

## **U.S. v. Rickmon**

(7th Cir. 2020) \_\_ F.3d \_\_ [2020 WL 1164269]

### **Issue**

Under what circumstances can a ShotSpotter alert provide officers with grounds to detain people in the area?

### **Facts**

At about 4:30 A.M., an officer on patrol in Peoria, Illinois received a “ShotSpotter” alert on his in-car computer. The location of the shot was the 2200 block of North Ellis Street. About three minutes later, dispatch reported that it, too, had received the alert, plus a second one that three shots had been fired from the same area. Almost immediately, a 911 caller confirmed that shots had been fired, and that one person was fleeing on foot and others were leaving in vehicles.

As the officer turned onto North Ellis Street, he saw the headlights from a car that was located about 300 feet from the scene. As the car started heading in his direction, the officer

turned on his emergency lights and “veered” into the oncoming lane, thereby blocking the car. The driver stopped, and the passengers “pointed backwards” and yelled “they are down there.” Looking down the street, the officer saw a crowd of about 15-20 people.

While detaining the two occupants of the car at gunpoint, the passenger, Terrill Rickmon, said that he had just been shot in the leg. (This was true.) After things settled down, the officer obtained consent from the driver to search the vehicle. Under the passenger’s seat, he found a nine-millimeter handgun. As the result, Rickmon was charged with possession of a firearm by a felon. When his motion to suppress the handgun was denied, he pled guilty.

### **Discussion**

At the outset, the court explained that ShotSpotter “is a surveillance system that uses sophisticated microphones to record gunshots in a specific area. After a device detects the sound of gunfire, it relays the audio file to a server in California, where an individual determines whether the sound is a shot. When that individual confirms the sound is a gunshot, ShotSpotter sends it back to the local police department.”

Rickmon argued that the handgun should have been suppressed because the officer had nothing more than a “hunch” that the occupants of the car were involved in the shooting. The court acknowledged that the officer “had no reason to suspect that any weapons used in the shooting were in this car.” It also noted that the driver and Rickmon complied with the officer’s commands, and that “they neither moved suspiciously nor gestured threateningly.”

Nevertheless, the court ruled that, even if a single ShotSpotter alert would not justify a detention, the officer also knew that there had been a second ShotSpotter alert from the same location, and that an anonymous 911 caller confirmed the report and said that one person was running off, and people in “several cars” were leaving. The court also noted that the crime under investigation constituted a danger to the public, and that public safety is a circumstance that may be considered in determining the legality of a

detention.<sup>1</sup> Said the court, “We have repeatedly emphasized in our decisions that the inherent danger of gun violence sets shootings apart from other criminal activity.”

Accordingly, the court ruled that “the circumstances here—the reliability of the police reports, the dangerousness of the crime, the stop’s temporal and physical proximity to the shots, the light traffic late at night, and the officer’s experience with gun violence in the area—provided reasonable suspicion to stop Rickmon’s vehicle.”

## Comments

At the hearing on the motion to suppress, there was testimony that ShotSpotter “is not always accurate,” and that “the record here does not demonstrate how often the Peoria Police Department received incorrect ShotSpotter reports or anything else attesting to the reliability of the system.” The court responded that “[i]n some future decision, we may have to determine ShotSpotter’s reliability where a single alert turns out to be the only articulable fact in the totality of circumstances. [But] this is not that case, given that 911 calls corroborated the ShotSpotter reports here.”

One other thing: The dispatcher received a subsequent 911 report in which the caller provided more information about the car’s direction of travel in relation to the shooting. But because the dispatcher did not notify the responding officers of this particular call, the court could not consider this circumstance in determining the legality of the stop. Said the court, “We conclude that the government cannot justify an investigative stop based on information that a 911 caller provides to a dispatcher who does not, in turn, notify the police on the scene.” POV

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<sup>1</sup> See *Florida v. J.L.* (2000) 529 U.S. 266, 273-74 [“We do not say, for example, that a report of a person carrying a bomb need bear the indicia of reliability we demand for a report of a person carrying a firearm before the police can constitutionally conduct a frisk.”]; *People v. Profit* (1986) 183 Cal.App.3d 849, 883 [“the seriousness of the offense involved is a highly determinative factor in any evaluation of police conduct”]; *People v. Lindsey* (2007) 148 Cal.App.4th 1390, 1397 [“[T]he conduct of shooting a gun on a residential street posed a grave and immediate risk to anyone nearby.”]