

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
vs.)
)
Ramon Turner,)
)
 Defendant.)

No. 02-20161 MLV

REPORT AND RECOMMENDATION

The defendant, Ramon Turner, has been indicted by the grand jury on one count of being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g). Before the court is his motion to suppress all evidence seized from his person, particularly a 9mm semi-automatic pistol, on the grounds that law enforcement officers stopped him without reasonable suspicion and detained and searched him without probable cause in violation of the Fourth Amendment. The motion was referred to the United States Magistrate Judge for a report and recommendation.

Pursuant to the reference, an evidentiary hearing was held on June 25, 2003. At the hearing, Officer Robert Herring with the Memphis Police Department testified on behalf of the government. Turner did not testify. After considering the testimony of Officer Herring, statements of counsel, and the briefs filed by the

parties, the court recommends that the suppression motion be denied.

PROPOSED FINDINGS OF FACT

Because the government presented only one witness, Officer Herring, and Turner presented no witnesses, Officer Herring's testimony is uncontradicted. The court finds Officer Herring's testimony to be credible and adopts as fact his version of the events.

On February 10, 2002, at approximately 2:00 a.m., the Memphis Police Department received "an armed party call" from a woman who advised that her boyfriend was outside the door of her apartment at 233 Decatur #C threatening to kill her. The Memphis Police Department dispatcher broadcast the information by radio to police officers in the area. Officer Herring, a patrol officer in the West Precinct, received the information and arrived on the scene within two minutes.

When he arrived, Officer Herring observed a male black, who was later identified as the defendant, Ramon Turner, at the apartment address banging on the door with his left fist. Turner had his other hand in his pocket. Because Officer Herring believed the man could be armed, Officer Herring notified the dispatcher that he had arrived on the scene. As Officer Herring approached, Turner looked at him and walked upstairs to the second level of the

apartment building.

Officer Turner then knocked on the door of the apartment to talk to the complainant and identified himself as the police. Believing that the person at the door was still Turner, the complainant would not open the door. She just kept yelling, "Get away."

At that point, two Memphis Housing Authority (MHA) officers arrived on the scene. Officer Herring asked the two MHA officers to go upstairs with him to cut off Turner's access. As the officers approached Turner, he kept backing up, with one hand in his pocket, until he was backed into a corner. Officer Herring asked Turner if he could talk to him. Turner responded by cursing. When Officer Herring asked Turner what he was doing at the door, Turner placed both hands on Officer Herring, pushed off, jumped over the second floor balcony to the ground, and fled.

The two MHA officers and Officer Herring pursued Turner. After a short foot chase, Turner was apprehended by the two MHA officers and a struggle ensued. During the struggle, a 9mm gun fell to the ground. The gun did not belong to the MHA officers. The officers detained Turner in the back seat of the squad car while they ran a check for outstanding warrants. There were two outstanding warrants. Turner was placed under arrest and charged with simple assault, unlawful possession of a handgun, disorderly

conduct, and resisting arrest.

PROPOSED CONCLUSIONS OF LAW

Because the stop and seizure of Turner and the gun was without a warrant, the burden of proving that the stop and seizure was lawful under the Fourth Amendment is on the government. *United States v. Winfrey*, 915 F.2d 212, 216 (6th Cir. 1990) (citing *Florida v. Royer*, 460 U.S. 491, 500 (1983)).

Turner argues that the officer lacked reasonable suspicion to question him and that there was no probable cause for his stop and detention. The government contends that the Fourth Amendment requires only reasonable suspicion to support the initial stop, not probable cause, and that the statements from the anonymous complainant coupled with Turner's actions provided reasonable, articulable suspicion for a stop. The government agrees that probable cause is required for the detention of the defendant but maintains that probable cause developed during the initial stop.

A stop, an arrest following a stop, and a search thereafter are not to be treated as one collective action, but rather each of the three acts must be considered separately. *United States v. Bentley*, 29 F.3d 1073, 1075 (6th Cir. 1994). The court will therefore first consider whether the initial stop was justified, and if so, whether the subsequent detention of the defendant was justified.

Generally, under the Fourth Amendment, a police seizure of a person must have probable cause. *United States v. Fountain*, 2 F.3d 656, 661 (6th Cir. 1993). An exception to this requirement was set forth in *Terry v. Ohio*, 392 U.S. 1, 30-31 (1968), and approved in succeeding cases, for limited investigatory seizures. "[A] policeman who lacks probable cause but whose 'observations lead him reasonably to suspect' that a particular person has committed, is committing, or is about to commit a crime, may detain that person briefly in order to 'investigate the circumstances that provoke suspicion.'" *Berkemer v. McCarty*, 468 U.S. 420, 439 (1984) (footnote omitted) (quoting *United States v. Brignoni-Ponce*, 422 U.S. 873, 881 (1975)). To establish that a seizure not supported by probable cause was "reasonable," the law enforcement officer must have a reasonable, articulable suspicion that crime is afoot. *Terry*, 392 U.S. at 21-22.

In determining whether reasonable suspicion exists, the court must look at the

"totality of the circumstances" of each case to see whether the detaining officer had a "particularized and objective basis" for suspecting legal wrongdoing. This process allows officers to draw on their own experiences and specialized training to make inferences from and deductions about the cumulative information available to them that might well elude an untrained person.

United States v. Arvizu, 534 U.S. 266, 273 (2002) (quoting *United States v. Cortez*, 449 U.S. 411, 417-418 (1981)). In this case, the

Memphis Police Department had received an "armed person" call for a specific location. Based on the information provided, Officer Herring was looking for a male standing outside the door of 233 Decatur #C. When he arrived within minutes of the call, he observed Turner beating on the door of 233 Decatur #C. It was 2:00 in the morning. As Officer Herring approached, Turner walked away upstairs. Officer Herring was able to verify that a woman was inside the apartment and was frightened. Officer Herring could not tell if Turner had a gun because Turner had his right hand in his pocket. When Officer Herring followed Turner and approached him upstairs to question him, Turner pushed Officer Herring and then jumped off the balcony and fled. The phone call from the complainant, Turner's presence at the door of 233 Decatur #C at 2:00 a.m., the woman frightened inside the apartment, Turner's hand in his pocket, the push of Officer Herring, Turner's jumping off the balcony, and Turner's flight, all combined under the totality of the circumstances to give Officer Herring reasonable, articulable suspicion that criminal activity was afoot.

Turner relies heavily on *Florida v. J.L.*, 529 U.S. 266 (2000), in support of his position that Officer Herring did not have any reasonable, articulable suspicion to detain him and question him. *J.L.* involved an anonymous tip. The anonymous caller informed the police that a young black man standing at a particular bus stop,

wearing a plaid shirt, was carrying a gun. Officers went to the bus stop, identified the person, frisked him, and arrested him. Other than the tip, the officers had no reason to suspect J. L. of illegal conduct. The officers did not observe any unusual movements or see a firearm.

Here, in sharp contrast to *J.L.*, when the officers arrived at the scene, they did observe unusual movements. They observed Turner push an officer, jump off a balcony at 2:00 a.m., and flee. This activity provided sufficient basis for the officers to reasonably suspect criminal activity and to detain Turner for further questioning. The officers had reason to suspect Turner was not a neighbor offering assistance to the frightened woman in the apartment.

In addition, although there was no proof presented that the complainant in the instant case gave her name, she did give her home address, thus enabling the police to identify her and verify the complaint. Because the police could locate her by her apartment address, she could ultimately be held accountable if she gave false information to the police.

During the struggle to apprehend Turner, the gun in question fell to the ground. There was no proof that the officers searched Turner's person. Thus, Turner's arguments concerning an improper search are without merit.

After the officers detained Turner to question him, they immediately ran a "wants and warrants" search and discovered two outstanding warrants on Turner. The outstanding warrants provided probable cause to arrest Turner.

CONCLUSION

For the foregoing reasons, it is recommended that Turner's motion to suppress should be denied.

Respectfully submitted this 30th day of June, 2003.

DIANE K. VESCOVO
UNITED STATES MAGISTRATE JUDGE

NOTICE

ANY OBJECTIONS OR EXCEPTIONS TO THIS REPORT MUST BE FILED WITHIN TEN (10) DAYS AFTER BEING SERVED WITH A COPY OF THE REPORT. 28 U.S.C. § 636(b)(1)(C). FAILURE TO FILE THEM WITHIN TEN (10) DAYS MAY CONSTITUTE A WAIVER OF OBJECTIONS, EXCEPTIONS, AND FURTHER APPEAL.

ANY PARTY OBJECTING TO THIS REPORT MUST MAKE ARRANGEMENTS FOR A TRANSCRIPT OF THE HEARING TO BE PREPARED.