

**UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT**

UNITED STATES OF AMERICA	:	
	:	
v.	:	Criminal Docket No.
	:	3:00 CR 94 (CFD)
THOMAS ALI DAVIS	:	

**RULING ON MOTION TO SUPPRESS**

The defendant, Thomas Ali Davis, was indicted by a federal grand jury on May 2, 2000, for possession of a firearm by a convicted felon in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). He has filed a motion to suppress tangible evidence [Document #8], claiming that his rights under the Fourth and Fourteenth Amendments to the Federal Constitution were violated when he was stopped and frisked by a police officer. He claims that the police officer lacked a reasonable suspicion to stop and frisk him, which led to the discovery of the firearm charged in the federal indictment. For the following reasons, the motion is DENIED.

**I. Findings of Fact**

The Court makes the following findings of fact based on the evidence presented at the hearings on the suppression motion, which the government has proven by a preponderance of the evidence. See United States v. Matlock, 415 U.S. 164, 177 & n.14 (1974).

At approximately 1:00 p.m. on March 1, 2000, the Manchester Police Department received an anonymous telephone call. The female caller indicated that a black male in a gray sweater named "Tom Davis" was walking north on Oakland Street, toward Tolland Turnpike in Manchester, Connecticut, armed with a handgun. The Manchester Police Dispatcher broadcast this information, including that the information was based on an anonymous tip, and Manchester

Police Officers Peter Celio and Michael Brouillard were sent to investigate the matter.

Approximately thirty seconds before the broadcast, Manchester Police Detective Joseph Morrissey was driving south on Oakland Street.<sup>1</sup> He observed a man walking north on Oakland Street, and two other men walking south on the same side of the street. The three men were approaching each other rapidly, and Detective Morrissey believed that there was going to be a physical confrontation. After briefly losing sight of the men as he passed them in his police cruiser, Detective Morrissey saw them reappear in his rearview mirror. The men passed each other on the street and no physical confrontation occurred. However, the men turned back toward each other and it appeared to Detective Morrissey that they were involved in a verbal altercation. Detective Morrissey continued to drive south on Oakland Street and did not stop the three men.

As Detective Morrissey continued driving, he heard the police broadcast concerning the anonymous tip. He realized that the man he had seen walking north on Oakland Street matched the description broadcast by the police dispatcher. Detective Morrissey then drove back to where he had seen the man matching the description, but the man was no longer there. He soon found the man, who was later identified as the defendant, in a nearby gas station convenience store. Detective Morrissey went into the convenience store and observed the defendant, who was at the front of the checkout line buying a soda. The defendant appeared very nervous and “antsy,” and was looking in all directions. Detective Morrissey made eye contact with the defendant, who

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<sup>1</sup>Although on duty at the time, Detective Morrissey was in plainclothes and driving an unmarked police cruiser. Detective Morrissey had been a member of the Manchester Police Department for nineteen years, and supervised its detective division.

appeared “concerned” when the eye contact was made. He thought that the defendant recognized him as a police officer even though he was in plainclothes. Detective Morrissey also was unable to determine at that time whether the defendant had a firearm because the defendant was wearing baggy clothes. He thought that the defendant might be planning to rob the convenience store, which he knew had been robbed several months earlier by a black male armed with a handgun.<sup>2</sup>

The defendant purchased a soda and left the convenience store.<sup>3</sup> Detective Morrissey followed him out of the store and approached him. Detective Morrissey identified himself as a police officer and asked the defendant if he was “Tom Davis.” The defendant indicated that he was. Detective Morrissey then asked the defendant twice if he had a gun; the defendant did not respond.

As a result, Detective Morrissey asked the defendant to step against the wall of the gas station so that he could conduct a pat-down search of the defendant to determine whether he had a firearm. The defendant did not comply. Detective Morrissey escorted the defendant to the wall and turned him so that the defendant was facing the wall. Detective Morrissey asked the defendant to place his hands on the wall, which the defendant failed to do. Detective Morrissey then grabbed the defendant’s arms and placed them on the wall. The defendant let his arms slide down the wall. After asking the defendant again to place his hands on the wall, which the

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<sup>2</sup>The Court reaches this conclusion notwithstanding the testimony of Cynthia Shea, who was the assistant manager of the gas station convenience store, and who was working at the front register at the time of this incident. In sum, she testified that she knew the defendant as a regular customer of the store and that there was nothing unusual about his behavior in the store on March 1, 2000.

<sup>3</sup>The defendant was in the store for approximately five minutes.

defendant again refused to do, Detective Morrissey grabbed the defendant's arms and placed them on the wall a second time.

Before Detective Morrissey could conduct a pat-down search of the defendant, the defendant spun around, shoved Detective Morrissey, and attempted to run. However, Detective Morrissey was able to hang onto the defendant's arm. A struggle ensued for approximately ten feet across the parking lot of the gas station. By that point, Officer Celio had arrived and the officers attempted to subdue the defendant. Officer Celio observed a semi-automatic handgun in the defendant's waistband during the struggle, which he seized. The defendant was then handcuffed, arrested, and searched incident to his arrest.<sup>4</sup> Officer Celio also discovered \$667.00 in cash and two small bags of crack cocaine in the defendant's pockets while searching him incident to the arrest.

The defendant has filed a motion to suppress the firearm as evidence on the ground that Detective Morrissey lacked a reasonable suspicion to stop and frisk him, which led to the seizure of the firearm, in violation of the Fourth and Fourteenth Amendments.

## **II. Discussion**

There are generally three levels of investigative interaction between law enforcement officers and private citizens: consensual encounters, limited investigative stops, and arrests. See United States v. Tehrani, 49 F.3d 54, 58 (2d Cir. 1995). Each requires an increasingly higher

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<sup>4</sup>The defendant was charged with the state offenses of possession of a firearm by a convicted felon in violation of Conn. Gen. Stat. § 53a-217c, and interfering with a police officer in violation of Conn. Gen. Stat. § 53a-167a, among other crimes. The firearm seized from the defendant was the same as the firearm charged in the federal indictment.

level of justification, from no cause, to reasonable suspicion, to probable cause. See id. The parties in this case agree that the motion to suppress concerns the validity of a limited investigative stop made pursuant to Terry v. Ohio, 392 U.S. 1 (1968). They also agree that the limited investigative stop occurred when Detective Morrissey asked the defendant to step against the wall of the gas station for a pat-down search.

A. Reasonable Suspicion

The Fourth Amendment requires that limited investigative stops, now known as “Terry stops,” “no matter how brief, must be founded on a reasonable suspicion supported by articulable facts that criminal activity may be afoot.” Tehrani, 49 F.3d at 58 (citation and internal quotation marks omitted); United States v. Sokolow, 490 U.S. 1, 7 (1989). There must be information which leads the law enforcement officer “reasonably to conclude in light of his experience that criminal activity may be afoot and that the persons with whom he is dealing may be armed and presently dangerous.” Terry, 392 U.S. at 30. The officer “must be able to articulate something more than an inchoate and unparticularized suspicion or hunch” concerning criminal activity. Sokolow, 490 U.S. at 7 (internal quotation marks omitted). “The Fourth Amendment requires some minimal level of objective justification for making the stop.” Id. (internal quotation marks omitted). However, the required level of proof is “considerably less than proof of wrongdoing by a preponderance of the evidence.” Id. In addition, “[i]f an investigative detention is properly premised upon articulable suspicion, the next inquiry is whether its scope and duration are reasonable.” Tehrani, 49 F.3d at 58. A court ultimately must consider the totality of the circumstances in evaluating the validity of a Terry stop. See Sokolow, 490 U.S. at 8. See

generally United States v. White, 648 F.2d 29 (D.C. Cir.) (providing a broad discussion of limited investigative stops), cert. denied, 454 U.S. 924 (1981).

At issue in this case is whether Detective Morrissey had a reasonable suspicion sufficient to justify the limited seizure and search of the defendant. In particular, the parties dispute whether the anonymous tip and the events preceding the stop by Detective Morrissey are sufficient to satisfy the Fourth Amendment in light of the Supreme Court's recent decision in Florida v. J.L., 120 S. Ct. 1375 (2000).

#### 1. Anonymous Tip

In J.L., the Supreme Court addressed the issue of “whether an anonymous tip that a person is carrying a gun is, without more, sufficient to justify a police officer’s stop and frisk of that person.” Id. at 1377. Police officers in that case received an anonymous tip that “a young black male standing at a particular bus stop and wearing a plaid shirt was carrying a gun.” Id. The police approached the defendant, told him to place his hands on the bus stop, frisked him, and seized a gun from his pocket. See id. The defendant later filed a motion to suppress the firearm, which the trial court granted. See id. The Florida Supreme Court upheld the trial court ruling on the ground that the stop and frisk violated the Fourth Amendment. See id. at 1378.

In affirming the judgment of the Florida Supreme Court, the U.S. Supreme Court held that “an anonymous tip lacking indicia of reliability . . . does not justify a stop and frisk whenever and however it alleges the illegal possession of a firearm.” Id. at 1380 (citing Alabama v. White, 496 U.S. 325 (1990)). The Supreme Court reasoned that “an anonymous tip alone seldom demonstrates the informant’s basis of knowledge or veracity;” however, “there are situations in

which an anonymous tip, suitably corroborated, exhibits sufficient indicia of reliability to provide reasonable suspicion to make the investigative stop.” Id. at 1378 (quoting Alabama v. White; internal quotation marks omitted). The Court further indicated that, as in the case before it,

[a]n accurate description of a subject’s readily observable location and appearance is of course reliable in this limited sense: It will help the police correctly identify the person whom the tipster means to accuse. Such a tip, however, does not show that the tipster has knowledge of concealed criminal activity. The reasonable suspicion here at issue requires that a tip be reliable in its assertion of illegality, not just in its tendency to identify a determinate person.

Id. at 1379.

In evaluating the validity of the investigative stop of the defendant in the instant case, therefore, the Court must determine whether the anonymous tip was “suitably corroborated” to exhibit sufficient indicia of reliability. In other words, the Court must determine whether the tip was reliable in its assertion of illegality, not just in its tendency to identify the defendant. If the anonymous tip was not reliable in its assertion of illegality, the Court must then determine whether additional information preceding the stop supported Detective Morrissey’s reasonable suspicion.

The facts concerning the anonymous tip in this case are similar to the facts in J.L. However, unlike the J.L. case, the anonymous caller in this case provided the defendant’s name and the police officer verified the defendant’s name prior to the investigative stop.

As indicated, the Supreme Court’s J.L. decision relied in large part on its prior decision in Alabama v. White, 496 U.S. 325 (1990). In White, the anonymous tip included not only a description of the defendant, but also accurately predicted her future movements, which were corroborated by the police. The Court concluded that “independent corroboration by the police

of significant aspects of the informer's predictions [of future actions by the defendant in that case] imparted some degree of reliability to the other allegations made by the [anonymous] caller," including allegations of illegality by the defendant. Id. at 332. Underlying this result was the Court's view that "because an informant is shown to be right about some things, he is probably right about other facts that he has alleged, including the claim that the object of the tip is engaged in criminal activity." Id. at 331.

Despite its reliance on White, however, the J.L. Court called the White decision a "close case." J.L., 120 S. Ct. at 1379. The Supreme Court indicated in J.L. that, although "knowledge about a person's future movements indicates some familiarity with that person's affairs," it "does not necessarily imply that the informant knows, in particular, whether that person is carrying hidden contraband." Id. Thus, although the J.L. decision does not indicate precisely what kind of information is necessary or sufficient to establish the reliability of an anonymous tip, it at least implies that predictive information used to establish such reliability must relate to the criminal activity of the defendant. See id.

In this case, the Court concludes that the anonymous caller's knowledge of the defendant's name, and Detective Morrissey's confirmation of that information, did not constitute sufficient corroboration of the anonymous tip to make it reliable in its assertion of illegality by the defendant. The tip contained no information about the defendant's future actions or other information that could not be known to anyone who observed the defendant in public. Although the information was sufficient to identify the defendant, any person who knew the defendant's name or had learned of it apart from criminal activity could have made the anonymous call. There

is no basis for concluding that the caller had specific knowledge of the defendant's future actions or his criminal activity. By itself, the anonymous call was insufficient to "confirm the reliability of an anonymous informant for the purpose of establishing reasonable suspicion of criminal activity."

Id.<sup>5</sup>

## 2. Other Factors Contributing to Reasonable Suspicion

Unlike the J.L. case, however, the Court concludes there were other facts in this case that, when considered together with the anonymous tip and Detective Morrissey's confirmation of the defendant's identity, were sufficient to constitute a reasonable suspicion that the defendant was involved in criminal activity. In reaching this conclusion, the Court credits Detective Morrissey's testimony that the defendant appeared to be involved in a verbal altercation with the two other men on Oakland Street, which occurred shortly before the encounter at the convenience store. The Court also credits Detective Morrissey's testimony that the defendant appeared nervous and "antsy" while he was in the convenience store, especially when Detective Morrissey made eye contact with him, and that Detective Morrissey thought the defendant recognized him as a police officer even though he was in plainclothes. See United States v. Peterson, 100 F.3d 7, 9 (2d Cir. 1996) (finding a reasonable suspicion, in part, based on a defendant's nervous and agitated appearance); cf. United States v. Woods, 837 F. Supp. 525, 529 (W.D.N.Y. 1993) (involving, in part, a nervous defendant who takes action to avoid uniformed agents and agents in plain clothes); United States v. Dawdy, 46 F.3d 1427, 1429-30 (8th Cir. 1995). As indicated, Detective

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<sup>5</sup>The government does not dispute that the anonymous call and Detective Morrissey's verification of the defendant's identity are, without more, insufficient to constitute a reasonable suspicion that the defendant was involved in criminal activity.

Morrissey was also concerned that the defendant might be planning to rob the convenience store, which he knew had been robbed several months earlier by a black man armed with a handgun. See Peterson, 100 F.3d at 9 (involving officers' awareness of ongoing criminal activity in a high-crime neighborhood). Finally, the defendant's failure to answer Detective Morrissey's questions about whether he had a gun, when considered together with the other information Detective Morrissey had at that time, was sufficient to create a reasonable suspicion that the defendant was involved in criminal activity, and thus to conduct a limited investigative stop of the defendant.<sup>6</sup> Cf. Tehrani, 49 F.3d at 60 (involving a defendant's inability to answer officers' questions).

The defendant contends that Detective Morrissey's suspicion concerning the incident on Oakland Street dissipated when he saw that no physical altercation occurred, and thus cannot be considered in determining whether a reasonable suspicion existed at the time of the stop. He also argues that Detective Morrissey's suspicion that the defendant was planning to rob the convenience store dissipated when the defendant left the store after buying a soda. Consequently, the defendant claims, these factors were immaterial or insignificant in terms of their contribution to a reasonable suspicion to stop the defendant. However, each of these factors contributed to the reasonable suspicion when considered together with the other information, and they warranted further investigation by Detective Morrissey, particularly because they all occurred so closely in

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<sup>6</sup>Although the defendant's refusal to cooperate or answer the questions cannot, without more, constitute a reasonable suspicion, see Florida v. Bostick, 501 U.S. 429, 437 (1991); Florida v. Royer, 460 U.S. 491, 497-87 (1983), his failure to respond to the questions concerning a firearm may contribute to a finding of a reasonable suspicion when considered together with the other factors indicated. See United States v. Farmer, No. 98-2308, 2000 WL 639474, at \*8 (10th Cir. May 18, 2000), cert. denied, 121 S. Ct. 268 (2000).

time. See Sokolow, 490 U.S. at 9-10. Moreover, the defendant's decision to leave the convenience store is consistent with Detective Morrissey's suspicion that he had been recognized by the defendant as a police officer.

Accordingly, in light of the totality of circumstances occurring up to and including the point when the defendant refused to answer Detective Morrissey's questions concerning a firearm, the Court concludes that Detective Morrissey had a reasonable suspicion to believe that the defendant was involved in criminal activity and to stop and frisk him on that basis.

**B. Search Incident to Arrest**

Even if the limited investigative stop of the defendant had violated the Fourth and Fourteenth Amendments, the Court concludes that the defendant's struggle with Detective Morrissey and Officer Celio provided a separate, independent basis for a search of the defendant and discovery of the firearm. The defendant's resistance to Detective Morrissey and Officer Celio, which extended across the parking lot of the gas station, created probable cause to arrest him for interfering with a police officer under Connecticut law. See Conn. Gen. Stat. § 53a-167a. Thus, the officers were permitted to search the defendant incident to his arrest for interfering and to seize the firearm on that basis, regardless of the legality of the initial stop. See United States v. Crump, 62 F. Supp. 2d 560, 568 (D. Conn. 1999). Although the struggle arose from Detective Morrissey's attempt to pat-down the defendant and the defendant's immediate attempt to flee, the commission of the interfering offense by the defendant constituted a sufficient causal break from the pat-down so as to allow the firearm to be admitted as evidence in this case. See Crump, 62 F. Supp. 2d at 569; see also Dawdy, 46 F.3d at 1430-31. But see United States v. Hoskie, No.

3:99-CR-128(EBB), 2000 WL 1052022, at \*9 (D. Conn. July 26, 2000). Nor is there any indication in this case that Detective Morrissey acted in bad faith or otherwise intended to cause the struggle with the defendant, which could alter the Court's conclusion. See Crump, 62 F. Supp. 2d at n.7.<sup>7</sup>

SO ORDERED this \_\_\_\_\_ day of November 2000, at Hartford, Connecticut.

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Christopher F. Droney  
United States District Judge

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<sup>7</sup>In addition, the illegality of an arrest is not a defense to the charge of interfering with a police officer under Connecticut law. A defendant may not resist an unlawful arrest as long as the arresting officer acts in good faith within the scope of his duties, or unless the resistance involves an unlawful entry into the defendant's home. See Conn. Gen. Stat. § 53a-23; In re Adalberto S., 604 A.2d 822, 827-28 (Conn. App. Ct.), cert. denied, 606 A.2d 1328 (Conn. 1992); State v. Biller, 501 A.2d 1218, 1220-21 (Conn. App. Ct. 1985), cert. denied, 506 A.2d 146 (Conn. 1986); State v. Privitera, 476 A.2d 605, 610 (Conn. App. Ct. 1984).

To the extent that the defendant attempts to distinguish the intervening criminal activity in Crump from the circumstances of this case, the Court concludes that the distinction is without merit. In each case, the police officers had probable cause to arrest the defendant for interfering with a police officer. The police officers therefore had a separate, independent basis for searching each defendant incident to arrest, regardless of the legality of the initial investigative stop.