IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE,	)	
	)	
V.	)	DEF. I.D.: 1004015937
	)	
RICHARD IVERSON,	)	
	)	
Defendant.	)	

Date Submitted: March 16, 2011
Date Decided: March 31, 2011

Upon Defendant's Motion to Suppress.
DENIED.

Steven P. Wood, Esquire and Joseph S. Grubb, Esquire. Attorneys for the State of Delaware.

Dean C. DelCollo, Esquire and Darryl J. Rago, Esquire. Attorneys for the Defendant.

SLIGHTS, J.

I.

In this Opinion, the Court considers the propriety of a so-called *Terry* stop[1] and later search of the defendant, Richard Iverson, pursuant to which law enforcement officers of the New Castle County Police Department seized illegal drugs and a live round of ammunition. The State has indicted Mr. Iverson on multiple charges including, but not limited to, Murder First Degree (capital) and Trafficking in Cocaine. Mr. Iverson contends that the police officer who conducted the *Terry* stop lacked a "reasonable and articulable suspicion" that he had been, was presently, or was about to be engaged in criminal activity at the time of the stop. Mr. Iverson's motion to suppress requires the Court to address two points of controversy: (1) when was the *Terry* stop actually initiated; and (2) did the officer possess a reasonable and articulable suspicion of criminal activity at that time? Because the Court finds that the police officer did possess a reasonable and articulable suspicion of criminal activity at the time he initiated the *Terry* stop, Mr. Iverson's motion to suppress must be **DENIED.**

II.

On February 19, 2010, at 1:26 a.m., the New Castle County Police Department's 911 call center began to receive several reports of gun shots in the

[1] *Terry v. Ohio*, 392 U.S. 1 (1968).

vicinity of 37 Dryden Road in the Whitehall community of New Castle, Delaware. Multiple patrol units were dispatched to the scene of the shooting and to the area surrounding the shooting. A printout of the New Castle County Police Department's computer aided dispatch ("CAD") log indicates that, within minutes of the first report, responding officers were advised that shots had been fired at the 37 Dryden Road location, a victim with gunshot wounds remained at that location and that one or perhaps two suspects had fled the scene on foot.[2] At 1:34 a.m., the dispatcher reported that one of the suspects was a black male last seen wearing a long black coat (with fur around the hood) and jeans.[3] The suspect was last seen running on West Edinburgh Drive towards West Bellamy Drive.[4] At 1:41 a.m., responding officers were advised that a K-9 unit had been dispatched to the scene of the shooting and that a "K-9 track" of the suspect would be initiated.[5] Thereafter, the K-9 unit reported the progress of the "K-9 track" of the suspect as the K-9 officer proceeded through the Whitehall community and surrounding area. Each of these reports were broadcast over the police radio for all responding officers to hear.[6]

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[2]State's Ex. 1, CAD log.

[3]*Id.*

[4]*Id.*

[5]*Id.*

[6]*Id.*

At 1:47 a.m., Corporal Clarence ("Tom") Purse (hereinafter "Corporal Purse"), a 14 year veteran of the New Castle County Police Department, was dispatched to a location across the street from the scene of the shooting in order to assist in the investigation. Prior to the dispatch, he had been listening to the radio traffic regarding the shooting and the investigation that immediately followed. His brother, Corporal Stephen Purse, was the officer engaged in the "K-9 track" of the suspect. At the suppression hearing, Corporal Purse testified that he followed the progress of his brother's "K-9 track" very carefully. He also heard radio traffic indicating that very soon after the shooting New Caste County Police officers had positioned themselves around a designated perimeter of 37 Dryden Road for the purpose of preventing the suspect(s) from fleeing the area. Thus, as Corporal Purse neared the location to which he had been dispatched, he was on full alert for individuals matching the description of the suspect he had heard on the radio. Indeed, given the perimeter that had been established and the direction of the "K-9 track" that was under way, he anticipated that the suspect might well be at or near the route on which he intended to travel.[7]

At 1:57 a.m., Corporal Purse observed a lone black male wearing a long black coat walking eastbound on the shoulder of Airport Road, near the intersection of

[7] *See* Map of Area, State's Ex. 3.

Airport Road and the Georgetown Villa apartments (approximately 1/4 mile from the scene of the shooting). There were no other pedestrians and no vehicle traffic in the area at that time. Corporal Purse drove past the individual while observing him and then made a u-turn so that he could make contact with the individual. By the time he returned, the individual with whom he wanted to speak was entering the parking lot of a 7-11 convenience store located on the north east corner of the intersection of Rt. 273 and Airport Road.

According to Corporal Purse, he drove up next to the individual, opened his car door and said to the individual words to the effect of "stop, I need to speak to you." The individual ignored Corporal Purse's command and continued to walk into the parking lot towards the 7-11. Corporal Purse reiterated the command to stop which was again ignored. He then activated the emergency equipment on his vehicle and moved his vehicle further into the parking lot.[8] Once again, he opened the door of his vehicle and directed the individual to stop. And, once again, the individual ignored him and proceeded to walk around a silver minivan that had just parked in a space immediately adjacent to the 7-11. As the individual walked around the minivan, it appeared to Corporal Purse that the individual bent down to drop something on the

[8]From this point forward, the encounter between Corporal Purse and Mr. Iverson is captured (without audio) on a 7-11 surveillance film shot from a camera mounted on the outside of the store. The film was shown during the suppression hearing. *See*, Surveillance DVD-R, State's Ex. 2.

ground.

Corporal Purse repositioned his vehicle to a safer location in the parking lot (he intended to use the vehicle as cover) so that he could engage the person whom he suspected of having been involved in the earlier shooting and who was now ignoring his commands. By the time he stopped his vehicle again and opened the door, the individual had moved to the far side of the parked vehicle and again appeared to be bending over as if to drop something on the ground. Corporal Purse made several voice commands to the individual to come out from behind the parked vehicle and eventually the individual complied.

Once the individual was out in the open, Corporal Purse commanded him to stop but the individual kept walking towards him. Corporal Purse noticed that the individual's right hand was in his right coat pocket so Corporal Purse commanded him to remove his hands from his pocket and to stop. The individual kept walking towards him so Corporal Purse removed his weapon from its holster. When the individual continued to walk towards Corporal Purse, the officer pulled his weapon and directed the individual to the ground. The individual complied and Corporal Purse was able to handcuff him and take him into custody without incident. Almost immediately thereafter, several other officers arrived at the scene. Corporal Purse then conducted a search of the ground in the area surrounding the parked minivan and

found three separate bags containing a white substance which later field tested positive for crack cocaine.

Upon learning that the individual was named Richard Iverson, the officers conducted a criminal history check and learned that Mr. Iverson had several outstanding bench warrants from the Superior Court and the Court of Common Pleas. He was then transported to the New Castle County Police headquarters. While in the "turnkey" unit at police headquarters, Mr. Iverson was processed for arrest during which a search of his black jacket revealed a live 40 caliber round. According to the State, this round matches bullet casings found at the scene of the shooting.

The State has stipulated that the jacket worn by Mr. Iverson at the time of his arrest does not have fur lining the hood. It is not clear, however, whether the jacket had a hood at all.

III.

On a motion to suppress, the State bears the burden of establishing that the challenged search or seizure comported with the rights guaranteed to Mr. Iverson by the United States Constitution, the Delaware Constitution, and Delaware statutory law.[9] The burden of proof on a motion to suppress is proof by a preponderance of the

[9] *Hunter v. State*, 783 A.2d 558, 560-61 (Del. 2001).

evidence.[10]

IV.

"Before this Court can decide whether a [*Terry*] stop was supported by reasonable articulable suspicion or otherwise justified, [it] must first make the threshold inquiry of whether [and when] a stop actually occurred."[11] Once the Court determines precisely when a *Terry* stop occurred, the Court must then examine "whether the officers had reasonable and articulable suspicion at that time to make the stop."[12] Thus, to decide the motion *sub judice*, the Court must determine: (1) when the *Terry* stop occurred;[13] and (2) whether Corporal Purse had reasonable and articulable suspicion at that time to stop Mr. Iverson for further investigation.

A. The *Terry* Stop Occurred At The Time Of Corporal Purse's Initial Encounter With Mr. Iverson

At first glance, the process of pinpointing the moment at which a *Terry* stop occurs would appear to be a straight forward exercise. Our Supreme Court has stated the applicable standard clearly and concisely: "[a] stop occurs when a police officer

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[10]*State v. Bien-Aime*, Del. Super., Cr. A. No. IK92-08-326, Toliver, J. (March 17, 1993)(Mem. Op.) (citations omitted).

[11]*Moore v. State*, 997 A.2d 656, 663 (Del. 2010) (citations omitted).

[12]*Purnell v. State*, 832 A.2d 714, 719 (Del. 2003).

[13]The State concedes that Corporal Purse conducted a *Terry* stop of Mr. Iverson but disputes Mr. Iverson's contention that the stop occurred early in the officer's encounter with him.

displays conduct that 'would communicate to a reasonable person that he or she was not free to ignore the police presence.'"[14] The analysis is confounded, however, when the real-time dynamics of a police/suspect interaction are thrown in the mix. In this case, for example, Corporal Purse made several verbal commands to Mr. Iverson, most of which were ignored. In the course of ignoring Corporal Purse's commands, Mr. Iverson engaged in several instances of furtive behavior (e.g. walking away when commanded to stop, discarding items from his pocket(s), placing his hands in his pockets and then walking towards the officer after being commanded to stop) all of which clearly would have enhanced Corporal Purse's reasonable and articulable suspicion. To the extent these behaviors occurred *after* the *Terry* stop was initiated, however, they are not available to the State as bases to form the reasonable and articulable suspicion upon which the stop was justified.[15] Herein lies the difficulty.

"Under the Fourth Amendment to the United States Constitution a seizure 'requires either physical force . . . or, where that is absent, submission to the assertion of authority.'"[16] Thus, in the context of the United States Constitution, the rather

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[14]*Id.* at 719 (citing *Jones v. State*, 745 A.2d 856, 863 (Del. 1999)).

[15]*See Jones*, 745 A.2d at 864 (holding that police officer cannot create reasonable and articulable suspicion by prompting the suspect to engage in furtive behavior after an "unjustified attempted stop" initiated without reasonable and articulable suspicion).

[16]*Id.* (quoting *California v. Hodari D.*, 499 U.S. 621, 626 (1991)).

involved interaction between Corporal Purse and Mr. Iverson at the scene of the *Terry* stop does not complicate the analysis of *when* the stop occurred. Mr. Iverson ignored all of Corporal Purse's commands to "stop" until he eventually "submitted" after Corporal Purse drew his weapon and commanded Mr. Iverson to "lay down on the ground." For Fourth Amendment purposes, the *Terry* stop did not occur until this time because this is when Mr. Iverson "submitted" to Corporal Purse's "assertion of authority."[17] And, for Fourth Amendment purposes, all of Mr. Iverson's furtive behavior prior to his "submission" was available to Corporal Purse to enhance his reasonable and articulable suspicion. As discussed below, however, the State constitutional analysis is not so clear.

In *Jones*, the Court considered both a federal and State constitutional challenge of a *Terry* stop and ultimately concluded that the Delaware Constitution, at Article 1, § 6, provides "broader protections to a suspect than the corresponding provisions of the Fourth Amendment of the United States Constitution."[18] The Court expressly rejected the notion that a *Terry* stop occurs only after the police officer applies physical force to effect the stop or the suspect submits to the officer's commands.[19]

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[17] *Id.*

[18] *See Jones*, 745 A.2d at 866.

[19] *Id.* at 863-64.

Indeed, the Court criticized this approach to the *Terry* stop analysis because it "allow[s] a police officer lacking reasonable suspicion to create that suspicion through an unjustified attempted detention."[20] In other words, under *Hodari D.*, a police officer could command a suspect to stop without a reasonable and articulable suspicion and then use the suspect's conduct in ignoring the command to fortify the bases for the initial stop. Although one could credibly argue that a suspect who ignores a command to stop apparently felt "free to ignore the police presence,"[21] and, therefore, had not been "stopped" for *Terry* purposes, the Supreme Court in *Jones* clearly held that a police officer must possess reasonable and articulable suspicion at the time he initiates the *Terry* stop and may not rely upon post-command events in forming the bases of his reasonable and articulable suspicion.[22] As noted in *Jones,* this departure from federal jurisprudence arguably makes the determination of precisely when the *Terry* stop occurred all the more important when assessing the propriety of the stop.[23]

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[20] *Id.* at 864.

[21] *Id.* at 863.

[22] *Id.*

[23] *Id.*

In this case, Corporal Purse candidly acknowledged that when he first approached Mr. Iverson and commanded him to stop he intended to conduct an investigation of Mr. Iverson to determine if he was involved in the earlier shooting. Corporal Purse also made it clear that he did not *ask* Mr. Iverson to stop but rather *commanded* him to stop so that he could be questioned. As developed at the suppression hearing, the facts reveal that Corporal Purse initially made eye contact with Mr. Iverson as he passed him traveling eastbound on Airport Road. He then pulled immediately along side of Mr. Iverson after making his u-turn and returning to the 7-11 parking lot. He then opened his door and commanded Mr. Iverson to "stop, I want to talk to you" (or words to that effect). Given these facts, the Court is satisfied that Mr. Iverson "was not free to ignore [Corporal Purse's] presence" after this initial encounter (although he certainly went ahead to do so).[24] Mr. Iverson was "stopped" for *Terry* and *Jones* purposes at the time Corporal Purse initially commanded him to stop as he was entering the 7-11 parking lot.

B. Corporal Purse Possessed Reasonable And Articulable Suspicion At The Time Of The *Terry* Stop

Having determined when the *Terry* stop occurred, the Court must next consider whether Corporal Purse possessed reasonable and articulable suspicion at the time of

[24] *Id.* at 863.

that stop. The Court concludes that he did.

"In determining whether reasonable and articulable suspicion exists a court 'must examine the totality of the circumstances surrounding the situation as viewed through the eyes of a reasonable, trained police officer in the same or similar circumstances, combining objective facts with such an officer's subjective interpretation of those facts.'"[25] A "reasonable and articulable suspicion" is defined as "an officer's ability to point to specific and articulable facts which, taken together, with rational inferences from those facts, reasonably warrant the intrusion."[26]

In this case, Corporal Purse testified that he had been listening closely to the radio dispatches and responding radio traffic relating to the shooting and subsequent investigation both prior and subsequent to being dispatched to join in the investigation. As he approached the scene, he learned that the suspect[s] were on foot and that a tight perimeter had been established by New Castle County Police officers surrounding the area of the shooting. He also learned that a "K-9 track" was on the trail of the suspect[s] and that it was "driving" the suspect[s] to the area of the intersection of Rt. 273 and Airport Road where he would be entering the Whitehall community. Finally, and most importantly, he learned that one of the suspects was

[25] *Purnell*, 832 A.2d at 719 (citations omitted).

[26] *Jones*, 745 A.2d at 861.

a black male last seen wearing a long black jacket and jeans. Thus, at the time Corporal Purse first observed Mr. Iverson (less than a half hour after and 1/4 mile away from the scene of the shooting), it was reasonable for him to suspect that Mr. Iverson had been involved in the shooting.[27]

The Court acknowledges that the black coat Mr. Iverson was wearing did not have a fur lined hood and may not have had a hood at all. Corporal Purse testified that he does not recall having heard that aspect of the suspect's description. In any event, it was reasonable for Corporal Purse to suspect that a black male wearing a long black coat and jeans and walking alone in the area of the shooting at a specified location may have been involved in that shooting based on earlier radio dispatches.[28] In this regard, this case is quite different from *Jones*. There, the police officer had received a dispatch that an unknown caller had observed an individual roughly fitting the defendant's description acting "suspiciously."[29] The court found this information

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[27]*See Moore*, 997 A.2d at 667 (noting that spacial and temporal proximity to the scene of the crime, the fact that the defendant was the first individual matching the description the officer had encountered, and the officer's overall training and experience all factored into the determination of reasonable and articulable suspicion).

[28]*See Thomas v. State*, 8 A.3d 1195, 1198 (Del. 2010) ("This Court has held that a police officer may conduct a *Terry* stop of an individual who matches the description of a suspect provided to the officer either by a reliable informant *or* over a police radio broadcast.") (emphasis supplied) (citations omitted).

[29]*See Jones*, 745 A.2d at 870.

insufficient to create a reasonable and articulable suspicion of criminal activity.[30] By contrast, in this case, Corporal Purse had been advised by his radio dispatcher that an individual very closely matching Mr. Iverson's description had been involved not in vaguely described "suspicious" activity but rather a shooting at a specified location where the victim had been shot in the abdomen.[31] This background, along with the information regarding the likely travel path of the suspect after the shooting, provided more than reasonable and articulable suspicion that Mr. Iverson may have been involved in criminal activity. Thus, Corporal Purse need not have relied upon Mr. Iverson's furtive behavior after the initial encounter to support his decision to initiate a *Terry* stop.[32] The decision was justified based on the information he had received prior to observing Mr. Iverson and by his positive identification of an individual closely matching the description of the shooting suspect. Accordingly, the evidence seized at the scene of the stop and thereafter at the police station was lawfully obtained.

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[30] *Id.*

[31] *See* State Ex. 3.

[32] The State contends that the stop was also justified under the so-called "community caretaker doctrine" since the evidence reveals that Mr. Iverson was himself shot and injured at the time of the stop. *See Williams v. State*, 962 A.2d 210 (Del. 2008). Since it does not appear that Corporal Purse knew that Mr. Iverson had been shot at the time he initiated the *Terry* stop and, indeed, did not discover his injury until after he was transported back to New Castle County Police headquarters, the Court does not see how the "community caretaker doctrine" applies here.

C. Even If The *Terry* Stop Was Not Justified, Seizure Of The Drugs And Ammunition Was Proper Under The Doctrines Of Abandonment And Inevitable Discovery

As mentioned, the encounter between Corporal Purse and Mr. Iverson in the 7-11 parking lot was captured on a surveillance video. This video, shown at the suppression hearing, clearly reveals that as Corporal Purse was present in the parking lot, Mr. Iverson approached a minivan parked next to the store and dropped several packages under the vehicle.[33] He then walked away from the vehicle (and the packages) towards the officer and eventually submitted to being taken into custody. Once Mr. Iverson was secured in handcuffs, the video shows Corporal Purse returning to the parked vehicle where he retrieved three packages from the ground. The State contends that even if Corporal Purse did not have reasonable and articulable suspicion to initiate the *Terry* stop of Mr. Iverson, the seizure of the packages he left on the ground was proper because Mr. Iverson had abandoned those packages. The Court agrees.

"When determining whether property has been abandoned in the context of search and seizure analysis, the Court must administer an objective test: did 'the words and acts of [the suspect] show relinquishment of privacy. . . .'"[34] Stated

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[33]State's Ex. 2.

[34]*State v. Dixon,* 2001 WL 209907, at *4 (Del. Super. Ct. Feb. 2, 2001) (citations omitted).

differently, the Court must determine if Mr. Iverson had a "reasonable expectation of privacy" in the packages at the time they were seized by Corporal Purse.[35] Given the totality of the circumstances present at the time Mr. Iverson dropped the packages on the ground, the Court is satisfied for several reasons that he then and there relinquished his expectation of privacy in the packages by abandoning them. First, the Court notes that Mr. Iverson's actions were clearly deliberate; the packages did not simply fall out of his pocket. Second, Mr. Iverson placed the packages directly adjacent to an occupied parked vehicle and then walked away clearly intending to separate himself from the packages.[36] Third and finally, the packages were placed on the ground in an area easily accessible and visible to the general public. These facts reveal an intent to abandon the packages such that Corporal Purse's subsequent seizure of them does not implicate State or federal constitutional considerations.[37]

Once Mr. Iverson was taken into custody and the drugs were recovered at the scene of the *Terry* stop, the investigating officers discovered that he was wanted on outstanding warrants from both the Superior Court and the Court of Common Pleas.

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[35] *Id.* (citation omitted).

[36] The surveillance video showed that after the vehicle pulled into the parking space one of the two occupants went inside the store while the other remained in the vehicle. *See* State's Ex. 2.

[37] *Id.*

He was then transported to the New Castle County Police headquarters where he was processed for arrest on the outstanding warrants. As part of the routine "turnkey" process, his clothing and belongings were searched. It was during this process that the "turnkey" officer discovered the live 40 caliber ammunition round in Mr. Iverson's coat pocket.

The State contends that even if Corporal Purse's *Terry* stop was not justified, the ammunition round inevitably would have been discovered because Mr. Iverson would have been searched incident to a lawful arrest after the discarded drugs were seized and the outstanding warrants were discovered. "[W]hen . . . the evidence in question would inevitably have been discovered without reference to the police error or misconduct, there is no nexus sufficient to provide a taint and the evidence is admissible."[38]

Here, the evidence reveals that Corporal Purse would have taken Mr. Iverson into custody after seizing the packages he abandoned and determining that they contained cocaine. He then would have discovered that Mr. Iverson was wanted on outstanding warrants from two Delaware courts. These facts, alone or together, would have given Corporal Purse probable cause to arrest Mr. Iverson. The search

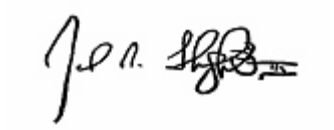
[38]*Nix v. Williams*, 467 U.S. 431, 448 (1984). *See also Cook v. State*, 374 A.2d 264, 267-68 (Del. 1977) (recognizing the inevitable discovery doctrine as an exception to the exclusionary rule).

of his jacket at police headquarters inevitably would have followed this lawful arrest. Accordingly, the inevitable discovery doctrine provides an independent basis upon which to deny the motion to suppress the live ammunition round seized from Mr. Iverson's coat.

V.

Based on the foregoing, defendant's motion to suppress evidence must be **DENIED.**

IT IS SO ORDERED.



Judge Joseph R. Slights, III

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