

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA :  
 :  
v. : No. 3:02cr340 (JBA)  
 :  
EDWARD DAILEY :

Ruling on Defendant's Motion to Suppress [Doc. #16]

Defendant Edward Dailey moves to suppress a Lorcin, .25 caliber semi-automatic hand gun seized by Officer Earl Baidy of the Hartford Police Department ("HPD") from Dailey's person on October 8, 2002, alleging that the attendant warrantless search and seizure were unreasonable under the Fourth Amendment of the United States Constitution. The Court held an extended suppression hearing, taking evidence and/or hearing argument on May 29, June 3, June 4, June 18, December 4, 5, 8, and 10 of 2003.<sup>1</sup> For the reasons set forth below, the Court finds that Officer Baidy properly detained and searched Dailey within the constitutional boundaries set forth in Terry v. Ohio, 392 U.S. 1 (1968) and progeny, and accordingly Dailey's motion to suppress [Doc. #16] is DENIED.

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<sup>1</sup> The hearing was interrupted by a full round of briefing and argument on defendant's motion to preclude the testimony of Officer Baidy. See Bench Ruling of 11/07/03 (as reflected by minute entry [Doc. #34]).

## **I. Factual Background**

### **A. Government's Evidence**

#### **1. Officers Ortiz and Baidy**

The Government offered two Hartford Police Department witnesses at the suppression hearing, Detective Nathaniel Ortiz and Officer Earl Baidy.<sup>2</sup> Their account of events, which the Court generally finds credible, is as follows:

On October 8, 2002, Ortiz was paged by a confidential informant telling him that at 73-75 Earle Street there were several individuals selling narcotics who may be armed and one individual whom the informant had seen armed with a handgun. The informant further described the individual with the handgun as an older, light complexioned, heavy set black male wearing white. In response to more specific questioning by Ortiz, the informant elaborated that the handgun was a small semi-automatic and that the individual in question was older than Ortiz (who was twenty-nine as of the date of the hearing). Ortiz testified that he had used this informant on numerous prior occasions and that the informant's information on those occasions had led to arrests for larceny, narcotics and firearm violations, seizures of drugs, and

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<sup>2</sup> Both officers testified that they had been employed at the HPD for approximately seven years. As of October 8, 2002, both officers were community service officers assigned to community response/service divisions in Hartford's north end that, among other duties, conduct surveillance operations related to narcotics and illegal firearms.

locating wanted individuals.<sup>3</sup> Ortiz eventually conveyed this information to Officer Baidy and another community service officer, Steven Pepler, and the three proceeded in an unmarked car to set up surveillance at a vantage point two to three houses down the street from 73-75 Earle Street.

Known as a drug outlet, 73-75 Earle Street had been the scene of gun violence, home invasions, and drug-related activity. Crack cocaine was commonly sold at that location. The property owner had filed a standing trespass complaint with the HPD and complained frequently at community meetings that drug-related activity was out of control there. Prior to October 8, 2002, the HPD had conducted "numerous investigations" of narcotics activity at the site.

The three officers, in uniform but concealed from view by the tinted glass of their automobile, conducted surveillance for approximately thirty minutes. They observed from two to six males at various times standing on the property at 73-75 Earle Street, including on the driveway, on the front of the property, and on the sidewalk. These individuals were constantly moving, coming to and departing from the property. Other individuals, including persons known to Ortiz to be drug dependent, would walk up to them and engage in hand-to-hand transactions before

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<sup>3</sup> Ortiz testified that his informant had a prior conviction and arrest record, but no pending cases at the time the information was provided. In addition, while the informant had been paid for information in the past, no payment was made for this particular tip.

leaving, or walk up to them, be escorted to the doorway of 73-75 Earle where an exchange would take place, and then depart. In addition, the individuals were flagging down cars in the street. One would flag down a car, and, when the car stopped, another would approach the car, lean into it while looking up and down the street, and engage in what appeared to be a transaction. These individuals were generally black males in their late teens or early twenties, wearing dark clothing.

The officers also immediately observed an individual matching the description provided by the confidential informant. He was older, bigger, and lighter skinned than the others and was the only one wearing white. Ortiz described him as older than typical drug dealers he had dealt with in Hartford, and atypically wearing white instead of the dark clothing he usually saw north end dealers wearing. He was seen, at various times, walking between the doorway at 73-75 Earle Street out to the sidewalk, standing in the driveway, moving on and off the property, flagging passing by cars, and escorting individuals up the front steps and conducting transactions in the front hallway. Ortiz testified that, based on his training and experience, flagging down cars is common operating procedure for street level drug dealers to signal to potential customers the availability of illicit drugs. Even though the officers testified that they immediately identified the individual matching the informant's description at the outset of their surveillance, they waited to

observe further for a number of reasons, including watching for ongoing criminal activity or possibly seeing the individual reveal the firearm, timing to insure the individual would not be able to disappear into 73-75 Earle Street, and officer safety issues related to potentially confronting more numerous and possibly armed suspects and difficulty in obtaining backup in Hartford.

After backup was in place, the officers drove to the front of the driveway at 73-75 Earle Street, exited their vehicle, and approached Dailey, who was the individual matching the informant's description, and another individual named Bell, who was with Dailey. Officer Baidy focused on Dailey, directing him to place his hands on a fence line running along the driveway. Dailey did not attempt to flee or discard property; rather he completely cooperated, putting his hands where directed and offering no resistance. Officer Baidy asked Dailey if there was anything on his person he should know about. Dailey was unresponsive. Officer Baidy then conducted a patdown of Dailey and, while moving his hands around the front side of Dailey's waistband, felt a hard object he believed to be a firearm. He reached into Dailey's waistband and removed the Lorcin, .25 caliber handgun that is the subject of the present motion. Dailey was then placed in handcuffs, arrested, and charged with criminal possession of a firearm, carrying a pistol without a permit, and criminal trespass in the third degree. No narcotics

charges were filed because no drugs were found on Dailey, although Ortiz credibly explained that street level drug dealers often do not carry their money or narcotics on them.

From the onset of the surveillance until Officer Baidy's pat down of Dailey and seizure of the firearm, the officers had seen no handgun, no bulge in Dailey's clothing, and no conduct consistent with a concealed weapon, such as reaching for a gun. The officers had no personal knowledge of Dailey or whether Dailey had any history of firearms possession or had been a danger to the community in the past. At the time of his arrest, Dailey complained of and the officers observed Dailey with some physical problem, appearing to have a hurt leg and walking with a limp, and in need of assistance getting into the patrol car, to which end they removed his handcuffs. Neither officer remembers if Dailey was using a cane at the time of arrest.

## **2. Discrepancies**

Defense counsel urges that there exist discrepancies between the testimony of Ortiz and Baidy and between documentary evidence and their testimony that demonstrate lack of credibility of both officers. He claims that the record shows the following discrepancies: 1) Ortiz testified Baidy was his partner whereas Baidy testified they were not; 2) Ortiz testified both he and Baidy met with the confidential informant whereas Baidy testified

that he was not present at the meeting and Ortiz relayed the information to him; 3) Ortiz testified Dailey stopped cars, leaned into them, and conducted apparent transactions whereas Baidy said Dailey did not; 4) Ortiz testified to Dailey escorting individuals on numerous occasions to the doorway at 73-75 Earle Street and back to the street whereas Baidy testified Dailey escorted individuals on two or three occasions from the driveway to the front steps and back down; 5) Ortiz testified that individuals in the residence at 73-75 Earle Street said Dailey did not have permission to be there whereas Baidy testified that the occupants did not answer at all; 6) Ortiz testified varyingly that Dailey remained on the premises at 73-75 Earle Street at all times and moved off at times; and 7) both officers' testimony regarding the appearance of the other individuals as distinct from Dailey is at odds with the appearance of Bell, who was in his early thirties, taller than Dailey and of the same weight, see Def.'s Ex. F.

The Court finds these alleged contradictions do not materially impact on the officers' credibility or collective account of what occurred at 73-75 Earle Street on October 8, 2002. Ortiz' testimony that Baidy was his partner is of small moment, was not fully developed, and is read in the context of: "He's also with the community response division assigned at that time." Tr. [Doc. #27] at 13:5-6; see also id. at 23:15-17. While Baidy states he and Ortiz were not partners, he elaborates

in the next question and answer, testifying "[w]e were both community service officers." Tr. [Doc. #29] at 20:4.

Ortiz' testimony that Baidy was with him when he met with the informant on October 8, 2002, see Tr. [Doc. #27] at 12:14-13:2, is followed by a question asking what the informant said to Ortiz, to which Ortiz answered, "I spoke with him and he told me...." Id. at 13:10 (emphasis added). The full context of Baidy's testimony on the issue, see Tr. [Doc. #29] at 38:22-50:21, is not necessarily inconsistent with Ortiz' testimony. Following his testimony that he was not there when Ortiz obtained the information, he stated that he did not see the informant, and that Ortiz conveyed the informant's information to him in person at "[a]n off site location," id. at 49:16, which was left unspecific because such information could tend to identify the informant. A plausible integration of both officers' testimony is that Ortiz was the only one who actually spoke with the informant but that this conversation, to which only Ortiz and the informant were privy, took place in a location at which both officers were present. There would be no need for Baidy to decline to reveal the location at which Ortiz conveyed the informant's information if the informant were not in some manner connected to that place.

The testimony about precisely what the officers observed Dailey doing versus what the other individuals did is understood within the context of the entire testimony. The officers were



uniform in their description of a fluid, ongoing street drug dealing scene involving various individuals, sellers and buyers, who were constantly arriving, leaving, and moving, and engaging in various stages and forms of transactions, including drive through and walk up service. While Ortiz' testimony of observing Dailey engaged in hand to hand transactions, see e.g., Tr. [Doc. #27] at 75:6-7 ("He'd escort the people up the stairs and take their money."),<sup>4</sup> contrasted with Baidy's that he did not see Dailey engage in such transactions, Baidy did see Dailey escort individuals up the stairs and into the doorway with the implication that transactions were taking place there. The Court attaches minimal significance to the difference between Ortiz having seen Dailey escort individuals to the door "numerous" times and Baidy having seen this conduct only two or three times, particularly as it is readily explained by the nature of the street drug bazaar described by the officers.

Baidy's not having heard the response Ortiz claims from the occupants of 73-75 Earle Street regarding whether Dailey belonged there indicates little more than two officers engaging in separate duties in the midst of an uncertain crime scene and

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<sup>4</sup> None of defense counsel's citations to Ortiz' testimony, see id. at 25:3; 28:7-10, 13-16; 58:11-59:23, supports the characterization that Ortiz claimed Dailey engaged in transactions with drive up customers (as opposed to walk up customers), and other testimony clarifies that this was not Ortiz' observation, see e.g. id. at 75:4-9 ("Yes, I saw Mr. Dailey. Mr. Dailey wouldn't necessarily go out way out to the cars, he'd be in the driveway. He'd escort the people up the stairs and take their money. That's why I say I didn't observed (sic) the transactions as they walked up the stairs. He'd escort them to the front.").

having different recollections; the gist is the same -- no one living there chose to claim any association with Dailey. Possibly divergent references to Dailey's whereabouts at 73-75 Earle Street, and whether he remained at all times on the premises or whether he moved about also do not appear contextually important.

Finally, it cannot be determined from the booking photo of Mr. Bell and the written description of his physical characteristics how he would have appeared to Ortiz and Baidy on the street on October 8, 2002. The fact that Bell is taller but the same weight as Dailey would tend to suggest that Dailey was heavier-set than Bell. In addition, from the photos in evidence, Bell does appear to look younger than Dailey.

#### **B. Defendant's Evidence**

Dailey offered several witnesses and exhibits, including: 1) Detective Carlos Ocasio, who is assigned to HPD's evidentiary service division where he runs the crime scene lab, which develops and processes crime scene photos and mug shots; 2) Richard Seaver, the property officer at Northern Correctional Institution ("Northern") in charge of inventorying all property coming into or leaving the facility; 3) Debra Williams, a friend of Dailey's who was living at 75 Earle Street on October 8, 2002; 4) Denise Velez, a close friend of Dailey's; 5) Carson Wright,

M.D., who is employed by the University of Connecticut Health Center, works under contract at Northern, and treated Dailey in mid to late October 2002; 6) Robert A. Famiglietti, the state public defender who represented Dailey at his state court arraignment on October 9, 2002; 7) Carolyn Delgado, women's services coordinator and custodian of records at Hartford Dispensary, a medical facility at which Dailey obtained medical treatment from June 2002 through October 8, 2002; 8) Dailey's booking photograph dated 10/08/02; 9) a Personal Property Receipt/Transfer Acknowledgment of the Connecticut Superior Court Judicial Marshals dated 10/08/02; 10) an Inmate Property Inventory Form (Attachment B) from Hartford Correctional Center ("HCC") dated 10/09/02; 11) an Inmate Property Inventory Form (Attachment B) from HCC dated 10/10/02; 12) an Inmate Property Inventory Form (Attachment B) from Northern dated 10/17/02; 13) an Inmate Property Status Form and Receipt (Attachment C) from Northern dated 10/17/02 and signed by Dailey on 10/18/02; 14) an Inmate Property Valuables and Document Storage and Discharge Report from Northern dated 10/21/02; and 15) Dailey's medical records, including from the Hartford Dispensary and John Dempsey Hospital.

Dailey marshaled his evidence to support three factual contentions. First, Dailey attempted to demonstrate that he was not wearing white when he was arrested on October 8, 2002, but clothes of other colors as depicted in his booking photograph,

and as recorded in various institutional property records describing no white upper body clothing. Second, Dailey attempted to demonstrate that his medical condition afflicting his back and legs on October 8, 2002 was such that he was physically incapable of the range of activity attributed to him by Ortiz and Baidy. Third, Dailey offered Debra Williams' testimony to contradict the officers' as to Dailey's whereabouts and activities on Earle Street just prior to his arrest. The Court is unpersuaded that this evidence undercuts the credibility of Ortiz and Baidy as to the material facts underlying their claimed reasonable suspicion justification for the Terry stop and pat down.

### **1. Dailey's Clothing**

Ortiz' and Baidy's emphatic testimony that Dailey was wearing white during their entire surveillance is considered in the context of their otherwise credible testimony. Baidy was certain that Dailey's jacket was all white (and in fact thought his pants were too), and Ortiz simply testified that Dailey was "wearing white." There was no other direct testimony of what Dailey wore, or put on or took off or discarded from the time he was arrested until the time he was brought to Northern, which included at least two intermediate stops at the Hartford Police Department (50 Jennings Road, Hartford, Connecticut 06120) and/or

a courthouse booking facility (95 Washington Street, Hartford, Connecticut 06106) and HCC (177 Weston Street, Hartford, Connecticut 06120). While Detective Ocasio testified that a booking photograph would "more or less" reflect what an individual was wearing at the time of arrest, Tr. [Doc. #27] at 104:22, he clarified on cross-examination by the Government that he had nothing to do directly with Dailey's intake at HPD, that he had no knowledge of how much time elapsed from Dailey's arrest to the time the booking photograph was taken, and that it is possible that Dailey was interviewed or placed in a holding cell before being booked. He further testified that handcuffs are routinely taken off while an arrested person is placed in a holding cell, giving a detainee the capability of removing articles of clothing, and this testimony is consistent with Dailey's mug shot showing him in a mere tee shirt in October.

The official forms dealing with Dailey's property, beginning with booking forms and carrying through HCC to Northern, although largely overlapping, are not uniform in their presentation of the property owned by Dailey. For example, the judicial marshal form, which indicates it was filled out while Dailey was in lock up, lists a cane as property of Dailey, but the subsequent HCC and Northern property forms make no mention of one. The HCC

forms do not list a red cap but the Northern forms do.<sup>5</sup> At the time of the suppression hearing, Mr. Seaver was unable to locate the property listed on Northern's forms as Dailey's, particularly the "blue coat."<sup>6</sup>

Finally, details in the testimony of Debra Williams, a defense witness, corroborate Ortiz' and Baidy's story in significant ways. While she could not remember what Dailey was wearing on October 8, 2002, see Tr. [Doc. #27] at 168:4-6, 203:1-3, she testified that, when the officers drove up and exited their vehicle, they specifically directed an inquiry regarding a

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<sup>5</sup> The HCC forms also list white socks and sneakers but the Northern forms do not. However, the absence of the sneakers and socks on Northern's inventory forms is probably not a significant variant as Mr. Seaver from Northern explained that inmates are permitted to retain their shoes upon entering the Northern population.

<sup>6</sup> Mr. Seaver was re-called to answer queries by the Government regarding what had happened to the property listed as Dailey's on Northern's property intake forms. Defense counsel cross-examined on what investigation Mr. Seaver had done since May 29, asking "...other than checking your own records and other than talking to other of your colleagues who worked at Northern, you didn't do anything else to investigate what happened to that property?" Tr. [Doc. #28] at 62:10-14. Seaver answered, "No, I conversed with my colleagues and I had asked the inmate if he had any knowledge of it also, and he had said that he had had it sent out with his sister," id. at 62:15-18. Defense counsel moved to strike the answer as non-responsive, hearsay, and as a statement obtained in violation of Miranda doctrine. The Court reserved on the motion [Doc. #0-0], and invited briefing. See id. at 68:22. No briefs were submitted and the motion remains pending. The motion [Doc. #0-0] is DENIED for the following reasons: the answer was responsive to defense counsel's inquiry; generally the federal rules of evidence and other exclusionary rules are inapplicable to suppression hearings, see United States v. Raddatz, 447 U.S. 667, 679 (1980) ("At a suppression hearing, the court may rely on hearsay and other evidence, even though that evidence would not be admissible at trial"), United States v. Matlock, 415 U.S. 164, 169-72 (1974), United States v. Brinegar, 338 U.S. 160, 171-74 (1949), Fed. R. Evid. 104(a); defendant's own statement would not constitute hearsay, see Fed. R. Evid. 801(d) (2) (A); and the Court does not rely on Dailey's alleged statement in its ruling denying his motion to suppress.

gun to Dailey and not to Bell, see id. at 175:24-176:9,<sup>7</sup> 204:11-21.<sup>8</sup> If the appearance of Dailey had not matched the informant's description or if the informant had not provided a description, it is difficult to comprehend how the officers could have been so prescient to go directly to Dailey, particularly in light of their unrebutted testimony that they had no prior knowledge of him.

## 2. Dailey's Medical Condition

Dailey's medical records and the testimony of Dr. Carson Wright and attorney Robert A. Famiglietti establish that Dailey had a medical problem with his back and legs during the time

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<sup>7</sup> A. ... I think they told [Bell] he had been out here all day, or something like that.

Q. Do you remember that specifically?

A. Yes.

Q. And anything said to [Dailey] that you remember?

A. Something about a gun.

Q. And was anything - do you remember anything said to [Bell] about a gun?

A. No.

<sup>8</sup> Q. And you don't remember specifically whether or not it was addressed to Mr Dailey? Because I think on direct you were asked what was said to Mr. Dailey, and you said -

A. Because -

Q. - "Where is the gun?"

A. Because when they was doing it, I guess they was looking at him at the time, at the gaze. They was looking at him asking where was the gun. They was asking where the gun was, but looking at him.

frame of September through October 2002 which at times hampered his ability to walk and move. However, the medical records also reveal that Dailey was able to walk immediately following the date of his arrest. See Def.'s Ex. A. (Clinical Record with notes dated 10/10/02 and 10/11/02) ("New intake - walking with limp . . . .," "Inmate told writer my back hurts and inmate did not want to walk anymore. . . . In A+D HCC was call (sic) and writer was informed inmate was having back pain but was able to move around."). In addition, Debra Williams testified that on October 8, 2002 she saw Dailey come out of 81 Earle Street,<sup>9</sup> walk down the steps, walk next door to her residence at 75 Earle Street, walk up the steps and come into her home. The overall picture provided by the medical and testimonial evidence is that Dailey had days when his back seriously interfered with his walking and other physical activities but that there were also days on which he could walk and move around. While Ms. Williams also testified that Dailey was moving slowly, was walking with difficulty - "like a baby," and with a cane, the Court concludes that Dailey's capabilities were consistent with the officers' testimony in that, despite his condition, he was able to move around during the period of their surveillance on that day as they described.

### **3. Williams' Testimony**

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<sup>9</sup> The Court notes that Def.'s Ex. 6 lists Dailey's address as "81 Earle Street, 3<sup>rd</sup> FL, Hartford. . . ." (Emphasis added).



While Debra Williams' testimony is consistent with that of Ortiz and Baidy on some specific points, it is irreconcilable to the extent it recollects the following sequence of events: Dailey exited the residence at 81 Earle Street to its front porch, where he met Bell (who was already there); both immediately walked over to 75 Earle Street to visit with Williams inside her residence at 75 Earle Street; they visited with her for thirty to forty five minutes without ever going outside;<sup>10</sup> all three then exited 75 Earle Street and, within thirty seconds, while Dailey and Bell were still on the driveway at 73-75 Earle Street, the officers drove up onto the curb, got out of their vehicle, and confronted Dailey and Bell. Williams testified she was able to see Dailey leave 81 Earle Street and come right over because she was standing in her doorway at the time. If Williams' recollection is accurate, Dailey would have been inside Williams' residence

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<sup>10</sup> On cross-examination, Williams maintained that Dailey and Bell were inside her residence for at least thirty minutes, specifically denying any shorter time period:

Q. And how long were they with you?

A. About half hour, 45 minutes. Something like that.

Q. You didn't check the clock or anything when they came?

A. No, but it wasn't long because I had to leave.

Q. Could it have been something less than a half an hour, about 15 minutes?

A. No, it was close - it was about a half an hour.

Tr. [Doc. #27] at 200:23-201:8; see also id. at 167:12-13 ("It must have been like a half hour, maybe 45 minutes. That's all.").

the entire time the officers claim they saw Dailey moving around, escorting individuals up the steps, and generally appearing to be engaging in narcotic-related activity in front of 73-75 Earle Street, and, their observations of apparent criminal activity by Dailey could not be credited.

The Court, however, does not credit Ms. Williams' account of the timing of any visit to her by Dailey. It would require the Court to conclude that Ortiz and Baidy were both outright fabricating their similar observations during the surveillance and then became completely truthful as to events surrounding the arrest, since Williams' and their renditions are not at odds on that score. To the contrary, the Court found the officers generally credible by both their demeanor and substantive testimony. In addition, the officers' testimony is consistent with respect to important details, and the minor inconsistencies detailed above tend to bolster the officers' credibility not detract from it.<sup>11</sup> By contrast, there are several reasons to discount the accuracy of Ms. Williams perceptions and recollections of the sequence of events on October 8, 2002, including 1) she had been friends with Dailey for two years; 2) she insisted that drug dealing took place two doors down from 73-75 Earle Street while simultaneously and strenuously maintaining

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<sup>11</sup> In fact, it could be cause for suspicion if the officers' testimony matched on all fours, without any deviations, as to the entire period of surveillance of a broad scene involving the activities of numerous individuals.

that she would shoo away drug dealers from in front of 73-75 Earle Street when she saw them there; 3) she emphasized that no drug dealing had taken place outside of 73-75 Earle Street on October 8, 2002 but also testified she spent most of that day down the street at her father's house or watching television at her own house; 4) she could not remember anything about what Dailey was wearing but could remember other details, including the amount of time Dailey and Bell visited her, Dailey's use of a cane, and Dailey's medical condition; 5) she had a cocaine problem that eventually led to her own arrest (although she testified that she had not used that day); and 6) she had been convicted of several crimes, including one specifically bearing on truthfulness - misdemeanor criminal impersonation.

## **II. Discussion**

Under Terry,

where a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot and that the persons with whom he is dealing may be armed and presently dangerous, where in the course of investigating this behavior he identifies himself as a policeman and makes reasonable inquiries, and where nothing in the initial stages of the encounter serves to dispel his reasonable fear for his own or others' safety, he is entitled for the protection of himself and others in the area to conduct a carefully limited search of the outer clothing of such persons in an attempt to discover weapons which might be used to assault him.

Terry, 392 U.S. at 30. After Terry, which involved an officer's

personal observations of activity occurring before him on a city street, the Supreme Court clarified that reasonable cause for a stop and frisk can be based on information supplied by another person, for example, "a credible informant warn[ing] of a specific impending crime...." Adams v. Williams, 407 U.S. 143, 147 (1972).

"[T]he quantum of suspicion necessary under the first prong of Terry [is] reasonable suspicion, based on specific and articulable facts, of unlawful conduct." United States v. Bayless, 201 F.3d 116, 132 (2d Cir. 2000) (quotation omitted). Further, "reasonable suspicion is an objective standard....," id. at 133, requiring the district court to evaluate "the totality of the circumstances surrounding the stop ... through the eyes of a reasonable and cautious police officer on the scene, guided by his experience and training." Id. (quotations and citations omitted). With respect to the second prong, "[s]o long as the officer is entitled to make a forcible stop, and has reason to believe that the suspect is armed and dangerous, he may conduct a weapons search limited in scope to [allow the officer to pursue an investigation without fear of violence]." Adams, 407 U.S. at 146.<sup>12</sup> Finally, "it is the [Government's] burden to demonstrate

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<sup>12</sup> Generally, the permissible constitutional scope of a Terry weapons search is limited to patdown exploration of a suspect's outer clothing and is exceeded where the officer omits this initial exploration and simply thrusts a hand into the suspect's pocket, see Sibron v. New York, 392 U.S. 40, 65-66 (1968); see also United States v. Casado, 303 F.3d 440, 443-49 (2d Cir. 2002); Adams, 407 U.S. at 147-48, or where the outer clothing patdown reveals no weapon and the officer continues the exploration, see Minnesota v. Dickerson,

that the seizure it seeks to justify on the basis of a reasonable suspicion was sufficiently limited in scope and duration to satisfy the conditions of an investigative seizure." Florida v. Royer, 460 U.S. 491, 500 (1983) (plurality opinion). Under the facts as found above, the Government's evidence satisfies these standards.

A known and reliable informant tipped Ortiz that a person matching Dailey's description was armed with a semi-automatic handgun and was among those engaging in illicit drug-related activities outside 73-75 Earle Street. Ortiz' and Baidy's half hour surveillance of 73-75 Earle Street not only confirmed the scene and activity the informant had reported to Ortiz, but also provided independent and corroborating evidence that Dailey, the individual matching the description, was engaged in narcotics activity at that location. In addition, both officers knew that location to be a drug hot spot and the site of prior criminal incidents.

Based both on the accurate tip from a known and reliable informant and the independent and corroborating observations of Ortiz and Baidy, reasonable officers would agree that Dailey was involved in criminal drug sales and, based both on the tip and the officers' knowledge that "narcotics dealers frequently carry weapons," United States v. Salazar, 948 F.2d 47, 51 (2d Cir.

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508 U.S. 366, 378 (1993).

1991), that Dailey was likely armed and dangerous.<sup>13</sup> Thus, the officer, being justified in making a forcible stop of Dailey, was not required to jeopardize his or others' safety by walking away without conducting the carefully-limited outer clothing pat down explicitly permitted by Terry. Officer Baidy did so, felt a hard object in Dailey's waistband, and thus lawfully retrieved the firearm that is the subject of the present motion.

### **III. Conclusion**

For the foregoing reasons, Dailey's motion to suppress [Doc. #16] is DENIED.

It is so ordered.

/s/

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Janet Bond Arterton, U.S.D.J.

**Dated at New Haven, Connecticut this 30th day of December, 2003.**

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<sup>13</sup> The Court notes that the theoretical possibility that Dailey could have been lawfully carrying a concealed permitted weapon under Connecticut law would not affect the Terry analysis because both the initial stop and subsequent frisk for weapons were otherwise reasonable. See Adams, 407 U.S. at 146.