

COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, SS.

HINGHAM DISTRICT COURT

DOCKET NO. 18/1836

COMMONWEALTH

V.

TIMOTHY L. HURLEY

COURT'S FINDINGS OF FACT AND RULINGS OF LAW ON DEFENDANTS
MOTION TO SUPPRESS EVIDENCE

Based upon the evidence presented at the motion hearing at the Hingham District Court and the reasonable inferences therefrom, the Court makes the following findings of fact and rulings of law:

FINDINGS OF FACT:

Officer Corey Arseneau of the Scituate Police Department was working on 12/20/18 when he was dispatched at 12:05 a.m. to the Untold Brewery in Scituate on a report of a suspicious motor vehicle in the area driving up and down the road. The caller gave the police a plate number and the officer made contact with the suspect vehicle in front of the Brewery. A check of the plate showed the vehicle was registered to the Hurley family. The operator of the motor vehicle was identified as the defendant, Timothy Hurley. The defendant had both a male and female passenger with him. There was no evidence of alcohol or alcohol consumption. Officer Arseneau indicated both passengers, identified as Kaylie Guiney and Keon Toney, were known to Scituate Police Department at that time. Keon Toney had several prior BOLOS for drug use and being found carrying firearms. Keon Toney and Kaylie Guiney told the officer they were going back to

Mr. Toney's home. The defendant lived in North Easton and put an address in his GPS before leaving the area.

At approximately 12:55 a.m., Officer Arseneau was dispatched to the MBTA parking lot in Scituate. The police had received a call from the same caller reporting a motor vehicle in the area. Officer Arseneau remembered there was an officer in the area who reported back that there was no vehicle at the T station when he responded. At 1:25 a.m., the same caller reported to police that the same motor vehicle was now on 15 Berkshire Road which is a street that runs behind the Brewery. The caller did not report any motor vehicle violations. Officer Arseneau indicated he arrived on scene at that address at the same time as Sergeant McLaughlin and Officer Gibbons. The police located the vehicle parked in front of a residence with the defendant in the driver's seat and the same female in the rear passenger's seat. Mr. Toney was not in the vehicle. Officer Arseneau testified there was nothing about the way the vehicle was parked that concerned the officers. The parties told the officer they were waiting for Mr. Toney to come back out of his house. Officer Arseneau recalled that the blue lights on the cruiser were illuminated. His cruiser was behind the defendant's car and Sergeant McLaughlin's cruiser was in front of the defendant's car. He believed Officer Gibbons was parked behind his car. Officer Arseneau approached the passenger side and Sergeant McLaughlin approached the driver's side. Officer Arseneau did not notice any drugs or drug paraphernalia. He left to go to the house the car was parked in front of to see if Mr. Toney was there. The officers determined they were not parked in front of Mr. Toney's house. He lived on Jenkins Place which was the street between Berkshire and the Brewery parallel to that house and the houses on Jenkins back up to the homes on Berkshire. Officer Arseneau indicated as he was returning from speaking to the owner of the home to determine if Mr. Toney lived there, he saw that Sergeant McLaughlin had the defendant out of the vehicle. As he approached the vehicle, Sergeant McLaughlin informed him he had seen narcotics paraphernalia by the operator's knee and in the center console area in plain view. Both the defendant and passenger were removed from the vehicle. Officer Arseneau was directed to search the vehicle. Under the driver's seat, he located a loaded firearm. The gun was positioned with the nozzle of the gun facing the back seat in a way that would suggest a right-handed person placed the firearm from the front under the seat with the right hand. The defendant was handcuffed and placed in the rear of the cruiser.

Officer Edward Gibbons testified he was working patrol that night and was aware of the first call that came in of a vehicle driving up and down the street near the Brewery. He indicated he was the last to arrive to the Brewery and did not speak to any of the parties but heard the defendant say he was headed home. Prior to that day, he had never had an interaction with the defendant. At 12:40 a.m., he was in the MBTA parking lot and saw the same vehicle pull into the parking lot and go to the staging area where parties wait for a train. Officer Gibbons indicated the distance between the Brewery and the MBTA lot is about an eighth of a mile. The defendant was alone at the time and told the officer he had to drop clothes back to the female passenger. Officer Gibbons indicated the defendant was not breaking any laws so his encounter with him was brief and the officer left the area. At approximately 12:55 a.m., after he had cleared the area, he received a call from dispatch saying the motor vehicle was at the station. He told dispatch he had just spoken to the defendant 10-15 minutes before and the defendant told him he was just dropping clothes on the platform for the female so the officer left the area. The officer questioned dispatch as to how the reporter could see the defendant was there and reiterated the defendant was not breaking any laws. The officer indicated he did not see any other people in the area where the caller reported he saw the vehicle again. At approximately 1:25 a.m., Officer Gibbons responded to Berkshire Road on the report of the same vehicle being in the neighborhood. When he arrived, Officer Gibbons recalled Sergeant McLaughlin was already speaking to the defendant and Ms. Guiney outside of the defendant's vehicle. Officer Arseneau was present. Officer Gibbons confirmed how the police cruisers were parked in front of and behind the defendant's vehicle but could not recall if anyone had their lights on at the time. Sergeant McLaughlin told the officers he saw drug paraphernalia in the car and asked them to look. Officer Gibbons saw a needle at that time on the passenger seat and removed the needle.

Sergeant Brian McLaughlin indicated he was working a shift until 2 a.m. that night when he was dispatched to a call of a possibly intoxicated person near the Brewery. He was the second vehicle on the scene. He knew both Kiley Guiney and Keon Toney from past narcotics incidents and Toney from a recent call about him carrying a firearm. He did not see any evidence of impairment by the driver and said the call was then cleared. He did not respond to the second call involving the defendant but did respond to the third call. The dispatcher indicated the same car and caller were involved and the call was for a suspicious vehicle on Berkshire Road. He found the defendant's vehicle parked in front of 16 Berkshire

Road with its lights illuminated. He approached and asked the defendant what was going on and he responded that he was waiting on Keon. Sergeant McLaughlin indicated Keon's residence was walking distance through the woods at 16 Berkshire Road. He noticed Ms. Guiney in the back seat and saw the defendant reach for the center console. He had to tell him twice not to do so. He told the parties to let him see their hands. At that time, he saw a syringe near the console and front passenger seat and asked them to step out of the vehicle. He could not see if there was anything in the syringe. He indicated he was alone at that time with no back up. Guiney was in the right rear passenger's seat with an open purse with prescription bottles and a white glassine bag containing white powder. There were syringes in the purse as well. Sergeant McLaughlin did not see the purse contents until he already had the defendant out of the vehicle and Ms. Guiney was getting out of the vehicle. Sergeant McLaughlin escorted the defendant to the rear of the car because he had no other officer with him. He spoke to Gibbons and Arseneau when they arrived and told them what he saw. He asked them to search the vehicle. Officer Arseneau advised him he located the firearm under the driver's seat. They took custody of the firearm and the syringe. The defendant was arrested and Ms. Guiney was also arrested on warrants they found were outstanding for her. Sergeant McLaughlin indicated he knew nothing about the defendant prior to that night. When he pulled up on the third call, he did activate his blue lights. At trial, the defendant introduced a photo of the purse located in the vehicle. In the photo, there are no syringes but the prescription pill bottles are visible. Sergeant McLaughlin testified the bag had been moved prior to the photo being taken and does not reflect the syringes he saw. The white powder did not test positive for any illegal substances.

At trial, the parties introduced the 911 calls and dispatch recordings from that night as Commonwealth's Exhibit 1. On the first call, the unidentified caller indicates he was just leaving his mother's house and saw people at the Brewery. He stated he did not know what they were doing or if they were drunk but he has to work in the morning and they keep driving up and down the street making noise. He indicated his neighbor Joey said they keep making noise as well. The dispatcher then called out to the officers that there was a motor vehicle causing a noise complaint near the Untold Brewery and that there was no description of the vehicle. He indicated he thought the vehicle was originating from the Brewery but was not sure if the Brewery was open. The same caller then calls back with a license plate number which he gives the officer. The dispatcher tells him they are

on scene. The dispatcher then calls out to the officers on scene that the suspect vehicle plate belongs to a 2014 Ford Fusion, color gray, registered to a Lawrence Hurley of North Easton who was born in 1930. One of the responding officers then calls in looking for confirmation that the operator of the vehicle they have stopped has an active license. He provides dispatch with the name of the defendant, Timothy Hurley, and his date of birth. The dispatcher responds that the defendant's license is active and he has no warrants. An officer then calls into dispatch that the party checks out and all units are cleared from the scene.

The next call comes from the same unidentified caller who indicates he is at the train station and that the same vehicle almost hit him and his mother on Stockbridge. He states that he thinks they are on drugs or something. The officer asks if he is at Jenkins Place and he responds he is at 5 Union. The dispatcher calls out to other officers that the same caller indicates the vehicle is at the T station lingering in the area. An officer responds that he saw the vehicle and spoke to the party who indicated he was leaving. Another officer responds that he is at the T station and no vehicles are there. The police then receive another call from the same caller who identifies himself as "Matty" on Jenkins Place. He indicates the same vehicle is on Berkshire and is waking up his family. He tells the dispatcher he wants to make a complaint and he will come to the station. The dispatcher radios for officers to check for the same vehicle now on Berkshire Road and indicates the caller is coming to make a complaint. The next part of the tape appears to be a call from one of the officers out on the road, identified as Ed on the call which is Officer Gibbons. The officer and dispatcher discuss how the party calling is not making sense, that when he indicated he was out near the T station the officer was there and saw no one else in the area, and that the parties in the vehicle were not breaking any laws. The next recorded call comes from an officer at 16 Berkshire Road who asks if the caller is looking to speak to an officer and the dispatcher responds that he indicated instead that he would come down to the station in person. An officer then requests a check on a license number. The dispatcher responds calling to the K9 officer and indicates that Ms. Guiney has an expired license and two active warrants. The last and final call involves a request for a "wrecker" or tow truck to respond to the scene. There was no evidence presented at the hearing that the caller ever came to the station to make a complaint or identify himself.

RULINGS OF LAW:

The defendant moves to suppress all evidence seized as a result of the stop and search of the defendant's vehicle. The defendant argues that the police lacked reasonable suspicion when they approached his vehicle on Berkshire Road. The defendant also argues that the police conduct amounted to a seizure and there was no probable cause to justify his detention or the search of his vehicle. The Commonwealth argues that the stop was valid based on reasonable suspicion by the caller, the exit order was justified based on safety concerns, and the police had probable cause to search the vehicle at the time the paraphernalia and firearm were found.

A stop occurs where the officer has communicated by words or conduct that the officer would use power to coerce the party to stay. See Commonwealth v. Matta, 483 Mass. 357(2019). The police do not seize a person merely by asking questions of the person. See United States v. Mendenhall, 446 U.S. 544(1980). An encounter with a person in a public place does not automatically become a stop and requires that the officer engage in a show of authority. See Commonwealth v. Doulette, 414 Mass. 653(1993). When police approach a parked vehicle and shine a flashlight into the car, no stop has occurred unless the officer blocks the vehicle or exhibits another show of authority. See Commonwealth v. Stephens, 451 Mass. 370(2008)(no stop where approached vehicle and shined flashlight until officer opened car door). The mere presence of multiple officers is not determinative that a stop or seizure has occurred. See Commonwealth v. Pimentel, 27 Mass. App. Ct. 557(1989)(three officers on scene was found by the Court to not be overwhelming). A seizure in the constitutional sense can be found at the point where an officer directs a party to move their hands or to stop moving. See Commonwealth v. Evans, 87 Mass. App. Ct. 687(2015). When police block a vehicle from exiting or surround a vehicle, a stop requiring reasonable suspicion has occurred. See Commonwealth v. Badore, 47 Mass. App. Ct. 600(1999). When the police activate their blue lights, a seizure has occurred requiring justification. See Commonwealth v. Campbell, 69 Mass. App. Ct. 212(2007).

If a stop has not occurred and the officer sees evidence of a crime in plain view, the defendant's constitutional rights are not violated. See Commonwealth v. Doulette, 414 Mass. at 657. If reasonable suspicion is required for an approach of a parked vehicle because it has become a stop or seizure in the constitutional sense, the Court must determine whether reasonable suspicion existed at the time of the

stop or seizure that the defendant was committing, had committed, or was about to commit a crime. See Commonwealth v. Silva, 366 Mass. 402(1974). Reasonable suspicion can be based on the first-hand observations of the officers or the collective knowledge of the officers. See Commonwealth v. Savage, 430 Mass. 341(1999). A named or unnamed citizen can also provide reasonable suspicion but where the information is provided by an unnamed citizen, the information must meet the sufficient indicia of reliability. See Commonwealth v. Depiero, 87 Mass. App. Ct. 105(2015). The indicia of reliability analysis applies to the 911 caller. See Commonwealth v. Edwards, 476 Mass. 341(2017)(sufficient reliability where caller identified himself and said he had seen defendant with a gun and pointed out vehicle to police); cf. Commonwealth v. Gomes, 75 Mass. App. Ct. 791(2009)(firearm suppressed because radio broadcast described man holding a gun but officer only saw a man in a vehicle with no gun in the area). Police corroboration of non-innocent detail is often needed to satisfy the reliability of the information from an unidentified caller. See Commonwealth v. Mubdi, 456 Mass. 385(2010). Because anyone can call the police for any reason, reasonable suspicion often requires a tip to be reliable in the information indicating a crime is occurring and not just its description of suspects involved. See Florida v. JL, 529 U.S. 266(2000). In determining reasonable suspicion, the Court looks for the presence of many factors, such as furtive gestures, traffic violations, flight, high crime areas, knowledge of a suspect's prior reputation, among others. See Commonwealth v. Thompson, 427 Mass. 729(1998); see also Commonwealth v. Peters, 48 Mass. App. Ct. 15(1999).

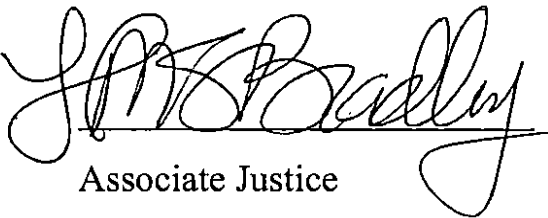
In the present case, the Commonwealth argues that because the police encountered the defendant three times and the caller was indicating an ongoing problem of noise and driving up and down roads, the police had reasonable suspicion to stop the vehicle the third time to speak to the defendant. The problem is that the stop and seizure of the defendant was due entirely to the officers' reliance on the information provided by the unidentified caller. The police never observed the defendant engaging in any criminal activity to corroborate the report from the caller. Where the caller's veracity was clearly questioned by at least one of the officers and the dispatcher right before the third call, the police lacked reasonable suspicion that the defendant was committing, had committed, or was about to commit a crime when they were dispatched to the third call. When the officers positioned their cars in front of and behind the defendant and activated blue lights before approaching the vehicle on that call, they seized the defendant at

that point without first observing drug paraphernalia or furtive movements by the defendant which might have justified the exit order and search. While Sergeant McLaughlin might have had a hunch something was going on when he approached Mr. Hurley, he lacked specific and articulable facts supporting a finding of reasonable suspicion to stop Mr. Hurley in violation of his Constitutional rights.

CONCLUSION

For the above-stated reasons, the defendant's motion to suppress all evidence is **allowed**.

So Ordered,

A handwritten signature in black ink, appearing to read "J. M. Bradley". The signature is written in a cursive style with a horizontal line underneath the name.

Associate Justice

Hingham District Court

Dated: March 6, 2022