

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

MALDEN DISTRICT COURT
DOCKET NO. 2150CR [REDACTED]

COMMONWEALTH

V.
[REDACTED]

SCANNED

FINDINGS AND ORDER ON DEFENDANT'S MOTION TO SUPPRESS

The defendant moved to suppress all evidence, observations, and statements gleaned from a motor vehicle stop and arrest of the defendant. For the reasons below, this motion is ALLOWED.

I. FACTS

On May 10, 2021, Trooper Chris Bellens was working the 11-730 am shift. At around midnight he received a dispatch for an erratic vehicle. There was no other information about the conduct or operation of the vehicle, just that it was being operated erratically. Based on information provided to him, Trooper Bellens believed that the caller was driving close to the erratic vehicle. Trooper Bellens asked the dispatcher, who is also a state trooper, to ask the caller to activate their hazard lights. The purpose of asking the operator to activate their lights was to pinpoint the caller's motor vehicle, distinguish their car from other cars and find the area of the offender. Trooper Bellens never spoke to the caller, was unaware of the caller's identity and there was no information that the caller ever identified him or herself. Moreover, Trooper Bellens never received any information about the make, model, color or other identifying

information about the caller's vehicle or the suspects' vehicle. There was also no information provided about what the operator of either vehicle looked like.

Trooper Bellens proceeded to the area of 95 North around exit 63A/63 B heading towards Goodwin circle. Since neither call nor the details of the content of call were admitted into evidence, it is unclear why Trooper Bellens believed the suspect's vehicle was in that area. Trooper Bellens saw a car with their hazard lights on and believed that to be the caller's vehicle. Then, he saw a black truck having trouble going down the ramp off the exit. The ramp is very long and has a horseshoe shape. The car in front of the black car drifted to the left and then jerked to the right. Trooper Bellens believed the car that had drifted to the left and jerked back right was the suspects' car because of the "erratic" way the car was moving. The car didn't cross any lines or lanes, was not speeding or driving the wrong way, and no driver had to take evasive action to avoid an accident.

Trooper Bellens activated lights to stop the vehicle. The operator of the car; the defendant, stopped immediately. Because the defendant stopped in a location that was blocking the ramp exit, Trooper Bellens told the defendant to move to safer spot and he complied. Upon approach, the driver looked solemn and close to tears. Trooper Bellen smelled alcohol as he spoke to the defendant through the window. The defendant answered all the Trooper's questions and gave his license and registration. He observed the defendant to have blood shot eyes, slurred speech, and he looked tired. However, the defendant complied with all orders, was alert and coherent, never fell or stumbled, was never physically aggressive and the trooper didn't find any nip bottles or other alcoholic bottles in the vehicle. Trooper Bellens believed the defendant was intoxicated so he asked him to perform field sobriety and the defendant refused to do so. The trooper asked him to step out of the car, so he arrested him for OUI-liquor. He saw the

defendant to be unsteady on his feet as he walked him to the vehicle. Prior to reading the defendant his Miranda rights, the defendant called the Trooper a “piece of shit” when he was placed in the back of the cruiser. He did not make any other statements.

II. RULING

The arrest of the defendant was the result of a motor vehicle stop. Law enforcement officers may perform a motor vehicle stop based on reasonable suspicion of criminal activity or based on observed civil motor vehicle infraction. Commonwealth v. Barreto, 483 Mass. 716, 718 (2019). The stop was not justified under either theory.

To effect an investigatory stop of a motor vehicle, the police must possess “reasonable suspicion, based on specific and articulable facts and inferences therefrom, that an occupant...had committed, was committing, or was about to commit a crime.” Commonwealth v. Manha, 479 Mass. 44, 46 (2018) citing Commonwealth v. Anderson, 461 Mass. 616, 621 (2012). In this case, the stop of the motor vehicle was precipitated by a caller who stated that he or she observed a vehicle driving erratically. First, the Commonwealth must establish the particularity of the vehicle’s description from the call or the radio broadcast. Commonwealth v. Manha, 479 Mass. 44, 46 (2018). The particularity of the radio broadcast was woefully insufficient. The Commonwealth did not introduce the call or broadcast into evidence. From the evidence adduced at the hearing, there was no information about the location of the suspects’ vehicle, the suspects direction of travel, or any description of the driver. Inexplicably, there was also no information provided about the make, model, color, or license plate of the suspect’s vehicle. Commonwealth v. Manha, 479 Mass. 44, 46 (2018) (“Here, the broadcast contained sufficient particularity of the defendant’s vehicle’s description [including its make, model, color,

and registration number] and the gender and age of the driver”); Commonwealth v. Westgate, 101 Mass. App. Ct. 548, 551 (2022) (“Here, the broadcast relayed the color of the car, make, license plate number, and location of the white Mercedes as reported by the male 911 caller, which established adequate particularity for the vehicle’s description”). This type of exiguous evidence cannot be the basis for a motor vehicle stop.

Even if the Court found that the information in the call was sufficiently particular, it would not change the result because the transmitted information was unreliable. Westgate, 101 Mass. App. Ct. at 551. In addition to particularity, a stop is only lawful if the Commonwealth can show indicia of reliability of the transmitted information. Id. The Commonwealth is required to show “the basis of knowledge of the source of the information (the basis of knowledge test) and the underlying circumstances demonstrating that the source of the information was credible or the information reliable (veracity test).” Id. In this case the information falls short on both basis of knowledge and veracity.

There is nothing to show how the caller knew the information he passed on to the state police. There is no information about the caller’s location when he saw the suspect vehicle and no other information to show the caller’s observations were based on first-hand observations. Commonwealth v. Manha, 479 Mass. 44, 46 (2018) (“In this case, the basis of knowledge test is satisfied where the 911 caller reported her firsthand observations”). Moreover, the details of the calls are too scant for the court to infer first-hand observation. Commonwealth v. Westgate, 101 Mass. App. Ct. 548, 551 (2022).

Similarly, the Commonwealths evidence fails the veracity prong. There was no information about the identity of the caller or whether the caller knew that he/she was identifiable. Manha, 479 Mass. 44 at 47. Consequently, the Court must treat the caller as

anonymous.¹ Id. As such, there is no evidence regarding his or her past reliability or honesty. Id. 46. With only a conclusory statement that the car was driving erratically, there is also insufficient evidence that the caller had just witnessed a shocking event. Id. at 47 (The Commonwealth can establish the caller's veracity by demonstrating that the caller "had just witnessed a startling or shocking event..."). Moreover, the police did not corroborate any important details of the call. Id. ("Even where a 911 telephone call is anonymous, the Commonwealth can still establish a caller's reliability "through independent corroboration by police observation or investigation of the details of the information provided by the caller"). There is no information from the caller about what his or her own vehicle looked like. Without that information, it is speculative to conclude the car that Trooper Bellens saw with its hazard lights on was the caller's car. Correspondingly, the belief that the suspects car was the vehicle in question because it was some where in the vicinity of a vehicle with its hazard lights on, is invalid.

Lastly, from the testimony at the hearing, there was insufficient evidence of a traffic violation. Regardless of their motivation, police may stop a motor vehicle after observing a motor vehicle infraction. Commonwealth v. Barreto, 483 Mass. 716, 721 (2019). Here, the only information is that the suspects' car drifted to the left and then jerked back right. Trooper Bellen's stated at the hearing that the defendant didn't cross any lines or lanes, thus, there was no marked lanes violation. Without more, any allegation of a civil infraction is nebulous.

¹"Where, as here, a 911 caller is identifiable, introducing evidence of that fact at the hearing on the motion to suppress would aid the motion judge in assessing the caller's reliability." Commonwealth v. Manha, 479 Mass. 44, 47 n. 2 (2018).

ORDER

For the foregoing reasons, the motion is allowed. All evidence discovered after Trooper Bellen put his lights & sirens on, including all evidence of the defendant's intoxication, is suppressed. This includes all observations of the defendant, identity of the defendant and statements of the defendant.

By the Court,

Asha White, J.

Hon. Asha White

Dated: September 20, 2022