

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

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EDDIE SAMOLOT,	:	
	:	
Plaintiff	:	CIVIL ACTION
	:	
v.	:	No. 04-5403
	:	
KARL GESCHWINDT and	:	
KRISTOPHER BACCARI,	:	
	:	
Defendants	:	

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ARNOLD C. RAPOPORT,  
UNITED STATES MAGISTRATE JUDGE

March 14, 2006

**MEMORANDUM**

Presently before this Court are the parties' Cross-Motions for Summary Judgment. For the reasons that follow, Plaintiff's Motion will be denied and Defendants' Motion will be granted.

**Procedural History**

On November 19, 2004, Plaintiff, Eddie Samolot ("Mr. Samolot"), initiated this matter by filing a two-count Complaint against Defendants, Karl Geschwindt ("Sergeant Geschwindt") and Kristopher Baccari ("Officer Baccari"). In Count I, Mr. Samolot claims that the Defendants violated his rights under the Fourth and Fourteenth Amendments of the United States Constitution by arresting him without probable cause. 42 U.S.C. § 1983. In Count II, Mr. Samolot avers that the Defendants violated his right to be free from illegal seizures pursuant to the Fourth and

Fourteenth Amendments of the United States Constitution. 42  
U.S.C. § 1983.

The action is before the court on federal question jurisdiction. See 28 U.S.C. §§ 1331, 1343. Venue is appropriate because Mr. Samolot alleges that the facts and circumstances giving rise to his causes of action occurred in Lehigh County, a county within the geographical boundaries of the United States District Court for the Eastern District of Pennsylvania. See 28 U.S.C. §§ 118, 1391.

### **Facts**

Based upon the record papers, exhibits, depositions, and the parties' statements of the facts, the pertinent facts are as follows:

At 3:35 p.m. on June 10, 2004, Emmaus resident Katie Gallagher<sup>1</sup> called 911 to report that a male individual had been threatening to kill her pet dog the prior week and for the past three days had begun walking past her house with a gun. Mrs. Gallagher expressed concern that this individual might shoot at her dog, misfire, and end up shooting a little girl that lived next door who was over playing with her dog. Mrs. Gallagher was advised that a police officer would be dispatched to her house. A general dispatch was made by Lehigh County Radio following the

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<sup>1</sup> At the time of the incident, the complainant, Katie Gallagher, was not yet married and was known by her maiden name of Condell. Throughout this opinion, we will address her by her married name of Gallagher.

call identifying it as a 10-49 "person with weapon" matter. Both of the Defendants, in separate police vehicles, responded to the dispatch.<sup>2</sup> In addition to Defendants, Detective Jason Apgar also responded.

Detective Apgar arrived at the scene<sup>3</sup> and initiated contact with Mrs. Gallagher. As she explained to Detective Apgar how someone had threatened to kill her dog, she also physically pointed out Mr. Samolot as the individual who made the threats. At that time, Mr. Samolot was walking approximately a block and a half away from where she and Detective Apgar were situated.

Officer Baccari received the dispatch from Lehigh County Radio for a complaint of a man with a gun in the 300 block of Broad Street. The dispatch information only stated that an actor was in the 300 block of Broad Street with a visible weapon. After receiving the dispatch, Officer Baccari, who was already in close proximity to the 300 block of Broad Street, looked at the computer screen present in his vehicle. The only information which he read on the screen was that "David Gallagher is walking around with a handgun that's visible and has threatened to shoot her."<sup>4</sup> Neither of the Defendants was aware of the fact that Mr.

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<sup>2</sup> Both Defendants were officers with the Emmaus Police Department.

<sup>3</sup> Mrs. Gallagher resided at 367 Broad Street in the Borough of Emmaus.

<sup>4</sup> Discovery in this matter has revealed that the computer screen actually stated as follows:

10-49 PERSON WITH WEAPON

Samolot's threats were directed towards Mrs. Gallagher's dog and, instead, were proceeding on the assumption that the then unknown actor was threatening a person with a gun.

Sergeant Geschwindt arrived shortly after Officer Baccari. Sergeant Geschwindt did not have an opportunity to review the information contained on the computer screen prior to meeting up with Officer Baccari. Accordingly, the only information Sergeant Geschwindt had at the time was what he had learned from the radio dispatch and from Officer Baccari.<sup>5</sup> While Detective Apgar spoke with the complainant, Mrs. Gallagher, Officer Baccari and Sergeant Geschwindt began walking on foot looking for the suspect. While they were searching, Detective Apgar provided them, via radio, with a description of the suspect - an elderly man wearing a pink shirt and shorts.

After receiving Detective Apgar's radioed description of the suspect, Sergeant Geschwindt observed Mr. Samolot, who matched the description of the suspect that was given to him by

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A DAVID GALLAGHER IS CARRYING A HANDGUN & IT IS VISIBLE  
10-38 STATES THIS MAN HAS PREVIOUSLY THREATENED TO KILL HER  
DOG

See Exhibit C, page 9, of Defendants' Motion for Summary Judgment filed September 19, 2005. Officer Baccari testified that when he looked at his computer screen he did not see the word dog. See Exhibit E, page 47-48, of Defendants' Motion for Summary Judgment filed September 19, 2005.

<sup>5</sup> According to his deposition testimony, Sergeant Geschwindt stated that he heard bits and pieces of the initial dispatch and then called Officer Baccari to get additional information. Sergeant Geschwindt testified that Officer Baccari told him that there was a man with a gun threatening to kill someone. See Exhibit F, page 9, of Defendants' Motion for Summary Judgment filed September 19, 2005.

Detective Apgar. At the time Sergeant Geschwindt first observed Mr. Samolot, he was approximately a half block off of Broad Street and walking with a dog toward his residence in the 300 block of Adrian Street. While maintaining eye contact of Mr. Samolot, Sergeant Geschwindt once again verified the description of the suspect via radio contact with Detective Apgar. While doing so, Sergeant Geshwindt and Officer Baccari cut through a backyard and headed towards Mr. Samolot's residence.<sup>6</sup> Sergeant Geschwindt observed Mr. Samolot open a screen door to his residence and begin to enter his home. As Mr. Samolot was doing so, Sergeant Geschwindt called over to him and asked him to step outside. Both Officer Baccari and Sergeant Geschwindt were in full uniform and in response to the request that Mr. Samolot step outside, Mr. Samolot did so. Mr. Samolot had to open the screen door to his residence in order to exit in response to Sergeant Geschwindt's request.

Based on the information supplied to Sergeant Geschwindt that the suspect was armed and making threats, he instructed Mr. Samolot after he stepped outside to turn around and face the residence and raise his hands. The instruction to raise his hands was stated twice before Mr. Samolot complied. As Mr. Samolot turned to face the residence, Sergeant Geschwindt observed a holster with a pistol on his right waist. Then,

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<sup>6</sup> Mr. Samolot resided at 329 Minor Street in the Borough of Emmaus.

notwithstanding Sergeant Geschwindt's order to Mr. Samolot to place his hands up, Mr. Samolot dropped his hands down towards his waist level. Concerned for the safety of both himself and Officer Baccari, Sergeant Geschwindt drew his service weapon, pointed it at Mr. Samolot and once again instructed him to place his hands up above his shoulder and keep them raised. Finally, Mr. Samolot responded by doing so. While Sergeant Geschwindt kept Mr. Samolot under cover, Officer Baccari proceeded to handcuff Mr. Samolot and remove the weapon from his holster.

While Mr. Samolot was being handcuffed, he remarked to the officers that he had an Akita. The dog was present in the doorway and barking loudly. Mr. Samolot remarked to the officers that his dog was a vicious dog. Because it was close to the screen door, the officers proceeded to move away from the door and in the direction of their patrol cars parked on Broad Street. Mr. Samolot's weapon was provided to Sergeant Geschwindt who checked it and determined it was unloaded. Thereafter, Sergeant Geschwindt ran a check via his patrol vehicle's radio on Mr. Samolot's weapon and the status of Mr. Samolot's gun permit.<sup>7</sup> Meanwhile, Officer Baccari had Mr. Samolot sit in the back seat of his patrol car while his identification and weapon status was being verified by Sergeant Geschwindt. Officer Baccari testified

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<sup>7</sup> It was subsequently determined that Mr. Samolot possessed a valid firearm permit. See Exhibit F, page 31, of Defendants' Motion for Summary Judgment filed September 19, 2005.

that the last he recalled, Mr. Samolot was seated in the back seat of the police vehicle with his feet out of the vehicle and was talking to them.

While Sergeant Geschwindt was verifying Mr. Samolot's weapon information, Officer Baccari proceeded on foot down to where Detective Apgar and Mrs. Gallagher were talking. Detective Apgar explained to Officer Baccari that Mr. Samolot had made threats earlier in the week but had not made any threats that day and that no charges nor an arrest would be made. Officer Baccari, therefore, proceeded back to his police vehicle and uncuffed Mr. Samolot. Officer Baccari then provided Mr. Samolot with a "courtesy ride" back to his residence. Once Mr. Samolot was at his residence, Sergeant Geschwindt returned his weapon to him. Sergeant Geschwindt estimated that the time that elapsed from when they first encountered Mr. Samolot until his gun was returned to him back at his residence was, at the most, 9 to 10 minutes.

#### **Contentions of the Parties**

Mr. Samolot contends that the Defendant police officers lacked the necessary reasonable suspicion to justify their detention of him. In addition, Mr. Samolot argues that by calling him out of his home, and by subsequently pointing a weapon at him and handcuffing him, a full-blown arrest occurred in the absence of probable cause.

Defendants, however, contend that they had the requisite reasonable suspicion which justified their brief detention of Mr. Samolot. Defendants argue that Mr. Samolot was not arrested and was, instead, placed in an investigatory detention premised upon his matching the description of the suspect and his proximity to the location where the suspect was last seen.

#### **Standard of Review**

In considering a motion for summary judgment, the court must determine whether "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986); Federal Home Loan Mortgage Corporation v. Scottsdale Insurance Company, 316 F.3d 431, 433 (3d Cir. 2003). Only facts that may affect the outcome of a case are "material". Moreover, all reasonable inferences from the record are drawn in favor of the non-movant. Anderson, supra.

Although the movant has the initial burden of demonstrating the absence of genuine issues of material fact, the non-movant must then establish the existence of each element on which it bears the burden of proof. See Watson v. Eastman Kodak



Company, 235 F.3d 851, 857-858 (3d Cir. 2000). A plaintiff cannot avert summary judgment with speculation or by resting on the allegations in his pleadings, but rather must present competent evidence from which a jury could reasonably find in his favor. Ridgewood Board of Education v. N.E. for M.E., 172 F.3d 238, 252 (3d Cir. 1999); Woods v. Bentsen, 889 F. Supp. 179, 184 (E.D. Pa. 1995).

### **Discussion**

An arrest unsupported by probable cause violates the Fourth Amendment of the United States Constitution. The test for probable cause is whether the "facts and circumstances within the officer's knowledge . . . are sufficient to warrant a prudent person, or one of reasonable caution, [to believe], in the circumstances shown, that the suspect has committed, is committing, or is about to commit an offense." Michigan v. DeFillippo, 443 U.S. 31, 37, 61 L. Ed. 2d 343, 99 S. Ct. 2627 (1979).

In Terry v. Ohio, 392 U.S. 1, 20 L. Ed. 2d 889, 88 S. Ct. 1868 (1968), however, the United States Supreme Court recognized that certain investigative seizures of an individual need not be supported by probable cause. In Terry, the Court held that a police officer may conduct a "stop" and "frisk" of an individual "for purposes of investigating possibly criminal behavior even though there is no probable cause to make an arrest" so long as the officer is "able to point to specific and

articulable facts" which give rise to a reasonable suspicion of criminal activity. Id. at 21-22. In assessing the reasonableness of the stop, the facts are "judged against an objective standard: would the facts available to the officer at the moment of the seizure or the search 'warrant a man of reasonable caution in the belief' that the action taken was appropriate?" Id. The Supreme Court further stated that in a Terry stop situation, the Fourth Amendment permits

a reasonable search for weapons for the protection of the police officer, where he has reason to believe that he is dealing with an armed and dangerous individual, regardless of whether he has probable cause to arrest the individual for a crime. The officer need not be absolutely certain that the individual is armed; the issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger.

Id. at 27.

As indicated by the language in Terry, resolving the question of whether a seizure is an investigative stop, rather than an arrest, generally depends on the reasonableness of the stop under the circumstances. The reasonableness is determined by examining two factors: (1) whether there was a proper basis for the stop, which is judged by examining whether the law enforcement officials were aware of specific and articulable facts which gave rise to a reasonable suspicion; and (2) whether the degree of intrusion into the suspect's personal security was reasonably related in scope to the situation at hand, which is judged by examining the reasonableness of the officials' conduct

given their suspicions and the surrounding circumstances. Terry, 392 U.S. at 19-20; see also United States v. Vasquez, 638 F.2d 507, 520 (2d Cir. 1980), cert. denied, 454 U.S. 975, 70 L. Ed. 2d 396, 102 S. Ct. 528 (1981), United States v. Hardnett, 804 F.2d 353, 356 (6th Cir. 1986), cert. denied, 479 U.S. 1097, 107 S. Ct. 1318, 94 L. Ed. 2d 171 (1987). When police officers make an investigative stop, they may take such steps as are "reasonably necessary to protect their personal safety and to maintain the status quo." United States v. Edwards, 53 F.3d 616, 619 (3d Cir. 1995), citing, United States v. Hensley, 469 U.S. 221, 235, 105 S. Ct. 675, 83 L. Ed. 2d 604 (1985).

We find that the Defendant officers possessed sufficient articulable facts which provided them with a reasonable suspicion that Mr. Samolot was involved in criminal activity at the time of his detainer. Specifically, we note that the Defendant officers arrived at the scene within minutes of Mrs. Gallagher making a call to 911. At the time, Defendants were working under the belief, albeit mistaken, that a man with a visible weapon had threatened to shoot Mrs. Gallagher.<sup>8</sup> Given the serious nature of the complaint, we find that the Defendants were justified in being concerned about their well-being as well as the well-being of other residents within the immediate neighborhood.

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<sup>8</sup> We view the circumstances and the reasonableness of the officers' actions from the perspective of the police officers on the scene and not with the benefit of 20/20 hindsight. See Graham v. Connor, 490 U.S. 386, 397 (1989).

While the Defendant officers were on foot looking for the suspect, Detective Apgar provided them with further information in the form of a description of the suspect, i.e., elderly male in pink shirt and wearing shorts, which perfectly matched Mr. Samolot's appearance. When Sergeant Geschwindt first observed Mr. Samolot, he was located within a half block of the 300 block of Broad Street where the suspect was last seen by Mrs. Gallagher. This information provided the Defendant officers with the necessary reasonable suspicion that Mr. Samolot had engaged in threatening Mrs. Gallagher.

We note that Mr. Samolot cites United States v. Ubiles, 224 F.3d 213 (3d Cir. 2000), as support for his contention that he was unlawfully detained. In that case, the United States Court of Appeals for the Third Circuit found that the stop and subsequent search of Ubiles were unjustified because the precondition for a Terry stop was not present. Ubiles, 224 F.3d at 214. As support for the decision, the Third Circuit stated that

First, it is not a crime to possess a firearm in the Virgin Islands - - even when standing in a crowd. Second, the anonymous tipster who approached the authorities had said nothing that would indicate that Ubiles possessed the gun unlawfully (e.g., without registration); that he was committing or about to commit a crime; or that he posed a threat to the officers or anyone in the crowd.

Ubiles, 224 F.3d at 214. In contrast to Ubiles, however, the Defendant officers here had reason to believe that Mr. Samolot

was involved in criminal activity at the time he was detained. Specifically, Mr. Samolot matched the description of the suspect whom they believed was armed and had threatened to shoot someone. Because we find that the Defendant officers in this case were aware of specific and articulable facts which gave rise to a reasonable suspicion at the time they detained Mr. Samolot, we find Ubiles to be inapposite.

We next examine whether the officers' actions escalated the purported investigative stop into an arrest. Looking at all of the circumstances surrounding the seizure of Mr. Samolot, we do not find that the Defendant officers' conduct was so intrusive as to constitute an arrest. Given the implication of threats made with a firearm, we find that the officers were justified in calling Mr. Samolot out of his house immediately after observing him enter the home. Once Mr. Samolot complied with the officers' request to step outside, he was asked to turn and face the home and put his hands up in the air. This conduct was reasonable in light of the officers' concerns for their own safety as well as the safety of the neighborhood given the nature of the complaint. Once Mr. Samolot stepped outside and began to comply with the request, Sergeant Geschwindt observed a firearm and a holster on Mr. Samolot's right hip. This observation further supported the conclusion that Mr. Samolot was indeed the suspect.

We conclude that Mr. Samolot's failure to comply with Sergeant Geschwindt's request that he raise his hands up above

his shoulders and his subsequent dropping of his hands down to his waist justified Sergeant Geschwindt's actions in drawing his service weapon on Mr. Samolot in order to maintain the safety of anyone in the immediate vicinity. Based on Mr. Samolot's conduct, as well as the underlying report of a threatened shooting, the temporary handcuffing of Mr. Samolot while his identification and gun permit were verified was reasonable under the circumstances. The fact that the officers detained Mr. Samolot in the vicinity of their vehicle as opposed to the Mr. Samolot's front door where Mr. Samolot's vicious dog was loudly barking was similarly reasonable under the circumstances.

With respect to the use of a gun and handcuffs, we note that there is no per se rule that pointing guns at people, or handcuffing them, constitutes an arrest. Baker, 50 F.3d at 1193. See also United States v. Edwards, 53 F.3d 616, 619 (3d Cir. 1995)(police actions in blocking a suspect's vehicle and approaching with weapons drawn does not constitute an arrest per se), United States v. Hastamorir, 881 F.2d 1551 (11th Cir. 1989)(use of handcuffs and gun during investigatory stop did not convert stop into a de facto arrest), United States v. Eisenberg, 807 F.2d 1446 (8th Cir. 1986)(weapons drawn does not per se transform an investigatory stop into an arrest), Hardnett, 804 F.2d at 357 (same).

We believe that the use of handcuffs and a weapon in the present case was reasonably necessary under the

circumstances. The officers were acting in a situation which justified a fear for their own safety as well as the safety of others in the immediate vicinity. The officers were operating under the belief that Mr. Samolot was armed and had threatened to shoot someone. The fact that Mr. Samolot was armed was confirmed by the officers before Sergeant Geschwindt drew his service weapon. Given these circumstances, as well as the conduct of Mr. Samolot in response to the officer's commands, it was reasonable for the Defendants to handcuff Mr. Samolot and display a weapon for their own protection. Under these circumstances, we conclude that the use of handcuffs and a display of a weapon by an officer did not convert the investigative stop into an arrest.

While Mr. Samolot emphasizes the fact that he was not "free to leave" the scene, this does not mark the point where a Terry stop escalates into an arrest, since in neither a stop nor an arrest is a suspect free to leave. Edwards, 53 F.3d at 619.

The test is not, as argued by [Mr. Samolot], whether a reasonable person would have felt free to leave under the circumstances: That concern marks the line between a fourth amendment seizure of any degree and a consensual encounter which does not require any minimal objective justification.

Edwards, 53 F.3d at 619, citing, United States v. Jones, 759 F.2d 633, 637 (8th Cir. ), cert. denied, 474 U.S. 837, 106 S. Ct. 113, 88 L. Ed. 2d 92 (1985). Clearly, a Terry stop is a seizure, Terry, 392 U.S. at 16, and one seized is by definition not free to leave. Edwards, 53 F.3d at 620.

With respect to the length of the detainer, we note

that there is no per se rule about the length of time a suspect may be detained before the detention becomes a full-scale arrest. Instead, the court must examine the reasonableness of the detention, particularly whether the police were diligent in accomplishing the purpose of the stop as rapidly as possible. Baker v. Monroe Township, 50 F.3d 1186, 1192 (3d Cir. 1995), citing, United States v. Sharpe, 470 U.S. 675, 685-686, 105 S. Ct. 1568, 84 L. Ed. 2d 605 (1985)(twenty-minute stop did not violate the Fourth Amendment). The United States Supreme Court has stated that

[i]n assessing whether a detention is too long in duration to be justified as an investigative stop, we consider it appropriate to examine whether the police diligently pursued a means of investigation that was likely to confirm or dispel their suspicions quickly, during which time it was necessary to detain the defendant. (citations omitted) A court making this assessment should take care to consider whether the police are acting in a swiftly developing situation, and in such cases the court should not indulge in unrealistic second guessing.

Sharpe, 470 U.S. at 686-687.

In this case, we find that the encounter that Defendants had with Mr. Samolot was not so intrusive as to constitute an arrest. We conclude that, given the circumstances facing them, Sergeant Geschwindt and Officer Baccari pursued their investigation in a reasonable and diligent manner. It was appropriate for the officers to hold Mr. Samolot for the brief period of time when Officer Baccari went to confer with Detective Apgar and while Sergeant Geschwindt was checking the status of



Mr. Samolot's firearm permit. We note further that the length of the entire encounter that Defendants had with Mr. Samolot was only nine to ten minutes long.

As in Sharpe, this case does not involve any delay unnecessary to the legitimate investigation of the police officers. Sharpe, 470 U.S. at 687. In addition, we note that Mr. Samolot has not presented any evidence that the officers were dilatory in their investigation.

### Conclusion

Because we find that the Defendant officers possessed sufficient articulable facts which provided them with a reasonable suspicion that Mr. Samolot was involved in criminal activity at the time of his detainer, we conclude that Mr. Samolot has failed to prove that he was subjected to an illegal seizure. Further, viewing all of the circumstances surrounding the seizure of Mr. Samolot, we do not find that the Defendant officers' conduct was so intrusive as to constitute an arrest. Accordingly, we deny Plaintiff's Motion and grant Defendants' Motion. An Order follows.

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

EDDIE SAMOLOT,	:	
	:	
Plaintiff	:	CIVIL ACTION
	:	
v.	:	No. 04-5403
	:	
KARL GESCHWINDT and	:	
KRISTOPHER BACCARI,	:	
	:	
Defendants	:	
	:	

**ORDER**

AND NOW, this 14 day of March, 2006, upon consideration of Plaintiff's Motion for Summary Judgment on Liability Only (Dkt. No. 15), and Defendants' response thereto, upon consideration of Defendants' Motion for Summary Judgment (Dkt. No. 17), and Plaintiff's response thereto, IT IS HEREBY ORDERED as follows:

1. Plaintiff's Motion for Summary Judgment on Liability Only is DENIED; and
2. Defendants' Motion for Summary Judgment is GRANTED.

BY THE COURT:

/s/ Arnold C. Rapoport  
ARNOLD C. RAPOPORT,  
United States Magistrate Judge