

investigate a light blue Maxima that was possibly being stolen by a black male, wearing a red and blue shirt. See Transcript at 8. According to the tip received by police, the location of the car was reported to be at Hobart and Filbert Streets. See id. Schrack testified that the radio call indicated that he was investigating a priority assignment. See id. at 6-8. Schrack testified that this area is known as a high crime area. See id. at 18.

In less than a minute, Sergeant Schrack proceeded to this location and observed on the east side of the street a light blue Maxima with two black males in the vehicle. See id. at 8, 13. One black man in a blue and red shirt, who was later identified as Mr. Keija Oakley ("Oakley") and is a co-defendant in this case, was in the front passenger's seat. See id. at 8. Another black male, who is the Defendant in this instant matter, was seated in the driver's seat. See id. As Sergeant Schrack approached the vehicle, he stopped approximately about a half a car length from the light blue Maxima. See id. at 8-9. The Maxima was running and he observed the car start to pull out towards Sergeant Schrack's car. See id. Schrack started to exit his vehicle and he observed the car slowly proceed toward him. See id. Schrack at this point drew his service revolver and he ordered the driver of the vehicle to place the vehicle in park and to shut off the vehicle. See id. He then ordered the males to show their hands and place them on the dashboard. See id. Schrack stated that he drew his revolver

because, in his experience with stolen cars, weapons are often found in the cars. See id. at 20.

Neither male complied and the vehicle still inched toward Sergeant Schrack. See id. at 9. Sergeant Schrack testified he was concerned at this time the car was going to hit him. See id. Schrack again ordered Defendant to place the car in park. See id. He also ordered the males to show their hand and place them on the dashboard. See id. Neither male complied. See id. After a third order, the Defendant placed the car in park, shut off the vehicle and exited the car. See id. at 9-10. Schrack testified that he was concerned for his safety at this time. See id. at 20.

Oakley remained in the car and he was making motions below the dashboard with his hands hidden from Schrack's line of vision. See id. at 10, 14. Schrack ordered Defendant to lie on the ground, but he began to walk away from the officer. See id. 10-11. Based on this behavior, he believed Defendant had stolen the car and was attempting to flee. See id. at 20. At this time, another black male, who identified himself as a state agent, proceeded past the light blue Maxima Schrack was investigating and apprehended Defendant. See id. at 11. Schrack testified that Oakley again failed to comply with his order to place his hands on the dashboard. See id. Schrack proceeded to the passenger side door and removed Oakley from the car. See id. at 12. Schrack holstered his weapon when he determined that Oakley did not have anything in

his hands. See *id.* While he was handcuffing him, he noticed a clear plastic baggie which he believed contained crack cocaine. See *id.* Currency was also recovered. See *id.*

Defendant now moves to suppress the physical evidence seized in this matter.

II. DISCUSSION

This case is governed by the analysis first applied in *Terry v. Ohio*, 392 U.S. 1 (1968). In *Terry*, the United States Supreme Court held that an officer may, consistent with the Fourth Amendment, conduct a brief, investigatory stop when the officer has a reasonable, articulable suspicion that criminal activity is afoot. See *id.* at 30. While "reasonable suspicion" is a less demanding standard than probable cause and requires a showing considerably less than preponderance of the evidence, the Fourth Amendment requires at least a minimal level of objective justification for making the stop. See *United States v. Sokolow*, 490 U.S. 1, 7 (1989). The officer must be able to articulate more than an "inchoate and unparticularized suspicion or 'hunch'" of criminal activity. See *Terry*, 392 U.S. at 27. Reasonable suspicion is dependent upon both the content of information possessed by police and its degree of reliability. See *Alabama v. White*, 496 U.S. 325, 330 (1990). Both factors--quantity and quality--are considered in the "totality of the circumstances--the

whole picture," that must be taken into account when evaluating whether there is reasonable suspicion. See *id.*

An individual's presence in an area of expected criminal activity, standing alone, is not enough to support a reasonable, particularized suspicion that the person is committing a crime. *Brown v. Texas*, 443 U.S. 47, 51 (1979). But officers are not required to ignore the relevant characteristics of a location in determining whether the circumstances are sufficiently suspicious to warrant further investigation. See *Illinois v. Wardlow*, 120 S.Ct. 673, 675 (2000) Accordingly, the Supreme Court has previously noted the fact that the stop occurred in a "high crime area" among the relevant contextual considerations in a Terry analysis. See *Adams v. Williams*, 407 U.S. 143, 144 and 147-148 (1972).

Cases have also recognized that nervous, evasive behavior is a pertinent factor in determining reasonable suspicion. See *Wardlow*, 120 S.Ct. at 676; *United States v. Brignoni-Ponce*, 422 U.S. 873, 885 (1975); *Florida v. Rodriguez*, 469 U.S. 1, 6, (1984). In reviewing the propriety of an officer's conduct, courts do not have available empirical studies dealing with inferences drawn from suspicious behavior, and we cannot reasonably demand scientific certainty from judges or law enforcement officers where none exists. See *id.* Thus, the determination of reasonable suspicion must be based on commonsense judgments and inferences about human behavior. See *United States v. Cortez*, 449 U.S. 411, 418, (1981).

Here, Sergeant Schrack received a priority assignment radio call indicating a potential theft at Hobart and Filbert of a light blue Maxima by a black male with a red and blue shirt. See Transcript at 6-8. Schrack, according to his testimony, proceeding to the location within a minute. See *id.* at 8. Schrack testified that he knew this area to be a high crime area. See *id.* at 18. As he proceeded to the location, he discovered a light blue Maxima with a black male in the front passenger's seat who was wearing a red and blue shirt. See *id.* at 8, 13.

At this point, Sergeant Schrack was simply investigating a possible car theft. See *id.* at 17. When an officer, without reasonable suspicion or probable cause, approaches an individual, the individual has a right to ignore the police and go about his business. *Florida v. Royer*, 460 U.S. 491, 498 (1983). And any "refusal to cooperate, without more, does not furnish the minimal level of objective justification needed for a detention or seizure." *Florida v. Bostick*, 501 U.S. 429, 437 (1991).

In this case, however, Defendant and the other male in the red and blue shirt acted in a manner which Sergeant Schrack believed threatened him. See Transcript at 8-9. He testified that the car continued to edge closed to him. See *id.* at 9. This danger escalated when they failed to comply with several orders by Schrack to place their hands on the dashboard. See *id.* Despite Schrack's

orders, Oakley continued to act furtively with his hand out of Schrack's line of vision. See *id.* at 10, 14.

Based on the totality of the circumstances, the record supports a finding that Schrack acted with reasonable suspicion. First, the radio call indicated a black male with a red and blue shirt was attempting to steal a light blue Maxima at Hobart and Filbert and these facts were corroborated by Schrack within a few minutes after the radio call. Secondly, upon approaching the vehicle, the Defendant in the light blue Maxima endangered Schrack when he moved the car in the officer's direction. Furthermore, the officer's concern for his safety was heightened when the male in the passenger seat acted furtively with his hand out of Schrack's line of vision. Third, Schrack noted that the area around Hobart and Filbert is a high crime area. Finally, in Schrack's experience, in situations where a stolen car is involved, weapons are often recovered.

The instant case, contrary to assertions by Defendant's counsel, is clearly distinguishable from the Supreme Court's opinion in *Florida v. J.L.*, 120 S.Ct 1375 (2000) and the Third Circuit's opinion in *United States v. Roberson*, 90 F.3d 75 (3rd Cir. 1996). Although both these cases involve anonymous tips and the facts are significantly different.

In *J.L.*, an anonymous caller reported to the Miami-Dade Police that a young black male standing at a particular bus stop and

wearing a plaid shirt was carrying a gun. See J.L., 120 S.Ct. 1375, 1377 (2000). Sometime after the police received the tip, two officers were instructed to respond. See id. They arrived at the bus stop six minutes later and saw three black males "just hanging out there." See id. One of the three, J.L., was wearing a plaid shirt. Apart from the tip, the officers had no reason to suspect any of the three of illegal conduct. See id. None of the individuals brandished a firearm, acted threatening or otherwise acted unusual. See id. One of the officers approached J.L., frisked him and seized a gun. See id. J.L. was charged with carrying a concealed weapon. The United States Supreme Court held the stop was unconstitutional because the anonymous tip lacked indicia of reliability. See id. at 1380.

In Roberson, a 911 operator received an anonymous call stating that a heavy-set black male wearing dark green pants, a white hooded sweatshirt and a brown leather jacket was selling drugs on the 2100 block of Cheltenham Avenue. See Roberson, 90 F.3d at 75. The 911 operator had no other information about the caller. See id. at 75-76. The police received a tip over the police radio. See id. 76. Two officers who were patrolling in a marked police vehicle responded and arrived at the scene 30 to 40 seconds later. See id. They observed a man meeting the tipster's description standing on the corner. See id. The police observed no drug activity. See id. The police exited their vehicle with guns drawn

and ordered the defendant away from a parked car. See *id.* As they approached him, they observed the butt of a gun protruding from his pants. See *id.* The police patted him down and seized from his person a 9mm semi-automatic pistol and drugs. See *id.* The defendant was arrested and charged with a violation of U.S.C. § 922(g)(1). See *id.* On appeal, the Third Circuit held that the police did not have reasonable suspicion for an investigative stop where they received a fleshless anonymous tip that provides only readily observable information and they themselves observe no suspicious behavior. See *id.* at 80.

The holdings in *J.L.* and *Roberson* do not apply in the instant case because the facts are distinguishable. In *J.L.* the Court reasoned that there was no reasonable suspicion based on the tip because it lacked reliability. See *J.L.*, 120 S.Ct. at 1380. The police in *J.L.* could have corroborated the tip, but did not attempt to do so. See *id.* In *Roberson*, the Third Circuit reasoned that the police should have observed the defendant or established surveillance in order to determine if the defendant was engaged in criminal activity. The instant case is different.

In the instant matter, Sergeant Schrack responded to the radio call with purpose of determining if any criminal activity was occurring. See Transcript at 16-17. The nature of the radio call, a theft in progress, required Schrack to proceed to the scene and determine if a crime was transpiring. Unlike in *J.L.* and *Roberson*,

where the police could have observed the defendant to determine if criminal activity was afoot, the police officer here was presented with a dangerous situation during his investigation. In attempting to corroborate whether the tip accurately indicated that the Maxima was in fact being stolen, Sergeant Schrack was threatened. Thus, Schrack did not have time to corroborate. Based on the circumstances, his experience and the high crime in the neighborhood, Schrack acted appropriately in attempting to determine if the car was stolen.

Additionally, J.L. and Roberson are distinguishable because those cases involved a tip about drug transactions or possession of a gun. In those cases, corroboration of drug activity or possession of a gun could have been observed while allowing police adequate time to respond. Here, to require the police to observe the situation in order to verify the tipster's information would have led, in this case, to the absurd result of allowing Defendant to drive away in a vehicle that was reported as being stolen. To adopt such a policy would undermine the police department's ability to effectively address reports of car thefts in progress. The Court concludes that the facts in this case are significantly different from those in J.L. and Roberson and thus require a different decision.

III. CONCLUSION

Considering the behavior of the Defendant and his cohort, the

fact Schrack verified the tip, that the area around Filbert and Hobart is a high crime area and the nature of the crime, the Court concludes that in the totality of the circumstances, Schrack had reasonable suspicion to stop defendant. Accordingly, Defendant's motion is denied.

An appropriate Order follows.

