

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

STATE OF DELAWARE,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 1411002232
	)	
SHAQUILLE CAMPBELL,	)	
	)	
Defendant.	)	

Submitted: May 14, 2015  
Decided: August 28, 2015

**Defendant’s Motion to Suppress – DENIED**

**MEMORANDUM OPINION**

Nicholas R. Wynn, Esquire, Department of Justice, 820 N. French Street,  
Wilmington, DE 19801, Attorney for Plaintiff State of Delaware.

Sean A. Motoyoshi, Esquire, Office of the Public Defender, 900 N. King Street,  
Wilmington, DE 19899, Attorney for Defendant.

**CARPENTER, J.**

Before this Court is Defendant Shaquille Campbell's ("Defendant") Motion to Suppress the firearm found in the vehicle he was operating on November 4, 2014. In Defendant's Motion, he argues that the police officer's search of his vehicle was unconstitutional and all fruits of that search should, therefore, be suppressed. The Court finds that under the circumstances of this case, the search of Defendant's vehicle was justified and the Motion is **DENIED**.

### **BACKGROUND**

During the evening of November 4, 2014, Officer Gaetan MacNamara of the Wilmington Police Department ("Officer MacNamara" or "Officer") witnessed Defendant driving a gold Buick LaSabre westbound on Second Street. Officer MacNamara recognized Defendant from prior dealings and believed his license to be suspended. The Officer made a westbound turn on Second Street and began following Defendant with the intent to check the validity of his license. As the Officer was following him, Defendant made an illegal lane change without signaling and turned onto DuPont Street. At that time the Officer performed a motor vehicle stop of Defendant.

Before exiting his patrol car, Officer MacNamara witnessed Defendant take his hands off the steering wheel, lean forward and then return his hands to the steering wheel. When the Officer approached Defendant's car, Defendant in a "hurried nervous manner" asked why he had been pulled over and that he didn't

have anything on him. Based on his prior dealings with the Defendant, Officer MacNamara testified that he felt Defendant's behavior was atypical and nervous. The Officer was also aware, at the time of the traffic stop, that the Defendant had been arrested multiple times for firearm charges and had been the subject of a prior shooting investigation. Based on all of these circumstances the Officer testified that he was concerned the Defendant had a firearm in the car.

Officer MacNamara asked Defendant to exit the car and place his hands on the vehicle. The Officer conducted a pat down of Defendant and did not find any contraband or weapons. However, Officer MacNamara testified that during and after the pat down Defendant continued to be uncharacteristically nervous. With Defendant standing next to the driver's side door of the vehicle, the Officer grabbed Defendant's shirt or belt with his right hand and poked his head into the car to look under the driver's seat. Officer MacNamara spotted the handle of what appeared to be a handgun under the driver's seat of Defendant's vehicle. Officer MacNamara then handcuffed Defendant, put him in the back of his patrol car and called for the evidence detection unit to come and retrieve the firearm from the vehicle.

The gold Buick LaSabre was registered to Defendant's sister. After finding the firearm in the car, Officer MacNamara called Defendant's sister to inform her that she could pick up the vehicle from the police station that evening. The car was

not towed, but was driven to the police station by an assisting officer, and the sister picked it up later that evening.

Defendant filed this Motion to Suppress and a hearing was held on April 10, 2015. At the conclusion of the hearing the Court held that the initial stop and the Officer's decision to remove Defendant from the vehicle and pat him down were legally valid. The Court reserved decision and requested supplemental briefing on whether Officer MacNamara's search of Defendant's vehicle was constitutional. This is the Court's decision on that limited issue.

## **DISCUSSION**

Defendant asserts that the Officer's search under the seat was an illegal search in violation of his constitutional rights under the Fourth Amendment to the United States Constitution. The State argues that the search was proper.

Pursuant to a brief stop, an officer "may conduct a limited protective search for concealed weapons,"<sup>1</sup> known as a "*Terry* search."<sup>2</sup> "[T]he purpose of a *Terry* search is 'not to discover evidence of crime, but to allow the officer to pursue his investigation without fear of violence.'"<sup>3</sup> "So long as the officer is entitled to make a forcible stop, and has reason to believe that the suspect is armed and dangerous, he may conduct a weapons search limited in scope to this protective purpose."<sup>4</sup>

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<sup>1</sup> *Adams v. Williams*, 407 U.S. 143, 146 (1972).

<sup>2</sup> *Terry v. Ohio*, 392 U.S. 1, 27 (1968).

<sup>3</sup> *Hicks v. State*, 631 A.2d 6, 11 (Del. 1993).

<sup>4</sup> *Adams*, 407 U.S. at 146.

However, “a permissible search for weapons is very limited.”<sup>5</sup> “[I]f the protective search goes beyond what is necessary to determine if the suspect is armed, it is no longer valid under *Terry* and its fruits will be suppressed.”<sup>6</sup> Thus, the question for the Court is whether Officer MacNamara’s search i.e. looking into the car under Defendant’s seat was outside of the scope of limitations of a *Terry* stop.

“A search pursuant to a *Terry* stop is conducted for the limited purpose of protecting the officer by determining if the person stopped has weapons.”<sup>7</sup> The United States Supreme Court in *Michigan v. Long*, held that in “evaluating the validity of an officer’s investigative or protective conduct under *Terry*, the “[t]ouchstone of our analysis...is always ‘the reasonableness in all circumstances of the particular governmental intrusion of a citizen’s personal security.’”<sup>8</sup>

The Defendant claims that the State cannot point to any legitimate government interest that would trump the Defendant’s Fourth Amendment rights. The Court disagrees. The United States Supreme Court has consistently held that the “protection of police and others can justify protective searches when police have a reasonable belief that the suspect poses a danger, that roadside encounters between police and suspects are especially hazardous, and that danger may arise from the possible presence of weapons in the area surrounding a suspect.”<sup>9</sup>

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<sup>5</sup> *Purnell v. State*, 832 A.2d 714, 721 (Del. 2003)

<sup>6</sup> *Hicks*, 631 A.2d at 11 (quoting *Minnesota v. Dickerson*, 508 U.S. 366, 373 (1993)).

<sup>7</sup> *Purnell v. State*, 832 A.2d at 723.

<sup>8</sup> *Michigan v. Long*, 463 U.S. 1032, 1051 (1983).

<sup>9</sup> *Id.* at 1049.

At the suppression hearing, the Defendant argued that the area searched, under the driver's seat, was not within the Defendant's immediate control and thus could not be legally searched because the Defendant was outside of the car and being detained at the time of the search. The Court in *Michigan v. Long*, addressed this very argument. The Supreme Court in *Long*, held that this reasoning was mistaken for several reasons. First, "during any investigative detention, the suspect is 'in the control' of the officers in the sense that he 'may be briefly detained against his will ...'"<sup>10</sup> Thus, a *Terry* suspect in Defendant's position might "break away from police control and retrieve a weapon from his automobile."<sup>11</sup> Second, if the suspect is not placed under arrest, such as the case here, "he will be permitted to reenter his automobile, and he will then have access to any weapons inside."<sup>12</sup> "A *Terry* investigation, such as the one that occurred here, involves a police investigation 'at close range,' when the officer remains particularly vulnerable in part *because* a full custodial arrest has not been effected, and the officer must make a 'quick decision as to how to protect himself and others from possible danger ...' In such circumstances, we have not required that officers adopt alternate means to ensure their safety in order to avoid the intrusion involved in a *Terry* encounter."<sup>13</sup> Thus, while it is true that the area under the seat was not

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<sup>10</sup> *Id.* at 1051.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 1052.

within Defendant's immediate control at the time of the search, it would have been if he were permitted to reenter the vehicle, and therefore, Officer MacNamara's decision to search under the seat is justified under the circumstances.

The Court in *Michigan* further held that the "balancing required by *Terry* clearly weighs in favor of allowing the police to conduct an area search ... as long as they possess an articulable and objectively reasonable belief that the suspect is potentially dangerous."<sup>14</sup> As in *Michigan v. Long*, when weighing the Officer's safety in a close range roadside encounter against the intrusion of Defendant's personal security, the Court finds here that the Officer did not act unreasonably in taking preventative measures to ensure there were no weapons within Defendant's immediate grasp. It is also central to the Court's decision that the intrusion to determine whether the Officer's belief was correct was limited to simply looking into the vehicle to determine whether a weapon could be observed. This limited preventative search is consistent with the Officer's right to protect himself while at the same time avoiding an unnecessary and excessive invasion of the Defendant's rights. Here, the Officer possessed an articulable and objectively reasonable belief that the Defendant was armed. The Officer was familiar with the Defendant and his past firearm arrests and his conduct when stopped was consistent with hiding something under the driver's seat. This knowledge, and the Defendant's reaction

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<sup>14</sup> *Id.* at 1051.

to being stopped by the Officer, clearly validates the Officer's action and the search under Defendant's seat. Thus, the search of the vehicle was within the scope of a *Terry* stop.

Therefore, the Court finds that the search of Defendant's vehicle was legally valid and Defendant's Motion to Suppress is hereby **DENIED**.

**IT IS SO ORDERED.**

/s/ William C. Carpenter, Jr.  
Judge William C. Carpenter, Jr.