

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA	:	CRIMINAL ACTION
	:	
v.	:	
	:	
JIMMY TORRES	:	NO. 01-531-1

**FINDINGS OF FACT, CONCLUSIONS OF
LAW AND ORDER**

HUTTON, J.

February 20, 2002

On September 4, 2001, Defendant Jimmy Torres was indicted for Possession of a Firearm by a Convicted Felon, in violation of 18 U.S.C. §922(g). On October 25, 2001, Defendant entered a plea of Not Guilty. Defendant filed a Motion to Suppress the firearm recovered in this case on November 2, 2001, and the Government filed its Response on January 18, 2002. A Suppression Hearing was held in this Court on January 22, 2002. The Government filed a Supplemental Memorandum on January 30, 2002, and the Defendant filed a Supplemental Memorandum on February 1, 2002. The Government filed a Response to Defendant's Supplemental Memorandum on February 5, 2002. Upon consideration of the above filings, the testimony presented at the hearing, and exhibits received in evidence at the hearing, the Court makes the following findings of fact and conclusions of law.

I. FINDINGS OF FACT

1. Lieutenant Sean Doris is employed by the Philadelphia Police Department, where he has worked for twenty-five (25) years. Lt. Doris is in charge of the Narcotics Strike Force and is responsible for overseeing street sales operations of drug dealing. The Narcotics Strike Force focuses on high crime areas known for drug dealing and drug-related crimes. See Doris Test. at 3, lines 8-25. When members of the Narcotics Strike Force are conducting street operations, Lt. Doris stays in the vicinity, in his vehicle, to oversee the operations. See id. at 4, lines 6-16.

2. Late in the afternoon on November 12, 2000, Lt. Doris was in his patrol car on the 200 Block of Ontario Street. His squad was working on a street sales operation approximately two blocks from that corner. Lt. Doris was listening to the transmissions, making sure that the buyers were being tracked and arrested in a quick and safe manner. See id. at 5, lines 2-16.

3. Lt. Doris identified the area he was in as the K Sector of the Twenty-Fifth District, which is located in the East Division of North Philadelphia. See id. at 5, lines 22-25; pg. 6, lines 1-2. Lt. Doris stated that the Twenty-Fifth District is a high-crime area with a large amount of homicides and an extremely large quantity of drugs. This area has been targeted as a high-crime

area by both the Philadelphia Police and Federal law Enforcement officials. See id. at 6, lines 7-21.

4. While Lt. Doris was parked at the 200 Block of Ontario Street on November 12, 2000, at approximately 4:30 PM, two elderly Hispanic males in a pickup truck pulled next to Lt. Doris and told him that there was a male with a gun on Lawrence Street. See Doris Test. at 10, lines 12-19. Lt. Doris put his car in reverse and backed up to Lawrence Street, where he observed a Hispanic male standing in the middle of the street, approximately twenty to twenty-five feet away, who pulled out a gun and started firing the gun at a group of males standing on the sidewalk across the street. See id. at 10, lines 20-24.

5. The Hispanic male who fired the gun, after seeing Lt. Doris, began running southbound on Lawrence Street. Lawrence Street is a one-way street that runs northbound. Lt. Doris attempted to drive southbound on Lawrence Street, against the flow of traffic, in pursuit of the Hispanic male. Lt. Doris was unable to keep pace with the Hispanic male due to the heavy flow of oncoming traffic. See id. at 12, lines 4-19.

6. Lt. Doris identified this individual as a Hispanic male, approximately five foot five to five foot six, approximately 135-

140 pounds, wearing dark clothing. See id. at 12, lines 22-25.

7. The Hispanic male was running quickly southbound down the center of Lawrence Street. See id. at 14, lines 3-6. Lt. Doris had made it about three-fourths of the way down Lawrence Street when the Hispanic male turned the corner onto Westmoreland Street. See Doris Test. at 14, lines 10-15. Westmoreland Street is a one-way street running eastbound. See id. at 14, lines 19-25. Lt. Doris attempted to turn the corner onto Westmoreland Street, going westbound against the flow of traffic, but was unable due to heavy oncoming traffic. See id. at 14, lines 16-25.

8. Immediately after turning the corner onto Westmoreland Street, Lt. Doris pulled off to the side of the road into an empty spot in order to let the oncoming traffic get by. See id. at 15, lines 8-13. Lt. Doris was unable to proceed westbound down Westmoreland Street due to the heavy oncoming traffic. See id. at 15, lines 10-13.

9. After Lt. Doris turned onto Westmoreland Street and pulled into the empty spot, he noticed a small car parked directly in front of him. See Doris Test. at 16, lines 3-5. Parked directly behind the small car was a large Chevrolet Suburban automobile. The driver's side door of the Suburban was open, there was a male standing

inside the door frame, and there was another male sitting in the driver's seat. See id. at 15, lines 24-25, pg. 16, lines 1-2. Approximately forty-five seconds to a minute elapsed from the time Lt. Doris first observed the male firing the gun until Lt. Doris observed the Defendant and the other male individual standing outside the Suburban. See id. at 21, lines 8-13.

10. Lt. Doris and the male standing inside the door frame made eye contact with one another. At that point the male individual who was standing inside the door frame threw his hands up in the air and took two or three steps backward. See id. at 16, lines 6-25.

11. Lt. Doris then exited his vehicle but had not yet pulled out his weapon. See id. at 18, lines 14-16. At that point, Lt. Doris observed the Defendant, who was sitting in the driver's side of the Suburban, put his hands beneath his legs and lift his body up. Lt. Doris believed that, based on the Defendant's bodily movements, he was trying to conceal something underneath his legs. See Doris Test. at 17, lines 10-14; pg. 18, lines 4-12. When Lt. Doris exited his vehicle, he was approximately ten to fifteen feet away from the defendant and the male standing inside the door frame. See id. at 18, lines 1-3.

12. After Lt. Doris exited his vehicle and observed the Defendant

reach down and place his hands between his legs, Lt. Doris pulled his weapon and ordered the Defendant and the other male individual to place their hands in the air. See id. at 19, lines 1-8. The Defendant ignored Lt. Doris' first demand to raise his hands in the air. See id. at , lines 1-10. Lt. Doris then made a second demand that the Defendant get out of the car and place his hands in the air, and the Defendant complied. See id. at 19, lines 6-13. Based on his experience, Lt. Doris believed that the Defendant was trying to hide either a gun or drugs. See Doris Test. at 19, lines 20-25; pg. 30, lines 10-13.

13. Lt. Doris testified that he ordered the Defendant out of the car because of the Defendant's suspicious movements and because he did not know if the Defendant was the individual he had been chasing. See id. at 19, lines 20-25. The Defendant is a slender built Hispanic male and had a facial profile that was similar to the individual that Lt. Doris had been chasing. See id. at 20, lines 9-11.

14. After the Defendant stepped out of the vehicle, he closed the door of the Suburban behind him. See id. at 22, lines 4-11. Lt. Doris had both males place their hands on the wall of a row home located outside of the Suburban. See id. at 20, lines 16-18. Lt. Doris waited for backup to arrive and they conducted a Terry frisk

of the two males. See Doris Test. at 21, lines 1-5. While the officers were frisking the Defendant and the other male individual, Lt. Doris walked over to the Suburban and looked in the window at the front driver's side seat and observed a .40 caliber handgun in plain view on the seat. See id. at 21, lines 20-23. Lt. Doris was able to view the weapon before he opened the door of the Suburban. See id. at 22, lines 13-17. When Lt. Doris retrieved the weapon, he noticed that the serial number was obliterated. See id. at 22, lines 18-25. Lt. Doris also noted that the gun was completely loaded, the magazine was in the handle of the gun and there was no round in the chamber. See id. at 23, lines 6-9. When Lt. Doris recovered the gun from the seat of the Suburban and noticed the obliterated serial number, he placed the Defendant under arrest. See Doris Test. at 23, lines 17-19.

15. Lt. Doris testified that, at the time the Defendant was being frisked, he wasn't sure if the Defendant was the individual that Doris had been chasing. However, once Lt. Doris found the weapon on the seat of the Suburban, Doris testified that he "thought for sure" he had apprehended the individual he was chasing. See id. at 23, lines 20-25.

16. Lt. Doris testified that it was only after further investigation that he discovered that the Defendant was not the

individual that he had been chasing. Lt. Doris came to this conclusion after discovering that there was dust and dirt in the bore of the gun that he seized, and after smelling gun oil rather than gun powder. See id. at 24, lines 1-15.

17. Lt. Doris testified that his observation of the other male individual who was standing outside the Suburban was suspicious because this individual threw his hands up, for no apparent reason, upon seeing Lt. Doris. Lt. Doris stated that he did not know if this individual was involved in the shooting, if he was being robbed, or if his car was being stolen. See id. at 29, lines 17-25.

18. Lt. Doris testified that, on the day in question, he was in uniform and was driving a marked police vehicle. See id. at 30, lines 14-17.

II. CONCLUSIONS OF LAW

1. The Fourth Amendment to the United States Constitution prohibits "unreasonable searches and seizures" by the Government, and its protections extend to brief investigatory stops of persons or vehicles that fall short of traditional arrest. Terry v. Ohio, 392 U.S. 1, 9 (1968); United States v. Cortez, 449 U.S. 411, 417 (1981). Because the "balance between the public interest and the individual's right to personal security," United States v.

Brignoni-Ponce, 422 U.S. 873, 878 (1975), tilts in favor of a standard less than probable cause in such cases, the Fourth Amendment is satisfied if the officer's action is supported by reasonable suspicion to believe that criminal activity "may be afoot." United States v. Sokolow, 490 U.S. 1, 7 (1989). Therefore, under the Supreme Court's decision in Terry v. Ohio, a police officer is permitted to stop and briefly detain an individual for investigatory purposes if the officer has reasonable suspicion that criminal activity may be afoot. See Terry, 392 U.S. at 30.

2. Specifically, the Supreme Court in Terry held that, where a police officer observes unusual conduct which leads him 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, and where nothing in the initial stages of the encounter serves to dispel his reasonable fear for his own or others' safety, he is entitled for the protection of himself and others in the area to conduct a carefully limited search of the outer clothing of such persons in an attempt to discover weapons which might be used to assault him. See Terry, 392 U.S. at 30.

3. When discussing how reviewing courts should make "reasonable suspicion" determinations, the Supreme Court has said repeatedly that courts must look at the "totality of the circumstances" of

each case to see whether the detaining officer has a "particularized and objective basis" for suspecting legal wrongdoing. See Cortez, 449 U.S. at 417, 418. This process allows officers to draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that "might well elude an untrained person." Id. at 418.

4. Lt. Doris testified that he has been an police officer for twenty-five years, and is currently in charge of the Narcotics Strike Force and responsible for overseeing street sales operations. See Doris test. at 3, lines 8-25. Based on a tip received from an unidentified individual, Lt. Doris spotted and pursued a Hispanic male who had fired a gun into a crowd of people. See id. at 10, lines 20-24. Lt. Doris was pursuing this Hispanic male though a high-crime section of Philadelphia known for its high volume of drugs and violent crime. See id. at 6, lines 7-21.

5. Lt. Doris further testified that he lost sight of the Hispanic male as this individual turned onto Westmoreland Street. See id. at 14, lines 10-15. Lt. Doris was able to turn onto Westmoreland Street approximately forty-five seconds to a minute after Doris initially witnessed the Hispanic male firing the gun. See id. at 21, lines 8-13. Immediately after turning onto Westmoreland

Street, Lt. Doris saw the Defendant sitting in a large Chevrolet Suburban, and another unidentified male standing outside of the Suburban. See id. at 15, lines 24-25. Lt. Doris testified that the Defendant had a similar profile to the individual he was chasing. See id. at 20, lines 9-11.

6. Lt. Doris testified that both the Defendant and the unidentified male were making suspicious movements. The unidentified male standing outside the Suburban put his hands up in the air and took steps backward immediately upon seeing Lt. Doris. See id. at 16, lines 6-25. Lt. Doris stated that he did not know if the unidentified male was being robbed or if his car was being stolen. See id. at 29, lines 17-25. The Defendant was putting his hands between his legs and lifting up his body. See id. at 17, lines 10-14. Lt. Doris believed that, based on the Defendant's bodily movements, he was possibly trying to hide a weapon under his legs. See id. at 17, lines 10-14.

7. This Court concludes, based on the facts mentioned above, that Lt. Doris had reasonable suspicion and was justified in stopping the Defendant and conducting a Terry frisk. Under the totality of the circumstances, Lt. Doris had reasonable suspicion to believe that criminal activity was afoot based on the fact that Doris was in pursuit of a Hispanic man he witnessed firing a gun into a crowd

of people in a high crime area, he saw this individual turn onto Westmoreland Street and then lost sight of him, and immediately after arriving on Westmoreland Street, Doris saw both the Defendant and an unidentified individual making suspicious movements which led Lt. Doris to believe that the Defendant was hiding a weapon. The brief detention of the Defendant by Lt. Doris, therefore, did not violate the Defendant's Fourth Amendment rights.

8. Moreover, Lt. Doris saw the gun in plain view on the seat of the Suburban before he retrieved it. It is well settled that searches and seizures of property in plain view are presumptively reasonable. See Payton v. New York, 445 U.S. 573, 586-587 (1980). What a person knowingly exposes to the public is not a subject of Fourth Amendment protection. See California v. Ciraolo, 476 U.S. 207, 213 (1986) (quoting Katz v. United States, 389 U.S. 347, 351 (1967)). Therefore, Lt. Doris' seizure of the gun did not violate the Defendant's Fourth Amendment rights.

Under the totality of the circumstances, Lt. Doris had reasonable suspicion to believe that criminal activity was afoot and, therefore, was justified in detaining the Defendant. The gun that was seized by Lt. Doris was in plain view on the driver's side seat of the Suburban. Accordingly, Lt. Doris' actions did not violate the Fourth Amendment rights of the Defendant.

An appropriate Order follows.

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O R D E R

AND NOW, this 20th day of February, 2002, upon consideration of the Defendant's Motion to Suppress (Docket No. 6), the Government's Response thereto (Docket No. 9), the testimony and evidence presented at the suppression hearing on January 22, 2002, the Government's Supplemental Memorandum in Opposition to Defendant's Motion to Suppress (Docket No. 13), Defendant's Supplemental Memorandum in Support of his Motion to Suppress (Docket No. 14), and the Government's Response to Defendant's Supplemental Memorandum in Support of His Motion to Suppress (Docket No. 15), IT IS HEREBY ORDERED that the Defendant's Motion is **DENIED**.

BY THE COURT:

HERBERT J. HUTTON, J.