

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

<b>COMMONWEALTH OF PENNSYLVANIA</b>	:	
	:	<b>CR-336-2014</b>
<b>v.</b>	:	
	:	
<b>TASHI NASIR CLAY,</b>	:	<b>CRIMINAL DIVISION</b>
<b>Defendant</b>	:	

**OPINION AND ORDER**

On April 24, 2014, the Defendant filed a Motion to Suppress. A hearing on the motion was held on June 23, 2014.

**I. Background**

On February 18, 2014, police were dispatched after a 911 caller reported that four black men wearing hooded sweatshirts were banging on the door of the residence at 807 Hepburn Street, Williamsport, Pennsylvania. At the time of the dispatch, the 911 caller was anonymous to police. The dispatch notified police that one of the men had a gun.

With this information, Williamsport Bureau of Police Corporal Jeffrey Paulhamus (Paulhamus) and his partner Officer Schon (Schon) proceeded in a marked car to the 800 block of Hepburn Street. During the hearing on the Defendant's motion, Paulhamus testified that the 800 block of Hepburn Street is a high crime area. He also testified that when he was responding to the report, he did not know that the group banging on the door of 807 Hepburn had gotten into a van and left the residence. One to two minutes after the dispatch, Paulhamus and Shon arrived at the intersection of Hepburn Street and Louisa Street. 807 Hepburn Street is approximately two houses away from this intersection. At the intersection, Paulhamus and Schon saw a black man wearing a hooded sweatshirt. The man had both hands in his pockets and was looking towards 807 Hepburn Street. Paulhamus observed no one else in the area. He testified that when

the man saw the police car, he began to walk away from it. One of the officers said “go on him” or “go out on him.”

When the man began to walk away, Paulhamus told the man to show the officers his hands. Paulhamus testified that the man took out his right hand but kept his left hand in his pocket. Paulhamus again told the man to show his hands, but the man again did not show his left hand. The man then ran away from the officers, and Paulhamus chased him. The man ran around the residence located at 816 Elmira Street. While the man was on the side of 816 Elmira Street, Paulhamus lost sight of him but only for a few seconds. This was the only time during the chase that Paulhamus lost sight of the man. The man continued to run to Mountain Avenue, where he stopped and was detained. The man was identified as the Defendant, Tashi Clay.

After the Defendant was detained, Paulhamus went back to 816 Elmira Street. He walked up a set of stairs in the back of 816 Elmira Street. While on these stairs, Paulhamus was able to see over a fence and into the yard that is next to the side of 816 Elmira where the Defendant ran. In the yard, Paulhamus saw a firearm on top of snow. He testified that he did not see any footprints in the snow in the yard.

The Defendant was charged with Firearms not to be Carried without a License,<sup>1</sup> Possessing Instruments of a Crime,<sup>2</sup> Tampering with Evidence,<sup>3</sup> Receiving Stolen Property,<sup>4</sup> and Possession of Firearm by Minor.<sup>5</sup>

In his Motion to Suppress, the Defendant argues that he was seized when Paulhamus first told him to show his hands. He argues that officers’ seizure of the Defendant was an arrest because the officers intended to take the Defendant into custody from the moment they saw him.

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<sup>1</sup> 18 Pa.C.S. § 6106.

<sup>2</sup> 18 Pa.C.S. § 907(b).

<sup>3</sup> 18 Pa.C.S. § 4910(1).

<sup>4</sup> 18 Pa.C.S. § 3925(a).

<sup>5</sup> 18 Pa.C.S. § 6110.1(a).

The Defendant argues that officer's statement "go out on him" showed intent to take the Defendant into custody. He argues that when he was seized, the officers did not have the probable cause needed for an arrest. The Defendant also argues that the officers did not have reasonable suspicion at the time of the seizure. He argues that because the officers lacked probable cause and reasonable suspicion, the seizure was unconstitutional. Finally, he argues that the firearm should be suppressed because the unconstitutional seizure caused the Defendant to abandon the firearm.

## **II. Discussion**

"Article I, § 8 of the Pennsylvania Constitution and the Fourth Amendment of the United States Constitution afford protections against unreasonable searches and seizures." In the Interest of M. D., 781 A.2d 192, 196 (Pa. Super. 2001). "A person has been 'seized' within the meaning of the Fourth Amendment only if, in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave." United States v. Mendenhall, 446 U.S. 544, 554 (1980).<sup>6</sup> "In evaluating the circumstances, the focus is directed toward whether, by means of physical force or show of authority, the citizen-subject's movement has in some way been restrained." Commonwealth v. Strickler, 757 A.2d 884, 890 (Pa. 2000). "No single factor should control this determination, and courts must examine the totality of the circumstances when reaching a conclusion as to whether a seizure occurred." Commonwealth v. Guzman, 44 A.3d 688, 693 (Pa. Super. 2012) (citing Strickler, 757 A.2d at 890).

This Court finds that the Defendant was seized when Paulhamus told the Defendant to show his hands. Paulhamus's statement was a show of authority. A reasonable person would

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<sup>6</sup> This standard has been "followed in Pennsylvania in determining whether the conduct of the police amounts to a seizure." Commonwealth v. Matos, 672 A.2d 769, 774 (Pa. 1996).

believe he or she was not free to leave after being told to show his or her hands by an officer arriving in a marked vehicle.

“Valid citizen/police interactions which constitute seizures generally fall within two categories, distinguished according to the degree of restraint upon a citizen’s liberty: the investigative detention . . . which subjects an individual to a stop and a period of detention but is not so coercive as to constitute the functional equivalent of an arrest; and a custodial detention or arrest, the more restrictive form of permissible encounters.” Strickler, 757 A.2d at 889. An arrest “is legal only if based on probable cause.” Id. An investigative detention “must be supported by specific and articulable facts creating a reasonable suspicion that the suspect is engaged in criminal activity.” Guzman, 44 A.3d at 692.

“[A]n arrest exists when (1) the police intended to take [a person] into custody, and (2) [the person] was subjected to the actual control and will of the police. This test is an objective test, and all circumstances must be viewed ‘in the light of the reasonable impression conveyed to the person subjected to the seizure.’” Commonwealth v. Hannon, 837 A.2d 551, 554 (Pa. Super. 2003) (quoting Commonwealth v. Douglass, 539 A.2d 412, 419 (Pa. Super. 1988)).

This Court finds that the Defendant was not under arrest when Paulhamus told him to show his hands. The circumstances do not show that Paulhamus intended to take the Defendant into custody at that time. Rather, they show that Paulhamus intended to ensure the safety of himself and Schon. Paulhamus and Schon were responding to a report of a person with a gun. They arrived in the area just one to two minutes after the dispatch. There, they saw the Defendant, who matched the two elements of the description of the individuals banging on the door of 807 Hepburn Street. It was reported that one of the individuals had a gun, and the

Defendant's hands were concealed in his pockets. Paulhamus's instruction to the Defendant indicates intent to make sure that the Defendant could not surprise the officers with a gun.

The Defendant argues that the officer's statement "go out on him" shows intent to arrest the Defendant. This statement in and of itself does not change this Court's finding that the Defendant was not under arrest. Without doubt, the statement shows the officer's intent to approach the Defendant, but as discussed above, officers can approach a person without placing that person under arrest. Such an approach is called an investigative detention and requires reasonable suspicion that the person is engaged or has been engaged in criminal activity.

"In order to determine whether the police officer had reasonable suspicion, the totality of the circumstances must be considered." Commonwealth v. Rogers, 849 A.2d 1185, 1189 (Pa. 2004). "Among the factors to be considered in forming a basis for reasonable suspicion are tips, the reliability of the informants, time, location, and suspicious activity, including flight." In the Interest of M. D., 781 A.2d at 197.

Here, the circumstances show the officers had reasonable suspicion that the Defendant had been engaged in criminal activity. Paulhamus and Shon arrived at the intersection of Hepburn Street and Louisa Street just one to two minutes after dispatch. 807 Hepburn Street is just two houses away from this intersection. At the intersection, they saw the Defendant, who matched the two elements of the description of the individuals banging on the door of 807 Hepburn Street. The Defendant was looking towards 807 Hepburn Street when the officers first saw him. When the Defendant saw the officers, he began walking away from them. These facts gave the officers reasonable suspicion that the Defendant had been involved in criminal activity. Although the individuals that were banging on the door of 807 Hepburn Street had left the area, Paulhamus testified that he did not know this when responding to the report.

“[A]n investigative detention carries an official compulsion to stop and respond.” Guzman, 44 A.3d at 692. Because the Defendant did not stop when the officers approached him, the Court finds that Paulhamus was justified in chasing the Defendant.

“Although abandoned property may normally be obtained and used for evidentiary purposes by the police, such property may not be utilized where the abandonment is coerced by unlawful police action.” Commonwealth v. Jeffries, 311 A.2d 914, 918 (Pa. 1973). As discussed above, the seizure of the Defendant was not unlawful because the officers had reasonable suspicion. Because the abandonment of the firearm was not coerced by unlawful police action, the firearm can be used for evidentiary purposes.

### **III. Conclusion**

The Defendant was seized when Paulhamus told him to show his hands. This seizure was not an arrest; it was an investigative detention. The investigative detention was lawful because the officers had reasonable suspicion that the Defendant had been engaged in criminal activity. Because the seizure was lawful, the discarded firearm can be used for evidentiary purposes.

### **ORDER**

AND NOW, this \_\_\_\_\_ day of August, 2014, based upon the foregoing Opinion, it is ORDERED and DIRECTED that the Defendant’s Motion to Suppress is hereby DENIED.

By the Court,

Nancy L. Butts, President Judge