

IN THE SUPERIOR COURT OF THE STATE OF  
DELAWARE

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE,	)	
	)	
Prosecution.	)	
	)	
v.	)	ID No. 1104020296
	)	
FAHMEE ALI,	)	
	)	
Defendant.	)	

**MEMORANDUM OPINION**

Michael J. Hendee, Esquire, Department of Justice,  
Wilmington, Delaware – Attorney for the State.

Ralph Wilkinson, Esquire, Office of the Public Defender –  
Attorney for the Defendant.

This is apparently a case of first impression in this state.<sup>1</sup> The court is called upon to decide whether a non-predictive<sup>2</sup> tip from an informant with whom the police have no previous experience is sufficiently reliable to authorize the police to detain a suspect. For the reasons stated below, the court finds that there were sufficient indicia of reliability to justify the police stopping the defendant on the basis of that tip.

### **Facts**

At approximately 9:00pm on April 24, 2011, the Wilmington Police received a telephone call from a female living in the vicinity of 29<sup>th</sup> and Washington Streets. The caller reported that a white male was sitting in a black Toyota using his cell phone. Several minutes later, according to the caller, a heavy set black male wearing a yellow or pink shirt, jeans with a tan shirt tied around his shoulders approached the black Toyota, leaned toward the driver's window and engaged in some sort of interaction with the driver. The caller expressed the view that the black male was selling drugs to the white man.

Officers Oliver and Spencer of the Wilmington Police Department responded to the call. Upon their arrival at the scene, they did not see anyone

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<sup>1</sup> The Court issued a bench ruling denying the motion to suppress. Because of the apparently novel nature of the issues presented here, the Court advised counsel it would likely issue a written opinion. This is that opinion.

<sup>2</sup> Tips from unidentified informants have sometimes been found to justify a stop when the tips accurately predict the future conduct of a suspect. *See Alabama v. White*, 496 U.S. 325, 331 (1990). There is no predictive element to the tip received by the police in the instant case.

matching the suspect's description, so they called RECOM asking that the description be repeated. RECOM in turn called the informant back asking for the description again. The informant again described the suspect and further told RECOM that the suspect was now at the corner of 30<sup>th</sup> and Washington Streets near a liquor store.

Officers Oliver and Spencer drove toward the liquor store where they saw the defendant. Officer Oliver later described the suspect, who was heavy set, as wearing a pink shirt, jeans and a plaid shirt tied around his neck or shoulders. Officer Spencer later described the suspect as wearing a yellow shirt, jeans and a checkered shirt tied around his neck. In any event, both officers thought that the suspect matched the description given to the moments earlier.

Officer Spencer, who knew the suspect, called out "hey, Fahmee?", or words to that effect. The suspect made a casual, low-key response. However, when Officer Oliver told the suspect that "WILCOM relays you've been selling drugs" and asked the suspect to approach the car, so they could see him better in the dark, the suspect became hostile. The suspect appeared agitated and raised his voice. The officers expressed concerns for their safety to the extent that the officers felt they needed to pat down the suspect to search for weapons. They had the suspect place his

hands on the hood of their patrol car, while they patted him down. The suspect placed the palm of his right hand on the hood of the car in the usual fashion. However, his left hand remained clenched, a fact quickly noticed by the officers. Not knowing what was in his left hand and fearing the possibility it was a weapon of some sort or that the suspect would try to hit an officer, the officers ordered the suspect to unclench and “show us your hand.” The suspect refused, whereupon Officer Oliver pulled the suspect’s left arm behind him in order to place him in handcuffs. When Officer Oliver did so, the suspect unclenched his left hand and small plastic bags later determined to contain crack cocaine fell out onto the street.

During the suppression hearing, both officers testified that the area of 29<sup>th</sup> and Washington and 30<sup>th</sup> and Washington is known as a high crime area in which drug transactions are frequent. They both testified that their experience as police officers would lead them to believe that, when someone approaches a white male parked in that neighborhood, briefly interacts with driver of the parked car and the driver thereafter immediately drives away, a drug transaction has likely taken place.

### **Discussion**

The Fourth Amendment protects people “against unreasonable searches and seizures” and has been applied to the states through the

Fourteenth Amendment.<sup>3</sup> The Delaware Constitution similarly protects people “from unreasonable searches and seizures.”<sup>4</sup>

Police officers may stop a person “for investigatory purposes if they have a reasonable, articulable suspicion that the individual is committing, has committed, or is about to commit a crime.”<sup>5</sup> The officer “must be able to articulate something more than an inchoate and unparticularized suspicion or ‘hunch’.”<sup>6</sup> Reasonable suspicion need not rise to the level of probable cause and can be amassed through information different in quantity, content and reliability.<sup>7</sup> Nonetheless, the tip needs to be “reliable in its assertion of illegality.”<sup>8</sup> The Court looks to the “totality of the circumstances” in making that determination.<sup>9</sup> The Court must determine whether the reliability of the tip along with the independent police work amounted to reasonable suspicion.

The Supreme Court of the United States has addressed cases that assist in framing the issue here, but Supreme Court has not addressed the issue that faces this Court. The Court examined an anonymous tip in *J.L.* The tip in *J.L.* differs substantially from the information provided by the

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<sup>3</sup> U.S. Const. art. IV.

<sup>4</sup> Del. Const. art. I, § 6.

<sup>5</sup> *Miller v. State*, 2011 WL 3524441 at \*3 (Del. 2011) (citing Del. Code Ann. Tit. 11, §1902; *Terry v. Ohio*, 392 U.S. 1 (1968)).

<sup>6</sup> *White*, 496 U.S. at 339 (quoting *Terry*, 392 U.S. at 27).

<sup>7</sup> *See White*, 496 U.S. at 330.

<sup>8</sup> *Florida v. J.L.*, 529 U.S. 266, 272 (2000).

<sup>9</sup> *White*, 496 U. S. at 331 (quoting *United States v. Cortez*, 449 U.S. 411, 417 (1981)).

caller in this case. The caller in *J.L.* anonymously provided a tip that an individual in a plaid shirt had a gun.<sup>10</sup> Police had no information about the location or identity of the caller.<sup>11</sup> The Court distinguished *J.L.* from *White* based on the lack of predictive behavior in the tip.<sup>12</sup> The anonymous nature of the tip was also important because tips from known callers can allow for the caller's reputation to be assessed and the caller "can be held responsible if her allegations turn out to be fabrications."<sup>13</sup> Concurring, Justice Kennedy joined by Chief Justice Rehnquist suggested under different facts an anonymous tip could lead to a finding that reasonable suspicion existed.<sup>14</sup> For example, as technology advances and gives police the ability to trace the identity of anonymous callers, it increases the reliability of those anonymous tips.<sup>15</sup> Moreover, "[i]f an informant places his anonymity at risk, a court can consider this factor in weighing the reliability of the tip."<sup>16</sup>

Federal courts have distinguished cases in which the informant's identity is known or easily obtainable by police.<sup>17</sup> The tip in the current case differs from *J.L.* in several ways that indicate reliability. Firstly, the identity

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<sup>10</sup> See *J.L.*, 529 U.S. at 268.

<sup>11</sup> See *id.* at 270.

<sup>12</sup> See *id.* at 271.

<sup>13</sup> *Id.* at 270 (citing *Adams v. Williams*, 407 U.S. 143, 146-47 (1972)).

<sup>14</sup> See *J.L.*, 529 U.S. at 275 (Kennedy, J., concurring).

<sup>15</sup> See *id.* at 276 (Kennedy, J., concurring).

<sup>16</sup> See *id.*

<sup>17</sup> See *Robinson v. Howes*, 2010 WL 4942839 at \*9 (E.D. Mich. 2010) (citing *U.S. v. Howard*, 150 F. App'x 476, 479-80 (6th Cir. 2005)).

of the caller was known to police. A caller, whose identity is known, exposes herself to criminal punishment if she is lying.<sup>18</sup> The possibility of criminal charges for lying aligns the tipster's self-interest with providing truthful information. Secondly, the caller was a resident of the same neighborhood as the defendant and, as such, "exposed [herself] to a risk of retaliation from the person named, making it less likely that the informant will lie."<sup>19</sup> Thirdly, the caller reported what she had just observed rather than secondhand information, which gives the tip "greater weight."<sup>20</sup> Each of these facts indicates reliability of the tip.

Police observed other facts that support reasonable suspicion. They observed "an individual, fitting a police dispatch description of a person involved in a disturbance, near in time and geographic location to the disturbance establish[ing] a reasonable suspicion that individual is the subject of the dispatch."<sup>21</sup> Moreover, the stop occurred in a high crime area known for drugs, which is "among the relevant contextual considerations in a *Terry* analysis."<sup>22</sup> The information police received suggested that the suspect had been selling drugs. Police needed to investigate further to

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<sup>18</sup> See *U.S. v. Valentine*, 232 F.3d 350, 354 (3rd Cir. 2000) (citing *U.S. v. Christmas*, 222 F.3d 141, 144 (4th Cir. 2000)); see also *Illinois v. Gates*, 462 U.S. 213, 233-34 (1983); *Adams v. Williams*, 407 U.S. 143, 146-47 (1972); *Robinson v. Howes*, 2010 WL 4942839 at \*9 (E.D. Mich. 2010).

<sup>19</sup> *Valentine*, 232 F.3d at 354 (citing *Christmas*, 222 F.3d at 144).

<sup>20</sup> *Valentine*, 232 F.3d at 354 (citing *Adams*, 407 U.S. at 147).

<sup>21</sup> *U.S. v. Snow*, 2011 WL 3792340 at \*4 (7th Cir. 2011) (quoting *U.S. v. Lenoir*, 318 F.3d 725, 729 (7th Cir. 2003)).

<sup>22</sup> *Illinois v. Wardlow*, 528 U.S. 119, 124 (2000) (citing *Adams*, 407 U.S. at 144, 147-48).

determine if the suspect had sold drugs “[a]nd that is the very purpose of a *Terry* stop.”<sup>23</sup>

Additionally, Defendant’s behavior during questioning necessitated the officers taking steps for their safety that led to the discovery of the drugs.<sup>24</sup> Defendant became increasingly confrontational as the conversation with police went on and he would not unclench his hand when officers asked that he put his hands on the car.

When an officer is justified in believing that the individual whose suspicious behavior he is investigating at close range is armed and presently dangerous to the officer or to others, it would appear to be clearly unreasonable to deny the officer the power to take necessary measures to determine whether the person is in fact carrying a weapon and to neutralize the threat of physical harm.<sup>25</sup>

Police justifiably expressed concern for their safety because they could not see what was in Defendant’s hand. Officers took action to protect themselves and as a result Defendant dropped the drugs. This, along with the other facts indicating reliability of the tip received by police, establishes that police had reasonable suspicion.

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<sup>23</sup> *Snow*, 2011 WL 3792340 at \*5 (citing *Terry*, 392 U.S. at 22-23).

<sup>24</sup> *See Terry*, 392 U.S. at 23-24.

<sup>25</sup> *Id.* at 24.

## **Conclusion**

The court finds that there were sufficient indicia of reliability to justify the police stopping the defendant on the basis of that tip. Therefore, Defense's motion to suppress is **DENIED**.

Date: September 12, 2011

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Judge John A. Parkins, Jr.