

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

UNITED STATES OF AMERICA :  
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 v. : CRIMINAL ACTION: NO. 13-654-1  
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 :  
 MAURICE STARKEY :

**MEMORANDUM**

**L. Felipe Restrepo, U.S. District Court Judge**

**November 4, 2014**

Defendant Maurice Starkey (“Starkey”) is charged in this case with being a convicted felon in possession of a firearm. ECF Doc. 8. Starkey moves to suppress all physical evidence discovered on his person and seized by officers of the City of Chester Police Department (“CCPD”) during a warrantless search. Doc. 31, at 2. Upon consideration of Starkey’s motion, the opposition thereto, and the parties’ supplemental briefs, and after an evidentiary hearing on August 18, 2014, the Court finds as follows:

**Findings of Fact**

1. In the early morning hours on August 15, 2013, CCPD Officer Joseph Dougherty was patrolling the City in a marked police vehicle with his K-9 partner; CCPD Officers James Nolan and Matthew Steward patrolled in another marked unit. Mot. Suppress Hr’g Tr. (“Tr.”), 8:13-17, 12:16-19, 24:22-25, 46:22-47:6, 68:21-25, 69:15-25, 70:7-12, August 18, 2014.

2. At approximately 12:54 a.m., a police radio dispatch went out based on a 9-1-1 call. Tr. 12:9-11, 22-24, 105:6-11. The police dispatcher stated that a robbery had just occurred whereby three black males attacked a white female or a white male, and the victim had a bag and a phone taken from him. Tr. 12:25-13:3, 14:15-18, 21:17-22:7; 17:19-18:9, 70:13-18. The

dispatcher also included that the incident occurred at 22<sup>nd</sup> and Providence, which was approximately eight blocks from Officer Dougherty's location, and that the alleged perpetrators of the robbery were headed south on Providence. Tr. 13:10-20, 14: 5-18. No clothing description was provided in the dispatch. Tr. 21:17-22:7.

3. The reported robbery occurred in an area known as "the funnel." Tr. 8:13-23, 10:14-11:20. "The funnel" describes a section of Chester that extends from 16<sup>th</sup> street between Edgemont Avenue and Providence Avenue. Tr. 10:13-23. Officer Dougherty explained that during the years he patrolled "the funnel," he heard gun shots every night and was involved in hundreds of arrests. Tr. 11:4-20. There, officers handled crimes spanning homicides, shootings, guns, drugs, robberies, and assaults. Tr. 10:24-11:3. Officer Nolan also testified he had already responded to calls of robberies, shootings, and domestic disputes in this neighborhood. Tr. 69:20-70:6.<sup>1</sup>

4. Officer Dougherty immediately responded to the dispatch call, by quickly driving to 18<sup>th</sup> and Providence; it took him only a matter of seconds to arrive to this area. Tr. 13:21-14:11. At that intersection, Officer Dougherty slowed his car. Tr. 13:21-15:5. From his experience, he predicted that this was the farthest south an individual could have traveled on foot in those few seconds. *Id.* Driving slowly, Officer Dougherty peered down alleys where he knew people cut through. Tr. 13:21-15:5.

5. While searching the area, he saw a group of three individuals around 20<sup>th</sup> and Providence. Tr. 15:6-12. The individuals had their backs to Officer Dougherty. Tr. 17:13-18.

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<sup>1</sup> It is acknowledged that Officer Nolan had only limited tenure on the police force at this time. He had completed six months of training at the police academy and had been with the CCPD for about three months. Tr. 67:12-21. These first three months with the CPPD consisted of office work, and he began patrolling on August 1, 2013, two weeks before this incident. Tr. 67:25-68:9.

Officer Dougherty noticed one member of the group was wearing a hoodie, which seemed out of place for an August night. Tr. 17:19-18:4. He also thought he saw one member of the group carrying a bag.<sup>2</sup> Tr. 17:19-18:7. From his angle, Officer Dougherty was unable to determine the individuals' genders. Tr. 17:16-18.

6. He then announced the group's location – that he had three individuals walking west on 20<sup>th</sup> Street – over the police radio. Tr. 18:14-19:7. Officer Nolan heard this update. Tr. 70:13-18, 72:9-11.

7. Officer Dougherty then continued to look for other people in the area. Tr. 18:14-19:7. At 22<sup>nd</sup> and Providence, Officer Dougherty saw an individual who he believed to be the victim. Tr. 15:17-20. Officer Dougherty continued to circle the area. Tr. 15:17-16:6. He saw no one else. Tr. 18:14-19:7.

8. Finding no other people in the area, Officer Dougherty returned to the same group of three individuals. Tr. 18:14-19:12. Approximately two minutes had passed between the time that Officer Dougherty received the initial radio dispatch and the time that Officer Dougherty stopped the group. Tr. 18:14-19.

9. Once Officer Dougherty returned to the group, he asked them to come over to him. Tr. 19:5-12.

10. The three individuals started to move toward Officer Dougherty's car, in response to his request. Tr. 42:18-43:1.

11. As they approached, Officer Dougherty stated on the police radio, "I've got three at 20<sup>th</sup> and Potter. I'll be getting out with them." Tr. 61:14-62:5. The record is unclear as to whether Officers Nolan and Steward heard this update from Officer Dougherty over the radio.

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<sup>2</sup> Officer Dougherty thought one of the individuals was carrying a bag, but it was later identified as a t-shirt draped over Starkey's shoulder. Tr. 100:9-12.

12. As Officer Dougherty started to get out of the car, he realized the group was composed of two females and one male. Tr. 19:5-14, 45:17-23.

13. Within a few seconds of Officer Dougherty beginning to exit his car, Officers Nolan and Steward arrived in another marked police car. Tr. 19:13-21, 45:24-46:3.

14. Officers Nolan and Steward had also been on patrol nearby that night and received the initial radio dispatch described in Paragraph 3. Tr. 69:23-25. Shortly thereafter, they received Officer Dougherty's radio update that he saw three individuals walking west on 20<sup>th</sup> Street. Tr. 70:13-18.

15. Officers Nolan and Steward arrived at 20<sup>th</sup> and Potter approximately 20 to 30 seconds after Officer Dougherty's radio call. Tr. 71:1-72:15, 87:18-20. Officer Steward then pulled up to park the car at on the corner of 20<sup>th</sup> and Potter. Tr. 72:16-21.

16. As Officers Steward and Nolan pulled up to park their vehicle, Officer Nolan realized that the group was composed of two women and one man. Tr. 100:1-8. He also noticed that Starkey had something black over his shoulder. Tr. 73:1-3, 97:2-17.

17. Officer Nolan then began to exit the vehicle. Tr. 73:4-6. As Officer Nolan exited his vehicle, Starkey started to run west. Tr. 19:18-21, 73:5-74:5.

18. Officer Nolan did not see Officer Dougherty when he arrived at 20<sup>th</sup> and Potter or when he got out of the car. Tr. 89:12-24, 90:1-3.

19. As Starkey was running west, Officer Nolan chased after him and called for him to stop. Tr. 73:5-6, 74:7-10. Starkey did not comply with Officer Nolan's commands. Tr. 74:7-10. Starkey continued running, with Officer Nolan in pursuit, for about five seconds and one-quarter of a block, until Officer Nolan caught up with him and leapt onto his back. Tr. 74:22-75:2.

20. Officer Nolan “took [Starkey] to the ground” and attempted both verbally and physically to get his hands behind his back, but Starkey continued to struggle. Tr. 75:4-23. Officer Nolan described himself as five feet ten inches and 190 pounds and Starkey as six feet four inches and 320 pounds. Tr. 75:7-12.

21. As Officer Nolan attempted to gain control of Starkey, he heard Officer Steward yell, “tazer, tazer, tazer.” Tr. 76:1-3. Officer Steward applied a tazer to Starkey. Tr. 90:23-91:5. Officer Steward also called out “gun” and grabbed a silver handgun from Starkey’s waistband. Tr. 76:8-20. After taking the gun, Officer Steward threw it to the side. Tr. 76:9-13. The officers were able to gain control of Starkey after tazing him. Tr. 76:14-16. He was then handcuffed and placed under arrest. Tr. 76:15-23.

22. The victim of the robbery was asked to identify the subjects and stated that the two women and Starkey were not the individuals who robbed him. Tr. 50:21-51:5.

23. At the cell block, officers discovered that Starkey also had crack cocaine on his person. Tr. 77:4-5.

24. Starkey was later indicted with possession of a firearm and ammunition by a convicted felon in violation of 18 U.S.C. §922(g)(a) and 924(e). *See* Doc. 8.

### **Discussion**

Starkey argues that the warrantless search of his person violated the Fourth Amendment for two reasons: (1) Officer Nolan lacked reasonable suspicion to perform a *Terry* stop; and (2) when Officer Nolan stopped Starkey’s flight by tackling him, he performed an arrest without probable cause.<sup>3</sup> Tr. 121:21-23; Doc. 40, at 1, 5.

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<sup>3</sup> At the August 18, 2014 evidentiary hearing, Starkey’s counsel clarified that Starkey was not challenging the constitutionality of Officer Dougherty’s initial stop of Starkey and that the

The Fourth Amendment to the United States Constitution protects persons “against unreasonable searches and seizures.” U.S. Const. amend. IV. Typically, for a seizure to be considered reasonable under the Fourth Amendment, it must be effectuated with a warrant that is supported by probable cause. *United States v. Robertson*, 305 F.3d 164, 167 (3d Cir. 2002). But where an officer has not secured a warrant, the officer may still, “consistent with the Fourth Amendment, conduct a brief, investigatory stop when the officer has a reasonable, articulable suspicion that criminal activity is afoot.” *Illinois v. Wardlow*, 528 U.S. 119, 123 (2000) (discussing *Terry v. Ohio*, 392 U.S. 1 (1968)). This type of investigatory stop is commonly referred to as a *Terry* stop. “An officer cannot conduct a *Terry* stop simply because criminal activity is afoot. Instead, the officer must have a particularized and objective basis for believing that the particular person is suspected of criminal activity.” *United States v. Goodrich*, 450 F.3d 552, 560 (3d Cir. 2006) (emphasis, citations, and internal quotations omitted); see *United States v. Bonner*, 363 F.3d 213, 217 (3d Cir. 2004).

Under the framework established in *Terry*, I must first determine the moment of seizure. *United States v. Torres*, 534 F.3d 207, 210 (3d Cir. 2008). Starkey’s position on the *precise* moment of seizure in this case is unclear; Starkey only asserts that Officer Nolan lacked reasonable suspicion after he arrived at 20<sup>th</sup> and Potter to support an investigatory stop of Starkey.<sup>4</sup> Tr. 117:18-21. The Third Circuit has established that a seizure occurs for Fourth Amendment purposes when there is either an application of force to restrain an individual’s movement or a submission to a show of authority. *United States v. Valentine*, 232 F.3d 350, 358 (3d Cir. 2000) (“The police must apply physical force to the person being seized or, where force

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inquiry should begin with Officer Nolan, not Officer Dougherty, since “Officer Dougherty didn’t do anything.” Tr. 121:21-23, 117:18-21.

<sup>4</sup> Starkey does not appear to assert that Officer Dougherty seized Starkey.

is absent, have the person seized submit to a show of police authority.”); *see also California v. Hodari D*, 499 U.S. 624, 637-38 (1991). According to Officer Dougherty’s testimony, after he asked the three individuals, including Starkey, to come over to him, Starkey initially complied and began to cross the street toward Officer Dougherty’s vehicle. However, when Officers Nolan and Steward pulled up only a few seconds later and Officer Nolan began to exit his vehicle, Starkey immediately began running away from the officers. Any momentary compliance by Starkey was insufficient to trigger a seizure here. *Valentine*, 232 F.3d at 359 (holding that a seizure did not occur until after defendant was wrestled even though he momentarily complied by giving his name before charging). Given Starkey’s subsequent flight and attempt to evade the officers, I find that a seizure did not occur until Officer Nolan made physical contact with Starkey by tackling him to the ground as Starkey was attempting to flee.

Having established the moment of seizure, *Terry* advises that I must consider the facts available to the officer at this moment of seizure to determine whether it was supported by reasonable suspicion. *Terry*, 392 U.S. at 16, 27. “In evaluating whether a particular stop was justified, courts must look at the *totality of the circumstances* surrounding the stop.” *Bonner*, 363 F.3d at 217 (emphasis added).

A totality of the circumstances analysis warrants consideration of a number of factors, including: (1) the reputation of the area in which the stop occurred for criminal activity; (2) the time of day or night; (3) the geographical and temporal proximity of the stop to the alleged crime; (4) Starkey’s behavior when the officers came into Starkey’s purview, including his flight; (5) the number of persons in the area; (6) the officers’ judgments and inferences, which may be based on their own common sense or may draw upon their training, experience, and expertise; (7) and, in cases such as this where officers’ investigation is based on a police

dispatch, the reliability of information provided to officers that served as the impetus for the stop. *See Wardlow*, 528 U.S. at 124; *Torres*, 534 F.3d at 210; *United States v. Brown*, 159 F.3d 147, 149 (3d Cir. 1998); *Goodrich*, 450 F.3d at 561; *Bonner*, 363 F.3d at 217; *Robertson*, 305 F.3d at 167.

Starkey argues that Officer Nolan lacked reasonable suspicion to support an investigatory stop of Starkey after Officer Nolan arrived at 20<sup>th</sup> and Potter.<sup>5</sup> Tr. 117:18-21. After considering the totality of the circumstances and the testimony presented during the evidentiary hearing, I disagree.

As an initial matter, though Starkey does not challenge the reliability of the information provided to the officers via the police radio dispatch, the Court acknowledges that the dispatch lacked some detail about the perpetrators of the robbery. In particular, the dispatch did not provide any description of the clothing worn by any of the three perpetrators. Instead, it offered only that there were three perpetrators, the gender and skin color of those three perpetrators, the fact that they took a bag and a phone from the victim, and the direction in which they were moving. The Third Circuit has held that other circumstances “can provide sufficient particularity or specificity to an otherwise general or indefinite description.” *Goodrich*, 450 F.3d at 560. Further, even where there is some discrepancy between the individuals stopped by the police and a general or vague description provided to the police, this discrepancy *alone* will not necessarily render the stop unconstitutional. *See Goodrich*, 450 F.3d at 560-61 (finding the initial stop of a woman and a man reasonable where an informant’s tip described two women, in light of other

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<sup>5</sup> The government argues that Officer Dougherty’s knowledge and the time of seizure should be considered collectively with Officer Nolan’s knowledge under the “collective knowledge doctrine.” *United States v. Whitfield*, 634 F.3d 741, 745-46 (2010). Finding that the facts and circumstances available to Officer Nolan are sufficient to support a finding of reasonable suspicion, the “collective knowledge doctrine” need not be applied here.

factors that raised officers' suspicion). Like in *Goodrich*, there was a discrepancy in this case between the information provided via the police radio dispatch and the characteristics of the group stopped. But the group Officer Nolan encountered did align with the information provided in several respects: (1) the number of individuals in the group; (2) the fact that there was one male in the group, who had something over his shoulder that could reasonably have been interpreted as a bag; and (3) presence just south of 22<sup>nd</sup> and Providence. Accordingly, I will consider this information alongside other factors relevant to the totality of the circumstances analysis.

The stop here took place in a particular area known to officers as a high crime area. "While an individual's presence in a high-crime area is not by itself sufficient to warrant a *Terry* stop, the fact that the stop occurred in a 'high crime area' [is] among the relevant contextual considerations in a *Terry* analysis." *Valentine*, 232 F.3d at 356. Officer Dougherty testified that every night there were shootings and that he assisted with hundreds of arrests in this vicinity, including arrests for robberies. While this knowledge cannot necessarily be imputed to Officer Nolan, it corroborates the testimony of Officer Nolan, who explained that in this neighborhood, he had already responded to calls of shootings, robberies, and domestic disputes of some nature, despite his very short time on patrol. I thus find that the reputation of this "funnel" area for robberies and gun violence is relevant to the reasonable suspicion calculus.

The late hour at which this stop occurred also justified heightened suspicion on the part of Officer Nolan. "The lateness of the hour of the stop [can] further support[] the inference of criminal activity, especially when considered alongside the area's reputation for criminal activity." *Goodrich*, 450 F.3d at 561. The crime and investigatory stop took place just before 1:00 a.m., an hour late enough to raise an officer's level of suspicion when encountering a group

of individuals walking down the street, particularly in a high crime area. *Compare Goodrich*, 450 F.3d at 561 (finding that 11:30 p.m. was a late hour that could lead to an inference of criminal activity); *and Valentine*, 232 F.3d at 356-57 (finding the fact that the defendant was walking around at 1:00 a.m. relevant to the analysis of reasonable suspicion), *and Brown*, 159 F.3d at 148, 150 (finding reasonable suspicion where incident took place around 1:30 a.m.), *with United States v. Navedo*, 694 F.3d 463, 465, 472 (3d Cir. 2012) (finding no reasonable suspicion where encounter occurred at 8:30 p.m.).

Next, both the geographic and temporal proximity of the crime to the stop in question also support a finding of reasonable suspicion. “Close proximity to the crime scene a few minutes after the [report] [is] a factor supporting [a] finding of reasonable suspicion.” *Goodrich*, 450 F.3d at 562 (3d Cir. 2006) (quoting *Brown*, 159 F.3d at 150). Officer Dougherty responded within seconds of receiving a radio dispatch describing a robbery that was either in progress or had *just* occurred, to find Starkey and two others only a few blocks from where the robbery took place; this was known to Officer Nolan based on police radio activity. Officers Nolan and Steward arrived at 20<sup>th</sup> and Potter within minutes of Officer Dougherty’s first report. All told, less than five minutes elapsed between the time the radio call describing the subjects went out and Officer Nolan’s arrival at the scene. Not only did Starkey’s movement initially cease close to the robbery site, but his location squared with the descriptions of the perpetrators’ movements communicated over police radio.

Of critical importance in this case is Starkey’s flight after Officers Nolan and Steward pulled up to Starkey. I agree with Starkey’s assertion that headlong flight is not itself sufficient to justify a *Terry* stop. As the court pointed out in *Navedo*, relied on by Starkey, “flight and the setting in which it occurs, is merely one of many factors police may reasonably consider before

making an investigative stop under *Terry*.” *Navedo*, 694 F.3d at 472. But the *Navedo* court also acknowledged that “flight upon noticing police, *plus some other indicia of wrongdoing*, can constitute reasonable suspicion,” as was held by the Supreme Court in *Wardlow*. *Id.* (quoting *Bonner*, 363 F.3d at 217); *see also Wardlow*, 528 U.S. at 124 (“Headlong flight—wherever it occurs—is the consummate act of evasion: It is not necessarily indicative of wrongdoing, but it is certainly suggestive of such.”). Unlike *Navedo*, this case presents headlong flight *and* several other indicators of potential wrongdoing, as discussed above. *See also United States v. Shambry*, 392 F.3d 631, 633 (3d Cir. 2004) (finding that defendant’s unprovoked flight in combination with the high crime area and officer’s identification of the defendant as the driver who previously struck an officer amounted to reasonable suspicion). Almost immediately upon noticing Officer Nolan, before Officer Nolan was able to announce the purpose of his stop or issue any commands, Starkey took off running westbound, away from the officers. Such headlong flight is precisely the type of evasive behavior to be factored into the reasonable suspicion calculus with other relevant factors known to Officer Nolan.

Starkey does not appear to argue that his flight could not be considered as part of the totality of the circumstances here. In Starkey’s original Motion to Suppress and at oral argument, he argues that there were no other indicia of wrongdoing that, when considered alongside Starkey’s flight, would give rise to reasonable suspicion under the standard articulated in *Wardlow*. Starkey argues that his flight was simply exercising his right to leave. Doc. 31, at 5-7; Tr. 118:25-119:2. While this Court does not mean to suggest that Starkey cannot exercise such a right, even with headlong flight, it does not follow that Starkey’s flight could not be considered as part of Officer Nolan’s assessment of the totality of the circumstances. In his supplemental brief, Starkey argues that reasonable suspicion “evaporated” when Officer Nolan

noticed that the group was composed of two females and one male, rather than three males, which took place before Starkey started running. Doc. 40, at 4. But as outlined above, the discrepancy between the gender of the individuals described in the radio dispatch and the individuals identified by Officers Dougherty and Nolan on the street is one factor among others, including Starkey's flight, which should be considered. The discrepancy does not preclude officers from assessing the remainder of the circumstances they encounter. Regardless, because Starkey fled before the moment of Officer Nolan's seizure, it is relevant to the totality of the circumstances analysis.

The remaining two factors provide only moderate support for reasonable suspicion. It is unclear from Officer Nolan's testimony whether *he* was aware of the presence or absence of other pedestrians in the area in which the robbery took place or Starkey was stopped. It is certainly likely, based on the credible testimony of Officer Dougherty, that Officer Nolan did not encounter other pedestrians as his vehicle approached the group at 20<sup>th</sup> and Potter. However, there is no testimony by Officer Nolan in the record confirming as much.

In addition, Officer Nolan was only in his few first weeks on patrol with the CCPD and in his first few months on the CCPD force. The Court credits Officer Nolan's testimony, corroborated by Officer Dougherty's testimony,<sup>6</sup> on the reputation for criminal activity in "the funnel" area of Chester, the content of the police radio dispatch, Officer Nolan's observations of Starkey and the group, and the timing and location of the events at issue. Officer Nolan's testimony gives no indication that he lacks in judgment, but I acknowledge that Officer Nolan did not have the benefit of years of experience with the CCPD.

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<sup>6</sup> I also credit the testimony of Officer Dougherty on (1) the reputation for criminal activity in "the funnel" area of Chester, given his years of experience working in this area; (2) his observations on the evening in question; and (3) the content of the police radio dispatch and his own radio activity.

In sum, given all of the facts and circumstances available to Officer Nolan at the moment he stopped Starkey by tackling Starkey as he fled, I find that the stop was supported by reasonable suspicion.

As to Starkey's second argument, that Officer Nolan's stop was an arrest not supported by probable cause, I must also disagree. Starkey was not arrested at any point before the gun was lawfully discovered; when the gun was discovered, the officers had sufficient probable cause.<sup>7</sup>

If officers determine, by their assessment of the totality of the circumstances, that an investigatory stop is warranted, they may then "take such steps as were reasonably necessary to protect their personal safety and to maintain the status quo during the course of the stop." *United States v. Hensley*, 469 U.S. 221, 235 (1985). "In effectuating a valid [*Terry*] stop, police officers are allowed to use a reasonable amount of force." *Bonner*, 363 F.3d at 217 (holding that the officers only engaged in a *Terry* stop when an officer tackled the defendant to stop his flight). The reasonableness of a stop requires a "balance between the public interest and the individual's right to personal security free from arbitrary interference by law officers." *Maryland v. Wilson*, 519 U.S. 408, 411 (1997) (citations and internal quotations omitted).

The credible testimony of Officer Nolan demonstrates that the force applied to Starkey was necessary to effectuate the *Terry* stop. Starkey refused to comply with Officer Nolan's commands to stop after Starkey first began to flee. Even after Officer Nolan tackled Starkey, Starkey continued to struggle and refused to comply with commands to stop and put his hands behind his back. Given Starkey's continued struggle, it became necessary to apply a tazer. Only

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<sup>7</sup> Starkey does not argue that there was no probable cause once the gun was discovered. Instead, he asserts that it is a fruit of an unconstitutional arrest and should be suppressed. Tr. 121:25-122:6.

after Starkey was tazered, at which point the gun in Starkey's waistband was revealed, were the officers able to gain control of Starkey. Starkey has not presented any evidence that contradicts Officer Nolan's testimony as to the amount of force that was necessary to bring Starkey under control.

Accordingly, I find that though the *Terry* stop escalated to an arrest after the gun was discovered, Officer Nolan's initial actions were based on reasonable suspicion and were necessary to complete the investigatory stop.

### **Conclusions of Law**

1. Based on all of the information available to Officer Nolan, the stop of Starkey was supported by reasonable suspicion and did not violate the Fourth Amendment.

2. The gun was recovered from Starkey's waistband during the officers' reasonable attempt to effectuate the *Terry* stop.

3. Starkey was arrested only after the officers discovered a gun on his person and the arrest was thus supported by probable cause.

For the foregoing reasons, Starkey's Motion to Suppress is denied. An implementing Order follows.

