

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

V.

CRIM. NO. [REDACTED]

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SUPPLEMENTAL MEMORANDUM OF LAW  
IN SUPPORT OF MOTION TO SUPPRESS

[REDACTED] seeks suppression of all physical evidence and statements taken from him by Officer Gerald Young on December 5, 2000. In supplementing the previous motion to suppress filed on January 17, 2001, [REDACTED] relies on his prior memorandum of law and the record established during the suppression hearing held on May 10, 2001. The grand jury testimony on Officer Gerald Young and a transcript of the May 10, 2001 suppression hearing are attached as exhibits A and B in support.

The suppression hearing was held in the District Court of Syracuse New York before the Hon. Frederick J. Scullin seeking the suppression of physical evidence and statements obtained from the defendant, [REDACTED] on December 5, 2000. [REDACTED] sought the suppression of certain evidence because it was obtained in violation of *Miranda v. Arizona*, *Terry v. Ohio* and the 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Amendments. [REDACTED] was stopped on December 5, 2000 by Officer Gerald Young of the Troy City Police, questioned, his license taken and withheld from him then eventually was arrested.

In their response to [REDACTED] motion the Government alleged that Officer Young was initially motivated to stop his car when he observed two individuals believed to be in

violation of the curfew ordinance in Troy, New York. (Gov't Memo in Response, p. 1). In addition, the Government alleged the "encounter" between [REDACTED] and Officers Young and Becker was consensual. (Gov't Memo in Response, p. 3, 5/10/01 Transcript, p. 5, attached as Ex. B). The Government also advised that [REDACTED] was asked for his identification "primarily for safety reasons". (Gov't Memo, p. 2, n. 1). Lastly, the Government alternatively advances that if the "encounter" was an "investigative detention" it was supported by *Terry v. Ohio*. (Gov't Memo, p. 4). It appears the Government has covered all legal exceptions to the *Terry* doctrine requiring reasonable suspicion.

However upon further development of the factual record at the suppression hearing the basis for the police detention of [REDACTED] confines the Court's consideration of the events to the facts known to the officer at the time of the detention and the belief of [REDACTED] evident during the stop that he was not free to leave. *See also Florida v. Bostick*, 501 U.S. 429, 434, 111 S.Ct. 2382, 115 L.Ed.2d 389 (1991)

**The "Encounter" was not Consensual because [REDACTED] was not free to leave.**

Although police may stop a citizen for questioning at any time, if the citizen does not recognize that he is free to leave, the encounter is non-consensual. *See Bostick*, 501 U.S. 429, 434. In addition, once personal effects are taken and retained by the law enforcement authorities an encounter that may have initially been consensual effectively becomes a seizure. *Florida v. Royer*, 460 U.S. 501-02, 103 S.Ct. 1319, 75 L.Ed.2d 229 (1983)(Retention of suspect's plane ticket and driver's license resulted in seizure). *See also, United States v. Lambert*, 46 F.3d 1064, 1068 (10<sup>th</sup> Cir. 1995)(Encounter became investigative detention once the agents received driver's license and did not return it.)

The present facts constrain the conclusion that the “encounter” with [REDACTED] was not consensual and instead resulted in a seizure or investigative detention requiring Officer Young to articulate a reasonable suspicion for stopping [REDACTED]. Terry v. Ohio, 392 U.S. 1, 27, 88 S.Ct. 1868, 20 L. Ed.2d 889 (1968) First, [REDACTED] was in reality not free to leave because Officer Young took and kept, fully intent on keeping, [REDACTED] driver’s license. (Ex. B, p. 33). In addition, submitting to Officer Young’s authority, [REDACTED] requested permission to sit down. He believed he was under the control of Officer Young (Ex. B, p.36). Officer Young did not inform [REDACTED] he was free to leave, (Ex. B, p.33). The police car also swung around in a U-turn stopping on wrong side of street immediately next to [REDACTED]. Lastly, a second police officer , Officer Becker, arrived at the same time Officer Young was taking the license and other information (Ex. B, p. 14-15). See Gardiner v. Inc. Village of Endicott, 50 F.3d 151, 155 (2d Cir. 1995)(Listing factors to be considered in determining whether encounter is consensual)(citations omitted). See also United States v. Glover, 957 F.2d 1004, 1008 (2d. Cir. 1992)(Finding of consensual encounter is based on totality of the circumstances).

Given the above facts, a reasonable person would not have believed he was free to leave the presence of Officers Young and Becker. United States v. Mendenhall, 446 U.S. 544, 554.

### **Officer Young Lacked Reasonable Suspicion**

[REDACTED] acknowledges that *Terry* allows the brief detention of an individual. However, detention must be based on reasonable suspicion. *Id.* At 1879. The requirements of *Terry* do not end with the suspicion alone. In addition, *Terry* requires that suspicion be not only reasonable, but also specifically related to the individual stopped. Lastly, once the suspicion that

a crime is being committed in this case the curfew violation, has been dispelled, the individual stopped must be allowed to go on their way.

██████████ was not seen or identified by Officer Young until after he had already decided to intercept the other two individuals. (Ex. B, pp. 27-28, Def. Ex. 3, Grand Jury Transcript, p. 4, Attached as Ex. A). Reason for the stop was not particularized to ██████████. In addition, all facts testified to by Officer Young are completely consistent with innocent activity. Officer Young believed ██████████ to be over the age of 18 (Ex. B, p.28). ██████████ was polite and compliant and gave no false, contradictory or evasive answers. (Ex. B, pp. 28-29, 38) He made no attempt to “depart” the area upon seeing the officer stop. (Ex. B, p. 28) *Cf. Illinois v. Wardlow*, 528 U.S. 119, 123 (2000) (Holding that an individual's unprovoked flight upon noticing the police, in conjunction with his presence in a high crime area, may constitute reasonable suspicion). ██████████ sought to join the other two individuals even after crossing the street in front of the approaching police car. (Ex. B, p. 11). *United States v. Wood*, 106 F.3d 942, 948 (10<sup>th</sup> Cir. 1997).

The only other factors involved in the reasonable suspicion equation, simple knowledge of ██████████ prior record and presence in the early morning hours in a “high crime area,” are not enough. *See Brown v. United States*, 443 U.S. 47, 52, 99 S.Ct. 2637, 61 L.Ed.2d 357 (1979). (The fact that a person is in a neighborhood frequented by drug users is not sufficient to suggest that the person is engaged in criminal conduct).

Taking these factors as the "totality of the circumstances" known to Officer Young at the time of the stop leads to the conclusion he did not have a particularized and objective basis for suspecting ██████████ of criminal activity. *United States v. Cortez*, 449 U.S. 411, 417- 18,

101 S.Ct. 690, 66 L.Ed.2d 621 (1981). In addition, [REDACTED] prior criminal involvement is insufficient to give rise to the necessary reasonable suspicion to justify shifting the focus of an investigative detention from an on the street stop to a narcotics or weapons investigation. United States v. Wood, 106 F.3d 942, 948 (10th Cir. 1997) *citing* United States v. Lee, 73 F.3d at 1034; United States v. Sandoval, 29 F.3d at 542-543. (If the law were otherwise, any person with any sort of criminal record ... could be subjected to a Terry-type investigative stop by a law enforcement officer at any time without the need for any other justification at all.)

**Even If there was Reasonable Suspicion for Stop, it Dissipated upon Examination of  
[REDACTED] License**

The Supreme Court has instructed that an investigative detention must "last no longer than is necessary to effectuate the purpose of the stop," and "[t]he scope of the detention must be carefully tailored to its underlying justification." Florida v. Royer, 460 U.S. 491, 500, 103 S.Ct. 1319, 1325, 75 L.Ed.2d 229 (1983). The Fourth Amendment requires that a search not continue longer than necessary to effectuate the purposes of the investigative stop. Royer, 460 U.S. at 500. An investigative stop must cease once reasonable suspicion dissipates. United States v. Babwah, 972 F.2d 30, 34 (2d. Cir. 1992)(Agents' continued detention of suspect became illegal once their reasonable suspicion proved unfounded).

Once the reason for the stop as articulated by Officer Young had been concluded with the finding that there was no violation of the curfew law by [REDACTED], any continued questioning and detention had to be based on fresh suspicion and additional facts supporting that suspicion. United States v. Holt, 229 F.3d 931 (10th Cir.2000)(Further questioning at the stop that is unrelated to the purpose of the stop is not permitted unless the officer has reasonable

suspicion of additional illegal activity). The short period of time it took for [REDACTED] to provide the exculpatory information limited any additional factual basis for keeping his license and requesting additional information about him from police dispatch. Officer Young did not advance any additional facts between providing the license and the further investigative inquiry to dispatch.

**No Reasonable Belief to Continue Investigation for “Safety Purposes.”**

When assessing a brief detention under *Terry* the issue is whether a reasonably prudent officer in the circumstances would be warranted in the belief that his safety or that of others was in danger." United States v. Rahman, 189 F.3d 88, 120 (2d. Cir 1999) *quoting Terry*, at 27. In addition, the further investigation allowed by the “police safety” exception during an investigative detention solely relates to the exception outlined in *Terry*, a quick frisk for weapons. Such additional intrusion also requires that the officers have a “reasonable belief” based on individualized suspicion that the suspect is “dangerous” McCardle v. Haddad, 131 F.3d 43, 49 (2d. Cir 1997) *quoting Michigan v. Long*, 463 U.S. at 1050 n. 14, 103 S.Ct. at 3481 n. 14. See also *id.* at 1053 n. 16, 103 S.Ct. at 3482 n. 16 and Maryland v. Buie, 494 U.S. 325, 334-35 n. 2, 110 S.Ct. 1093, 1098 n. 2, 108 L.Ed.2d 276 (1990) ("Even in high crime areas, where the possibility that any given individual is armed is significant, *Terry* requires reasonable, individualized suspicion before a frisk [of persons or areas] for weapons can be conducted.").

Other than the conclusory response concerning “safety” as a basis for the prolonged detention, Officer Young provided no additional factual basis other than over politeness and a request for permission to move as a basis for a “threat” to his “safety”. (Ex. B. p.38). Therefore, the additional inquiry to the dispatcher was without a reasonable basis and took place during an

illegally prolonged stop and as such any information gained is fruit of the illegal seizure subject to suppression. Wong Sun v. United States, 371 U. S. 471 (1963).

### **Statement of ██████████ Is Subject to Suppression**

██████████ was seized at the time Officer Young further questioned him concerning weapons. *Miranda* warnings had not been given at the time the questions were asked. No waiver of *Miranda* had occurred. Miranda v. Arizona, 384 U.S. 436 (1966). Thus, the statement is also a fruit of the initial illegal conduct as should be suppressed. Wong Sun v. United States, 371 U. S. 471 (1963).

### **Doctrine of Inevitable Discovery is Inapplicable**

In addition, because the seizure was illegal, the inevitable discovery doctrine is inapplicable. Exceptions to the warrant requirement, such as the exceptions for a search incident to arrest and for an inventory search, would depend in part on the lawfulness of ██████████ seizure. United States v. Perea, 986 F.2d 633, 642 (2d Cir. 1993) *citing* See, e.g., Smith v. Ohio, 494 U.S. 541, 543, 110 S.Ct. 1288, 1290, 108 L.Ed.2d 464 (1990) (per curiam) (incident to arrest); Illinois v. Lafayette, 462 U.S. 640, 648, 103 S.Ct. 2605, 2610, 77 L.Ed.2d 65 (1983) (inventory search); United States v. Jenkins, 876 F.2d 1085, 1089 (2d Cir.1989) (same).

### **Conclusion**

Because the actions taken by Officer Young were based on nothing more than a feeling or belief about ██████████ and this is precisely the type of "unparticularized suspicion or hunch" that the Supreme Court of the United States has found impermissible, the evidence obtained from ██████████ should be suppressed. (Ex. B. p. 44), Terry, 392 U.S. at 27; United States v. Sokolow, 490 U.S. 1, 7 (1989).

WHEREFORE, [REDACTED] respectfully requests the Court suppress the physical evidence and statements obtained from him on December 5, 2000 as fruits of the unconstitutional stop and detention conducted by the law enforcement authorities and for such other relief as the Court deems appropriate.

DATED: June 6, 2001

Respectfully Submitted,

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PAUL EVANGELISTA  
Assistant Federal Defender