

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**  
**IN AND FOR NEW CASTLE COUNTY**

STATE OF DELAWARE,	)	
	)	
	)	
	)	
v.	)	ID. No. 1309007140
	)	
CHARLES BLACKSHEAR,	)	
	)	
Defendant.	)	

**ORDER**

AND NOW, TO WIT, this 7th day of April, 2014, **IT IS HEREBY**

**ORDERED** as follows:

**Introduction**

Before the Court is Defendant Charles Blackshear’s (“Defendant”) motion to suppress, brought by counsel, for evidence seized and statements obtained as a result of an of an alleged unlawful arrest in violation rights guaranteed by the Fourth Amendment to the U.S. Constitution and Article I, Section 6 of the Delaware Constitution. Defendant was arrested shortly after officers from the Wilmington Police Department (“WPD”) were dispatched to a high crime area where a large fight and gunshots had been reported. The Court has reviewed the

parties' submissions, including the parties' supplemental memoranda, and held a suppression hearing. For the reasons that follow, Defendant's motion is **DENIED**.

### **Findings of Fact**

On the evening of September 10, 2013, Officer Daniel Humphrey ("Officer Humphrey") of the WPD was on K-9 patrol duty when he received a call over dispatch to respond to the intersection of 6<sup>th</sup> and Jefferson streets in Wilmington for a large fight. While Officer Humphrey was in route, dispatch reported that shots were fired. Once he arrived, he observed about 30-35 people arguing and yelling and other officers who were in the area. Officer Humphrey removed his K-9 from the vehicle and attempted to disperse the crowd.

As Officer Humphrey waited for the crowd to settle, a woman in the crowd came to him and informed him that a black male wearing a pink shirt was carrying a firearm in his waistband. The woman stated that the man was "right there." She did not point, but she nodded her head in the southbound direction of Jefferson Street. Officer Humphrey understood that the woman was signaling that the man was nearby. Officer Humphrey did not obtain her name and contact information because the woman did not want to give her name. Officer Humphrey has testified that he would be able to recognize the individual if he saw her again.

Officer Steven Cancila (“Officer Cancila”) was also called to respond to the area. Officer Cancila was familiar with the area and knew it to be a high crime area that had at least two previous shootings. Thereafter, Officer Humphrey passed on the information that he obtained from the unidentified woman and directed Officer Cancila toward the 500 Block of Jefferson Street. Officer Cancila walked down the street while Officer Humphrey followed a short distance behind him. Outside of a residence located at 511 Jefferson, the officers observed a black male wearing a pink shirt, later identified as the defendant, sitting on the steps. There were one to two people who were also sitting on the steps, a man standing at the door, and several people standing and “hanging out” in the front yard. Neither officer observed any other black males wearing pink shirts.

The man standing at the door pulled several keys from his pocket and appeared as though he was trying to open the door. Officer Humphrey and his K-9 remained in the front yard as Officer Cancila approached the residence. As he approached, Defendant stood up, turned toward the front door and began whispering to the man standing at the door. Officer Cancila observed that the other individuals in the area appeared to be calm as they continued to look toward Officer Cancila; however, Defendant was fidgeting and stopped looking at Officer Cancila.

At that point, Officer Cancila ordered everyone on the steps to put their hands up, but Defendant did not comply. Officer Cancila repeated his order and the defendant rose only his right hand, put it back down, and hesitated in stepping toward Officer Cancila. Officer Cancila removed his firearm and Defendant ultimately complied. However, when Officer Cancila attempted to handcuff Defendant, Defendant pulled his hands apart. When Defendant tensed up and started looking around, Officer Humphrey believed that he was going to run. As a result, Officer Humphrey warned the defendant that, if the defendant was going to keep pulling his hands apart, the K-9 would bite him. Officer Cancila handcuffed the defendant, conducted a pat-down search, and discovered a black and silver firearm in the defendant's waistband.

### **Parties' Contentions**

Defendant argues that, by ordering everyone to put their hands up, Officer Cancila seized Defendant without probable cause because he was not engaging in any criminal or otherwise suspicious activity. In the motion, defense counsel stated noted that “the only information that the police had at the time [Defendant] was arrested was from an anonymous source who never identified anyone by name or descriptions.”<sup>1</sup> Defense counsel did not advance any further argument or present any case law on reliability of the unidentified woman's statement until the

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<sup>1</sup> Def. Mot. to Suppress, at ¶ 7.

suppression hearing. At the hearing, defense counsel described the woman's statement as an anonymous tip and relied upon *Florida v. J.L.*<sup>2</sup> to argue that the State was required to show that the information that she provided was sufficiently reliable through police corroboration of a predictive future behavior.<sup>3</sup>

The State responded to Defendant's motion, arguing that Defendant was not placed under arrest until Officer Cancila discovered the firearm in his waistband. The State also argued that, during that time, Officer Cancila needed only reasonable suspicion to conduct an investigatory detention and pat-down for officer safety and that the officer's actions constituted a reasonable intrusion. The State contended that, when the Officer Cancila discovered the firearm, his reasonable suspicion was elevated to probable cause. In its supplemental memorandum, the State distinguished the information provided by the unidentified woman from information provided in cases involving anonymous tipsters. The State argued that the former was "inherently more reliable"<sup>4</sup> because the woman approached Officer Humphrey, in person, a short time after officers were called to the area while within a block's distance from Defendant and since many people were standing around. Thus, the woman could have subjected herself to retaliation from Defendant and criminal prosecution for providing false information. Further,

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<sup>2</sup> *Florida v. J.L.*, 529 U.S. 266 (2000).

<sup>3</sup> Defense counsel also relied upon *Shram v. State*, 366 A.2d 1185 (Del. 1976)(discussing the showing required for the reliability an anonymous tip offered to support probable cause).

<sup>4</sup> State Memo., at 2.

the State argued that her identity was “easily obtainable” since Officer Humphrey also testified that he would be able to identify her again.<sup>5</sup>

Defendant rebutted the State’s argument in a supplemental response by arguing that the face-to-face tip alone does not justify a seizure. Defendant argued that the woman’s identity is not easily obtainable and that there is no evidence that the woman relayed firsthand, rather than secondhand, information to Officer Humphrey.

### **Discussion**

#### **I. The Seizure was an Investigatory Stop Requiring Reasonable Suspicion that Defendant was Armed or Otherwise Dangerous.**

The Fourth Amendment to the U.S. Constitution and Article I, Section 6 of the Delaware Constitution protect citizens from unreasonable searches and seizures. A person is seized when “under all of the circumstances surrounding the encounter, the police conduct would have communicated to a reasonable person that he/she was not free to terminate the encounter with the officers.”<sup>6</sup> There are two types of seizures recognized by the courts.<sup>7</sup> The first type, known as a *Terry*-stop,<sup>8</sup> occurs when “police restrain an individual for a short period of time” and

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<sup>5</sup> State Memo., at 3.

<sup>6</sup> *Quarles v. State*, 696 A.2d 1334, 1336-37 (Del. 1997)(citing *Florida v. Bostick*, 501 U.S. 429, 439 (1991)).

<sup>7</sup> *Id.* at 1337.

<sup>8</sup> This type of stop has been codified in 11 *Del. C.* § 1902.

“requires that the officers have a reasonable articulable suspicion that the suspect has committed or is about to commit a crime.”<sup>9</sup> Therefore, “a police officer may frisk a person who has been detained if he possesses a reasonable articulable suspicion that the detainee is armed and presently dangerous.”<sup>10</sup> The officer may frisk the person, “not to discover evidence of crime, but to allow the officer to pursue his investigation without fear of violence.”<sup>11</sup> The second type of seizure is “more intrusive” and “occurs when the police effectuate an arrest of a suspect for the commission of a crime” and must be supported by probable cause.<sup>12</sup>

In order to determine whether a seizure is an investigatory detention or an arrest, the Court must examine ‘the reasonableness of the level of intrusion under the totality of the circumstances.’ The following considerations are pertinent to the analysis: (1) the amount of force used by the police; (2) the need for such force; (3) the extent to which the individual's freedom of movement was restrained; (4) the physical treatment of the individual, including whether handcuffs were used; (5) the number of agents involved; (6) the duration of the stop; and (7) whether the target of the stop was suspected of being armed.<sup>13</sup>

As this Court noted in *State v. Biddle*, there are situations in which the “courts have found an intrusive detention to be akin to a *Terry* stop when the police

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<sup>9</sup> *Id.* (citing *United States v. Hernandez*, 8th Cir., 854 F.2d 295, 297 (1988)).

<sup>10</sup> *State v. Henderson*, 892 A.2d 1061, 1064 (Del. 2006)

<sup>11</sup> *Purnell v. State*, 832 A.2d 714, 721 (Del. 2003)(quoting *Hicks v. State*, 631 A.2d 6, 11 (Del.1993)(internal quotations omitted).

<sup>12</sup> *Quarles*, 696 A.2d at 1337.

<sup>13</sup> *State v. Kang*, 2001 WL 1729126, at \*6 (Del. Super. Nov. 30, 2001); *State v. Biddle*, 1996 WL 527323, \*7 (Del. Super. Aug. 9, 1996) *aff'd*, 712 A.2d 475 (Del. 1998).

had a reasonable basis to believe the suspect was armed or otherwise dangerous.”<sup>14</sup> For example, in *Buckingham v. State*,<sup>15</sup> the Supreme Court considered whether a seizure was within the scope of an investigatory stop, where an officer detained three suspects at gunpoint and directed them to stand at the rear of the vehicle after learning that an armed robbery and shooting occurred at the grocery store.<sup>16</sup> In addition, the officer had also viewed one of the suspects, the defendant, coming from the direction of the store and behavior which the officer found suspicious.<sup>17</sup> The Court held that the detention constituted a “limited intrusion on the personal security of the person detained” which “was justified by such substantial law enforcement interests that the seizure could be made on articulable suspicion not amounting to probable cause.”<sup>18</sup>

Officer Cancila’s initial instruction to Defendant to put his hands up while Defendant was on the steps and subsequent actions of ordering the defendant to walk toward him, and handcuffing him with the assistance of Officer Humphrey constituted a reasonable intrusion under the totality of the circumstances. The circumstances in this case are similar to those circumstances in *Buckingham* under which the Supreme Court found that an officer’s conduct was a “limited

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<sup>14</sup> *Biddle*, 1996 WL 453306 at \*7.

<sup>15</sup> *Buckingham v. State*, 482 A.2d 327 (Del. 1984).

<sup>16</sup> *Id.* at 332.

<sup>17</sup> *Id.* at 329.

<sup>18</sup> *Id.* at 332 (quoting *Florida v. Royer*, 460 U.S. 491, 103 S. Ct. 1319 at 1325, 75 L.Ed 229 (1983))(internal quotations omitted).

intrusion.”<sup>19</sup> In *Buckingham*, the officer had information that a shooting occurred during an armed robbery in the grocery store near where the officer detained the individuals. Here, Defendant was detained within a block of the area in which the officers were dispatched to respond to the area where the large fight occurred and shots were fired. Even more compelling in this case than in *Buckingham* is the fact that Officer Cancila was aware, based on the information provided by the unidentified woman to Officer Humphrey, that an individual with a particular description was located in a particular direction and carrying a firearm. Furthermore, Officer Cancila observed that Defendant looked away and was fidgeting while everyone else looked toward Officer Cancila and appeared to be calm.

Defendant’s conduct thereafter justified the limited intrusion because Defendant failed to comply with Officer Cancila’s repeated instructions by keeping his hands down, raising one, and then putting it back down, hesitated in walking toward Officer Cancila. Additionally, when he was being handcuffed, he began to pull his hands apart and to look around which prompted Officer Humphrey to believe that he was going to run. The amount of force, restraints, officer involvement, and duration was reasonable in light of the totality of these facts.

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<sup>19</sup> *Id.*

## **II. The Statement given by the Unidentified Woman was Sufficiently Reliable.**

Defendant argues that the police could not rely on the information provided by the unidentified woman to form the reasonable suspicion that the defendant was armed and dangerous. Defendant's argument is primarily based upon the U.S. Supreme Court's decision in *Florida v. J.L.*

In *J.L.*, an anonymous caller contacted the police and stated that a young black male was standing at a specific bus stop, wearing a plaid shirt, and carrying a gun.<sup>20</sup> Within a few minutes after being instructed to respond, police officers arrived at the bus stop and observed the defendant matching the description provided by anonymous caller and standing with two other individuals.<sup>21</sup> Although the officers observed no illegal conduct or unusual movements, one of the officers approached the defendant, instructed him to put his hands up, frisked him, and seized a gun.<sup>22</sup> The Court concluded that the tip lacked the sufficient indicia of reliability because the caller failed to provide predictive information or any way to test the informant's knowledge or credibility.<sup>23</sup> Distinguishing tips from known informants from anonymous tips, the Court stated, "[u]nlike a tip from a known informant whose reputation can be assessed and who can be held

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<sup>20</sup> *J.L.*, 529 U.S. at 268.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 271.

responsible if her allegations turn out to be fabricated, “an anonymous tip alone seldom demonstrates the informant's basis of knowledge or veracity.”<sup>24</sup>

The statement provided by the unidentified woman in this case contained sufficient indicia of reliability because, in stark contrast to the anonymous caller in *J.L.*, the woman approached Officer Humphrey *in person* shortly after the officers learned of a large fight and that gunshots were fired. By taking this action, the unidentified woman placed herself in a position in which she “c[ould] be held responsible if her allegations turn out to be fabricated.”<sup>25</sup>

The Court’s conclusion that the face-to-face nature of the statement in this case differs from an anonymous tip is not only based upon the distinction set forth in *J.L.*, but also on Delaware Supreme Court and Third Circuit case law relying on *J.L.* In *Sneider v. State*, the Supreme Court acknowledged the distinction in a case in which an anonymous caller described a defendant and his vehicle when she informed police that the he was drinking in a parking lot.<sup>26</sup> The anonymous caller also remained in the parking lot to confirm her report and made no attempts to conceal her identity.<sup>27</sup> The Court held the “informant provided [the officer] a sufficient quantity and quality of information during their face-to-face

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<sup>24</sup> *Id.* at 270 (internal citations omitted)(citing *Adams v. Williams*, 407 U.S. 143, 146–147, 92 S.Ct. 1921, 32 L.Ed.2d 612 (1972) and *Alabama v. White*, 496 U.S., at 329, 110 S.Ct. 2412).

<sup>25</sup> *Id.*

<sup>26</sup> *Sneider v. State*, 2010 WL 3277434, at \*1-2, 3 A.3d 1098 (Del. 2010)(TABLE).

<sup>27</sup> *Id.* at \*2.

encounter.”<sup>28</sup> In doing so, the Court quoted a decision by the Third Circuit in stating, “[a] ‘tip given face to face is more reliable than an anonymous telephone call....[W]hen an informant relates information to the police face to face, the officer has an opportunity to assess the informant’s credibility and demeanor.’”<sup>29</sup>

The anonymous in-person tip given to the officers in that decision, *U.S. v. Valentine*,<sup>30</sup> is comparable to the information given by the unidentified woman in this case. In *Valentine*, officers were patrolling a high crime area when an individual flagged them down and stated that he had just seen a dark skinned man with a beard carrying a gun and wearing a blue shirt, blue pants, and a gold chain.<sup>31</sup> When an officer asked for the individual’s identity, the individual refused to provide his information.<sup>32</sup> The officers then located the man who matched the description provided by the unidentified individual about 50 to 100 feet north of the area where they met the unidentified individual.<sup>33</sup> The court determined that the tip was sufficiently reliable because it was given in-person and consisted of information that the informant had just observed shortly before speaking to the

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<sup>28</sup> *Id.* at \*3.

<sup>29</sup> *Id.* at \*2 (quoting *United States v. Valentine*, 232 F.3d 350, 354 (3rd Cir. 2000)).

<sup>30</sup> *United States v. Valentine*, 232 F.3d 350 (3d Cir. 2000).

<sup>31</sup> *Id.* at 352.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

officers.<sup>34</sup> In response to the defendant's argument that, by leaving the area after providing the tip, the informant could not be held easily accountable, the court stated

[w]hat matters for our purposes is not that the officers could guarantee that they could track down the informant again...the question is whether the tip should be deemed sufficiently trustworthy in light of the total circumstances. And in this case the circumstances support the reliability of the tip: the informant was exposed to retaliation from [the defendant] and knew that the officers could quickly confirm or disconfirm the tip; and the officers could assess the informant's credibility as he spoke, knew what the informant looked like, and had some opportunity to find the informant if the tip did not pan out. From the fact that the officers acted, and acted quickly, after receiving the tip, a court may deduce that the officers thought the tipster's demeanor, voice, and perhaps a host of other factors supported the reliability of the tip.<sup>35</sup>

Here, the unidentified woman's information was sufficiently reliable. First, prior to receiving the tip, the officers were dispatched to the area in response to a large fight and a report that shots had been fired. Second, like the unidentified informant in *Valentine*, the unidentified woman approached Officer Humphrey and provided her tip in a face-to-face encounter within moments after his arrival. Third, she described the defendant's clothing and indicated the direction where the defendant was located. Fourth, the defendant was located shortly after and was the

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<sup>34</sup> *Id.* at 454. The Court also distinguished the facts before it from the facts in *J.L.* and cited to cases which "have recognized the difference between in-person informants and anonymous telephone calls." *Id.* at 354-55.

<sup>35</sup> *Id.* at 355.

only person that the officers observed wearing a pink shirt. Such facts demonstrate that the information was sufficiently reliable.

**III. The Officer had Reasonable Suspicion to Initiate the Investigatory Detention, which Rose to the Level of Probable Cause.**

Based on the totality of the circumstances, including the information provided by the unidentified woman, the Court also finds that Officer Cancila had reasonable suspicion to believe Defendant was armed, which justified the detention and pat-down. Defendant's actions after Officer Cancila approached the residence added to Officer Cancila's reasonable suspicion. These facts coupled with the discovery of the firearm after the pat-down provided the grounds for probable cause to arrest Defendant.

**Conclusion**

For the foregoing reasons, defendant's motion to dismiss is **DENIED**.

**IT IS SO ORDERED.**

**/S/ CALVIN L. SCOTT**  
**Judge Calvin L. Scott, Jr.**