



The government presented the testimony of the two arresting officers, City of Philadelphia police officers Richard Riddick and Timothy Wade. Officer Wade testified that at about 7:15 P.M. on January 13, 1998, he received a telephone call at the 12th District from an eyewitness to a previous shooting in Philadelphia. (Suppression Hearing Transcript ("S.T.") 5). The witness, Joseph Halloran ("Halloran") told Officer Wade that the individual who had committed the shooting and was wanted by the police, John Rightly ("Rightly"), was inside Dominator's Bar at 7100 Elmwood Avenue. (S.T. 5). Officer Wade testified that a police detective from the 12th District told him to arrest Rightly. (S.T. 6).

According to Officer Wade, he and Officer Riddick picked up Halloran in their patrol car before driving to 7100 Elmwood, Dominator's Bar. (S.T. 7). Halloran pointed out Rightly to Officer Wade before the two officers entered the bar. (S.T. 9). Other uniformed officers entered the bar some time after Officer Wade and Officer Riddick. (S.T. 8). Rightly was seated at the bar. (S.T. 12). DeFelice was seated at the bar just to the left of Rightly. (S.T. 12). Officer Wade approached Rightly and asked him his name. (S.T. 13). Officer Wade testified that he asked Rightly to stand up and place his hands on the bar. (S.T. 13). He patted down Rightly, but no weapons were recovered. (S.T. 13-14). Officer Wade testified that he then placed Rightly under arrest for the prior shooting. (S.T. 13). Officer Wade testified that he did

not frisk or search anyone in the bar other than Rightly. (S.T. 19.) He said that because his attention was on Rightly, he did not observe the interaction between Officer Riddick and DeFelice. (S.T. 25-26.) Officer Wade testified that he and Officer Riddick were not inside the bar for much longer than five minutes. (S.T. 19.)

Officer Riddick testified that during this time, he was standing to the left of Officer Wade. (S.T. 40). Officer Riddick, who stands six feet five and half inches tall, stood directly over DeFelice's right shoulder while DeFelice sat at the bar. (S.T. 34, 40). Officer Riddick testified that he observed DeFelice, who had both hands on the bar, reach towards his waistband with his right hand. (S.T. 40, 43). Officer Riddick testified that he saw the butt of a handgun protruding from DeFelice's waistband. (S.T. 40, 86). Officer Riddick testified that DeFelice was wearing a jacket, but the jacket was not covering the gun. (S.T. 43, 85-86.) Officer Riddick testified that he "grabbed [DeFelice] and [] spun him around [in his chair] and [] recovered the firearm." (S.T. 43). Officer Riddick testified that DeFelice said, "I wasn't going to do anything." (S.T. 40.) Officer Riddick then asked DeFelice whether he had a license for this firearm. (S.T. 46.) Officer Riddick testified that DeFelice said, no. (S.T. 46.) Officer Riddick testified that after he recovered the firearm from DeFelice, he patted DeFelice down for more weapons. (S.T. 46). No

other weapons were recovered from DeFelice. (S.T. 46.) Officer Riddick then placed DeFelice under arrest. (S.T. 46.)

Officer Riddick testified that seated to the left of DeFelice was another man. (S.T. 48.) This man was Anthony Mangano ("Mangano"). (S.T. 239). After some questioning, Officer Riddick testified that Mangano consented to a "quick pat down." (S.T. 45, 48-49.) Officer Riddick testified that he searched Mangano for his protection because of the close proximity Mangano was sitting to DeFelice and Rightly. (S.T. 48-49.) No weapons were found on Mangano and he was not arrested. (S.T. 48-49.) Several other males were inside the bar during this time. (S.T. 48-49.) They were all seated further from Rightly than DeFelice and Mangano. (S.T. 48-49.) Officer Riddick said that he did not frisk or search any of these other males. (S.T. 48-49.) He also testified that there was no search of the bar itself. (S.T. 48.) Officer Riddick testified that he and Officer Wade were inside the bar for about ten or twelve minutes. (S.T. 49.)

Defendant's witnesses Dominic Gricco, Kathleen Shaw, Sean Harrity and Anthony Mangano testified that they observed the arrest of DeFelice from various vantage points. As this Court does not find these witnesses credible, it is not necessary to describe their testimony. Also before the Court is the testimony of Michele

Miller before the federal grand jury.<sup>1</sup> Since her testimony is of

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<sup>1</sup>The parties stipulated to the testimony of Michele Miller before the federal grand jury due to a medical condition that prevented her from testifying at the suppression hearing.

no consequence to the issue before the Court, her testimony need not be described as well.

## **II. FINDINGS OF FACT**

Based on the testimony and the exhibits, this Court finds the following facts: Several police officers went to 7100 Elmwood Avenue, Dominator's Bar at about 7:30 P.M. on January 13, 1998, to arrest John Rightly who was wanted for a prior shooting. Officers Wade and Riddick entered the bar and were followed by some other police officers. Seated at the bar from right to left were Rightly, DeFelice and Mangano. Officer Wade arrested Rightly.

While Officer Wade was engaged with Rightly, DeFelice removed his right hand from the bar and reached for his waistband. DeFelice was wearing a jacket. It did not, however, fully conceal the gun he had in his waistband. DeFelice was seated at the bar. Officer Riddick stood directly behind his right shoulder. At six feet five and half inches tall, Officer Riddick had a unique vantage point from which to look down upon DeFelice. Not only was DeFelice's actions suspicious, the butt of the gun was observed by Officer Riddick. Officer Riddick seized the gun from DeFelice while he was still seated. Officer Riddick asked DeFelice whether he had a license to carry this firearm, and he said no. Officer Riddick then frisked DeFelice. No other weapons were found. Officer Riddick arrested DeFelice.

Officer Riddick asked Mangano whether he had any weapons. Mangano replied, no. Officer Riddick asked Mangano whether he could search him. After Mangano consented to a search, Officer Riddick patted down Mangano, but no weapons were found. The police did not search the bar. No one else in the bar was searched besides Rightly, DeFelice, and Mangano. Only Rightly and DeFelice were arrested.

## II. DISCUSSION

### A. The Gun

Searches and seizures "conducted outside the judicial process, without prior approval by a judge or magistrate are per se unreasonable under the Fourth Amendment--subject to a few established and well delineated exceptions." Thompson v. Louisiana, 469 U.S. 17, 19-20 (1984) (quoting Katz v. United States, 389 U.S. 347, 357, 88 S.Ct. 507, 19 L.Ed.2d 576 (1967) (footnote omitted)). The most notable exception to the warrant requirement is the Terry stop. In Terry v. Ohio, 392 U.S. 1 (1968), the Supreme Court held that certain investigatory stops were permissible without probable cause, as long as "in justifying the particular intrusion, the police officer [is] able to point to specific and articulable [sic] facts which, taken together with rational inferences from those facts, reasonably warrant the intrusion." Id., at 20-21.

This case falls within the scope of the officers' authority as defined in Terry. Under Terry, police officers have the authority to briefly detain and perform a pat down search for weapons on any individual who the officers reasonably believe may be armed and pose a danger to them. Id., at 30. Indeed, in his memorandum in support of his motion to suppress, the Defendant concedes that "if this Court credits the testimony of Officer Riddick that Mr. DeFelice reached for his waistband and rejects the defense evidence that Mr. DeFelice did not make any motions or move either of his hands from the bar until after he was searched," then Officer Riddick would have had the legal authority to frisk DeFelice for weapons.

In this case, the police officers went into the bar to arrest John Rightly for shooting another male. When they entered the bar to arrest Rightly, he was seated at the bar with DeFelice. As Officer Wade was dealing with Rightly, DeFelice reached with his right hand toward his waist area, and Officer Riddick feared for his safety. Officer Riddick testified that he actually saw the butt of the handgun in the waistband of DeFelice. It was perfectly reasonable for Officer Riddick to believe that DeFelice may shoot the officers with it to avoid the arrest of Rightly. Because this Court finds that not only did DeFelice reach for his waistband, but his gun was apparent to Officer Riddick, Officer Riddick had the

legal authority to frisk DeFelice. Accordingly, Defendant's motion to suppress the gun is denied.

**B. The Grand Jury Testimony of Civilian Witnesses**

The Defendant alleges that the Government abused the grand jury process by calling potential defense witnesses before the grand jury to question them about their observations on the night that DeFelice was arrested. The Defendant relies on no authority for its contention.

The law is clear that a grand jury proceeding is accorded a presumption of regularity, which generally may be dispelled only upon particularized proof of irregularities in the grand jury process. United States v. R. Enter., Inc., 498 U.S. 292 (1991); United States v. Mechanik, 475 U.S. 66, 75 (1986). The Defendant has the burden of demonstrating an abuse of the grand jury process. United States v. Breitzkreutz, 977 F.2d 214, 217 (6th Cir. 1992). In light of the presumption in favor of the regularity of grand jury proceedings, and the burden placed on the defendant to demonstrate grand jury abuse, it is clear that the Defendant has not demonstrated any abuse of the grand jury process in the questioning of potential defense witnesses before the grand jury in this case.

An Appropriate Order follows.

