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## MEMORANDUM OF LAW

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**Re:** District Court Ruling Explains When Anonymous Tips  
Can Justify Police Searches For Firearms

**Date:** August 10, 2012

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### I. ISSUE

A United States District Court in Pennsylvania has ruled that an anonymous tip informing officers that someone is carrying a gun is not enough to give rise to a “reasonable suspicion” to justify a search. *U.S. v. Garvin*, No. 11-480-01, 2012 U.S. Dist. LEXIS 76540 (E.D. Pa. May 31, 2012).

The legal issue in this federal case was whether the defendant’s Fourth Amendment rights were violated when two officers frisk searched him looking for a concealed firearm based on an anonymous tip that he had a gun.

### II. FACTS

One night at around 10:30 p.m., two Philadelphia police officers received a radio call reporting an armed man walking his dog. The tip described him by sex, race, and clothing, and noted that he was walking a dog at a particular intersection. The radio call provided no information about the source of the tip, nor did it give the officers information that the man who allegedly had the gun had committed any crime.

The officers found the defendant who met the physical description given by the tipster, walking his dog within half a block of the identified intersection. It was late at night and the streets were otherwise empty of pedestrians. The officers instructed the defendant to come towards them. The officers asked if the defendant was armed. He replied that he was not. The officers then conducted a frisk search for

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weapons, which the defendant did not object to. The frisk search uncovered a handgun, which was found on the defendant's waistband. The defendant was arrested.

The defendant sought to suppress the handgun as evidence in court, arguing that the handgun was recovered by police based on an unlawful frisk search.

### III. ANALYSIS

The court first recited well-established law that, in the absence of a search warrant, an officer may lawfully conduct an investigatory stop (“*Terry* stop”) when the officer has a “*reasonable, articulable suspicion*” that criminal activity is afoot. An officer can conduct a *Terry* stop and frisk even without the higher level of information necessary to establish “probable cause.” *Terry v. Ohio*, 392 U.S. 1 (1968).

A court must consider the totality of the circumstances to determine whether the reasonable suspicion standard is met. This includes considering factors such as the reliability of an informant's tip, the presence of the defendant in a high crime area, a defendant's presence on the street at a late hour, the defendant's behavior, the police officers' knowledge, training, and experience, and officers' judgments and inferences about human behavior. When a reasonable suspicion is based on a tip from an informant, the tip must contain sufficiently particularized information and reflect personal knowledge about the subject of the tip.

Once reasonable suspicion is established, an officer may conduct a pat down (“frisk”) of the outer clothing of the person detained in order to discover weapons that might be used against officers.

In this case, the court held that because the Defendant's gun was concealed in his waistband, the information provided by the tip was not available to any casual observer. Instead, this specific knowledge indicated that the informant had personal knowledge that the Defendant was armed. But the court then noted that because some individuals are legally permitted to carry guns pursuant to the Second Amendment, a reasonable suspicion that an individual is carrying a gun is not itself evidence of criminal activity.

Consequently, the court held that the tip alone was not sufficient to support an investigatory stop.

So the court then had to consider whether the stop was supported by other factors aside from the tip. The court looked for additional factors to determine whether there were enough circumstances to rise to a reasonable suspicion. The court noted facts that indicated evasive behavior by the Defendant (the Defendant abruptly turned from walking southbound to walking northbound when a police vehicle passed him and stopped at the corner), as well as the Defendant seeking entry into a residence when a second

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police car pulled up and stopped beside him. The court found that the tip informing the officers of particularized information that the Defendant was armed, together with the evasive conduct by the Defendant, was enough to give rise to reasonable suspicion and justify the frisk search.

Because the reasonable suspicion standard had been met, the *Terry* stop and frisk was not a Fourth Amendment violation, and the handgun evidence was not suppressed.

#### IV. CONCLUSION

This decision reflects a small but refreshing change in the perspective toward firearms, and Second Amendment rights, and a rare recognition that the presence of firearms per se are not an indication of criminal activity.

#### For Further Assistance:

Michel & Associates, P.C. has the largest and most experienced firearms law practice in California. For links to information that may help you answer these types of questions, the "Reference Materials" section of our website has a subsection on firearms law at <http://michellawyers.com/reference-materials/firearm-law-references/>.

To stay updated on firearm law issues we encourage you to subscribe to our Firearms Law Newsletters by visiting <http://michellawyers.com/subscribe/>.

If you have any questions or concerns regarding your legal obligations, we would be happy to assist you. You can contact us at [gunlawquestions@michellawyers.com](mailto:gunlawquestions@michellawyers.com).

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