

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA	:	
	:	
vs.	:	NO. 603 CR 2019
	:	
BRIAN RICHARD HILL,	:	
Defendant	:	

Criminal Law – Police/Citizen Interactions - Investigatory Stop - Reasonable Suspicion
- Custodial Stop - Probable Cause - Collective Knowledge -
Permissible Scope of *Terry* Frisk

1. Interactions between police and private citizens fall into one of three legal classifications: (1) a “mere encounter” or request for information which requires no level of suspicion by the police; (2) an “investigative detention” which must be supported by reasonable suspicion; and (3) an arrest or “custodial detention” which must be supported by probable cause.
2. When reasonable suspicion exists based on specific and articulable facts that criminal activity may be afoot, police may constitutionally stop and briefly detain the subject of their observations to obtain more information. Such detention, for investigatory purposes, can continue only so long as is necessary for the police to gather information confirming or dispelling their suspicions upon which the detention was based. The circumstances justifying an investigative detention must objectively show the detention is for investigatory purposes and not to arrest and charge the detainee.
3. An arrest is any act that evidences an intention to take a person into custody *and* which subjects him to the actual control and will of the person making the arrest. In determining whether an individual has been arrested, an objective test is applied viewed in the light of the reasonable impression conveyed to the person subjected to the seizure rather than the strictly subjective view of the officer or the person being seized. An encounter becomes an arrest when, under the totality of the circumstances, a police detention becomes so coercive as to be the functional equivalent of an arrest.
4. Probable cause to arrest requires that at the moment a suspect is arrested the facts and circumstances within the officer’s knowledge, and of which he has reasonably trustworthy information, are sufficient to support a man of reasonable caution to believe that an offense has been committed and that the person arrested has committed the offense. Where two or more officers are working as a team and at least one of them has probable cause to effect an arrest, that knowledge can be imputed to the officer making the arrest, even if such information was not actually conveyed to the arresting officer.
5. The standard for reasonable suspicion does not deal with hard certainties but with probabilities; it is based on common sense; and it takes into account the inferences

a police officer may draw upon his training and experience. In assessing whether an investigative detention has crossed over to an arrest, courts should take care to consider whether the police are acting in a rapidly developing, potentially volatile situation and, in such cases, should not indulge in unrealistic second guessing. The test for reasonable suspicion to conduct an investigative detention is less demanding than that of probable cause to support an arrest. It can arise from information that is different in quantity and quality than that required for probable cause, as well as from information less reliable than that required for probable cause.

6. In distinguishing between an investigatory and custodial detention a number of factors must be considered, including the basis for the detention (the crime suspected and the grounds for suspicion); the duration of the detention; the location of the detention (public or private); whether the suspect was transported against his will (how far, why); the method of detention; the show, threat or use of force; and, the investigative methods used to confirm or dispel suspicions.
7. No single factor controls the determination whether an investigatory stop has escalated to a custodial arrest. The use of a firearm by police in directing a suspect to lie prone on the ground and the placing of handcuffs on the suspect does not automatically convert an investigatory detention into a custodial stop, particularly where such conduct is shown to be for an extremely brief period to preserve the status quo and primarily for the officers' safety and protection, as where the police have reason to believe the suspect is armed and dangerous. It is both prudent and safe for an officer to draw his firearm when approaching a vehicle in a criminal investigation, as opposed to a routine traffic stop
8. Where reasonable suspicion exists to support an investigative detention, police may conduct a reasonable search for weapons for the officers' protection if they have reason to believe that a suspect may be armed and dangerous. A pat down or frisk for these purposes is limited in scope to one reasonably designed to discover weapons or other items which can harm the officers or others nearby. This standard limiting the scope of a permissible frisk is less demanding than that under the "plain feel" doctrine for the seizure of contraband which requires, *inter alia*, that the incriminating nature of the contraband be immediately apparent to the officer such that the officer perceives, without further search, that what he is feeling is contraband before the officer has a lawful right of access to the object. In contrast to the reasonable belief required to support the pat down of a suspect who is the subject of an investigative detention for weapons, a search incident to arrest permits a search of the arrestee's person as a matter of course – and without a case-by-case adjudication of whether a search of a particular arrestee is likely to protect officer safety or evidence.
9. At a minimum, reasonable suspicion, if not probable cause, existed to detain Defendant, where police responded within ten minutes of receiving a report of shots being fired at night in a wooded area near occupied structures within borough limits; observed two men wearing camouflage flee into the woods upon their arrival, one of whom was suspected to be the Defendant; searched the wooded area into which the two had disappeared and were believed hiding for

almost forty-five minutes without success; and then, upon learning that an individual was observed moments earlier exiting the woods within a half-mile of where the officers were located, immediately drove to this location and spotted the Defendant, who for the safety and security of the first officer to arrive was directed at gunpoint to lie prone on the street for a brief period until the arrival of a second officer who handcuffed and frisked the Defendant, at which time a black powder pistol was found strapped to Defendant's abdominal and chest area and removed.

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Defendant	:	
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Cynthia Dyrda-Hatton, Esquire		Counsel for Commonwealth
Assistant District Attorney		
Matthew J. Mottola, Esquire		Counsel for Defendant

MEMORANDUM OPINION

Nanovic, P.J., June 10, 2020

Defendant herein contends the facts and circumstances surrounding his seizure establish he was subjected to a custodial detention requiring probable cause rather than a *Terry* stop requiring only a reasonable suspicion that criminal activity was afoot. Contending further that his detention was not supported by probable cause, Defendant claims that his arrest was illegal, as was the handgun seized from his person, and that this handgun and any statements he made thereafter should be suppressed. Defendant further argues that even if he was lawfully detained under *Terry* and a pat-down for weapons allowed, the scope of the *Terry* frisk conducted went beyond that permitted to discover the presence of weapons.

PROCEDURAL AND FACTUAL BACKGROUND

On November 28, 2018, at approximately 7:30 P.M., Brad Digilio heard three gunshots fired in the woods behind Boyer's Supermarket as he was exiting the store. (pp.52-53).¹ This wooded area lies between the Boroughs of Lansford and Coaldale,

contains a walking path or trail used for pedestrian travel between the two communities, and extends into a mountainous area behind the store in the direction of Summit Hill. (pp.6, 11, 66). A gate is located at the Lansford end of the trail, right behind Boyer's Supermarket, where the trail meets Abbott Street. (pp.15-16). At the time Mr. Digilio heard the shots, the sun had set and it was dark outside. (p.5).

Upon leaving Boyer's Supermarket, Mr. Digilio drove directly to the Coaldale Police Station and reported the incident to Officer James Bonner. (p.53). Officer Bonner immediately drove to the scene and estimated he arrived there within ten minutes of when the shots were fired. (p.53). Upon his arrival, he observed two males wearing camouflage who, upon seeing Officer Bonner, fled into the woods heading in the direction of Lansford. (pp.53-54, 59, 62, 66-68). Officer Bonner gave chase but was unable to overtake or locate either individual once they entered the woods. (p.54). He immediately called for backup since firearms were involved and it was pitch black outside. (p.54).

Officers Jarrod Bulger and Anthony Campanell of the Lansford Borough Police Department were dispatched and responded to the area to assist Officer Bonner in his search for the two individuals. (pp.4-5). Upon their arrival, Officers Bulger and Campanell began searching the wooded area closest to Lansford, while Officer Bonner continued searching the area closest to Coaldale. After searching for perhaps ten to twenty minutes with no success, Officers Bulger and Campanell met Officer Bonner outside the wooded area to discuss how to proceed. (pp.19-20, 38, 46). During this meeting, Officer Bonner explained to Officers Bulger and Campanell about the reported shooting and provided them with a description of the two individuals he observed fleeing

into the woods, indicating, as well, that he believed Defendant, who he was familiar with, was one of the two. (pp.9, 27-28, 37, 39, 54). As they were meeting, Officer Bonner spotted individuals with flashlights moving in the woods. (pp.6, 19, 46, 61). This prompted the three Officers to re-enter the woods where they continued to search for the individuals Officer Bonner saw when he first arrived on scene. After searching for another fifteen minutes without success, the three Officers met once again outside the woods to decide their next course of action. (pp.19, 28, 39, 47-48, 62).

During the entire period the Officers had been searching, they found no one else in the woods. (pp.20, 70). As they were conferring after the second attempt to locate the individuals responsible for the shooting, a passing motorist stopped and advised Officer Bulger that he had just seen a man wearing a jacket exit the woods from the walking trail which connected with Abbott Street in Lansford, a short distance – less than half a mile - from where the Officers were then located. (pp.6, 20-21). Officer Bulger, followed closely by Officers Campanell and Bonner, each in separate vehicles, immediately drove toward that location.

Officer Bulger arrived first and spotted the Defendant wearing a large camouflage jacket walking northbound on Cortright Street, close to Abbott Street. (pp.7, 30, 41). Officer Bulger stopped and activated his overhead lights. At this point, Officer Bulger exited his vehicle and for officer safety – being by himself and knowing that the individuals they were searching for were armed – drew his firearm and directed the Defendant at gunpoint to lie down on the ground as he waited for backup to arrive. (pp.6-8, 31).

Within seconds of seeing Officer Bulger activate his overhead lights, Officer

Campanell arrived on the scene. (pp.7-8, 32, 37, 48-49, 54). As Officer Bulger continued to cover Defendant, still with his weapon drawn, but lowered and no longer pointing at the Defendant, Officer Campanell approached the Defendant, handcuffed him, and patted him down for weapons. (pp.33, 40, 49). During this pat-down, Officer Campanell felt something bulky beneath Defendant's jacket. (pp.41, 50-51). Officer Campanell unzipped Defendant's jacket, reached in, and retrieved a black powder pistol strapped to Defendant's abdominal and chest area with a belt. (pp.41-42). As Officer Campanell was handcuffing the Defendant and patting him down, Officer Bonner arrived on the scene. (pp.51, 54, 63-64). Officer Campanell handed the weapon to Officer Bonner and then placed Defendant in the rear of the Coaldale police cruiser which had been driven to this location by Officer Bonner. (pp.7, 41-43).

Defendant was taken to the Coaldale Police Station where he was questioned after being Mirandized. (p.55). Defendant admitted being in the woods hunting with another individual and firing three rounds into a skunk which had been trapped. (pp.10, 43, 55). Defendant was charged by the Lansford Police with carrying a concealed firearm without a license, a felony of the third degree. 18 Pa.C.S.A. § 6106(a)(1).² No charges were filed against Defendant for violating a Coaldale Borough ordinance which prohibited the firing of a firearm within Borough limits, one of several firearm violations Officer Bonner believed may have been committed when he drove to the scene. (pp.59-60).

In his Omnibus Pre-Trial Motion now before us, Defendant is challenging the legality of his initial seizure by Officers Bulger and Campanell and is seeking suppression of both the firearm taken from his person and of any statements he made

to police. Whether Defendant is entitled to suppress the firearm Officer Campanell found under his coat and the statements he subsequently made to the police depends on the nature of the interaction which took place at the time the firearm was seized. Was Defendant under arrest or was he the subject of an investigative detention. If an arrest, was it supported by probable cause. If an investigative detention, did police possess “specific and articulable facts” on which to base a reasonable suspicion that he was involved in criminal activity.

DISCUSSION

(a) Nature of Detention – Investigatory versus Custodial

The law recognizes three levels of police-citizen interactions.

The first of these is a “mere encounter” (or request for information) which need not be supported by any level of suspicion, but carries no official compulsion to stop or to respond. The second, an “investigative detention,” must be supported by a reasonable suspicion; it subjects a suspect to a stop and a period of detention, but does not involve such coercive conditions as to constitute the functional equivalent of an arrest. Finally, an arrest or “custodial detention” must be supported by probable cause.

Commonwealth v. Ellis, 662 A.2d 1043, 1047-48 (Pa. 1995) (footnote and internal citations omitted). “In evaluating the level of interaction, courts conduct an objective examination of the totality of the surrounding circumstances.” Commonwealth v. Lyles, 97 A.3d 298, 302 (Pa. 2014) (citation omitted). Not only the conduct of the police, but also the setting in which it occurs are important factors in making this determination. *Id.* at 303 (quoting Michigan v. Chesternut, 486 U.S. 567, 573-74, 108 S.Ct. 1975, 100 L.Ed.2d 565 (1988)).

Where an individual’s freedom of movement has in some way been restrained, whether by physical force or show of authority, such that a reasonable person would

believe he was not free to leave, he has been seized and is entitled to the protections of the Fourth Amendment. United States v. Mendenhall, 446 U.S. 544, 554, 100 S.Ct. 1870, 64 L.Ed.2d 497 (1980). That Defendant was seized when Officer Bulger drew his weapon and ordered Defendant to the ground is not in dispute. However, while Defendant contends the totality of the circumstances evidences he was the subject of an illegal arrest, the Commonwealth argues this was an investigative detention. A number of factors determine whether a detention is investigative or custodial, including

the basis for the detention (the crime suspected and the grounds for suspicion); the duration of the detention; the location of the detention (public or private); whether the suspect was transported against his will (how far, why); the method of detention; the show, threat or use of force; and, the investigative methods used to confirm or dispel suspicions.

Commonwealth v. Smith, 172 A.3d 26, 32 (Pa.Super. 2017) (citation and quotation marks omitted).

An arrest is “any act that indicates an intention to take the person into custody *and* subjects him to the actual control and will of the person making the arrest.” Commonwealth v. Hannon, 837 A.2d 551, 554 (Pa.Super. 2003) (citations and quotation marks omitted) (emphasis added), *appeal denied*, 847 A.2d 1279 (Pa. 2004). In contrast, while “every *Terry* stop involves a stop and period of time during which the suspect is not free to go but is subject to the control of the police officer detaining him,” Commonwealth v. Ellis, 549 A.2d 1323, 1331 (Pa.Super. 1988), *appeal denied*, 562 A.2d 824 (Pa. 1989), the circumstances surrounding an investigative detention do not indicate an intention to take the person into custody. Hannon, 837 A.2d at 554. “It is not the subjective view of the police officer that controls in determining whether an individual is in custody; rather, it is an objective test, *i.e.*, viewed in the light of the

reasonable impression conveyed to the person subjected to the seizure rather than the strictly subjective view of the officers or the persons being seized.” Commonwealth v. Guillespie, 745 A.2d 654, 660 (Pa.Super. 2000) (citation omitted). In assessing whether an investigative detention has crossed over to an arrest, courts should take care to consider whether the police are acting in a rapidly developing, potentially volatile situation and, in such cases, should not indulge in unrealistic second-guessing. Commonwealth v. Mayo, 496 A.2d 824, 826 (Pa.Super. 1985).

Here, Defendant was suspected of firing a gun at night near occupied structures within Borough limits. Defendant was one of only two persons known to be in the woods at or about the time the shooting had occurred, the other being Defendant’s accomplice. The duration of the detention was brief, literally seconds. It occurred on a public street, at night, where Defendant was free to flee in any given direction. Defendant was not transported, however, he was directed, at gunpoint, to lie on the ground and was handcuffed, for officer safety, given the likelihood that he was in possession of a firearm based on the crimes suspected. After a pat-down and the discovery of a firearm on Defendant’s person, Defendant was placed in a police cruiser and Mirandized before being questioning.

No single factor controls the determination whether an investigatory stop has escalated to a custodial arrest. An encounter becomes an arrest when, under the totality of the circumstances, a police detention becomes so coercive as to be the functional equivalent of an arrest. Commonwealth v. Dix, 207 A.3d 383, 388 (Pa.Super. 2019), *appeal denied*, 217 A.3d 790 (Pa. 2019). Here, while the pointing of Officer Bulger’s firearm at Defendant and directing Defendant to lie prone on the ground

evidenced a clear use of force and display of authority, this was done for an extremely brief moment to maintain the status quo - until backup arrived - and Officer Bulger was able to safely investigate whether Defendant was one of two persons the police were looking for. See Commonwealth v. Johnson, 849 A.2d 1236, 1239 (Pa.Super. 2004) (“It is both prudent and safe for an officer to draw his firearm when approaching a vehicle in a criminal investigation (as opposed to a routine traffic stop).”); Dix, 207 A.3d at 388-89 (holding a defendant’s detention outside of his parked vehicle by two police officers with their guns drawn who believed defendant had placed a firearm in his waistband and who directed defendant to place his hands on his vehicle was an investigatory stop). Defendant’s detention, at this moment, was for investigatory purposes, and not to arrest and charge Defendant.

Significantly, none of the other factors points in the direction of Defendant being arrested before being placed in the police cruiser. Prior to being placed in the police cruiser, Defendant was not transported against his will. Neither the place or duration of the detention was coercive. Nor does the fact that Defendant was handcuffed, by itself, convert an investigative detention into an arrest, especially where, as here, handcuffing and frisking Defendant served primarily for the Officers’ safety and protection, and only incidentally in furtherance of an investigation to confirm or dispel the Officers’ suspicions that Defendant was one of the persons responsible for firing shots in the woods. Smith, 172 A.3d at 32; Mayo, 496 A.2d at 826. See also Commonwealth v. Guillespie, 745 A.2d 654, 660-61 (Pa.Super. 2000) (holding that “the handcuffing of [defendant] was merely part and parcel of ensuring the safe detaining of the individuals during the lawful *Terry* stop”); Commonwealth v. Rosas, 875 A.2d 341, 348 (Pa.Super. 2005)

(holding that “for their safety, police officers may handcuff individuals during an investigative detention”), *appeal denied*, 897 A.2d 455 (Pa. 2006).

Given these circumstances, and in particular the need for the Officers’ safety and security when Defendant was initially detained, we conclude that Officers Bulger and Campanell’s initial seizure of Defendant was an investigative detention and not a custodial arrest. *Cf. Commonwealth v. Revere*, 888 A.2d 694, 696 (Pa. 2005) (holding that “where exigent circumstances exist, a brief detention and transportation in a police vehicle does not automatically constitute an arrest which must be supported by probable cause”). Whether the circumstances known to these officers at the time, when added together, support a reasonable suspicion to believe that criminal activity was afoot must now be addressed.

(b) Reasonable Suspicion

An officer may stop and briefly detain a person for investigatory purposes when that officer has “reasonable suspicion, based on specific and articulable facts, that criminal activity may be afoot.” *Commonwealth v. Allen*, 555 Pa. 522, 725 A.2d 737, 740 (1999). “[T]he fundamental inquiry is an objective one, namely, whether the facts available to the officer at the moment of the intrusion warrant a man of reasonable caution in the belief that the action taken was appropriate.” *Commonwealth v. Gray*, 784 A.2d 137, 142 (Pa.Super. 2001). We must consider the totality of the circumstances, including such factors as “tips, the reliability of the informants, time, location, and suspicious activity, including flight.” *Id.* (citing *Commonwealth v. Freeman*, 563 Pa. 82, 757 A.2d 903, 908 (2000)).

Smith, 172 A.3d at 33. “In assessing all the circumstances, courts must give weight to the inferences that a police officer may draw upon their training and experience.” *Commonwealth v. Ramey*, 2016 WL 153272 *6 (Pa.Super. 2016) (citing *Commonwealth v. Holmes*, 14 A.3d 89, 95 (Pa. 2011)), *appeal denied*, 145 A.3d 725 (Pa. 2016).

An investigative detention subjects a person to a stop and a period of detention sufficient to allow police an opportunity to gather information confirming or dispelling their suspicions upon which the detention is based. “To maintain constitutional validity, an investigative detention must be supported by a reasonable and articulable suspicion that the person seized is engaged in criminal activity and may continue only so long as is necessary to confirm or dispel such suspicion.” Commonwealth v. Strickler, 757 A.2d 884, 889 (Pa. 2000). As stated in Commonwealth v. Bryant, 866 A.2d 1143 (Pa.Super. 2005).

[T]he Fourth Amendment does not require a policeman who lacks the precise level of information necessary for probable cause to arrest to simply shrug his shoulders and allow a crime to occur or a criminal to escape. On the contrary, Terry [v. Ohio], 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968),] and its progeny recognize that the essence of good police work is for the police to adopt an intermediate response where they observe a suspect engaging in unusual and suspicious behavior. A brief stop of a suspicious individual, in order to determine his identity or to maintain the status quo momentarily while obtaining more information, may be reasonable in light of facts known to the officer at the time.

Id. at 1146 (internal citations and quotation marks omitted) (brackets added), *appeal denied*, 876 A.2d 392 (Pa. 2005).

The test for reasonable suspicion necessary to conduct an investigative detention is less demanding than the standard of probable cause for an arrest. Commonwealth v. Holmes, 14 A.3d 89, 95-96 (Pa. 2011). It can arise from information that is different in quantity and quality than that required for probable cause, as well as from information less reliable than that required for probable cause. Commonwealth v. Emeigh, 905 A.2d 995, 998 (Pa.Super. 2006). The reasonable suspicion standard “does not deal with hard certainties, but with probabilities” and “must be based on

common [] sense.” United States v. Cortez, 449 U.S. 411, 418, 101 S.Ct. 690, 66 L.Ed.2d 621 (1981); Illinois v. Wardlow, 528 U.S. 119, 125, 120 S.Ct. 673, 145 L.Ed.2d 570 (2000).

Here, within ten minutes of shots being heard fired in the woods an individual was seen with Defendant’s general description fleeing into the woods and evading detection. Following this sighting by Officer Bonner, a search of the woods for almost forty-five minutes by three police officers for the individuals Officer Bonner had observed was unsuccessful - notwithstanding that at one point, about halfway through the search, flashlights were observed - further suggesting the individuals the police were looking for were hiding. See Illinois v. Wardlow, 528 U.S. at 124 (observing that “[h]eadlong flight - wherever it occurs - is the consummate act of evasion. . .”).

During the police search, no other individuals were found in the woods, the individuals Officer Bonner observed fleeing were headed in the direction of Lansford, the individual observed by the passerby exiting the woods was exiting the Lansford side of the woods near where the shots had been originally fired, and within minutes of this observation Officer Bulger found Defendant who fit the same general description provided by Officer Bonner and the passing motorist walking near the trail’s end. (pp.8, 20-21, 62). These facts we find are sufficient at a minimum to establish the requisite reasonable suspicion to support Officer Bulger’s detention of Defendant. Cf. Commonwealth v. Walls, 53 A.3d 889, 894 (Pa.Super. 2012) (concluding that unprovoked flight by a defendant, even when not in a high crime area, combined with defendant matching the gender, race and clothing of an individual observed carrying a gun near the same location, gave “rise to reasonable suspicion that criminal activity was

afoot”).³

(c) Scope of Frisk Allowed

As his final issue, Defendant argues the scope of the pat-down by Officer Campanell exceeded the lawful bounds of a *Terry* frisk and, as such, Officer Campanell lacked lawful justification to seize Defendant’s weapon and arrest him. We disagree.

In *Terry [v. Ohio]*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968)], the United States Supreme Court articulated a police officer’s “narrowly drawn” authority to conduct a reasonable search for weapons for the officer’s protection. The officer may pat down or frisk a suspect for weapons only if he reasonably believes that criminal activity is afoot, and that the suspect may be armed and dangerous. The officer must be able to articulate specific facts to justify his belief that the suspect may be armed and dangerous. Moreover, the scope of a *Terry* search is limited. Because the “sole justification of the search . . . is the protection of the police officer and others nearby, . . . it must therefore be confined in scope to an intrusion reasonably designed to discover guns, knives, clubs, or other hidden instruments for the assault of the police officer.” *Terry*, 392 U.S. at 29.

Commonwealth v. Perez, 595 A.2d 1315, 1317 (Pa.Super. 1991) (internal citations omitted).

The requirements of *Terry* were met here: (1) a lawful investigatory stop supported by reasonable suspicion that Defendant had committed a criminal offense, and (2) a limited search for weapons based on a reasonable belief that Defendant was armed and dangerous. *Arizona v. Johnson*, 555 U.S. 323, 326-27, 129 S.Ct. 781, 172 L.Ed.2d 694 (2009). Officer Campanell’s protective pat-down of Defendant was confined to a search for weapons and, upon feeling a bulky item beneath Defendant’s jacket, removal of that item for officer safety. Defendant’s argument that Officer Campanell must have specifically identified this item as a weapon prior to its removal confuses the “plain feel” doctrine for the seizure of contraband with the purpose and

scope of a *Terry* frisk. Whereas the seizure of non-threatening contraband detected by an officer's "plain feel" during a pat-down for weapons is permitted "if that officer is lawfully in a position to detect the presence of contraband, the incriminating nature of the contraband is immediately apparent and the officer has a lawful right of access to the object," with the term "immediately apparent" meaning that "the officer conducting the *Terry* frisk readily perceives, without further search, that what he is feeling is contraband," Commonwealth v. Guillespie, 745 A.2d at 657 (citations and quotation marks omitted), a pat-down for weapons permits an officer to remove items which he reasonably believes may be used to harm the officer or others nearby. Terry, 392 U.S. at 26.

Officer Campanell's search did not go beyond that which was necessary to discover the presence of weapons which could be used to endanger the safety of police or others. Commonwealth v. E.M./Hall, 735 A.2d 654, 661 (Pa. 1999). Moreover, Officer Campanell's concern that what he felt might be a weapon was confirmed when this "bulky item" turned out to be a black powder handgun. *Compare* Commonwealth v. Taylor, 771 A.2d 1261, 1270 (Pa. 2001) (per Newman, J., joined by Cappy and Castille, JJ.) (stating that even though the officer testified that what he felt was not a gun or knife, the officer could have reasonably believed the hard, cylinder-type, four-inch object was a weapon of some sort, even though it in fact it was a prescription bottle) with Commonwealth v. Wilson, 927 A.2d 279, 285-86 (Pa.Super. 2007) (finding that neither the officer's description of what he felt in the suspect's pocket, a "hard, large ball," nor the physical characteristics of what was actually seized – a round cluster of

twelve tiny knotted plastic baggie corners, which contained a net weight of 1.743 grams of cocaine - could conceivably be thought to have been a weapon).

CONCLUSION

For the reasons stated, we conclude that Officer Bulger's stop of Defendant was an investigative detention supported by reasonable suspicion for the purpose of temporarily detaining Defendant while the police investigated whether Defendant had illegally fired a firearm within Borough limits and was one of two individuals Officer Bonner had observed fleeing into the woods and who hid from the police. We also find that Officer Campanell was legitimately concerned during his pat-down of Defendant that what he felt might be a weapon, that this belief was reasonable under the totality of the circumstances, and that the removal of this bulky item for further examination was justified.

BY THE COURT:

P.J.

¹ All page references in this Memorandum Opinion are to the notes of testimony for the suppression hearing held on November 8, 2019.

² Defendant did not have a firearms carrying permit or a valid hunting license at the time. (pp.56-58). See 18 Pa.C.S.A. § 6106(b)(9) (excluding from the license requirements of subsection (a), persons licensed to hunt, if actually hunting, or going to or returning from hunting).

³ "Whether there is probable cause to arrest without a warrant depends on whether, at the moment a suspect is taken into custody, the facts and circumstances within the officer's knowledge, and of which he has reasonably trustworthy information, are sufficient to warrant a man of reasonable caution to believe that an offense has been committed and that the person to be arrested has committed the offense." Commonwealth v. Stokes, 389 A.2d 74, 76 (Pa. 1978).

In determining whether probable cause existed in a particular situation, a court will look not just at one or two individual factors, but will consider the "totality of the circumstances" as they appeared to the arresting officer:

When we examine a particular situation to determine if probable cause exists, we consider all the factors and their total effect, and do not concentrate on each individual element. . . . We also focus on the circumstances as seen through the eyes of the trained officer, and do not view the situation as an average citizen might. . . . Finally, we must

remember that in dealing with questions of probable cause, we are not dealing with certainties. We are dealing with the factual and practical considerations of everyday life on which reasonable and prudent [persons] act.

Commonwealth v. Simmons, 295 Pa.Super. 72, 83, 440 A.2d 1228, 1234 (1982), quoting Commonwealth v. Kazior, 269 Pa.Super. 518, 522, 410 A.2d 822, 824 (1979). It is only the probability, and not a *prima facie* showing, of criminal activity that is the standard of probable cause for a warrantless arrest. Commonwealth v. Kloch, 230 Pa.Super. 563, 327 A.2d 375 (1974). Probable cause exists when criminality is one reasonable inference; it need not be the only, or even the most likely, inference. See e.g. Commonwealth v. Kendrick, 340 Pa.Super. 563, 571, 490 A.2d 923, 927 (1985) (probable cause “does not demand any showing that ... a belief [of criminal activity] be correct or more likely true than false”); Commonwealth v. Moss, 518 Pa. 337, 344, 543 A.2d 514, 518 (1988) (in assessing sufficiency of probable cause, the fact that other inferences could be drawn from circumstances does not demonstrate that inference that was drawn by police was unreasonable). As Courts of this Commonwealth have repeatedly emphasized, determinations of probable cause “must be based on common-sense non-technical analysis.” Commonwealth v. Gray, 509 Pa. 476, 484, 503 A.2d 921, 925 (1985).

Commonwealth v. Quiles, 619 A.2d 291, 298 (Pa.Super. 1993) (*en banc*).

In this case, it is also appropriate to ask whether Officer Bonner had probable cause to arrest Defendant since, if he did, Officer Bulger was likewise authorized to make a warrantless arrest. See Commonwealth v. Yong, 177 A.3d 876, 889-90 (Pa. 2018) (holding that where there is evidence two officers are working as a team, and one of them has probable cause to stop or arrest an individual, that knowledge can be imputed to the officer who makes the arrest, even without evidence that it was actually conveyed). See also Commonwealth v. Smith, 172 A.3d 26 (Pa.Super. 2017), allowing an officer conducting an investigation to rely upon hearsay information provided by another officer, and stating:

It is entirely permissible for an officer to engage in the investigation of a suspect based on the observations of another officer even when the officer conducting the investigation has not been supplied with the specific facts needed to support the seizure; however, the officer who made the observations must have the necessary facts to support the interdiction. This precept flows from the realities of police investigation, which often relies upon the cooperation of many police officers.

Id. at 33. (citation and quotation marks omitted). Cf. Commonwealth v. Rush, 326 A.2d 340, 341 (Pa. 1974) (stating that while “the facts and circumstances establishing probable cause must be known to the police at the time of the arrest, . . . acting on the orders of an officer with probable cause obviates the need for probable cause on the part of the arresting officers”).

It was Officer Bonner to whom the report of shots being fired in the woods was first given by Brad Digilio, which report, by an identified eyewitness - rather than an anonymous one - is deemed “inherently trustworthy.” See Commonwealth v. Brogdon, 220 A.3d 592, 600 (Pa.Super. 2019), *appeal denied*, 226 A.3d 967 (Pa. 2020). It was Officer Bonner who first arrived on the scene and witnessed firsthand the two persons the police were looking for - one of whom he believed was the Defendant - flee into the woods. (pp.53-54). Not only did Officer Bonner believe Defendant was one of the persons he observed fleeing into the woods, this belief was confirmed when the person Officer Bulger stopped was the very same person Officer Bonner thought he recognized, dressed in clothing of the same type Officer Bonner had described. Moreover, Officer Bonner was present as Defendant was being handcuffed and frisked by Officer Campanell. (pp.54-56, 63). These combined facts further establish probable cause for Defendant to be arrested and to be searched incident to that arrest. See Commonwealth v. Simonson, 148 A.3d 792, 798-99 (Pa.Super. 2016) (explaining “search incident to arrest” exception to the warrant requirement), *appeal denied*, 169 A.3d 33 (Pa. 2017).