05/09/97 STATE DELAWARE v. HECTOR S. BARROW

1997 | Cited 0 times | Superior Court of Delaware | May 9, 1997

MEMORANDUM OPINION

TOLIVER, Judge

INTRODUCTION

The Defendants, Hector S. Barrow and Jermaine Barnett, have been indicted by the State of Delaware on charges of Murder First Degree, Robbery First Degree, Burglary Second Degree, Possession of a Firearm during the Commission of a Felony and other related offenses. These crimes were allegedly committed on June 25, 1995, [1] at an establishment known as the Black Sheep Sports Store ("Black Sheep Sports") which was then located at 3600 Lancaster Avenue in Wilmington, Delaware. Both Defendants have filed motions seeking to suppress certain evidence seized and/or obtained during the course of the State's investigation. The motions alleged that the Defendants are entitled to the relief sought as a result of violations of their rights under the United States and Delaware State Constitutions as well as Delaware statutory law.

Defendant Barrow initially contends that his stop and detention were in violation of 11 Del.C. § 1902, [2] commonly referred to as the "Two Hour Detention Law". Specifically, he maintains that he should have been released after a witness failed to identify him as one of the suspects in a "show-up." [3] He further contends that although he was taken into custody at approximately 5:20 p.m. on June 25, 1995, he was not advised of his constitutional rights as required by the United States Supreme Court in Miranda v. Arizona, 384 U.S. 436, 16 L. Ed. 2d 694, 86 S. Ct. 1602 (1966), until 9:50 a.m. on June 26, 1995. [4] Since the State failed to comply with § 1902 and/or the dictates of Miranda, he argues that any evidence gathered during his detention, including recorded or unrecorded statements; should be excluded.

Defendant Barnett contends that his statements to the police on June 25, 1995 and June 26, 1995 [5] were obtained in violation of his rights under the Fourth and Fifth Amendments to the United States Constitution, which, again, are guaranteed to the citizens of the individual states by the Fourteenth Amendment. Defendant Barnett also contends that his identification by Morris Cotton was a violation of his right to due process as guaranteed by the Fourteenth Amendment to the United States Constitution in that the police used an identification process that was impermissibly suggestive. That process, he argues will lead to a substantial likelihood of irreparable misidentification at trial.

05/09/97 STATE DELAWARE v. HECTOR S. BARROW

1997 | Cited 0 times | Superior Court of Delaware | May 9, 1997

A suppression hearing was held on May 6, 1996 through May 9, 1996, and on May 13, 1996 through May 15, 1996. At the Conclusion of the hearing, the Court requested legal memorandum from the parties setting forth their respective positions. The submissions having been filed, that which follows is the Court's resolution of the issues so presented.

FACTS

At approximately 4:44 p.m. on June 25, two individuals telephoned the emergency assistance or "911" operator to report what they believed to be a possible robbery. The witnesses, later identified as Pat Johnson and Barbara Fisher, saw the three black males wearing baseball caps who appeared to be attempting to illegally enter Black Sheep Sports. After a brief interlude, the witnesses watched as the same three males exited that establishment carrying a brown bag and began to travel in the direction of Pat's Pizzeria and the Lancaster Court Apartments. Ms. Johnson stated that one of the black males was wearing mustard colored pants and one of the others was wearing all black except for some white on his shirt.

Sergeant Pulling, Corporal Dooner and Officer Martin, all of the Delaware State Police, the first officers on the scene, arrived at Black Sheep Sports within minutes after the Johnson/Fisher call. The owner, Thomas Smith, was found seated on the floor with a gun shot wound to the back of his head. The store had been ransacked. It also appeared that guns, ammunition as well as money had been taken. This information was passed along to other officers arriving at the scene and broadcast via police radio.

As the three suspects passed behind Pat's Pizzeria, two of its employees, Alecia Craft and Terry Ewald, were taking a break at the rear of the store. Both witnesses were interviewed by Officer Martin at approximately 5:00 p.m. and indicated that they saw three black males carrying a bag walk behind Pat's Pizzeria toward the Lancaster Court Apartments.

Ms. Craft described one suspect as five feet eight inches tall with a thin build who appeared to be about nineteen years old. This suspect was further described as clean cut with close cropped hair wearing a blue and white stripped shirt. A second suspect looked to be approximately eighteen years old, wearing a red shirt, dark pants and a baseball cap. Ms. Craft stated that this suspect was carrying what appeared to be a heavy brown bag with the assistance of the third suspect described only as a black male.

Ms. Ewald described the three individuals in similar terms. She estimated the first suspect to be sixteen to eighteen years old, five feet eight inches tall and about one hundred thirty pounds with close cropped hair. He was wearing a blue, green and orange striped polo shirt with a collar and black jeans, but was not wearing a hat. The second suspect was described as about the same age as the first, possibly an inch or two shorter and thirty to forty pounds heavier. He and the third suspect were carrying a brown bag. The third suspect, according to Ms. Ewald, was wearing blue jeans and a

long sleeve shirt.

At or about the same time, Officer Wohner of the Newport Police Department, having heard the report of the incident at Black Sheep Sports following the 911 call, headed toward the Lancaster Court Apartments. Upon his arrival, he encountered Morris Cotton who was washing his car in the parking lot adjacent to Building 2 of that complex where he resided. Mr. Cotton informed Officer Wohner that he had seen a black male approach Building 2 from the direction of Black Sheep Sports and walk around the front of that building. A minute or two later, Mr. Cotton saw two other black males walk past him carrying a bag enter the rear of Building 2. These individuals also approached from the direction of Black Sheep Sports. His description of the three men generally fit the descriptions transmitted to police personnel by the 911 operator following the Johnson/Fisher call. As a result of the receipt of this information, officers from the Delaware State and the New Castle County Police established a cordon around Building 2 to prevent anyone from entering or leaving. This process was completed at approximately 5:20 p.m.

After the perimeter had been secured, Corporal Hale of the Delaware State Police entered Building 2 along with Officer Grehofsky of the New Castle County Police. Aware of the information furnished by the witnesses interviewed up to that point in time, Corporal Hale and Officer Grehofsky approached Apartment 2C, located on the second floor. An individual who identified himself as Dennis Thomas answered the door. After receiving permission to enter, Corporal Hale explained to Mr. Thomas that he was there because he wanted to search for any individuals that might have been involved in the incident at Black Sheep Sports. He further inquired as to whether there was anyone else in the apartment. Mr. Thomas indicated that his "cousin" was laying on the living room floor. At that point, Officer Hale began an inspection of the premises and encountered an individual who identified himself as Lawrence Johnson, on the floor under a blanket. Defendant Johnson, a light complexioned black male, at that time was sixteen years old, five feet eleven inches tall and approximately one hundred fifty pounds.

Mr. Johnson was removed to the kitchen where Officer Grehofsky and Mr. Thomas were located. Corporal Hale then continued, with negative results, his inspection of the premises to determine what, if any, threat was present in the remainder of the apartment. He did, however, observe a pair of mustard colored pants which matched the description of those worn by one of the suspects. At that point he stopped the inspection and exited the building through its rear door with Messrs. Thomas and Johnson in tow. It was approximately 5:21 p.m.

At the same time, Defendant Barrow was attempting to leave Building 2 through the front door. Officer Brackin, with his weapon drawn, ordered the Defendant to lie on the ground. [6] The officer intercepted Defendant Barrow because his general appearance matched one of the descriptions of the suspects given by Ms. Johnson and Ms. Fisher. The Defendant was twenty-three years old, five feet nine inches tall and weighed one hundred sixty pounds. Officer Brackin also noticed that he was sweating more profusely than normal for the temperature on that day. When asked general questions

about his name and address, Defendant Barrow responded that his name was Shane Barrow and he lived at Fifth and Madison Streets in Wilmington. In addition, Defendant Barrow told officers that he was told to wait in the building by a police officer because some kids were running around with guns and that he had just been walking around looking for friends. At that point he was put into a police car.

At approximately 6:00 p.m., a canine unit tracked body scent from Black Sheep Sports to Building 2. While this was taking place, Officer Martin spoke with Ms. Johnson who provided the officer with additional information relative to Ms. Johnson's description of the suspects and their activities. This exchange took place at approximately 6:00 p.m. Ms. Johnson described one of the suspects as in his early twenties, possessing a thin build and wearing a baseball cap. She saw this suspect enter Black Sheep Sports from the east side door. The second suspect was described by Ms. Johnson as also in his early twenties, with a medium build and approximately five feet eight inches tall. He was dressed in all black clothing with the exception of a white design on his shirt, wore gloves and carried a bag as he entered the store. The third suspect was the closest to Ms. Johnson. She described him as a light complexioned black male, about eighteen years old, with a thin but muscular physique. He was wearing mustard colored pants, a green shirt and a green baseball cap. In Ms. Johnson's opinion, this suspect acted as a "lookout." These particulars were then broadcast to other officers on the scene at 6:38 p.m.

At 7:05 p.m., Defendant Barnett, with a basketball in his hands, attempted to exit Building 2 by means of the rear stairs when he encountered Officer Fyock of the New Castle County Police. Officer Fyock ordered the Defendant outside and asked him to identify himself, provide his address as well as to state the nature of his business at that time and place. Defendant Barnett replied that he was Michael Coveng of 417 Madison Street, Wilmington, Delaware and was born on July 28, 1977. He went on to indicate that he had just left one the apartments of Building 2 where he had showered but to which he couldn't return since he did not have a key and the door had locked behind him. Notwithstanding his claim of having recently showered, Officer Fyock noticed that Defendant Barnett's clothes were dirty and that he matched the general description of the suspects. He was then detained. At the time of his detention, Defendant Barnett was five feet eleven inches tall and weighed one hundred sixty pounds.

Defendants Johnson and Barrow along with Dennis Thomas were taken from Building 2 and placed in police vehicles. When questioned by Officer Brackin, Defendant Barrow again gave his name as Shane Barrow. However, personal identification documents found on his person revealed that his name was Hector S. Barrow and listed his address as 640 Stanley Avenue, Brooklyn, New York, not the local address he previously gave. Defendant Johnson, when asked, gave his true name, told the officer he was sixteen years old and provided him with a home address of 1224 Pacific Street, Brooklyn, New York. Neither said anything more at that point in time. Mr. Thomas, when questioned, revealed that he knew Defendant Barrow, whoa he referred to as "George". "George", he stated, had come running into Apartment 2 shortly before the police arrived shouting "the cops are

here, the cops are coming", and then ran out.

Between 5:21 p.m. and 6:00 p.m. that evening, Defendants Barrow and Johnson were involved in a series of "show ups" before Ms. Johnson, Ms. Craft and Ms. Ewald, in or near the police cars in which they were being held. Defendant Johnson was identified as one of the suspects by each of the witnesses. No such identification was made of Defendant Barrow. Both Defendants were returned to separate but adjacent police cars at the Conclusion of this process.

Ms. Johnson was interviewed again at 7:10 p.m., this time by Detective Cicchini of the Delaware State Police, in an attempt to obtain addition information relative to the identity of the suspects. Ms. Johnson related that it was just before 5:00 p.m. and she was sitting on her porch with her cousin, Ms. Fisher, when the two women observed three black males approach Black Sheep Sports. At first they approached the store from the side door, facing Mary Ella Drive, but all three left after a few minutes. Approximately two minutes later, the three returned.

This time, while one of the trio stood on the steps to the store which faced Lancaster Pike, another went around to the front and the third individual went to the entrance that faced Mary Ella Drive and began to knock. Although Ms. Johnson thought the individuals looked suspicious, since she saw the owner's van in his driveway, she was not concerned that the three would attempt to break in under those circumstances. She then saw two of the three enter the store. While the duo was inside, Ms. Johnson stated that she heard what she believed to be a car "backfiring". In any event, within five minutes from having entered the store, the two individuals exited. At that point they were joined by the third individual who had gone to the door immediately following the "backfire" heard by Ms. Johnson. Two of the trio were observed carrying a brown bag as they left the store.

One of the three had a very dark complexion and looked to be about twenty years old. His height was estimated to be five feet four inches and weighed approximately two hundred pounds. He wore a black hat and black shirt with a white design. The second suspect she described appeared to her to be in his late teens, approximately five feet nine inches tall and was wearing a baseball cap and mustard colored pants. Ms. Johnson estimated his weight to be about one hundred and forty-five pounds. She did not provide any additional information concerning the third suspect.

At 7:33 p.m., Defendant Barnett was presented for viewing by witnesses for the first time, and Defendant Johnson, for the second. This time the witnesses included Ms. Fisher as well as Ms. Johnson. They were placed in a group with twelve to fifteen others to protect their identities. The Defendants were among a number of other individuals, estimated to be as many as nine, cast as possible "suspects". While Defendant Johnson was again identified as one of the participants, the witnesses were unsure whether Defendant Barnett was similarly involved in the events at Black Sheep Sports. Both Defendants were returned to police cars at the Conclusion of this process.

At some point after Defendant Johnson's return to the police car adjacent to the one in which

Defendant Barrow was being held, but before 8:00 p.m., Corporal Hale observed Defendant Barrow signalling to Defendant Johnson. Corporal Hale interpreted the exchange as Defendant Barrow telling Defendant Johnson to remain silent. The officer was unable to conclude whether Defendant Johnson noticed the gestures or responded to them.

Because of plans to perform a tactical search of Building 2, Detective Cicchini initiated questioning of those individuals known to have either been in or associated with that building. At 8:30 p.m., the manager of the Lancaster Court Apartments informed police that there were a total of four apartments in Building 2, but only two, one on each of its two floors, were occupied. On the first floor, one apartment was occupied by a Ms. Dubose and Mr. Cotton. The occupied apartment on the second floor was leased to a Christine Edwards. The vacant apartments on each floor were locked.

At 8:55 p.m., Defendant Johnson agreed to talk to Detective Cicchini after being advised of his constitutional rights as required by Miranda. The Defendant told the officer that prior to his removal from Building 2, he had been sleeping and was not involved in any criminal activity. He also said that no one else was in the apartment other than he and Dennis Thomas.

Defendant Barnett was likewise advised of his constitutional rights and agreed to talk to Detective Cicchini beginning at 10:00 p.m. This Defendant indicated that he had been with his girlfriend, "Karen", whose last name he did not know, who lived with her aunt. Earlier that afternoon, they had engaged in sexual intercourse, he fell asleep and "Karen" went to the store. Upon awaking, he showered and left, locking the door behind him. However, he couldn't remember to whom the apartment belonged, and again stated that he did not have a key. Lastly, Defendant Barnett told Detective Cicchini that he was eighteen years old but gave a date of birth of July 28, 1977.

Defendant Barrow was not interviewed at the scene. However, some time around midnight on June 25, Christine Edwards arrived and identified Defendant Barrow as someone she knew as "George", who would come down from New York. According to her, George travelled between Delaware and New York to visit an individual she identified as Andrew Austin. At 12:40 a.m., officers were able to verify that Defendant Barrow did not live in Delaware as he had previously indicated.

All three Defendants were removed from the scene between 11:00 p.m. and midnight on June 25. Johnson was taken to Delaware State Police Troop 6 by Officer Martin at 11:00 p.m. Defendants Barnett and Barrow were transferred to Troop 2 by unknown officers around midnight. Dennis Thomas was released at 12:30 a.m. on June 26.

Ms. Fisher was interviewed at 12:50 a.m. on June 26 by Detective Cicchini. Her characterization of the first and second approaches by the three suspects was consistent with that provided by Ms. Johnson with one exception. That difference was that the individual she nominated as the lookout went into the store before the "backfire" noise. Her description of the three suspects was similarly consistent.

The lookout was described as five foot five to six inches tall and thin, weighing between one hundred twenty-five and one hundred thirty pounds. She estimated his age to be somewhere between twenty and twenty-three. He had on mustard colored pants with a black and gold striped shirt, and was wearing a baseball cap. The second suspect was a black male estimated to be in his twenties, heavier than the lookout and possessing a darker complexion. She was not able to describe the third suspect because of her inability to clearly observe him.

A warrant authorizing the search of Building 2 was approved at 2:30 a.m. on June 26. The search began at 3:10 a.m. Recovered from Apartment 2C were a number of guns, at least thirty, a brown bag in which some of the guns were located, ammunition of various types, clothing, personal papers purporting to belong to Defendant Barrow, coins and other items of personalty.

After being removed to Troop 2 and prior to any effort to interview him further, Defendant Barnett, then being referred to as Michael Coveng, assumed two additional identities. After dropping the initial alias, he insisted his name was Clifton Pierre and that he was born on January 17, 1975. At some later point during the early morning of June 26, he discarded that moniker as well and claimed to be Kamel Wells with a birth date of January 6, 1973. As a result of the confusion regarding his identity, Defendant Barnett's fingerprints were taken and submitted for analysis to an Automatic Fingerprint Identification System ("AFIS") search.

At 9:50 a.m. on June 26, Defendant Barrow was advised of his constitutional rights and he invoked his right to remain silent. The interview concluded and no further attempt was made to discuss the situation with him.

At 10:50 a.m. that morning, Defendant Barnett was again advised of his constitutional rights and agreed to waive them and be interviewed by Detective Cicchini. During the course of that interview, the results of the AFIS search were received and established Defendant Barnett's true identity based upon his prior criminal record. When confronted with this information, Defendant Barnett acknowledged the same and admitted to the planning of the robbery. However, he denied ever being inside Black Sheep Sports and the interview concluded after approximately one hour and thirty minutes.

At 6:00 p.m. on June 26, Defendants Barrow and Barnett were taken to Justice of the Peace Court 18 and arraigned.

On August 3, 1995, Detective Cicchini, accompanied by another officer, met with Mr. Cotton at his place of employment. The purpose of the meeting was to obtain a tape recording of Mr. Cotton's statement. While there, Detective Cicchini asked Mr. Cotton if he had seen an article in the local newspaper concerning the events that transpired on June 25. Photographs of Defendants Barrow and Barnett, along with a photograph of Lawrence Johnson accompanied the article. Mr. Cotton replied that he had read the article and had looked at the pictures. He also stated that the three individuals

pictured in the story were the same three individuals he had personally witnessed run past him on June 25 while he was washing his car in the parking lot of the Lancaster Court Apartments. When questioned further, Mr. Cotton stated that this Conclusion was based on his recollection of the events of June 25 and that the article only confirmed what he had seen.

Mr. Cotton went on to describe the three individuals he saw on June 25. All three suspects had passed within six feet of him. He viewed the first suspect for about thirty to forty-five seconds, and the other two suspects, for up to one minute. The first suspect was described as a black male with a dark complexion dressed in a black hat, a black shirt with a white "logo" or design on it and black pants. The other two were described as slightly younger black males with short hair who were carrying a brown bag between them. Their height was estimated to be five feet eight inches and five feet ten inches respectively. Mr. Cotton indicated that he had observed the first suspect on other occasions at the Lancaster Court Apartments prior to June 25. Mr. Cotton also declared that he had previously seen the younger suspect at the Lancaster Court Apartments. These suspects were identified by him respectively to be Defendants Barrow and Johnson from photographs obtained when they were arrested on June 26. [7]

Discussion

A. The Stop, Detention and Arrest

The Fourth Amendment guarantees against unreasonable searches and seizures and prohibits the issuance of warrants authorizing the sane except based upon probable cause. Notwithstanding this protection, it is undisputed that the police, as a general rule, do not need a warrant based upon probable causes and may stop and detain a person, if the police have a reasonable suspicion that the person is participating in criminal activity. Under such circumstances, an individual may be detained without probable cause and a limited investigation may proceed to confirm or dispel the suspicion of criminal activity. Terry v. Ohio, 392 U.S. 1, 22, 20 L. Ed. 2d 889, 88 S. Ct. 1868 (1968); U.S. v. Place, 462 U.S. 696, 702, 77 L. Ed. 2d 110, 103 S. Ct. 2637 (1983); Coleman v. State, Del. Supr., 562 A.2d 1171, 1174 (1989), cert. denied, 493 U.S. 1027, 107 L. Ed. 2d 754, 110 S. Ct. 736 (1990); Byrd v. State, Del. Supr., 458 A.2d 23, 25 (1983). Establishing "reasonable suspicion" places a lesser burden on the State than demonstrating the existence of "probable cause" State v. Deputy, Del. Supr., 433 A.2d 1040 (1981).

Delaware has codified these principles in 11 Del.C. § 1902. Coleman, 562 A.2d at 1174, n. 3. "The purpose of this section was to legalize the questioning and detention of persons without probable cause where the express criteria of this section were met." State v. Deputy, Del. Supr., 433 A.2d at 1042; State v. Bowden, Del. Supr., 273 A.2d 481, 484 (1971). Reasonable suspicion, from an officer's standpoint, has been defined as the "ability to point to specific and articulable facts which, taken together with all rational inferences from those facts, reasonably warrant the intrusion." Coleman, 562 A.2d at 1174 (quoting Terry v. Ohio, 392 U.S. at 22). A detention is so authorized if a person fails to adequately give identification or, in a limited way, explain his or her actions. Buckingham v. State,

Del. Supr., 482 A.2d 327, 333 (1984). However, any detention of an individual is unlawful where there is no reasonable basis to suspect that the detainee committed a crime. Hicks v. State, Del. Supr., 631 A.2d 6 (1993). Furthermore, while compliance with § 1902 allows the lawful detention of an individual for up to two hours, any action so taken must still be consistent with the Fourth and Fourteenth Amendments. State v. Biddle, Del. Super., Cr. A. No. IN-95-06-0957, Barron, J. (June 25, 1996) at 6.

The initial inquiry which must therefore be addressed is whether, on June 25, the Defendants were subjected to an investigatory detention/stop or were placed under arrest. Should one or both of the Defendants be determined to have been placed "under arrest" at the time of their respective detentions, probable cause to have done so must have existed at that time. If the confrontations were investigatory detentions/stops, a determination must be made as to whether the police had "reasonable grounds" at that time to suspect that each defendant had been involved in the crimes which occurred at Black Sheep Sports. Even if reasonable suspicion is found to exist, the Court must then determine when the detentions became arrests and whether probable cause existed at that subsequent time to justify the change in the character of the detention.

Like many other determinations in this area, the question of whether a detention constitutes an investigatory or an arrest, is dependent upon the reasonableness of the intrusion predicated upon the totality of the circumstances involved in each situation. Posr v. Doherty, 944 F.2d 91, 94 (2d Cir. 1991). However:

At some point in the investigative process, police procedures can qualitatively and quantitatively be so intrusive with respect to a subject's freedom of movement and privacy interests as to trigger the full protection of the Fourth and Fourteenth Amendments.

Hayes v. Florida, 470 U.S. 811, 815-816, 84 L. Ed. 2d 705, 105 S. Ct. 1643 (1985).

Where the stop involved the transportation of an individual from one location to another, the intrusion is viewed as more extreme and more likely to be deemed an arrest, requiring a showing of probable cause. See Centanni v. Eight Unknown Officers, 15 F.3d 587 (6th Cir. 1994), cert. denied, 512 U.S. 1236, 129 L. Ed. 2d 860, 114 S. Ct. 2740 (1994); United States v. Martinez, 808 F.2d 1050, 1055 (5th Cir. 1987), cert. denied, 481 U.S. 1032, 95 L. Ed. 2d 533, 107 S. Ct. 1962 (1987); Florida v. Royer, 460 U.S. 491, 502-03, 75 L. Ed. 2d 229, 103 S. Ct. 1319 (1983); United States v. Richardson, 949 F.2d 851, 856-58 (6th Cir. 1991); United States v. Thompson, 906 F.2d 1292, 1297 (8th Cir. 1990), cert. denied, 498 U.S. 989, 112 L. Ed. 2d 540, 111 S. Ct. 530 (1990). Where the extent of the intrusion was motivated by safety concerns, courts have been more likely to find that the actions taken were not so severe as to render the stop an arrest for Fourth and Fourteenth Amendment purposes. This is true even where weapons have been displayed and/or restraints have been employed. See United States v. Merkley, 988 F.2d 1062, 1064 (10th Cir. 1993); Courson v. McMillian, 939 F.2d 1479, 1495-96 (11th Cir. 1991); United States v. Alvarez, 899 F.2d 833, 838-39 (9th Cir. 1990), cert. denied, 498 U.S. 1024, 112 L. Ed. 2d 663, 111 S. Ct. 671 (1991) and Dempsey v. Town of Brighton, 749 F. Supp. 1215, 1218-19 (W.D.N.Y.

1990), aff'd without opinion, 940 F.2d 648 (2d Cir. 1991), cert. denied, 502 U.S. 925 (1991).

Other factors which have been considered include the character and quality of any force used, the justification for the action taken, the extent of the curtailment of individual freedom of movement, whether the individual was considered armed and/or dangerous, as well as the nature and duration of the detention. Biddle at 17 (citing United States v. Perea, 986 F.2d 633, 645 (2d Cir. 1993)); see also Gardner v. Grand River, 955 F. Supp. 817, 826 (1997); see e.g., United States v. Walker, No. 94-3521, 1995 WL 141343 (6th Cir. 1995); United States v. Smith, 3 F.3d 1088, 1094-96 (7th Cir. 1993). As the Court of Appeals for the Eleventh Circuit noted:

Neither handcuffing nor other restraints will automatically convert on Terry stop into a de facto arrest requiring probable cause. Just as probable cause to arrest will not justify using excessive force to detain a suspect, the use of a particular method to restrain a person's freedom of movement does not necessarily make police action tantamount to an arrest.

United States v. Kapperman, 764 F.2d 786, 790 n. 4 (11th Cir. 1985) (emphasis in original). Moreover, even if the initial confrontation can be deemed investigatory, it can not continue indefinitely and still withstand challenge. United State v. Sharpe, 470 U.S. 675, 685, 84 L. Ed. 2d 605, 105 S. Ct. 1568 (1985). The reviewing court must ask:

whether the police diligently pursued a means of investigation that witness likely to confirm or dispel their suspicions quickly, during which time it was necessary to detain the defendant.

Id. at 686. Thus, the controlling inquiry must always be the reasonableness of the action taken. Kapperman.

By the time Defendant Barrow was apprehended, somewhere around 5:21 p.m., the police were aware that they were dealing with a robbery and likely homicide, among other offenses, and that weapons as well as ammunition had been taken. They knew from an initial interview of Ms. Johnson that there were three suspects in possession of what appeared to be a large, heavy brown bag and their general direction of travel. That knowledge was supplemented by the information passed on by Ms. Craft and Ms. Ewald. Mr. Cotton provided a specific destination where it appeared that the suspects might likely be located, i.e., Building 2. Lastly, they had a general description of the three suspects which indicated that they ranged in height from five feet six inches to five feet eight inches tall and weighed between one hundred thirty and one hundred seventy pounds. None of the three appeared to be any older than in their twenties and one looked to be a teenager. All three were black males although one possessed a lighter skin complexion than the other two.

In light of these circumstances, the Court must conclude that the actions taken by the police authorities in securing the Defendants as they exited Building 2 constituted an investigatory stop and not an arrest. Given the threat posed by the weapons and ammunition taken and the fact that one

person had already been fatally injured during the course of the robbery of Black Sheep Sports, it is readily apparent that the Defendants were detained as part of the investigation of those events and that the police acted with all due dispatch. It is equally evident that the manner and timing of the detentions was appropriate given the public safety concerns present. To approach a structure to which presumably armed suspects had been tracked without guns drawn would have been foolhardy at best. For the same reasons, it was appropriate to restrain any individuals so seized with handcuffs. Lastly, it must be remembered that the Defendants were not removed from the general area where they were discovered while the investigation continued and that they were questioned relative to who they were and why they were at that location. Those actions were therefore reasonable and not so intrusive as to trigger the protection afforded by the Fourth and Fourteenth Amendments.

Having reached that Conclusion, the analysis must now focus on whether the police had a reasonable suspicion that the Defendants were or had been engaged in criminal activity. In the Court's view, the action taken as to each of the Defendants was based on articulable and reasonable suspicion that they had been engaged in criminal activity under the totality of the circumstances. Consequently there was no violation of applicable law, federal or state.

The record reveals that Defendant Barrow generally fit the description provided by the witnesses up to that point in time. He was twenty-three years old, five foot nine inches tall and weighed one hundred sixty pounds. He was found in the general vicinity of the crime and at the location where police believed the suspects had travelled. His behavior and/or physical appearance was thought suspicious while his explanation of why he was at that location deemed questionable. This information, combined with the general knowledge about the crime and the suspects, provided the police with a reasonable basis to suspect that Defendant Barrow had been engaged in the criminal activity being investigated. His detention at that point in time therefore complied with § 1902 and did not contravene the principles enunciated in Terry.

By the time the police encountered Defendant Barnett at 7:05 p.m., the amount of evidence pointing to Building 2 as the place where the suspects being sought night be located had increased. As previously noted, the apprehension of Defendant Barrow took place contemporaneous with the apprehension of Defendant Johnson and Mr. Thomas and the discovery of the mustard colored pants by Officer Hale. Those events were followed by the show up identification of Defendant Johnson by Ms. Johnson, Ms. Ewald and Ms. Craft at or about 5:30 p.m. Defendant Barrow was not so identified. However, he was discovered to have a New York address as did Defendant Johnson notwithstanding the fact that he told police that he lived in Wilmington, and was linked to Apartment 2C by Mr. Thomas.

As of 6:00 p.m., two other factors had come to the attention of the police. First, an additional link between Building 2 and Black Sheep Sports had been established by a canine tracking unit. Second, Ms. Johnson was interviewed a second time and provided a more detailed yet consistent description of what and whom she had seen.

When Defendant Barnett emerged from Building 2, he provided an explanation that did not satisfy the officers who confronted him, particularly given his physical appearance. Moreover, he did fit within the general description of the suspects sought with the exception of the fact that he was two to three inches taller than the estimates of the heights of the suspects provided. Nor can it be ignored that Defendant Barnett, like Defendant Barrow, was in the building to which a canine unit had tracked the suspects and which was also in close proximity to the scene of the crime. Given the information available, the Court must conclude that there was a reasonable basis to suspect that he too had been involved in the criminal activity then under investigation and that the initial detention did not violate § 1902 or the principles set forth in Terry.

Having determined that the Defendants' challenge to the initial detention is not viable, the third step in this analysis must be taken, i.e., a determination must be made as to when the detentions became arrests. United States v. Sharpe, 470 U.S. 675, 685, 84 L. Ed. 2d 605, 105 S. Ct. 1568 (1985). It is also at that point that the State must establish the existence of probable cause in order to sustain the continued detention of the Defendants. Id.

Based on the record as it existed at the Conclusion of the suppression hearing, it appears that Defendant Barrow was detained at or near 5:21 p.m. on June 25. The State could therefore, pursuant to § 1902, legally detain that defendant for two hours after that point in time. Defendant Barnett was seized coming out of Building 2 at 7:05 p.m. which meant that the State had until 9:05 p.m. to establish a basis to arrest him. The State argues that probable cause did in fact exist with regard to each of the Defendants within those time frames. The Defendants obviously disagree.

In Delaware, a police officer is authorized to make a warrant less felony arrest where that officer has reasonable grounds to believe that the person being arrested has committed a felony. 11 Del.C. § 1904(b)(1); State v. Demby, Del. Super. Cr. A. No. IN94-12-1518, Cooch, J. (Nov. 28, 1995); Beck v. Ohio, 379 U.S. 89, 91, 13 L. Ed. 2d 142, 85 S. Ct. 223 (1964). Reasonable grounds have been interpreted to mean probable cause. State v. Crowe, Del. Super., Cr. A. No. IN95-10-0187, Herlihy, J. (Mem. Op. at 4) (Apr. 10, 1996); Thomas v. State, Del. Supr., 467 A.2d 954, 957 n.3 (1983) (citing United States ex rel. Mealey v. Delaware, 352 F. Supp. 349, 353 (D. Del. 1988). The definition of probable cause has evolved over time. In 1813, "Chief Justice Marshall stated that the term probable cause connotes less evidence than that which would justify a conviction." State v. Maxwell, Del. Supr., 624 A.2d 926, 928 (1993) (citing Locke v. United States, 11 U.S. 339, 3 L. Ed. 364 (1813)). In 1983, in "an effort to fix some general, numerically precise degree of certainty . . . to 'probable cause'" the United States Supreme Court stated that "'only the probability, and not a prima facie showing, of criminal activity is the standard of probable cause.'" Illinois v. Gates, 462 U.S. 213, 235, 76 L. Ed. 2d 527, 103 S. Ct. 2317 (1983) (quoting Spinelli v. United States, 393 U.S. 410, 419, 21 L. Ed. 2d 637, 89 S. Ct. 584, (1969).

Likewise, the Delaware Supreme Court has stated that probable cause is an elusive concept which cannot fit into an exact definition. Thompson v. State, Del. Supr., 539 A.2d 1052, 1055 (1988); State v. Cochran, Del. Supr., 372 A.2d 193, 195 (1977). It can not be measured by precise standards:

but by the totality of the circumstances through a case by case review of the factual and practical considerations of everyday life on which reasonable and, prudent men, not legal technicians, act.'

State v. Maxwell, 624 A.2d at 298 (quoting Illinois v. Gates, 462 U.S. at 231) (quoting Brinegar v. United States, 338 U.S. 160, 175, 93 L. Ed. 1879, 69 S. Ct. 1302 (1949))). See also Hovington v. State, Del. Supr., 616 A.2d 829, 833 (1992); Thompson v. State, Del. Supr., 539 A.2d at 1055. Our highest Court went on to state:

to establish probable cause, the police are only required to present facts which suggest, when those facts are viewed under the totality of the circumstances, that there is a fair probability that the defendant has committed a crime.

State v. Maxwell, 624 A.2d at 930 (citing Jarvis v. State, Del. Supr., 600 A.2d 38, 42-43 (1991) (citing Illinois v. Gates, 462 U.S. at 230-31 (1983)).

Applying these precepts to the facts of this case, it is clear that the State had probable cause to arrest each of the Defendants at or near the end of their respective periods of detention pursuant to § 1902. In addition to the information which lead them to suspect that the Defendants had engaged in criminal activity at Black Sheep Sports at the time of their respective detentions, more information became available to the police which justifiably increased that suspicion to the probability that the Defendants had engaged in the conduct being investigated.

Specifically, Mr. Thomas, removed from Apartment 2C with Defendant Johnson, related to police that Defendant Barrow ran in and out of that apartment excitedly announcing the arrival of the police. Yet Defendant Barrow told the police he encountered that he had been told to remain inside the building and that he was just looking for friends. He also indicated that his name was "Shane Barrow" and that he was from Wilmington notwithstanding his possession of personal identification indicating that he was from New York. Ms. Johnson had given a more detailed description of the suspects which again matched the physical appearance of the Defendants. The police had obtained information from the apartment manager indicating which apartments were occupied and by whom, thereby eliminating the possibility that any others in the building, which had been secured within forty minutes from the time of the 911 call, might have been involved. There was also the alleged attempt by Defendant Barrow to communicate with Defendant Johnson while they were in adjacent police cars some time around 7:30 p.m. It should be remembered as well that Defendant Johnson had been positively linked to the events at Black Sheep Sports by at least two witnesses by that point in time. And, notwithstanding the fact that neither of these Defendants were so identified. Defendant Barrow was viewed only by Ms. Johnson while sitting in a police vehicle and Defendant Barnett was not ruled out as a suspect by the witnesses.

The sum total of this information establishes the requisite nexus between the events of June 25 at Black Sheep Sports and the Defendants. Probable cause does not require the police to uncover

information necessary to prove a suspect's guilt beyond a reasonable doubt or even to prove that guilt is more likely than not. Jarvis v. State, 600 A.2d at 43. The fact that the defendants gave the officers explanations for their presence at the apartment building that, while plausible, were not believed, is not grounds to upset the findings of probable cause. Our supreme Court has stated that:

the possibility that there may be a hypothetically innocent explanation for each of several facts revealed during the course of an investigation does not preclude a determination that probable cause exists for an arrest."

State v. Maxwell, 624 A.2d at 930.

Since this Court has determined that the detention and arrests of the Defendants were valid, any statement that are knowingly, voluntary and intelligently given, that followed the legal arrest, are not subject to suppression as "fruit of the poisonous tree." Govan v. State, Del. Supr., 655 A.2d 307, 1995 WL 48359 *2 (citing Colorado v. Spring, 479 U.S. 564, 572, 93 L. Ed. 2d 954, 107 S. Ct. 851 (1987)). The same Conclusion applies to the challenge mounted by the Defendants to the photographs taken as a part of the formal charging or "booking" procedure following a lawful arrest.

B. Statements Provided During Interrogation

Defendant Barnett makes two contentions in this regard. In the first instance, he contends that the statements made to Detective Cicchini at approximately 10:00 p.m. on June 25, should be suppressed because he was not first advised of his constitutional rights as required by Miranda. Next he seeks to have the statement that he made to Detective Cicchini starting at 10:50 a.m. on June 26, suppressed because it was involuntary and the product of coercion.

The United States Constitution and the Constitution of the State of Delaware provide, in part, that no person shall be deprived of life, liberty, or property, without due process of law. U.S. Const. Amend. V; Del. Const. Art. I, § 7. Ergo, admission of an involuntary statement at a criminal trial would violate due process. Mincey v. Arizona, 437 U.S. 385, 398, 57 L. Ed. 2d 290, 98 S. Ct. 2408 (1978); see also Jackson v. Denno, 378 U.S. 368, 376, 12 L. Ed. 2d 908, 84 S. Ct. 1774 (1964); Haynes v. Washington, 373 U.S. 503, 518, 10 L. Ed. 2d 513, 83 S. Ct. 1336 (1963); Lynumn v. Illinois, 372 U.S. 528, 537, 9 L. Ed. 2d 922, 83 S. Ct. 917 (1963); Stroble v. California, 343 U.S. 181, 190, 96 L. Ed. 872, 72 S. Ct. 599 (1952). A voluntary statement has been held to be a statement that, under the totality of the circumstances, is made freely by an individual with reasonable intelligence, and not the product of government coercion. State v. Bright, Del. Super., 683 A.2d 1055, 1059 (1996) (citing United States v. D.F., 63 F.3d 671, 679 (7th Cir. 1995) (citing United States v. Montgomery, 14 F.3d 1189, 1194 (7th Cir. 1994))); Colorado v. Connelly, 479 U.S. 157, 170, 93 L. Ed. 2d 473, 107 S. Ct. 515 (1986); Moran v. Burbine, 475 U.S. 412, 421, 89 L. Ed. 2d 410, 106 S. Ct. 1135 (1986); Liu v. State, Del. Supr. 628 A.2d 1376, 1379 (1993); State v. Rooks, Del. Supr., 401 A.2d 943, 948-49 (1979); Black v. State, Del. Supr., 616 A.2d 320, 322-23 (1992).

As noted above, special consideration is given to statements made by defendants during custodial interrogations to insure that they are in fact 'voluntary'. Again, the State must show that prior to any questioning, the defendant was advised of certain constitutional rights and his right to invoke then. Miranda; and United States v. Mitchell, 966 F.2d 92, 97-8 (2d Cir. 1992). While this advice is not constitutionally mandated, it is required to ensure that the Fifth Amendment right against compulsory incrimination is respected. Cooper v. Dupnik, 924 F.2d 1520, 1527 (9th Cir. 1989) (citing Connecticut v. Barrett, 479 U.S. 523, 528, 93 L. Ed. 2d 920, 107 S. Ct. 828 (1987)).

A suspect may, of course, waive the constitutional rights about which he or she must be advised pursuant to Miranda. That waiver must be knowing and voluntary. Moreover, it is the State's burden to establish that a waiver is valid. DeJesus v. State, Del. Supr., 655 A.2d 1180, 1192 (1995); Whalen v. State, Del. Supr., 434 A.2d 1346, 1351 (1980), cert. denied, 455 U.S. 910, 71 L. Ed. 2d 449, 102 S. Ct. 1258 (1982); State v. Siple, Del. Super., Cr. A. No. IN94-12-1641, Cooch, J. Mem. Op. at 11 (July 19, 1996).

In Liu v. State, 628 A.2d at 1379, the Delaware Supreme Court held that in order to establish that a suspect had waived some or all of the constitutional rights covered by Miranda, two conditions must be met:

First, the relinquishment of the right[s] must have been voluntary in the sense that it was the product of free and deliberate choice rather than intimidation, coercion or deception. Second, the waiver must have been made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it. Only if the "totality of the circumstances surrounding the interrogation" reveal both an uncoerced choice and the requisite level of comprehension may a court properly conclude that the Miranda rights have been waived.

Id. (quoting Moran v. Burbine, 475 U.S. at 421). Moreover:

These issues must be determined under the totality of the circumstances including the behavior of those doing the interrogating, the conduct of the defendant, his age, his intellect, his experience, and all other pertinent factors.

Whalan v. State, 434 A.2d at 1351 (citing North Carolina v. Butler, 441 U.S. 369, 374-75, 60 L. Ed. 2d 286, 99 S. Ct. 1755 (1979)). In focusing on the behavior of the interrogators, some evidence of police misconduct or overreaching must be found in order to call into question the otherwise voluntary character of a waiver. Colorado v. Connelly, 479 U.S. at 170; and Liu v. State, 628 A.2d at 1380.

As to Defendant Barnett's contention that his responses to Detective Cicchini's questions at 10:00 p.m. on June 25, neither the applicable law or the facts of record support him. Simply put, general questions asked of an individual concerning his or her name, address, date of birth, do not constitute "interrogation" as envisioned by Miranda. United States v. Avery, 717 F.2d 1020, 1025 (6th Cir. 1983), cert. denied, 466 U.S. 905, 80 L. Ed. 2d 157, 104 S. Ct. 1683 (1984). Moreover, it appears that the

Defendant was in fact advised of his constitutional rights by Detective Cicchini prior to initiating that contact. Consequently, the statements made at that time, given the absence of any contention that they were involuntary, are not subject to suppression as urged by this Defendant.

A similar fate must befall the challenge to the statement made the following morning.

In this regard, Defendant Barnett asserts that being in custody for sixteen hours coupled with the denial of food, water and sleep, was enough to overcome his will which rendered the statements given involuntary. Additionally, Defendant Barnett alleges his statement that "it doesn't make a difference", was evidence that his will was overborne by the police during the course of his detention. The State has denied that the statements made by Defendant Barnett during the course of his interview on June 26 were anything but involuntary.

Having reviewed the record as well as the submissions of the parties, it is apparent that Defendant Barnett's argument is misplaced. Specifically, Detective Cicchini testified that all reasonable requests for nourishment and sleep would have been met. In fact, Defendant Barnett was provided with a glass of water upon request and was observed at some point, with his eyes closed while in the police car at the crime scene. He has not indicated that he expressed any desire for further sleep or food. Equally significant is the fact that the Defendant has not pointed to any evidence to indicate that he was tired, hungry, sick or otherwise mentally or physically incapacitated. Indeed, Defendant Barnett had sufficient presence of mind to assume and discard three identities before acknowledging his real identity. He did so then, some fifteen hours after he was taken into custody and prior to giving a statement, only after being confronted with the results of the AFIS search. Lastly, the statement itself, captured on videotape and viewed by the Court, reveals that the Defendant lacked any apparent infirmity, was alert and conversant and verbally sparred with the interrogating officer, sometimes appearing to get the better of the latter. In sum, it is readily apparent, given the totality of the circumstances present herein, that Defendant Barnett was advised of his constitutional rights, understand those rights and that he knowing and voluntarily waived the same. [8]

Defendant Barrow has alleged that he was not advised of his constitutional rights until 9:50 a.m. on June 26. It appears that he is correct. It also appears that he invoked his right to remain silent at that time and made no statements from that point forward. To the extent he answered generic questions concerning his name, address and age, etc., prior to that point in time, again, Miranda does not apply. United States v. Avery, 717 F.2d at 1025.

C. The Cotton Photo Identification

The final issue to be resolved is Defendant Barnett's challenge to Mr. Cotton's out of court identification of him on August 3, 1995, on the basis that it was improperly prompted by the use of a police photograph. Stated differently, the police violated Defendant Barnett's Constitutional right to due process when they showed the "booking" photograph of Defendant Barnett to Mr. Cotton for

identification. Such a showing, Defendant Barnett contends, was "so impermissibly suggestive as to give rise to a very substantial likelihood of irreparable misidentification." Younger v. State, Del. Supr., 496 A.2d 546, 550 (1985) (quoting Simmons v. United States, 390 U.S. 377, 384, 19 L. Ed. 2d 1247, 88 S. Ct. 967 (1968)); In also Harris v. State, Del. Supr., 350 A.2d 768 (1975). Accordingly, he contends the August 3, 1995 identification, as well as any subsequent identifications based thereon, should be suppressed. The Court does not agree.

The Delaware Supreme Court set forth a two prong test to determine whether an out-of-court identification violated a defendant's due process violation. The Court must determine whether: (1) the confrontation was unnecessarily suggestive; and (2) if a likelihood of misidentification exists. Harris v. State, 350 A.2d at 770.

Although the preferred practice is to display more than one photograph for identification, this Court has held that showing a single photograph is not, ipso facto, a denial of due process and that the totality of the surrounding circumstances must be considered.

Stanford v. State, Del. Supr., 608 A.2d 730 (1992); In also Redden v. State, Del. Supr., 269 A.2d 227, 228-29 (1970). Moreover, even a suggestive confrontation cannot amount to a violation of the defendant's due process right, without an "increased danger of irreparable misidentification." Manson v. Brathwaite, 432 U.S. 98, 53 L. Ed. 2d 140, 97 S. Ct. 2243 (1977). "The question of suggestiveness is invariably fact-driven." Richardson v. State, Del. Supr., 673 A.2d 144, 147 (1996).

The United States Supreme Court set forth the following factors when considering the reliability of a witness' identification:

the opportunity of the witness to view the criminal at the time of the crime, the witness' degree of attention, the accuracy of [the witness'] prior description of the criminal, the level of certainty demonstrated [by the witness] at the confrontation, and the length of time between the crime and the confrontation.

Manson v. Brathwaite, 432 U.S. at 114 (citing Neil v. Biggers, 409 U.S. 188, 199-200, 34 L. Ed. 2d 401, 93 S. Ct. 375 (1972).

According to what Mr. Cotton told Officer Wohner on June 25, he observed three suspects walk past him shortly after the offenses occurred and that they came from the general direction of Black Sheep Sports. He watched as they entered Building 2 and further described what they had on, which generally fit the descriptions provided to the police following the Johnson/Fisher 911 call.

On August 3, 1995, Mr. Cotton told Detective Cicchini that he had read an article in the local newspaper regarding the events in question and viewed the accompanying photographs. He also stated that the suspects were the same three individuals who passed him on June 25. The basis of that

identification was his recollection of the events that transpired on that date. The newspaper article only confirmed what he recalled.

Mr. Cotton also indicated that he had seen two of the suspects at the apartment complex on prior occasions. However, because some confusion arose as to which of the suspects Mr. Cotton was referring, Detective Cicchini showed Mr. Cotton the "booking" photographs of the three suspects. After examining all three, the witness identified the photographs of Defendants and Johnson as the two suspects he had previously seen at the complex.

In light of these circumstances, the Court can not conclude that showing the individual photographs of the instant Defendants was unnecessarily suggestive. First, the witness had already seen the photos in the newspaper. Second, he had seen two of the suspects before. Third, it was done only to clear up some confusion relative as to which of the suspects Mr. Cotton was referring.

The Court must conclude as well that the likelihood of misidentification is minimal. Specifically, his opportunity to observe and describe the suspects as they passed within six feet of him shortly after the offenses occurred, support this Conclusion. Further, this witness emphatically stated that his identification was based on his own view of the suspects and not the photos.

In sum, the August 3, 1995 identification by Mr. Cotton was not unnecessarily suggestive. Nor is there a likelihood, substantial or otherwise, of misidentification at trial unless the aforementioned identification is suppressed. Defendant Barnett's motion as to this issue must therefore be denied.

Conclusion

For the foregoing reasons, the motions filed by Defendants Barnett and Barrow to suppress certain evidence discovered or collected during the course of the investigation of the events which took place at the Black Sheep Sports Store on June 25, 1995, must be, and hereby are, denied.

IT IS SO ORDERED.

TOLIVER, JUDGE

1. Also charged was Lawrence Johnson, then a juvenile, who was tried separately frol November 18, 1996 to Decembor 12, 1996.

2. 11 Del.C. § 1902 states:

(a) A peace officer may stop any person abroad, or in a public place, who the officer has reasonable ground to suspect is committing, has committed or is about to commit a crime, and may demand the person's name, address, business abroad and destination.

(b) Any person so questioned who fails to give identification or explain the person's actions to the satisfaction of the officer may be detained and further questioned and investigated.

(c) The total period of detention provided for by this section shall not exceed 2 hours. The detention is not an arrest and shall not be recorded as an arrest in any official record. At the end of the detention the person so detained shall be released or be arrested and charged with a crime.

3. A "Show up" is defined as a "one-to-one confrontation between suspect and witness to [a] crime. A type of pretrial identification procedure in which a suspect is confronted by or exposed to the victim of or witness to a crime." Black's Law Dictionary 1380 (6th ed. 1990).

4. Although it is not specifically stated, it appears that Defendant Barrow is relying on the prohibition contained in the Fifth Amendment to the United States Constitution against compulsory self-incrimination. That prohibition is extended to the states by virtue of the Fourteenth Amendment. Malloy v. Hogan, 378 U.S. 1, 12 L. Ed. 2d 653, 84 S. Ct. 1489 (1964). In the absence of further guidance, the Court will so view this contention.

5. All further references to June 25 and/or June 26, 1995, shall be by the month and date only.

6. Although Officer Brackin indicates that Defendant Barrow was initially detained at this time, it should be noted that a cordon around Building 2 was not established until 5:20 p.m. and that Officers Grehofsky and Hale entered that building immediately thereafter. Consequently, testimony that the detention of Defendant Barrow occurred at 5:21 p.m. is open to some question.

7. Because of some initial confusion on the part of Detective Cicchini as to which of the three suspects Mr. Cotton was referring, Detective Cicchini displayed the photographs in question to Mr. Cotton. Mr. Cotton pointed to Defendants Barrow and Johnson thereby clarifying the situation.

8. The Court does note as well that Defendant Barnett had two prior convictions for robbery and therefore presumably had some familiarity with his constitutional rights, including his right against self-incrimination. This is also a factor to be weighed. See State v. Demby, Del. Super. Cr. A. No. IN94-12-1518, Cooch, J. (Mem. Op.) (Nov. 28, 1995).