

white stripes, [and] light blue jeans.” Officer Williams and his partner arrived at the bar within a short period of time and observed that another police unit had temporarily detained an individual matching the description of the male. This male was unarmed. He told the police that he didn’t have a gun, but that a black male who was a "large dude wearing a gray sweatshirt, seated at the end of the bar was carrying a gun." Further, this unknown male stated that it was the defendant who had called the police and provided a description of him because of some kind of problem between them.

Based on this new description and information, Officer Williams entered the bar and saw a large black male (5’ 11", 210 lbs.), seated at the end of the bar. This black male was wearing a gray sweatshirt. Indeed, he was the lone individual in the bar of approximately 10-12 males (Hispanic and African American) who fit the description. Officer Williams immediately approached him and frisked him. The officer felt the contour of a weapon and retrieved a 9 millimeter Ruger semi- automatic pistol. Officer Williams asked the defendant if he had a license to carry the firearm and he responded that he did not . The defendant was arrested and charged with the unlawful possession of a firearm.

II. ARGUMENT

THE POLICE OFFICERS’ CORROBORATION OF THE “PERSON WITH A GUN” TIP WAS SUFFICIENT TO JUSTIFY A TERRY STOP AND FRISK.

The defendant contends that the police “did not have probable cause to believe that the defendant had committed or was committing a crime, nor did they have a reasonable suspicion that the defendant was armed and dangerous and about to commit a crime.” Defense Motion at page 1. The defendant’s position is without merit. Upon receiving information of a person

armed with a gun, and details that allowed them to corroborate the information, the police properly stopped and frisked the defendant. The recovered firearm should be admissible.

In Terry v. Ohio, 392 U.S. 1 (1968) the Supreme Court carved out an exception to the probable cause requirement of the Fourth Amendment by holding that a police officer may stop an individual reasonably suspected of being armed and engaged in criminal activity, question him briefly, and perform a limited pat-down frisk for weapons. Id. at 22-24. The test 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. Reasonable suspicion depends on both the content of the information and its degree of reliability. Alabama v. White, 496 U.S. 325, 330 (1990)

The Courts that have considered the issue generally agree that where, as here, police officers receive an anonymous tip of a person with a gun which is corroborated in every significant detail by pre-stop surveillance, the officers are permitted to conduct a Terry stop and frisk of the subject of the tip even if he does not engage in suspicious behavior. United States v. DeBerry , 76 F.3d 884, 886 (7th Cir. 1996); United States v. Walker , 7 F. 3d 26,31 (2d Cir. 1993), cert. denied, 510 U.S. 1169 (1994); United States v. Clipper ,973 F. 2d 944, 951 (D.C. Cir. 1992) cert. denied, 506 U.S. 1070 (1993). “Armed persons are so dangerous to the peace of the community that the police should not be forbidden to follow up a tip that a person is armed, and as a realistic matter this will require a stop in all cases. “ DeBerry , 76 F. 3d at 886. Thus where the police are able to corroborate the appearance and location of an armed person described in an anonymous tip, a limited investigatory frisk “ strike[s] the proper balance between the right of the

people to be let alone and their right to be protected from armed predators.” Id.

When evaluating whether the police had sufficient information from an informant to conduct an investigatory stop, the court is required to look at the totality of the circumstances. White, 496 U.S. at 328, United States v. Salazar, 945 F.2d 47, 50 (2d Cir. 1991). In contrast to an anonymous tip which generally fails to demonstrate the informant’s basis of knowledge and/or independent veracity sufficient to provide the reasonable suspicion for a Terry stop, “a face-to-face informant must be thought more reliable than an anonymous telephone tipster” [because he] runs the greater risk that he may be held accountable if his information proves false.” See United States v. Bold, 19 F.3d 99, 102 (2d Cir. 1994), citing Salazar, 945 F.2d at 50-51. In addition, when, as here, the information concerns an individual with a gun, the totality of the circumstances test “should include consideration of the possibility of the possession of a gun, and the government’s need for a prompt investigation.” Bold at 104.

In United States v. Gibson, 64 F.3d 617 (11th Cir. 1995), a case factually similar to this one, the Court held that the police had reasonable suspicion to conduct a Terry stop and frisk of the defendant where they acted in reliance on an anonymous tip that a male fitting his general description was armed. In Gibson, the police received an anonymous telephone call informing them that two African-American men at a local bar were armed. The caller described one as wearing beige pants and a white shirt, and the other as wearing a long black trench coat. The police arrived at the bar within two and a half minutes after receiving the call. Upon arriving at

the bar, the officers saw an African-American male wearing beige pants and a white shirt outside the club, but they were unable to stop him. They then entered the bar, quickly established that Gibson, an African-American male, was the only one wearing a long black trench coat and then approached him. Gibson, whose back was facing the officers, turned to face the officers and simultaneously reached behind his back. One officer drew his weapon and explained that they believed he was carrying a firearm, while his partner frisked Gibson. The officer recovered a gun from the defendant's back waist area underneath the trench coat. Gibson was subsequently arrested.

In reviewing the totality of the circumstances, the Gibson Court focused on the immediate threat to the safety of the public and the police officers caused by the potential unlawful possession of a firearm in a public establishment. As the Court stated, “the nature of this tip, combined with the independent corroboration of innocent details provided the officers with reasonable suspicion.” Id. at 623 n.6. Gibson was the only African-American male in the bar that fit the provided description. The quick response by the police also was important because “the reported information was still fresh, increasing the chance that the officers would confront the potentially armed individual before any violence broke out, while also reducing the possibility that the officers would mistakenly detain the wrong person.” Id.

The Third Circuit in United States v. Roberson, 90 F.3d 75, 81 n.4 (3d Cir. 1996), also recognized the imminent danger associated with a tip involving the possession of a firearm. Roberson addresses the corroboration required to justify a Terry stop when an anonymous tip relates to drug dealing, not possession of a gun or other weapon. The Roberson court held that when an anonymous tip relates solely to drug dealing, police officers may stop and search the

subject of the tip only if the information provided to and corroborated by the officers is at least partially predictive in nature or the officers themselves observe the subject engage in suspicious behavior. Roberson, 90 F.3d at 79-80. However, the court expressly acknowledged, due to the “inherent hazards of a firearm,” that its holding did not apply to cases in which the tip related to possession of a weapon. Id. at 81 n.4. In so doing, it cited with approval Clipper and DeBerry, two cases in which Terry stops were approved in the absence of either predictive information or suspicious behavior. Id.

Indeed, the “element of imminent danger distinguishes a gun tip from one involving possession of drugs.” Clipper, 973 F.2d at 951. See also Gibson, 64 F.3d at 622; Bold, 19 F.3d at 104. As the Clipper court observed

The hazards that the illegal use of firearms presents to officer and citizen alike are well documented If there is any doubt about the reliability of an anonymous tip [involving possession of drugs], the police can limit their response to surveillance or engage in “controlled buys.” Where guns are involved, however, there is the risk that an attempt to “wait out” the suspect might have fatal consequences.

973 F.2d at 951. “Law enforcement officers are at greatest risk when dealing with potentially armed individuals because they are the first to confront this perilous and unpredictable situation.” Gibson, 64 F.3d at 624.

Thus, the dispositive inquiry is whether all of the circumstances create a web of facts which warrants conducting a stop and pat-down. See U.S. v. Bold., 19 F.3d 99, 102-03 (2d Cir. 1994) (corroboration by police observation of contemporaneous anonymous tip regarding type and location of vehicle containing armed man provided reasonable suspicion to detain); U.S. v. DeBerry, 76 F.3d 884, 885 (7th Cir. 1996) (corroboration of anonymous tip that person was

carrying gun through suspect's movement as if reaching for a gun provided reasonable suspicion for officer to draw gun and detain).

Here, Officer Williams had articulable facts to reasonably conclude that the defendant might be armed. Officer Williams had been directed by police radio to the bar at 8th and Bristol because of an anonymous tip to police that there was a man with a gun. The description of that male included his race and clothing.

Upon their arrival at the bar, within minutes from receiving the initial call, both officers observed fellow officers performing a Terry stop on an individual who matched the initial description. This person's explanation that it was another individual with some kind of grudge against him who actually possessed a gun. He in turn provided Officer Williams with a description of another black male, his appearance, clothing and location. The officer went into the bar and immediately identified the defendant as the only person fitting the description of the black male reported to be armed with a gun.

The detailed description contained the armed suspect's 1) race; 2) sex; 3) body build; 4) clothing; and 5) precise location within the interior of the bar. This tip also came from an identifiable person; this was not a telephone call of unknown origin to "911." Because the informant was accountable to the police if his story proved to be false, his information was reliable. **Bold**, 19 F. 3d at 102. Indeed, the reliability of this individual's information was corroborated by the officers' observations, which were made mere seconds after hearing this individual's description of the defendant and his account of what had precipitated the 911 call.

Furthermore, this tip did not involve drug dealing, but an armed person, which both the

Clipper, supra, and Gibson, supra, courts emphasized clearly requires the police to immediately investigate in order to protect the public at-large from the dangers presented by an armed individual in a public place.

This defendant was the lone individual in the bar of approximately 10-12 males (Hispanic and African American) who fit the description. Officer Williams will testify that the defendant was the first person he spied as he walked into the bar because he was seated at the far end of the bar. At that point, Officer Williams possessed sufficient information from the initial radio call, the informant outside the bar and his own observations, to permit him to have a reasonable suspicion that criminal activity might be afoot (illegal possession of a firearm in a public place) to warrant a Terry stop and frisk of the defendant. Based on the totality of these circumstances, the police officers had a reasonable suspicion that the defendant was armed to warrant a limited frisk of him for a firearm.

III. CONCLUSION.

For the foregoing reasons the Court should deny the Defendant's Motion to Suppress the physical evidence, a Ruger 9 millimeter semi-automatic pistol loaded with eleven (11) rounds with an obliterated serial number, seized from the defendant on December 12, 1998.

Respectfully submitted,

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