

STATE OF MISSOURI)
) SS
CITY OF ST. LOUIS)

FILED
FEB 27 2014

MISSOURI CIRCUIT COURT
TWENTY-SECOND JUDICIAL CIRCUIT
(City of St. Louis)

22ND JUDICIAL CIRCUIT
CIRCUIT CLERK'S OFFICE
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STATE OF MISSOURI,)
)
Plaintiff,)
) No. 1122-CR07327-01
vs.)
) Division No. 16
JASON LAMPKIN,)
)
Defendant.)

ORDER

Defendant's motion to suppress Defendant's statements was called, heard and submitted. Over Defense Counsel's objection, the Court allowed the State to re-open the record to provide additional, clarifying testimony. The Court took the motion under submission a second time. The Court now rules as follows.

Defendant seeks suppression of statements he made on December 14, 2011, while being questioned by St. Louis Police detectives. He claims that he was not clearly advised of his rights prior to the interview, that he did not waive his right to counsel, that the interrogation did not cease when he expressed a desire to have counsel present and that the statements he made

were the result of an unlawful arrest in that he was taken into custody without a warrant or probable cause.

The State responds that the evidence shows Lampkin was advised of his rights and that he did agree to waive his right to have an attorney present during questioning. The State admits that Lampkin was arrested on a "wanted," but also claims that there was probable cause to arrest him. Finally, the State asserts that Lampkin waived his right to counsel, after invoking it, prior to continuation of the interrogation on December 14, 2011.

Defendant has been charged with two counts of murder first degree, one count of assault first degree and three counts of armed criminal action. The State alleges Defendant drove a car while another occupant shot and attempted to kill Dwight Hart on November 23, 2010. The State also alleges that Defendant, acting with another, murdered Travion Harris and Robert Rucker in separate incidents on November 23, 2010.

When a defendant presents a motion to suppress statements the State bears the burden to prove the defendant waived his rights. State v. Powell, 798 S.W.2d 709, 713 (Mo.banc 1990). The State must prove, by a preponderance of the evidence, that the

statements were lawfully obtained. State v. Birmingham, 132 S.W.3d 318, 320-321 (Mo.App.E.D. 2004).

The evidence adduced at the two hearings on Defendant's motion is as follows. Detective Joe Lankford testified that the murder investigation began the evening of November 23, 2010. Lampkin was later identified as a person of interest by witnesses and he was identified from a photo lineup by a witness. In October 2011 Detective Lankford interviewed Lampkin. Lampkin was brought to St. Louis from St. Charles, where he had been in custody,¹ to be interviewed. After the interview he was released, as no charges were pending against him.² Detective Charles Betts said that on this occasion Lampkin did not say anything substantial.³ During these earlier interviews, Lampkin was confronted with some of the evidence that had been gathered against him. He was told the police had evidence that Lampkin drove the cars from which shots were fired but Lampkin was not the shooter, and also that the gun used in the murders had been tied to him by another witness.

¹ He was in custody for reasons unrelated to this case.

² Reference was made during the interviews to charges in a drug case and Lampkin's being wanted by the Bridgeton police in relation to stolen cars.

³ Recordings of the October 19th interviews were entered into evidence as State's exhibits 4 and 5.

Defendant's cell phone was seized at the October 2011 interview and a warrant was obtained for the contents. A contact list, as well as several photographs of Defendant, were found on the phone. Among the photographs were photographs of Defendant holding weapons that looked like weapons used in the murders, including a photograph taken two days prior to the murders.

On December 14, 2011, Lampkin was taken into custody at a residence in the 3800 block of North 25th Street. Police officers had received information that there was stolen property and possibly robbery suspects at an address in that block. Multiple officers went to the address and, according to Detective Mark Keisker, they were given consent by the homeowner to search the premises. Detective Keisker said officers were not at the residence looking for Lampkin, but he was one of three males present. When officers ran checks on the three males they found that Lampkin was "wanted" for questioning about a murder. The officers did not have a warrant for Lampkin's arrest. Lampkin was arrested, placed in handcuffs and driven in a police vehicle to the homicide office to be interviewed by homicide detectives. The State concedes that Defendant was not free to leave.

Detectives Keisker and Betts spoke with Lampkin at the station on December 14, 2011.⁴ Prior to being questioned Lampkin was advised by the detectives of his Miranda rights and he said he understood his rights. He then voluntarily waived his rights and engaged in a fifteen minute discussion that was audio and videotaped. Lampkin indicated he wanted to speak with an attorney and the discussion about the crimes ended.⁵ The detectives told him he was going to be booked and locked up because he had a probation violation. Lampkin filled out a booking form, and was then told he was going to be taken to a cell and then to the Justice Center.

Detective Lankford testified that Lampkin told the officers as he was being taken to a holding cell that he wanted to talk to them without an attorney. Langford testified that Defendant said something like "Hey man, I want to talk to you....." Detective Betts also testified that Lampkin said outside of the interview room that he wanted to speak to the officers without an attorney. Betts said there were no threats or coercion outside the interview room. Lampkin was returned to the interview room and

⁴ This interview was recorded and a video disk of the interview was entered into evidence as State's Exhibit 1.

⁵ Lampkin was booked, and while filling out a form a detective asked him pedigree information and information about his residence.

the audio and video recording was resumed. Defendant made incriminating statements.

The first issue raised in Defendant's motion is whether he was taken into custody without a warrant and without probable cause for his arrest and thus improperly questioned following an invalid arrest. Custodial interrogation is defined as questioning initiated by law enforcement officers after a person has been taken into custody. State v. Gaw, 285 S.W.3d 318, 321 (Mo.banc 2009). Custodial detention for purposes of interrogation is not allowed absent probable cause to arrest. Dunaway v. New York, 442 U.S. 200 (1979). Where a person is unlawfully seized, statements of the defendant that are a direct result of such seizure should be suppressed and cannot be used against the defendant at trial. State v. Taber, 73 S.W.3d 699, 707 (Mo.App.W.D. 2002).

It is undisputed here that Lampkin was arrested when he was taken into custody on December 14, 2011, by police officers acting only on the "wanted" for questioning notice. This was a warrantless arrest.

A warrantless arrest is lawful only if police have probable cause to believe the person committed a felony. State v. J.D.L.C., 293 S.W.3d 85, 88 (Mo.App.W.D. 2009); State v. Johnson,

943 S.W.2d 285,290 (Mo.App.E.D. 1997). "Probable cause" exists when there are facts and circumstances sufficient for a prudent person to believe a suspect has committed an offense. Warren v. Director of Revenue, 416 S.W.3d 335, 340 (Mo.App.S.D. 2013). Probable cause is evaluated with regard to the *collective knowledge* of all agencies and officers participating in the arrest. See, State v. Clayton, 995 S.W.2d 468, 477 (Mo.banc 1999); State v. Bradshaw, 81 S.W.3d 14, 32 (Mo.App.S.D. 2002).

The Court finds that there was probable cause to arrest Lampkin at the time he was taken into custody on December 14, 2011. The record shows, at a minimum, that Defendant had an outstanding probation violation which would support his being booked and jailed. Therefore, the statements he made on that date, following his warrantless arrest, were not the fruits of an illegal seizure in violation of Defendant's Fourth Amendment rights. In addition, it is clear from the record that Lampkin was fully advised of his rights and voluntarily waived those rights prior to making statements to the detectives.

The second issue raised by Defendant's motion is whether the detectives improperly questioned him following his request to speak with an attorney. In Miranda v. Arizona, 384 U.S. 436 (1966) the Supreme Court held that a suspect subject to custodial

interrogation has the right to consult with an attorney and to have an attorney present during questioning. This is one of the measures designed to protect the Fifth Amendment right against compulsory self-incrimination. Once an accused has invoked his right to counsel during custodial interrogation, a valid waiver of that right cannot be established by showing that he responded to further police initiated custodial interrogation after again being advised of his rights. He is not subject to further interrogation until counsel has been made available or he has himself initiated further communication, exchanges or conversations with the police. Edwards v. Arizona, 451 U.S. 477, 484-485 (1981). Here, the interview was terminated when Lampkin said he wanted to speak with an attorney.

Once an accused requests counsel, questioning may resume if the accused himself initiates further communication with police. The State has the burden to show the defendant initiated further discussions with the police and voluntarily, knowingly, and intelligently waived the counsel right he had invoked. State v. Byrd, 389 S.W.3d 702, 708 (Mo.App.E.D. 2012).

There is no evidence to rebut the detectives' testimony regarding the events that occurred outside of the interview room

while Lampkin was being taken to a holding cell.⁶ The detectives testified that the continuation of the December 14, 2011 interview, after Lampkin's request for counsel, was initiated by Lampkin. There is nothing in the record indicating that Lampkin's desire to continue with the interview was coerced.

Accordingly, the Court finds that Defendant's statements made to police detectives on December 14, 2011, were not the result of an illegal arrest, that Defendant was fully advised of his Miranda rights and knowingly waived his rights prior to commencement of questioning by the detectives, and that after Defendant asked to speak with an attorney the detectives honored that request, and that the further discussion after Defendant made his request was voluntarily initiated by Defendant.

THEREFORE, it is Ordered and Decreed that Defendant's motion to suppress statements is denied.

SO ORDERED:



Bryan L. Hetttenbach, Judge

Dated: 2/27/14

⁶ This discussion was not recorded audibly or on video.

cc: Melissa Gilliam, Assistant Circuit Attorney
Sarah Lambright, Attorney for Defendant