jeans had just fired a pistol" near a particular address, coupled with "furtive behavior" by a suspect matching the description in the tip, did provide the reasonable suspicion necessary for such a stop and frisk. United States v. Sims, 296 F.3d 284, 285-86 (4th Cir. 2002) (officer saw suspect crouched down, peeking around corner of house, and suspect jerked back behind house when he and officer made eye contact). On the other hand, the Fourth Circuit more recently found that an anonymous tip that a "short, black male with glasses" was carrying a gun outside a particular apartment complex, coupled with evidence that a "generally match[ing]" suspect's eyes were "bloodshot and glassy," that he had a strong odor of alcohol on his breath, that he was "fidgety and nervous" when officers spoke to him, and that he admitted he had been drinking, did not provide the reasonable suspicion necessary for such a stop and frisk. United States v. Brown, 401 F.3d 588, 590-91 (4th Cir. 2005). In Brown, the Fourth Circuit explained that "the officers had acquired no additional information that Brown was carrying a firearm" before seizing him by ordering him against a car, at which time the bulge of a gun became visible in his pants pocket. Id. at 596. The Fourth Circuit also explained that the

officers did not, under Virginia law, have probable cause to arrest Brown for public intoxication, so the initial seizure could not be justified on that ground. Id. at 596-97.

Corporal [REDACTED] report indicates that when he first saw the vehicle on [REDACTED] he observed it parked at the [REDACTED]. His report does not provide details of any conduct by occupants of the vehicle, or of the black male who approached the vehicle, that provides information to support the tip provided by the anonymous caller, i.e., that firearms were being sold from the vehicle or that any other criminal conduct was taking place. Neither Corporal [REDACTED] nor Corporal [REDACTED] observed any obvious violation of traffic laws that would have justified the vehicle stop. At the time of the stop and seizure of the Defendant and the occupants of the vehicle, no information had been obtained by the police which would have corroborated the tip with regard to whether the passengers in the vehicle may have been selling firearms.¹ Certainly Corporal [REDACTED] did not see the Defendant with a gun. This case is clearly distinguishable from Sims, and presents even less of an argument for reasonable suspicion than did the facts and circumstances present in Brown. The facts here are not distinguishable, in any meaningful way, from those in Florida v.

¹ "The reasonable suspicion here at issue requires that a tip be reliable in its assertion of illegality, not just in its tendency to identify a determinate person." Florida v. J.L., 529 U.S. at 272.

J.L. Accordingly, just as in that case, the firearms in question should be suppressed because they were seized during a stop and frisk conducted without reasonable suspicion and, thus, were seized in violation of the Fourth Amendment. Any contraband seized or statements made as a result of the unlawful detention would be inadmissible under the "fruit of the poisonous tree doctrine." See, e.g. Wong Sun v. United States, 371 U.S. 471, 484, 83 S.Ct. 407, 415, 9 L.Ed.2d 441 (1963).

In this case, neither Corporal [REDACTED] nor Corporal [REDACTED] had the requisite reasonable suspicion when the car in which the Defendant was a passenger was originally stopped.² The Defendant contends that the initial stop of the vehicle and subsequent seizure violated the Fourth Amendment, and the evidence must be suppressed on that basis.

² Although only a passenger, the Defendant may still contest the legality of the stop. Brendlin v. California, 127 S. Ct. 2400 (2007).

Conclusion

For all these reasons, the evidence seized on [REDACTED],
or evidence obtained as a result of the stop, should be suppressed.

Respectfully submitted this the 18th day of [REDACTED]

[REDACTED]
Federal Public Defender

/s/ [REDACTED]

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CERTIFICATE OF SERVICE

I hereby certify that on [REDACTED], I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

[REDACTED]
Assistant United States Attorney
P. O. Box 1858
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Respectfully submitted,

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