05-1734-cr(L)

To Be Argued By:
ROBERT M. SPECTOR

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United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 05-1734-cr(L)
05-6477-cr(XAP)

UNITED STATES OF AMERICA,
Appellant-Cross-Appellee,

-vs-

VAMOND ELMORE,
Defendant-Appellee-Cross-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

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BRIEF FOR THE UNITED STATES OF AMERICA

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STATEMENT OF JURISDICTION

The district court (Janet C. Hall, J.) had subject matter jurisdiction over this federal criminal case under 18 U.S.C. § 3231. The government filed a timely notice of appeal pursuant to Fed. R. App. P. 4(b)(1)(B), and this Court has jurisdiction over the government's appeal from the district court's order suppressing evidence under 18 U.S.C. § 3731. Consistent with § 3731, the United States Attorney has filed a certification with this Court that this appeal is not taken for purpose of delay and that the evidence that has been suppressed is a substantial proof of a fact material in the proceeding.

The Solicitor General of the United States has personally authorized this appeal.

STATEMENT OF THE ISSUE PRESENTED

Did the arresting officers have reasonable, articulable suspicion to support the June 25, 2003, traffic stop of the defendant which led to the seizure of the firearm charged in Count Two of the Indictment?

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Preliminary Statement

On June 22, 2003, Norwalk Police Detective Thomas Roncinske was contacted several times by Dorothy Mazza, who identified herself as the defendant's former girlfriend and claimed that the defendant was in possession of several firearms. Specifically, Mazza had observed the defendant in possession of a loaded .38 Smith and Wesson revolver, which was presently located in his black, two-door Acura. She had also observed him in possession of a .22 caliber pistol, another .38 caliber revolver, a "riot

pump shot gun," an "AK" and several rounds of ammunition for the AK and the .22 caliber pistol. According to Mazza, the defendant had stored these items "with a girl" in an apartment in Carleton Court and in a BMW belonging to a "Dwayne Sherman." Mazza advised Detective Roncinske that she knew about these weapons because she had seen them at her parents' residence in Darien, Connecticut, where she and the defendant had lived. The last time she had seen the weapons was on June 19, 2003. She had forced the defendant to leave when she had discovered the weapons because she had been concerned for the welfare of her young son.

After attempting to verify Mazza's identity and attempting to corroborate her information, Detective Roncinske authored a memo to be dispatched to all Norwalk police officers indicating that he had "[r]eceived information" on June 22, 2003, that a "Vamond Elmore (DOB 1/6/77 aka 'Wooley King')" was "in possession of a handgun." The memo described the defendant's vehicle, the location in the vehicle where the gun could be found and the areas of the city which the defendant frequented. Detective Roncinske also attached a photograph of the defendant to the memo.

On June 24, 2003, Norwalk Police Sergeant Kenneth King received Detective Roncinske's memo for the first time and read it to his patrol officers at the start of his midnight shift. Just after the start of the shift, Sergeant King and officer Mark Suda spotted the defendant, whom they knew from prior interactions, and stopped him in his Acura. While standing outside the defendant's vehicle,

Sergeant King observed what appeared to be the handle of a small handgun protruding from the floor area behind the driver's seat. He then retrieved a fully loaded .38 caliber Smith and Wesson revolver from the floor behind the driver's seat. The defendant was arrested, and, while back at the police stations, he waived his Miranda rights and admitted to having purchased the gun for $75.00 from a local man who was a drug user.

On June 26, 2003, Detective Roncinske applied for and received a state search warrant for the apartment and the BMW where the other firearms were located. On June 27, 2003, at approximately 5:40 a.m., Norwalk Police officers executed the search warrant and, after being directed to a bedroom closet, discovered a large blue duffel bag containing an AK-47 rifle, a shotgun, a 500-round box of .22 caliber ammunition and a magazine for an AK-47 rifle loaded with ammunition. They removed from the same closet a dark-colored plastic bag which contained a loaded .22 caliber handgun. In addition, they discovered a .38 caliber revolver in a BMW which was owned by Dwayne Sherman and parked in a lot in front of Building 13.

The defendant was subsequently charged by Indictment in federal court with two counts of being a felon in possession of firearms and/or ammunition, based on the firearm seized on June 25, 2003 (Count Two), and the firearms and ammunition seized from the apartment on June 27, 2003 (Count One). The defendant was not charged with the firearm seized from the BMW. He filed a motion to suppress the firearms and ammunition charged in both counts. The district court granted the motion as to

the firearm charged in Count Two and denied it as the firearms and ammunition charged in Count One. The defendant then entered a guilty plea as to Count One, conditional on his right to challenge the court's suppression ruling. At sentencing, the district court granted the defendant's unopposed motion to sever the two counts, imposed a term of 92 months in prison on the conviction for Count One, and issued a final judgment as to that count. The defendant has since filed a notice of appeal as to that judgment of conviction.

In this interlocutory appeal, the Government challenges the district court's granting of the suppression motion as to the firearm charged in Count Two.

STATEMENT OF THE CASE

On June 25, 2003, the defendant/appellee/cross-appellant was arrested by members of the Norwalk Police Department on state firearms charges. JA50.[1] On February 17, 2004, a federal grand jury sitting in New Haven, Connecticut returned an indictment against the defendant which charged him with two counts of possession of a firearm and ammunition by a convicted felon, in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). JA12-JA13. On June 18, 2004, the defendant filed a motion to suppress the firearms and ammunition charged in both counts. JA14. On February 28, 2005, the district court (Hall, J.) issued a written ruling denying in

[1] The Joint Appendix will be cited as "JA" followed by the page number.

part, and granting in part, the motion to suppress. JA269. That ruling was entered on March 2, 2005. JA7. Specifically, the court granted the motion to suppress as to the firearm charged in Count Two and denied the motion to suppress as to the firearms and ammunition charged in Count One. JA293. On March 14, 2005, the defendant filed a motion for reconsideration of the court's ruling, and, on March 18, 2005, the court granted the motion. JA295, JA7 (docket entry). On March 30, 2005, the government filed a notice of appeal as to the district court's ruling suppressing the firearm charged in Count Two. JA331. On May 27, 2005, after considering additional briefing on the portion of the suppression ruling denying the request to suppress the firearms and ammunition charged in Count One, the court adhered to its previous ruling. JA321.

On June 15, 2005, the defendant entered a guilty plea to Count One of the Indictment, conditional on his right to appeal the district court's ruling as to his motion to suppress the firearms and ammunition charged in Count One. JA336. In the plea agreement, the Government also reserved its right to continue in its appeal of the court's ruling suppressing the firearm charged in Count Two. JA340. On November 9, 2005, the court sentenced the defendant to 92 months' incarceration and three years' supervised release. JA345. The court also granted the defendant's unopposed motion to sever Count One from Count Two and issued a final judgment as to the defendant's conviction on Count One. JA345. Judgment entered on November 29, 2005. JA10 (docket entry). The defendant filed a timely notice of appeal as to this

judgment, which was entered on December 1, 2005. JA10 (docket entry), JA348.

On October 19, 2005, this Court granted the government's motion to hold its appeal in abeyance in anticipation of the proposed consolidation of the defendant's appeal of his conviction on Count One. On January 11, 2006, the Court entered a scheduling order in the consolidated appeal which designated the government as the appellant and the defendant as the appellee.

The defendant has been incarcerated since his initial state arrest on June 23, 2003, and is currently serving his sentence.

STATEMENT OF FACTS

The following facts appear largely to be undisputed and can be adduced from the testimony presented by both the Government's and the defendant's witnesses at the suppression hearings on July 12, 2004, July 28, 2004, August 26, 2004, and January 24, 2005.

On or about June 22, 2003, Norwalk Police Detective Thomas Roncinske was contacted by an individual who told him that the defendant was in possession of some weapons and that she was concerned that he "may do harm to somebody." JA77. She had originally contacted someone else from the Norwalk Police Department, but had been referred to Detective Roncinske because he specialized in handling gun cases. JA105, JA125. She identified herself as "Dorothy" and stated that she was a

close personal friend of the defendant's. JA77. She provided a home phone number and a cell phone number. JA77-JA78.

Over the course of that day, Detective Ronsinske spoke with Dorothy approximately four times, each time by phone; they never met face-to-face. JA78. He estimated that he called her two times and that she called him at least two times. JA79. During those contacts, he learned from her that her full name was "Dorothy Mazza" and that she had been the defendant's girlfriend.[2] JA79-JA80. Using the Department of Motor Vehicle's ("DMV") database, Detective Roncinske discovered Mazza's address and date of birth. JA79-JA80.

Mazza told Detective Roncinske that the defendant possessed a .38 Smith and Wesson revolver loaded with

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[2] The Government did not disclose Mazza's identity to the defendant and planned on proceeding with the suppression hearing by referring to her as a confidential informant, which is how Detective Roncinske referred to her in his reports and in the search warrant which resulted in the seizure of the firearms and ammunition charged in Count One. Indeed, the Government referred to her in this manner in its preliminary opposition to the defendant's motion to suppress. On July 12, 2004, however, Mazza came to court with defense counsel, and the defendant disclosed her as a potential witness at the suppression hearing. At that point, the defendant indicated that, based on his pre-hearing interviews with Mazza, he knew that she was the confidential informant that had contacted Detective Roncinske. Both parties agreed, therefore, that she could be referred to by name during the hearing.

hollow-point bullets. JA81. She stated that the defendant possessed the firearm in his vehicle, which was a black, two-door Acura with tinted windows that had recently been switched over from a temporary plate to a permanent Connecticut plate. JA81. Mazza did not know the plate numbers, just that the defendant had recently switched over from a temporary to a permanent plate. JA81-JA82. She told Detective Roncinske that she had seen the gun on the defendant's person and in his car and that the defendant frequented the Carleton Court and Round Tree Motel areas of Norwalk. JA82, JA126. She also told him that she had seen the gun hidden under a piece of carpet that had been altered on the front passenger's side of the car. JA83. According to Mazza, the defendant had told her that he had purchased the Smith and Wesson firearm from a "white crack head for $75." JA93.

Mazza also told Detective Roncinske that the defendant was in possession of a .22 caliber pistol, a .38 caliber revolver, a "riot pump shot gun," an "AK" and several rounds of ammunition for the AK and the .22 caliber pistol. JA84. She claimed that he kept these items in an apartment in Carleton Court with "a girl named [Tanea] that lived there" and in a BMW belonging to a Dwayne Sherman. JA84. She stated that Sherman and his wife lived in Carleton Court and that Tanea lived in the apartment above the Shermans. JA85. She attempted to describe the building in which they all lived, and Detective Roncinske, based on what he knew about the apartment complex, surmised that she was referring to Building 14. JA85. She also stated that the defendant and Sherman were friends. JA108.

Mazza stated that she knew about these weapons because she had seen them at her residence; she lived with her parents in Darien, Connecticut. JA85-JA86. She had discovered the firearms at the Darien residence and kicked out the defendant out of concern for her young son, who also lived there. JA86. The last time she had seen the weapons was on June 19, 2003. JA86.

To attempt to verify Mazza's identity, Detective Roncinske asked her some questions about the defendant. JA81, JA90. Specifically, he asked her questions about an incident in 2002 in which the defendant had been shot. JA90. Detective Roncinske knew from his own independent investigation of the shooting that the defendant had been shot in November 2002 in retaliation for a separate incident in which the defendant and his associate allegedly had pistol-whipped a man named Demark Bond. JA76-JA77. Mazza likewise knew this possible motive for the shooting and the specific injuries sustained by the defendant. JA90-JA91. She explained that she had been the one to nurse him back to health after the shooting.[3] JA126.

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[3] Articles related to the November 2002 shooting of the defendant appeared in local newspapers from November 8, 2002, through November 12, 2002 and were admitted as defendant's exhibits at the suppression hearing. Although the articles detailed, to some degree, the nature of the defendant's injuries (one article stated that his right leg had been "shattered" by a bullet), they did not name a suspect in the shooting or detail a motive for the shooting. In fact, in a November 12, 2002, article, the defendant himself stated in an (continued...)

To attempt to corroborate her information, Detective Roncinske first checked with the DMV computer system to verify that the defendant had a vehicle registered to him which matched the information given by Mazza. JA82. He discovered that the defendant had a new Acura registered to him with an expired temporary registration number 823JA. JA82-JA83. Next, he went to Carleton Court and located a black, four-door, BMW registered to "Dwayne Sherman" parked in front of Building 13 and in a parking lot shared by Buildings 13 and 14. JA87. He also obtained a housing list for Carleton Court which gave the names for the residents of each of the apartments. JA88. He discovered that a "Denedia Sherman," who was the wife of Dwayne Sherman, lived in an apartment in Building 14 and that a "Myra Humphrey" lived above the Shermans; the significance of her last name did not become apparent until Detective Roncinske learned that a Tanea Humphrey had been in the car with the defendant when he was stopped on June 25, 2003. JA88-JA89. Finally, by running the criminal history reports for the defendant and Dwayne Sherman, Detective Roncinske discovered that they had previously been arrested together for an armed robbery. JA107-JA108.

Mazza insisted that her name be left out of any police reports because she was "scared for her life." JA80. "She knew about [the defendant's] past. She had seen the

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[3] (...continued)
interview that he had not "recognize[d] the shooter" and could not "think of a reason for the crime." JA349-JA340.

weapons. She knew that he was in possession of the weapons. She was deathly afraid there would be retribution if her name was found out." JA80. She also refused to meet in person with Detective Roncinske because she was fearful of what might happen if she was seen with the police. JA104.

As a result of the information collected from Mazza over the course of his shift on June 22, 2004, Detective Roncinske authored a memo to be dispatched to all Norwalk police officers. JA78, JA91, JA110. In the memo, Detective Roncinske indicated that he had "[r]eceived information" on June 22, 2003, that a "Vamond Elmore (DOB 1/6/77 aka "Wooley King") was "in possession of a handgun." JA204. The memo stated, "Elmore operates a 1992 Acura 2door, color black" with "CT. temp registration 823J8 (expired), however the information obtained is the vehicle has a regular CT. plate." JA204. The memo advised, "If stopped the gun may be hidden on the passenger side under the carpet." JA204. It also advised that "Elmore frequents the Carleton Court area and the Round Tree Motel on Westport Ave." JA204. Detective Roncinske also attached a photo of Elmore to the memo. JA41.

On June 24, 2003, Norwalk Police Sergeant Kenneth King received Detective Roncinske's memo for the first time and read it to his patrol officers at the start of his midnight shift. JA40. Just after the start of the shift, some time between 11:30 p.m. and midnight, Sergeant King and officer Mark Suda were driving in two separate patrol cars south on South Main Street, approximately 200 yards from

Carleton Court, when they both observed the defendant drive past them in a black two-door Acura with tinted windows traveling north on South Main Street near the intersection of Concord Street. JA42-JA43, JA135-136. Both Sergeant King and Officer Suda knew the defendant from prior interactions in the neighborhood and were able to see him through the front windshield of his car, which was not tinted. JA41-JA42, JA134-JA135. Officer Suda also specifically recalled also seeing a "Spanish female" or "light-skinned, black female" in the front passenger seat. JA135-JA136.

They turned their vehicles around and followed the Acura. JA43, JA136. Officer Suda immediately called Sergeant King using his Nextel phone and indicated that he "might have found Vamond Elmore." JA62, JA136. Sergeant King caught up to the defendant's car and saw that it had Connecticut license plate number 403-SJX. *See* JA44-JA46. A check on the plate provided no identifying information. JA44. Sergeant King knew that the "S" series was new at the time and surmised, based on the information regarding the car's prior expired temporary registration, that the plate was new and that the car had been newly registered. JA45, JA137. As the officers approached the intersection with Washington Street, Sergeant King activated his overhead lights, drove past Officer Suda's vehicle and pulled over the defendant's vehicle. JA46, JA137-JA138. Officer Suda also stopped to assist. JA138.

Sergeant King approached the vehicle's driver side, and Officer Suda approached the passenger side. JA138.

Sergeant King ordered the defendant to lower the tinted window, and he complied. JA47. He asked the defendant for his license and registration, had him shut off his car, had him place the keys on the dashboard and asked him to step out of the car. JA47, JA52. The defendant complied. JA47, JA52. The only other person in the car was a front seat passenger whom Officer Suda identified as Tanea Humphrey. JA51, JA138. She was asked to step out of the vehicle and walk back towards the police vehicles. JA46. She was not arrested, and was taken back to her residence at Carleton Court shortly after the stop. JA53, JA69.

As Sergeant King was standing outside the defendant's vehicle, he surveyed its interior using his flashlight. JA48-JA49, JA67. He noticed that a portion of the carpet in the area of the front passenger seat appeared to be loose. JA49. He also noticed what appeared to be the handle of a small handgun protruding from the floor area behind the driver's seat. JA49. Sergeant King reached inside the vehicle, moved the driver's seat forward, and retrieved a fully loaded .38 caliber Smith and Wesson revolver from the floor behind the driver's seat. JA49, JA53. Officer Suda recalled Sergeant King leaning inside the driver's side of the vehicle and then turning toward him and stating, "I have an 87," which is the Norwalk police code for a handgun. JA139-JA140. Officer Suda thought Sergeant King might have retrieved the gun from behind the front passenger seat, but could not see from his vantage point; he also estimated that Sergeant King had been searching less than a minute before telling him that he had found a gun. JA153-JA154. As a result of the

discovery of the firearm, the officers arrested the defendant. JA50, JA140.

On June 26, 2003, Detective Roncinske applied for a Connecticut state search warrant for the Humphrey apartment and for Sherman's BMW. JA94. In the search warrant affidavit, he listed all the information that had been communicated to him by Dorothy Mazza prior to the traffic stop, the information that he himself had corroborated about the Humphrey residence and the fact that the information related to the stop had been corroborated by the seizure of the gun, which was exactly what Mazza had described: a .38 Smith and Wesson revolver loaded with hollow-point ammunition. JA212-JA213. Connecticut Superior Court Judge Reynolds signed the search warrant, and on June 27, 2003, at approximately 5:40 a.m., Norwalk Police officers executed it. JA94-JA95, JA212-JA214.

The warrant authorized a search of the following residence: "133 Montery Place Building 14 apartment 174." JA211. The property was described as a "brick faced, three story building, with a brown shingle roof," and a photograph of it was attached to the warrant application. JA211. The apartment was described as a "third floor apartment." JA211. The warrant authorized entry into the apartment and the search for, and seizure of, the following contraband: one "AK-47 style" assault rifle, one 12 gauge "pump action" shotgun, one .22 caliber pistol, .38 caliber ammunition, .22 caliber ammunition, and "7.62 x 39" ammunition. JA211. The warrant alleged that such contraband "constitutes evidence" of the offense

of "[p]ossession of an assault weapon" and "machinegun." JA211.[4]

The officers identified the lessee of the apartment as Myra Humphrey, Tanea Humphrey's mother, and provided her with a copy of the search warrant. JA96. They read Miranda warnings to Tanea Humphrey and asked her where the weapons were located. JA95-JA96. Tanea told the officers that the weapons were in her closet. JA96. They removed a large blue duffel bag, which contained an AK-47 rifle, a shotgun, a 500-round box of .22 caliber ammunition, and a magazine for an AK-47 rifle loaded with ammunition. JA96. They also removed a dark-colored plastic bag sitting inside a laundry basket inside the closet which contained a loaded .22 caliber handgun. JA96.

Norwalk Police Detective David O'Connor, who was assigned to perform the search of Tanea Humphrey's bedroom, was unable to determine for certain what the bags contained until he removed them from the closet and opened them. Tr.1/24/05 at 192.[5] The black bag containing the handgun appeared to be a small bag from a grocery store that was either loosely tied closed or folded closed; the duffel bag containing the long guns appeared

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[4] A separate search warrant issued for the BMW registered to Sherman, and officers discovered a .38 caliber revolver hidden in that car when they executed the warrant.

[5] Transcript citations will be referred to by the date and page number.

to be a large, blue Nike bag that was zipped closed. Tr.1/24/05 at 190-92, 206-08. Tanea gave a statement indicating that she had received the weapons in some bags from the defendant and that he had asked her to hold them for him. JA96. At the time, Tanea had not known what was in the bags. JA96-JA97. According to Tanea, the defendant did not live in her apartment, had never been an overnight guest or even a dinner guest, did not have a key or free access to the apartment, had only ever been to the apartment a handful of times for five minutes each time, had only come to the apartment to access items in the bags he had given to Tanea to store for him, and had not stored anything else in the apartment other than the firearms and ammunition. Tr.8/26/04 at 12-15.

SUMMARY OF ARGUMENT

The district court erred in concluding that the June 25, 2003, traffic stop which gave rise to the seizure of the firearm charged in Count Two was not supported by reasonable suspicion.

Contrary to the district court's holding, the informant here was not effectively anonymous. She gave enough personal information to render herself accountable to authorities, identifying herself by name and giving the police two telephone numbers – including one which the police used twice to contact her the day before the traffic stop. She demonstrated her basis for personal knowledge about the defendant by providing detailed information about her relationship as his former girlfriend, and nonpublic information about a shooting that involved the

defendant one year earlier. The district court's contrary application of prevailing Supreme Court and Second Circuit case law places law enforcement officers in the difficult position of having to meet face-to-face with an informant who is willing to identify herself but, out of a concern for her own safety, does not want to meet with the police.

In this case, the police attempted to act quickly on information that a violent individual with several prior felony convictions for crimes of violence was in the possession of numerous firearms. To do so, the police attempted to corroborate as much information as they could from an untested confidential informant and then use that information to engage the defendant in a *Terry* stop. Although the informant provided only limited predictive information about the defendant, including his likely whereabouts and the car he would be driving, the police were able to corroborate numerous other details she provided. Given the totality of the circumstances, the officers' traffic stop was amply supported by reasonable suspicion.

ARGUMENT

I. The June 25, 2003, Traffic Stop Which Gave Rise To The Seizure Of The Firearm Charged In Count Two Was Supported By Reasonable Suspicion

A. Factual And Procedural Background

On June 18, 2004, the defendant filed a motion to suppress, claiming that the initial police stop on June 25, 2003, which gave rise to the discovery of the firearm charged in Count Two of the Indictment was not supported by reasonable suspicion and that, as a result, the firearm seized from the defendant's vehicle and charged in Count Two should be suppressed. JA14, JA17. The defendant further argued that the firearms and ammunition charged in Count One should be suppressed as well because, without the information in the search warrant affidavit discussing the fruits of the June 25 stop, the warrant giving rise to the seizure of those firearms and ammunition was not supported by probable cause. JA14, JA19.

The Government submitted a preliminary opposition to the defendant's motion on July 1, 2004. JA21. The court held the suppression hearing on July 12, 2004, July 28, 2004, August 26, 2004, November 3, 2004 and January 24, 2005. JA5-JA7 (docket entries). On September 2, 2004, the defendant filed a supplemental memorandum in support of his motion to suppress, and on September 8, 2004, the Government filed a supplemental memorandum in opposition. JA162, JA182. On or about November 9,

2004, the Government and the defendant filed additional memoranda addressing the issue of whether the defendant had standing to challenge the search warrant for Humphrey's apartment. JA219, JA227. At the conclusion of the hearing on January 24, 2005, the Government sought and received permission from the court to file a supplemental memorandum addressing both the standing issue and the issue of whether the officers had reasonable suspicion to stop the defendant on June 25, 2003. The Government filed that memorandum on February 1, 2005, and the defendant filed a response on February 15, 2005. JA235, JA263.

On February 28, 2005, the court issued a written ruling denying in part, and granting in part, the motion to suppress. JA269. Specifically, the court granted the motion to suppress as to the firearm charged in Count Two based on its conclusion that the Norwalk police's June 25, 2003, motor vehicle stop of the defendant was not supported by an articulable, reasonable suspicion. JA275-JA282. In so ruling, the district court rejected the Government's contention that Mazza was a known, confidential informant:

> Roncinske did not go to that address to see if the caller really lived there. He also did not meet face-to-face with the caller to confirm her identity. There is no evidence that he even called the home phone number given by the informant, using only her cell phone for their conversations. There is also no evidence that Roncinske confirmed that either the cell phone number or the home phone number

in question belonged to the person the caller claimed to be.

Additionally, most of the information the government credits as proving the caller's identity, *i.e.* the details of Elmore's shooting, was public information. Elmore offered into evidence several articles found in local newspapers detailing the shooting and its effects on Elmore. . . . The articles included the date, time and location of the shooting, and stated that Elmore was shot in the right leg, shattering it, in the groin, and in the left arm. . . . The only information the caller appeared to know that was not found in the newspaper articles was the police's theory as to the motive for the shooting. However, as that case has never been officially solved, such information might say as much about the caller's knowledge of police information as it does about her identity or knowledge of Elmore.

. . . . Despite having the caller's "name" prior to the *Terry* stop, Roncinske did not really know with whom he was speaking. He had never used the caller as a confidential informant and had not even spoken with the caller on any prior occasion. He simply trusted that the caller was giving him truthful personal information. When you combine this with the caller's refusal to meet with police, it appears as though the caller did not want to be traceable. Unlike the anonymous caller in *Colon*, who gave information that made clear that she

> intended to be identifiable and believed that she could be held accountable for her information at a later date, *see* 250 F.3d at 133, this caller only gave a name and two telephone numbers, neither of which were verified. As such, the court finds that the facts place the caller most appropriately in the category of anonymous informant.

JA278-JA279 (footnotes and internal citations omitted).

The district court also entirely discounted Detective Roncinske's efforts to corroborate Mazza's information. First, as stated above, the court gave no weight to Mazza's claimed personal knowledge about the 2002 shooting incident involving the defendant because this information had been the subject of several newspaper articles. Second, the district court was unimpressed by Detective Roncinske's and Sergeant King's various efforts to corroborate Mazza's information, and instead focused on the fact that Mazza's report to Detective Roncinske did not predict the defendant's future movements or actions.

As to the firearms and ammunition charged in Count One, the court denied the motion to suppress based on its conclusion that, despite the fact that the search warrant leading to the seizure of those items was not supported by probable cause without the information related to the traffic stop on June 25, 2003, the exclusionary rule did not apply under the good faith exception. JA290-JA293. In so ruling, however, the court specifically rejected the Government's argument that the defendant lacked standing to challenge the search warrant. JA288-JA289.

On March 14, 2005, the defendant filed a motion for reconsideration of the portion of the court's ruling which relied upon the good faith exception to deny the motion to suppress as to Count One. JA295. The court granted the motion for reconsideration but, upon further review, adhered to its original ruling. JA7-JA8 (docket entries), JA321.

B. Governing Law And Standard Of Review

"In *Terry v. Ohio*, 392 U.S. 1, 30 . . . (1968), the Supreme Court carved out an exception to the general rule requiring probable cause for a search, permitting an investigating officer to briefly detain an individual for questioning. An officer may, consistent with the Fourth Amendment, briefly detain an individual if the officer has a reasonable suspicion that criminal activity may be afoot." *United States v. Vargas*, 369 F.3d 98, 101 (2d Cir. 2004) (internal quotation marks omitted). During an investigatory detention, "[t]he investigating officer may also frisk an individual for weapons if the officer reasonably believes that person to be armed and dangerous." *United States v. Colon*, 250 F.3d 130, 134 (2d Cir. 2001). "The Fourth Amendment does not require a policeman who lacks the precise level of information necessary for probable cause to arrest to simply shrug his shoulders and allow a crime to occur or a criminal to escape." *Adams v. Williams*, 407 U.S. 143, 145 (1972). "On the contrary, [*Terry*] recognizes that it may be the essence of good police work to adopt an intermediate response. A brief stop of a suspicious individual, in order to determine his identity or to maintain the status quo

momentarily while obtaining more information, may be most reasonable in light of the facts known to the officer at the time." *Id.* "The officer making a *Terry* stop must be able to articulate something more than an inchoate and unparticularized suspicion or hunch. The Fourth Amendment requires some minimal level of objective justification for making the stop." *Alabama v. White*, 496 U.S. 325, 329-30 (1990) (internal brackets, ellipses and quotation marks omitted). In the end, however, "[a] determination that reasonable suspicion exists . . . need not rule out the possibility of innocent conduct." *United States v. Arvizu*, 534 U.S. 266, 277 (2002) (rejecting defendant's claim that facts suggested "a family in a minivan on a holiday outing").

"[R]easonable suspicion is an objective standard; hence, the subjective intentions or motives of the officer making the stop are irrelevant." *United States v. Bayless*, 201 F.3d 116, 133 (2d Cir. 2000). In addition, "[u]nder the collective or imputed knowledge doctrine, an arrest or search is permissible where the actual arresting or searching officer lacks the specific information to form the basis for probable cause or reasonable suspicion but sufficient information to justify the arrest or search was known by other law enforcement officials initiating or involved with the investigation." *Colon*, 250 F.3d at 135 (citing *United States v. Hensley*, 469 U.S. 221, 230-33 (1985)). "The rule exists because, in light of the complexity of modern police work, the arresting officer cannot always be aware of every aspect of an investigation; sometimes his authority to arrest a suspect is based on facts known only to his superiors or

associates." *United States v. Valez*, 796 F.2d 24, 28 (2d Cir. 1986); *see Hensley*, 469 U.S. at 230-33 (holding that *Terry* stop based on flyer issued by neighboring police department indicating that suspect wanted for investigation of a felony was permissible if the officers who issued the flyer possessed particularized reasonable suspicion of criminal activity). In addition, the evidence supporting the stop "must be seen and weighed not in terms of library analysis by scholars, but as understood by those versed in the field of law enforcement." *United States v. Cortez*, 449 U.S. 411, 418 (1981). "This process allows officers to draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that might elude an untrained person." *Arvizu*, 534 U.S. at 273 (internal quotation marks omitted).

"Reasonable suspicion may be based on an informant's tip as long as it is sufficiently reliable." *United States v. Quarles*, 955 F.2d 498, 501 (8th Cir. 1992) (internal quotation marks omitted). "Informants' tips, like all other clues and evidence coming to a policeman on the scene may vary greatly in their value and reliability," and "[r]igid legal rules are ill-suited to an area of such diversity." *Illinois v. Gates*, 462 U.S. 213, 232 (1983) (internal citations and quotation marks omitted). "[E]ven if we entertain some doubt as to an informant's motives, his explicit and detailed description of alleged wrongdoing, along with a statement that the event was observed first-hand, entitles his tip to greater weight than might otherwise be the case." *Id.* at 234.

In addition, "'it is improper to discount an informant's information simply because he has no proven record of truthfulness or accuracy.'" *United States v. Canfield*, 212 F.3d 713, 719 (2d Cir. 2000) (quoting *United States v. Wagner*, 989 F.2d 69, 73 (2d Cir. 1993)). An informant's "veracity can be shown in other ways." *Canfield*, 212 F.3d at 719. For example, an informant's veracity may be established if the informant's information is provided face-to-face, rather than anonymously: "'[A] face-to-face informant must, as a general matter, be thought more reliable than an anonymous telephone tipster, for the former runs the greater risk that he may be held accountable if his information proves false.'" *Id.* (quoting *United States v. Salazar*, 945 F.2d 47, 50-51 (2d Cir. 1991)). Moreover, whether the information is anonymous or face-to-face, "'if an informant's declaration is corroborated in material respects, the entire account may be credited, including parts without corroboration.'" *Canfield*, 212 F.3d at 719-20 (quoting *Wagner*, 989 F.2d at 73). Courts should distinguish between an informant who is anonymous and an informant who provides sufficient identifying information to allow the investigating officer to hold the informant responsible for providing false information. *Compare Williams*, 407 U.S at 146-47 (upholding *Terry* stop based on uncorroborated tip from known reliable informant) *with White*, 496 U.S. at 331-32 (holding that anonymous tip justified *Terry* stop because innocent details were corroborated and tip accurately predicted future events).

In reviewing the denial of a motion to suppress involving a determination of probable cause or reasonable

factual findings of the district court and *de novo* review to the ultimate determination that the facts as found justify the detention. *See Ornelas v. United States*, 517 U.S. 690, 697 (1996); *United States v. Garcia*, 339 F.3d 116, 118-19 (2d Cir. 2003). The evidence is to be construed in the light most favorable to the Government. *See Garcia*, 339 F.3d at 118; *Bayless*, 201 F.3d at 132.

C. Discussion

In this case, it is undisputed that the sole information giving rise to the June 25, 2003, stop of the defendant's vehicle was the information contained in Detective Roncinske's memo of June 22, 2003. The police did not independently view the defendant engage in suspicious activity. The Court, therefore, must determine whether the information provided to Detective Roncinske by Mazza that the defendant had a .38 caliber revolver loaded with hollow-point ammunition hidden in his car was sufficiently reliable to justify the stop.

Mazza spoke to Detective Roncinske over the phone on June 22, 2003, identified herself by first and last name, provided her home and cellular telephone numbers, stated that her basis of knowledge was that she had been the defendant's girlfriend and had personally observed the firearms and ammunition at issue, and accurately answered questions put to her by Detective Roncinske to establish her relationship with the defendant. More specifically, Mazza accurately described a November 2002 shooting, the wounds the defendant had suffered from the shooting, and the alleged circumstances surrounding, and motive

for, the shooting. In addition, based on the information given to him by Mazza, Detective Roncinske was able to use DMV records to confirm Mazza's name, and to learn her address and date of birth. Detective Roncinske was also able to use Mazza's cellular telephone number to contact her again on June 22 to review and confirm information with her that she had previously provided to him. Indeed, he estimated that, between calls he placed to her and calls she placed to him, they talked at least four times by phone on June 22, as he was in the process of attempting to corroborate various portions of her statement. Based on all of these facts, it was objectively reasonable for Detective Roncinske to believe that Mazza felt she could be held accountable for the provision of any false information.[6]

In addition, prior to the stop of the defendant, the police were able to corroborate several pieces of information provided by Mazza. Detective Roncinske confirmed that the defendant had a black 1992 Acura registered to him under a temporary Connecticut license plate which had recently expired. He also drove to Carleton Court and confirmed that there was a black BMW registered to a Dwayne Sherman parked outside Building 13. At the same time, he discovered that a Denita Sherman, who was Dwayne Sherman's wife, lived in Building 14. Finally, he learned that the defendant and

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[6] Indeed, although irrelevant to the reasonable suspicion analysis, it bears note that Detective Roncinske did meet face-to-face with Mazza several times after the defendant's June 25 arrest.

Dwayne Sherman had been arrested together in the past for an alleged armed robbery. In addition, just prior to the stop, Sergeant King and Officer Suda observed the defendant, driving in the Carleton Court area, in a car matching the description provided by Mazza, with a new Connecticut license plate. Mazza had stated that the defendant frequented Carleton Court and that he had recently converted his temporary plate to a permanent plate on his black Acura.

It is undisputed that, once Sergeant King stopped the defendant's vehicle, his prolonged detention and arrest of the defendant was justified by his discovery of the firearm sitting in plain view behind the driver's seat. The issue to be resolved here is simply whether the initial stop of the vehicle was supported by reasonable suspicion. As set forth above, the officers had reasonable suspicion to stop the defendant based on the totality of the circumstances, including Mazza's basis of knowledge as the defendant's ex-girlfriend, the fact that Mazza was reporting criminal activity that she herself had observed, the fact that Mazza could be held accountable for the provision of false information, the fact that Mazza's account both was detailed and concerned recent observations, and the fact that the police were able to corroborate several important details of her report.

Although the district court recognized that a *Terry* stop may be justified by information provided by a confidential informant, or even an anonymous tipster, it ruled that the information provided by Mazza in this case did not justify the defendant's stop. First, the district court rejected the

Government's contention that Mazza was a known, confidential informant and specifically concluded that she was effectively an anonymous tipster. In so ruling, the district court faulted Detective Roncinske for not meeting personally with Mazza or otherwise confirming, with certainty, her identity. The court placed great emphasis on the proposition that anyone purporting to be Mazza could have been using her name and providing false information to Detective Roncinske with impunity. In the Government's view, however, the district court erred in treating Mazza as an anonymous tipster, which in turn caused the court to demand a higher degree of corroboration.

In fact, Mazza is nothing like the anonymous tipster in *Florida v. J.L.*, 529 U.S. 266 (2000), the primary case on which the defendant relied in his motion to suppress. In *J.L.*, the individual was an "unknown caller" from an "unknown location." *Id.* at 270. In a concurring opinion, Justice Kennedy noted that there was no indication in the record that police had traced or recorded the call. *See id.* at 275 (Kennedy, J., concurring).

Here, Mazza identified herself by name, explained her relationship to the defendant and provided personal information about him to corroborate this relationship. She gave two different phone numbers, and Detective Roncinske was able to use those numbers to talk with her several times on June 22, 2003, before authoring the memo which gave rise to the stop of the defendant. Detective Roncinske was also able to use DMV records to confirm

Mazza's name and to learn her address and date of birth.

Detective Roncinske did not meet with Mazza because she had been "deathly afraid" of the defendant and had not wanted to take any chance that he could discover her identity as the person who had called the police about him. Although the district court did not appear to discredit Detective Roncinske's testimony on this subject, it noted, "While the safety concerns of confidential informants are an important consideration, something could have been arranged that would have allowed the police to confirm the caller's identity while maintaining her confidential status." JA278 n.6. Moreover, the district court rejected the Government's argument that Mazza's accountability had been established by the fact that she had spoken with Detective Roncinske several times on June 22: "[S]uch calls could be answered by anyone, anywhere in the United States that had cell phone service. This is not the kind of verification required to invoke an exception to the protections of the Fourth Amendment." JA279 n.7.

The district court placed too much emphasis on Detective Roncinske's failure to identify Mazza definitively. The case law construing the requirements of *Terry* do not require a face-to-face meeting with an informant to classify that individual as something other than an anonymous tipster. Although this Court recognized in *Canfield*, 212 F.3d at 719, that a face-to-face meeting with an untested informant can provide sufficient guarantees of trustworthiness to allow police to rely on a tip, several decisions since *J.L.* have clarified the meaning

of the term "anonymous tipster" and rebut the suggestion that the police must definitively identify the caller before making the stop. *See United States v. Terry-Crespo*, 356 F.3d 1170, 1174 (9th Cir. 2004) (distinguishing *J.L.* because 911 caller, although not giving a location or return phone number, gave his name and a contemporaneous account of having been threatened with a firearm, and because the call itself had been recorded); *United States v. Quarles*, 330 F.3d 650, 655 (4th Cir. 2003) (distinguishing *J.L.* and finding that 911 caller did not qualify as anonymous because he identified himself by name, agreed to meet with the police after the stop, spoke to the 911 dispatcher for 14 minutes, and conveyed personal information about the defendant); *United States v. Harris*, 313 F.3d 1228, 1235 (10th Cir. 2002) (distinguishing *J.L.* because caller provided her name and location and telephoned the police twice about the criminal activity); *United States v. Browning*, 252 F.3d 1153, 1157 (10th Cir. 2001) (distinguishing *J.L.* because caller identified herself by name, date of birth and location, gave a telephone number "that allowed the dispatcher to call her back," and had been a victim of the alleged crimes giving rise to the stop); *see also United States v. Johnson*, 364 F.3d 1185, 1191 (10th Cir. 2004) (noting that caller, who was not asked for name or address, was different from caller in *J.L.* because he gave his cell phone number and talked with dispatcher for eight minutes about criminal activity he was witnessing). In this case, like the caller in *Colon*, Mazza provided Detective Roncinske with enough personal information (including a phone number which she used multiple times on June 22) that she must have believed that

the "police, in due course, could track her down." 250 F.3d at 133.

Thus, based on these decisions and contrary to the district court's conclusion, it seems apparent that the police need not meet face-to-face with an untested informant to rely on his or her information. For example, in *Quarles*, the court specifically rejected the argument that the lack of a face-to-face encounter between the tipster and the police before the stop deprived the police of an opportunity to find the tipster reliable:

> Rainey provided sufficient information to the police that he could have been held accountable for his statements. Not only did Rainey provide his name, he provided information about the murder of his brother, the name of a U.S. Marshal to whom he had spoken about Quarles, the color and make of his own car, and his location. This was enough information for the police to track down Rainey and enough that Rainey is bound to have felt as though he was being held accountable for what he was saying.

330 F.3d at 656. Likewise, in *Terry-Crespo*, the court rejected the argument that the identified caller was akin to an anonymous tipster because he simply could have lied when he gave his name:

> [T]here may be circumstances in which the police know, or should know, that a caller has obviously given a false name to enshroud himself with

> anonymity, for example, a caller self-identifying as "Arnold Schwarzenegger" or "Jon Bon Jovi." This case, however, is not that circumstance. The male caller, who was not a native English speaker and who at one point spoke in Spanish, gave the 911 operator a plausible Hispanic name and spelled it for her. That "Domingis" was not the expected spelling of the homophone "Dominguez" does not diminish the reasonableness of the police reliance on this caller at that time as a known source. We decline to impose a duty on the police to confirm the identity of every 911 caller who provides his or her name or to know the universe of names in the United States and their endless variants. The Fourth Amendment's reasonableness requirement does not demand such linguistic precision.

356 F.3d at 1174.

In the end, although the district court offered good suggestions for ways in which Detective Roncinske could have done further investigative work to attempt to verify Mazza's identity, such investigation was not necessary to provide the police with reasonable suspicion. Faced with a disturbing first-hand report about a known, violent felon in possession of several firearms, the police reacted as *Terry* dictates, i.e., adopting an "intermediate response" to allow for a "brief stop" of the defendant to verify whether there was any truth to the report. *See Williams*, 407 U.S. at 145.

The district court also improperly discounted Detective Roncinske's efforts to corroborate Mazza's information. First, as stated above, although Mazza convinced Detective Roncinske that she was the defendant's ex-girlfriend by describing, *inter alia*, a shooting in which he had been a victim, the court disregarded this information because it had been the subject of several newspaper articles disseminated to the public. Second, although Detective Roncinske and Sergeant King were able to corroborate much of the innocent details of Mazza's information, the district court instead focused on the fact that, other than predicting the defendant's whereabouts and the car he would be driving, Mazza did not predict his future movements or actions. *See United States v. Oliva*, 385 F.3d 1111, 1114 (7th Cir. 2004) ("The district court is required to consider the informant's information in light of how detailed it is, how reliable it is, and to what degree it is corroborated by other information available to the officers").

The police in this case, however, did far more to corroborate Mazza's information that they did in *J.L.* In *J.L.*, the tipster stated that a "young black male standing at a particular bus stop and wearing a plaid shirt was carrying a gun," and the police searched a male matching this description and his two friends based simply on the fact that the male matched the caller's description and was standing at the described bus stop. *See* 529 U.S. at 268.

Here, unlike in *J.L.*, Mazza provided a very detailed description of criminal activity that she herself had witnessed. She provided specific descriptions of the

firearms, explained that she had recently kicked out the defendant after having discovered them, and told Detective Roncinske where they were currently being stored. She explained that she had been the defendant's girlfriend and that the defendant had stored several firearms at her home in Darien, Connecticut. Even had the district court "entertain[ed] some doubt as to [Mazza's] motives," by virtue of her self-proclaimed status as the defendant's ex-girlfriend or by virtue of her refusal to meet with the police, her "explicit and detailed description of alleged wrongdoing, along with a statement that the event was observed firsthand, entitled [her] tip to greater weight than might otherwise be the case." *Gates*, 462 U.S. at 234; *see also United States v. Hauk*, 412 F.3d 1179, 1191 (10th Cir. 2005) (noting that the "degree of detail, claim of first-hand knowledge, and information about the circumstances of learning the information, lends weight to the credibility of the tip").

Mazza's reliability was further buttressed when she provided detailed, nonpublic information about a shooting involving the defendant one year earlier. Specifically, Mazza knew that the defendant might have been shot in retaliation for his having pistol-whipped a man named Demark Bond. JA90-JA91. She claimed to have nursed the defendant back to health after he had been shot in 2002 and provided accurate details about the shooting, its underlying motive, and the resulting injuries. The district court discredited this nonpublic information because it detailed an unproven theory and just as easily have could have demonstrated that the tipster had access to police information, rather than access to information about the

defendant. JA278-JA279. This logic places the police in a difficult situation. If a tipster provides nonpublic information that does not correspond to information known by the police, such information will be deemed unverifiable and will be disregarded in the reasonable-suspicion calculus. If a tipster's information *does* correspond with what is known to the police, it will be disregarded because the tipster could be relying on the police's source of information, rather than the defendant himself.

The critical point here is that Mazza knew nonpublic information about the defendant which the police believed to be accurate. Detective Rocinske acted reasonably in concluding that such knowledge enhanced her reliability and made it more likely that other information she provided about the defendant was similarly based on first-hand knowledge. *See Nelson*, 284 F.3d at 484 (holding that informant's provision of information "known to the police, but not to the general public," demonstrated access to "inside information" that established informant's reliability, even absent predictive information).

Moreover, prior to the stop of the defendant, the police were able to corroborate much of the innocent information provided by Mazza. Detective Roncinske confirmed that the defendant had a black 1992 Acura registered to him under a temporary Connecticut license plate which had recently expired; he confirmed there was a black BMW registered to Dwayne Sherman parked outside of Building 13 of Carleton Court; he confirmed that a Denita Sherman, who was Dwayne Sherman's wife, lived in Building 14,

and he confirmed that the defendant and Dwayne Sherman had been arrested together in the past for an alleged armed robbery. Prior to the stop Sergeant King and Officer Suda observed the defendant, driving in the Carleton Court area, in a car matching Mazza's description, with a new Connecticut license plate; Mazza had stated that the defendant frequented Carleton Court and that he had recently converted from a temporary to a permanent plate on his black Acura.

By corroborating the innocent information from Mazza's statement, the police officers were entitled to place more confidence in the inculpatory portion of the statement. The lack of predictive information, beyond Mazza's indication as to where the defendant could be located, is not fatal to the analysis. "[T]here are many indicia of reliability respecting anonymous tips." *J.L.*, 529 U.S. at 274 (Kennedy, J., concurring); *see also United States v. Perkins*, 363 F.3d 317, 325 (4th Cir. 2004) (holding that predictive information unnecessary where stop based on officer's "reasonable assumption" as to tipster's identity, his own knowledge of area, and his observation of a car and of individuals matching the caller's description), *cert. denied*, 543 U.S. 1056 (2005); *United States v. Nelson*, 284 F.3d 472, 483-84 (3d Cir. 2002) (noting that, while "predictive information can demonstrate particularized knowledge, other aspects of the tip can reflect particularized knowledge as well"); *United States v. Wheat*, 278 F.3d 722, 734 (8th Cir. 2001) (noting that there is no "rule requiring that a tip predict future action"); *United States v. Johnson*, 64 F.3d 1120, 1125 & n.3 (8th Cir. 1995) (noting that "rule requiring that a tip

predict future action" would not be consistent with the totality of the circumstances approach to determining reasonable suspicion).

In the end, the district court did what the Supreme Court in *Arvizu* cautioned against: it viewed each of the reasons justifying the defendant's stop in isolation, rather than collectively. *See Arvizu*, 534 U.S. at 274. Reasonable suspicion merely requires "some minimal level of objective justification" for making a stop, which is "considerably less than proof" by a preponderance of the evidence and "obviously less demanding" than probable cause. *See United States v. Sokolow*, 490 U.S. 1, 7 (1989). "[R]easonable suspicion cannot be reduced to 'a neat set of legal rules,' lest our focus on factors in isolation blind us to the 'totality of the circumstances' that must guide our assessment of police behavior." *Nelson*, 284 F.3d at 484 (quoting *Arvizu*, 534 U.S. at 274). Here, based on the detailed information provided by Mazza, which was derived from her own timely, personal observations and her close personal relationship with the defendant, and the corroboration of both Mazza's identity and the innocent details of her information, the police developed an articulable, reasonable suspicion to detain the defendant briefly on June 25, 2003, a detention which subsequently led to the discovery of the firearm charged in Count Two of the Indictment.

CONCLUSION

For the foregoing reasons, the district court's ruling suppressing the firearm charged in Count Two of the Indictment should be reversed.

Dated: April 3, 2006

Respectfully submitted,

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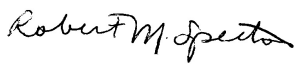

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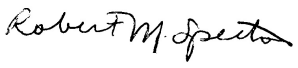
CERTIFICATION PER FED. R. APP. P. 32(A)(7)(C)

This is to certify that the foregoing brief complies with the 14,000 word limitation requirement of Fed. R. App. P. 32(a)(7)(B), in that the brief is calculated by the word processing program to contain approximately 9,672 words, exclusive of the Table of Contents, Table of Authorities, Addendum of Statutes and Rules, and this Certification.



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ADDENDUM

Statutory Provisions

18 U.S.C. § 922(g) (1)

(g) It shall be unlawful for any person--

(1) who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

. . .

to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.