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Legal Advisor's Update

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A summary of laws that may be of interest to you. More information is available in the Legal Advisor's Office at 645-4530. This is not an inspectional item. If you receive this Update, and are not a member of the Columbus Division of Police, this should not be viewed as legal advice. We hope you find the contents helpful, but you should consult your own legal counsel for advice.

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I. Enforcement of Post-Conviction No Contact Orders (NCO)

The Supreme Court of Ohio recently created Form 10-G for No Contact Orders (“NCO”). This new form is a more formalized version of the “stay away” orders routinely put in place as a condition of community control—so we are talking about **post-conviction** NCOs. Sup.R. 10(A)(1)-(2) state that any time a protection order or NCO is issued, modified, or terminated the court must complete a “Protection Order Notice to NCIC” using Form 10-A. The completed Form 10-A must be sent to law enforcement to be entered into the National Crime Information Center (“NCIC”). Entering the NCO into NCIC is intended to “facilitate nationwide enforcement of the order.”

Although Form 10-A refers to giving notice of a protection order, the NCO is not technically a “protection order” for purposes of state law. Violation of an NCO may **not** be prosecuted under R.C. 2919.27 (Violation of a Protection Order); rather, an alleged violation of an NCO must be addressed through probation revocation proceedings based on a statement of violation. In this context, the revocation process may be initiated a couple of different of different ways by an officer who encounters an NCO violation: arrest or report and referral to probation.

An arrest for a violation of an NCO is authorized (not required) by R.C. 2951.08(A). A new charge will not be filed for the violation of the NCO, unless of course the defendant has committed other offenses in addition to violating the NCO. For example, if a defendant has prohibited contact with a victim, thereby violating the post-conviction NCO, and also threatens to kill the victim, the defendant would receive a fresh charge for aggravated menacing, but not for violating the NCO. Under R.C. 2951.08(A), law enforcement officers may arrest defendants, without a warrant, if they have reasonable grounds to believe they have violated certain conditions of community control, including orders to not contact or communicate with specified individuals. So, yes, an officer may arrest for a violation of an NCO, without filing a new charge, if the defendant’s sole infraction is violating the NCO.

An officer may also take a report and refer victim to the Franklin County Municipal Court Probation Department, or whatever is the appropriate probation department depending on from where the NCO emanates. Defendant’s probation officer will then investigate the alleged violation and may file a Statement of Violation if merited. The police report should list all relevant evidence, and witnesses with contact information so probation may meaningfully follow-up.

Officers will likely learn about existence of NCOs from LEADS, Courtview, or victims. If an officer encounters an NCO, Officers shall verify the existence of the NCO by having the FCMC Clerk, or the appropriate clerk, contacted. If Law Enforcement makes an arrest for a violation of probation, the Clerk’s office should be contacted to request an order-in warrant under the arrestee’s probation case number; the order-in warrant will facilitate booking the defendant into jail. The Deputy Clerk will send a copy of the warrant to the jail for slating.

Law enforcement is required by R.C. 2951.08(B) to notify Probation within 3 days of arrest.

The appropriate way to do that relative to NCOs from the Franklin County Municipal Court will be to email your report to the Municipal Court Probation Department. A separate Division wide email will be sent out with that email address once it is live and being regularly checked by probation. If an officer chooses not to arrest for an NCO that emanates from FCMC, the officer should take a report and send that report to the same email address so probation can follow-up.

Finally, the DVTPO, CRPO, and NCO forms also allow Judges to order the defendant to not possess, use, carry, or obtain deadly weapons, including firearms and ammunition. All three forms have been updated to include instructions that explain to defendants the specific steps they need to take to comply with the order to surrender deadly weapons. Defendants may call the Columbus Division of Police if CPD filed the underlying charges. In all other cases, defendants may call the Franklin County Sheriff's Office, and FCSO will connect them with the correct law enforcement agency. The appropriate agency will give the defendant specific instructions for how to surrender their deadly weapons if they have been ordered to do so.

II. Hazing (Collin's Law) In effect 10/7/21

Introduction: Collin's law attacks hazing in several ways. One, ORC § 2903.31, which has been Ohio's anti-Hazing law for several years, has been amended to expand the definition of hazing and what types of organizations are covered by the law. Two, ORC § 2903.31 has been amended to more explicitly outlaw certain hazing activities, such as coerced consumption of alcohol or drugs of abuse. Three, penalties for hazing have been increased. It is now a felony if the coerced consumption of alcohol or drugs results in serious physical harm. Collin's law also has created new Revised Code Section § 2902.311, which requires administrators and others to report hazing to law enforcement. If an administrator, or others, acting in an official or professional capacity recklessly fail to report hazing to the police, it is a criminal offense. OSU and others are of course being diligent in assuring any hazing incident is reported to the police. Given many OSU students live off-campus, within the City of Columbus, these reports will be made to the Columbus Division of Police. The Division is currently adjusting policies to assure these reports are taken and investigated. If an officer is dispatched to a hazing incident, or is at the scene of an incident where it becomes apparent hazing has occurred, the officer should collect/preserve relevant evidence. Officers should also identify suspects involved in the hazing, and witnesses to the hazing, and assure this information is documented for any needed follow-up investigation.

Changes to ORC 2903.31 under Collin's Law

- Expands the definition of hazing to specifically include coercing another to do any act of initiation, or any act to continue or reinstate membership in an organization, **including coercing another to consume alcohol or a drug of abuse.**

- **Added:** teacher, consultant, alumnus, or volunteer to administrator, members, and employees who shall not permit hazing to occur.
- **Added:** Subsection (C)(1) which prohibits recklessly participating in hazing involving coerced consumption of alcohol or drugs resulting in the serious physical harm of another person. Subsection (C)(2) applies this to administrators, employees, faculty members, teachers, consultants, alumnus, and volunteers.
- **Increased Penalties:** Subsection (D) increases the penalties for violation of this code section:
 - **Violations of (B)(1) or (B)(2) are 2nd Degree Misdemeanors**
 - **Violations of (C)(1) or (C)(2) are 3rd Degree Felonies**

New Section: ORC 2903.311 applies directly to administrators, employees, faculty members, teachers, consultants, alumni and volunteers and gives them a **mandatory duty to report** knowledge of hazing to a law enforcement agency.

- Duty to report to law enforcement immediately
- Duty to report only applies if they are in an official or professional capacity
- Hazing conduct can be reported in the county the victim of the hazing resides, where the hazing occurred or where the hazing is occurring.
- Failure to immediately report the knowledge of hazing is a 4th Degree Misdemeanor
 - Unless the hazing involved serious physical harm in that case the failure to report is a 1st Degree Misdemeanor.

Subsection (2): Applies the hazing law to **all** primary, secondary, post-secondary schools **and** any other educational institution public or private.

- Which means you may receive reports from institutions other than colleges and universities, based on this subsection the code applies to any and all manner of educational institutions (i.e. trade schools, culinary arts schools, cosmetology schools)

III. Show-Ups/One Person Identification Procedures

In a "cold stand," or "show-up," a victim or witness, in a relatively short time after the incident, is shown only one person and asked whether they can identify the perpetrator of the crime. **State v. Lewis, 2019-Ohio-3660 (8th App. Dist. 9/12/19).** While this one-person show-up identification procedure is inherently suggestive, a witness's identification from such a show up is admissible if the identification is reliable. **State v. Kozic, 2014-Ohio-3807 (7th App. Dist. 2014).**

We have had a number of concerns raised relative to these processes over the past few years, and we can see that officers sometimes don't completely understand the finer points of how to conduct these identification procedures. So, what makes one of these procedures reliable? (Most of this is

also available in the Training Supplement to the Division Directives Manual in Chapter 4, Issue 3, titled Creation and Administration of Photo Lineups and Show-ups).

- 1) The officer needs to find out if the victim/witness saw the suspect, how they saw them, from what vantage point they saw them, and if they were paying close attention to the suspect/details of the confrontation/incident, **before** you do a “show-up.” In other words, the officer needs to take steps to make sure the victim/witness can, with some level of confidence, identify the perpetrator.
- 2) The officer needs to get a specific detailed description of the suspect, based on what the victim/witness saw during the confrontation, **before** the “show-up.”
- 3) The officer needs to ascertain the length of time between the confrontation and the proposed “show-up.” The “show-up” should be close in time to the confrontation. If an unreasonable amount of time has passed, then a different I.D. procedure should be used, such as a photo-array.
- 4) The officer should transport the victim/witness to the suspect for the “show-up” to avoid any unlawful arrest claims in the event the detained person is not the suspect.
- 5) The victim or witness should be advised how the process will work. They should be told that the person detained may, or may not, be the suspect, and that they should carefully look at the person before indicating if they believe the detained person was involved in the incident. The victim/witness should be told they do not have to make an identification.
- 6) The suspect should not be seated in the cruiser for this process, and if they are handcuffed, the handcuffs should be hidden.
- 7) Suspects should not be required to put on clothes worn by the perpetrator. They can be requested to speak, but they do not have to do so.
- 8) THIS IS A BIG ONE WHERE WE HAVE SEEN ISSUES LATELY: Show-ups should not be conducted with more than one victim and/or witness present at a time. If there is more than one victim and/or witness, the show-up shall be conducted separately for each victim and/or witness, and victims/witnesses should not be permitted to communicate before or after any show-up regarding the identification of the suspect. The same suspect should not be presented to the same victim and/or witness more than once. If there are multiple suspects, the suspects shall be separated and subjected to separate show-up procedures. You should not show multiple suspects to a witness at the same time.
- 9) The officer should record victim and/or witness statements during (BWC) and immediately following the show-up identification. Make note of the victim’s/witness’ remarks and his or her level of confidence, and any additional statements regarding the suspect(s) identified.
- 10) Suspects do not have a right to counsel before or during a show-up.

IV. ShotSpotter, Reasonable Suspicion and Stops

We have gotten several good questions from officers about ShotSpotter and *Terry* Stops. The two cases cited below analyze *Terry* stops related to ShotSpotter alerts. While the cases are not from our jurisdiction, we think the way the courts analyze these *Terry* stops is the way in which our courts will analyze ShotSpotter related *Terry* stops. There are several things for officers to take from these cases:

- The time that elapses between the alert, and when an officer arrives at the location of the alert, is really important. In other words, the faster an officer gets there, the more likely an officer can justify a stop of someone at or near the location of the alert. Having said that, an alert by itself will generally not support a stop of someone at or near the location of the alert, but the quicker an officer arrives, the less other information the officer needs.
- Being really observant on the way to the scene, and while entering the scene, is really important. An officer should be able to note if they saw anyone else on the way into the scene, or upon arriving at the scene. Were other cars or pedestrians leaving the area? It is helpful to scan the whole area upon arrival so an officer can explain if there was anyone else on the street, in nearby yards, or on porches. A court will find it compelling if an officer is able to testify they got there quickly, and that Joe Suspect was the only person at or near the location of the alert, especially late at night when people are generally unlikely to be out and about.
- As with any other suspect, it is really important to observe the suspect's behavior *before* giving an order to stop. Are they walking quickly or running from the alert area? Are they acting evasively? If they are leaving in a car, is the driving erratic or suspicious? Is it the only moving car seen at or near the location? Do they have any of the telltale signs of having a gun? What is the nature of the neighborhood?
- If 911 shots fired calls are also being received in conjunction with the alert, the information in those calls ought to be considered as well as they too may help support reasonable suspicion.
- Finally, an officer should be able to describe the basic manner in which ShotSpotter works, especially as to location accuracy. If an officer has been on multiple ShotSpotter runs at or near the location, this is also helpful information.

A. United States v. Jones, 2021 U.S. App. LEXIS 17756 (USDC Dist. of Columbia)

Critical Points of the Case:

- A *Terry* stop, which constitutes a Fourth Amendment seizure, occurs when physical force is used to restrain movement or when a person submits to an officer's show of authority. It is the government's burden to show that officers had evidence to support a reasonable and articulable suspicion at the time of a stop. Such evidence must include more than mere presence in an area of expected criminal activity.
- A defendant's presence in the precisely identified area where a crime has recently occurred and officers' observation of his suspicious behavior there raise reasonable suspicion.

Facts: On the night of April 6, 2019, the Metropolitan Police Department (MPD) alerted police officers Jasmine Turner and Brianna Ennis that its ShotSpotter system had identified the sound of gunshots in the 3500 block of 13th Street Southeast in Washington, D.C. The officers arrived on the block *a minute and a half* after receiving the alert from MPD. They saw Chauncey Jones walking quickly and observed that there was no one else outside on the block. While the officers checked for victims, a dispatcher reported over their radio that citizens on neighboring blocks were calling 911 to report gunshots heard at either end of the 3500 block. The officers believed these were the same shots reported by ShotSpotter, because they had heard no additional shots since arriving on the block.

Finding no victims, Officers Turner and Ennis decided to stop Jones. They followed him around the corner onto Trenton Place, where Officer Damien Williams joined them. Turner got out of the patrol car and pursued Jones on foot. Jones continued to walk away as she called out to him: "Hello, how ya doin'? Hello. Excuse me! Hello. You don't hear me talking to you?" Jones was wearing a hooded jacket. After ten seconds, Jones stopped and turned back toward the officers, removing the headphones he was wearing under the jacket's hood. Ennis also approached. Turner testified that Jones "kept moving, like moving a lot," and his "hand kept moving, gravitating towards his waistband area." Turner grabbed Jones's hand and told him to stop moving. Williams and two other officers then converged on Jones. Observing an item jostle in Jones's waistband, Williams tackled Jones and, after a struggle, recovered the item, a pistol.

Issue: Did the officers have reasonable articulable suspicion that crime had occurred at that location and that Jones was the individual engaged in the criminal activity at the time of the stop?

Holding and Analysis: Yes. The totality of the information known to Officer Turner when she stopped Jones amounted to reasonable suspicion. The totality of the circumstances were as follows: The ShotSpotter alert and dispatcher report from MPD indicated that shots were fired in the 3500 block of 13th Street Southeast. Officers Turner and Ennis arrived at the location of the reported gunshots within a minute and a half of the MPD call. Officer Turner testified that they saw that Jones was the only person on that block. Jones was walking quickly away from the location of the shooting. He did not initially respond to Turner's repeated efforts to get his attention. When Jones did pause and look back towards Officer Turner, reaching up in a gesture suggesting he was removing earbuds, Officer Turner could have drawn an alternative, non-suspicious inference from Jones's failing to respond and continuing to walk away from her: He could have been listening to loud music and initially failed to hear her calling out. But the court found that when Turner commanded Jones to stop she could not see that Jones was wearing headphones, and the court determined that it was reasonable for her to treat Jones's non-responsiveness as grounds for suspicion.

This court has previously held that a defendant's presence in a precisely identified area where a crime has recently occurred, and officers' observation of suspicious behavior by the person upon arrival, support reasonable suspicion--the gunshots reported here were pinpointed to a single block. Here, the officers arrived quickly, and there was no one besides Jones outdoors on the block. Jones was walking swiftly away from the site of the shots and failed to respond to Turner's requests that he stop, all of which Officer Turner could reasonably perceive as evasive.

Defendant Jones raised several objections to this holding. First, he argued that his presence on the block was not a basis for reasonable suspicion because others could have been outside when the shots were fired and escaped into a building or driven away in a car before the officers arrived. However, the court pointed out that officers need not rule out all innocent possibilities before making a stop. Here, Officers Turner and Ennis arrived on the block within a minute and a half of MPD's call reporting the ShotSpotter alert, and a dispatcher reported further calls from neighbors as they arrived, so the officers could reasonably infer that the shots had been fired very recently. The officers also observed Jones behaving evasively.

Second, Jones asserted that ShotSpotter identifies only a "radius of unspecified size," so the officers could not know that he was on the precise block where shots were fired. But the court accepted the government's factual claim that ShotSpotter identified the 3500 block of 13th Street Southeast as the site of the gunshots. Jones offered no reason why that finding was clearly erroneous.

Third, Jones contended that he was not walking quickly when the officers saw him. The court reviewed the body camera footage and concluded that the district court's finding was not clearly erroneous. The court also pointed out that, even if Jones' pace was not suspicious, his initial

failure to respond to Turner was evasive conduct that, together with the other facts, supported a finding of reasonable suspicion.

Finally, Jones argued that the officers had no reason to think the gunshots were fired by someone outdoors rather than indoors, so his presence outdoors on the block could not be grounds for reasonable suspicion. But as the government explained, the fact that residents of neighboring blocks could hear the shots made it more likely that they were fired outside. The officers' evidence sufficed to provide reasonable suspicion even if it left some residual possibility that the shots were fired indoors.

B. United States v. Diaz, 2020 U.S. Dist. LEXIS 191250 (USDC S.D. New York)

Critical Points of the Case:

- **Individuals are not seized under the Fourth Amendment every time they stop and cooperate with police officers. An officer's conduct rises to the level of a seizure when (1) a person obeys a police officer's order to stop or (2) a person that does not submit to an officer's show of authority is physically restrained.**
- **In reviewing whether a *Terry* stop was supported by reasonable suspicion, a court must ask "whether there was a particularized and objective basis' for suspicion of legal wrongdoing under the totality of the circumstances.**
- **A single ShotSpotter alert, standing on its own, generally does not amount to reasonable suspicion. However, the ShotSpotter alert can be a critical part of the totality of the circumstances when coupled with other factors.**

Facts: The court in this case described ShotSpotter in the following manner: "ShotSpotter" is a GPS enabled sound detection system that the New York Police Department ("NYPD") uses to identify and locate gunfire within the city of New York. Essentially "a surveillance system," ShotSpotter "uses sophisticated microphones to record gunshots in a specific area." When ShotSpotter detects a sound that may have been a gunshot, a report is broadcast to NYPD officers on patrol that includes the approximate location of the alleged gunfire, the elevation at which it was detected, and the number of rounds apparently discharged.

On the evening of October 20, 2019, two nearly identical ShotSpotter reports were broadcast to NYPD officers on patrol in the Bronx. The first report, broadcast around 7:40 PM, stated that one round of apparent gunfire was detected at roof-level at 940 Reverend James A. Polite Avenue. Officers who responded to the address encountered a three-story, single family home (the "940 Building"), which shared a wall with a six story, walk up apartment complex at 936

Reverend James A. Polite Avenue (the "936 Building"). According to officers who testified at the suppression hearing, the neighborhood around the buildings is high in criminal activity, and the 936 Building in particular has been the subject of numerous police calls.

The officers who responded to the first ShotSpotter report observed that the 940 Building appeared to have "no rooftop access." The 936 Building, however, had a flat roof that the officers knew from prior experience was accessible by internal stairwell. Understanding that ShotSpotter locations are accurate to about a "half a block radius," the officers determined that the 936 Building was more likely than the 940 Building to have been the location of roof level gunfire and searched it from top to bottom. Finding no evidence to corroborate the ShotSpotter report, they departed.

Around 8:51 PM, a second ShotSpotter report was broadcast again stating that one round of apparent gunfire was detected at roof level at 940 Reverend James A. Polite Avenue. This time, Officers Stephen Bonczyk and Cynthia Lopez—both of whom heard the first ShotSpotter report but did not respond to it - immediately drove to the address in a marked police car. Like the officers who responded to the first report, Officers Bonczyk and Lopez were familiar with the neighborhood, understood ShotSpotter locations to be approximate, and knew from experience that the 936 Building had a roof accessible by internal stairwell.

As Officers Bonczyk and Lopez pulled up to the 940 Building — about "two to three minutes" after the second ShotSpotter report was broadcast—they saw Caesar Diaz and Michael Hawkins exiting the front door of the 936 Building and entering a gated, "open-air vestibule area." The officers saw no one exiting or entering the 940 Building, which they noticed had a roof that appeared partially slanted. From their moving police car, the officers observed Diaz — who had his hood on and his hands in his sweatshirt pockets - "turn his body slightly." They observed also Hawkins "pivot" and "hurry," as he walked toward the vestibule's front gate. Officer Lopez testified that she thought Hawkins's body pivot may have been an effort to hide himself when he saw their police car.

Officers Bonczyk and Lopez parked and approached the 936 Building on foot. As they approached the vestibule, Officer Bonczyk observed that Diaz and Hawkins were still walking towards its front gate, and that both had their hands in their sweatshirt pockets. The government introduced security footage from the 936 Building showing the defendants exiting the 936 Building into the vestibule. According to Officer Bonczyk, Diaz was "creating a tension" in his sweatshirt with his hands, which Officer Bonczyk interpreted as an effort to "conceal his midsection." Officer Lopez testified that, once the officers got to the gate, she recognized Diaz as having been arrested for assaulting a police officer in the past.

While standing outside the vestibule's front gate, Officer Bonczyk asked Diaz and Hawkins to take their hands out of their sweatshirt pockets, which they did. When Diaz removed his hands

from his sweatshirt, Officer Bonczyk saw the garment shift up, revealing a "bulge in his center waistline area" that Officer Bonczyk thought was a weapon. Officer Bonczyk testified that he then asked for consent to search Diaz and Hawkins. Diaz responded, in sum and substance, "Don't fucking touch me. I'm going to sue you." Diaz and Hawkins then tried to exit through the front gate but were blocked by the officers.

Seconds later, six additional officers joined Officers Bonczyk and Lopez at the gate. The group included Officer Cristian Hernandez and Sergeant Alejandra Perez, both of whom had responded to the first ShotSpotter report. Two of the officers entered the 936 Building to investigate. After about five to ten minutes, they found a shell casing on the roof. On the sidewalk, Sergeant Perez spoke to a man walking his dog who said he lived in the 936 Building and heard a gunshot. According to Sergeant Perez, the man "motioned with his head" toward Diaz and Hawkins - both of whom the man said that he saw coming down from the roof — and told her to "check them." Meanwhile, Officers Bonczyk, Lopez, and Hernandez separated Diaz and Hawkins and began questioning them on opposite sides of the front vestibule. Diaz and Hawkins both told the officers that they did not live in the 936 Building, but they provided conflicting information regarding what they had been doing inside.

After being informed about the shell casing discovery and the dog-walking witness, Officer Bonczyk frisked Diaz. He began with his center waistband area, where he had seen the bulged. He recovered an unloaded gun inside a plastic bag in Diaz's groin area and arrested him. Subsequently, Hawkins was arrested by Officer Hernandez. When Hawkins asked why he was being arrested, Officer Hernandez told him it was because he was "together" with Diaz. Hawkins was frisked at the scene after his arrest, but no weapons were found. After searching Hawkins at the police precinct, officers found a loaded gun in his groin area. The gun recovered from Hawkins matched the shell casing officers found on the roof of the 936 Building.

Issue #1: When were Diaz and Hawkins detained?

Holding and Analysis: The defendants effectively obeyed an "order to stop" when Officers Bonczyk and Lopez physically blocked them from leaving the front vestibule, and they cooperated without struggle. The question thus becomes whether the officers' conduct *before* they blocked the defendants - *i.e.*, when the officers asked the defendants to remove their hands from their sweatshirt pockets and to consent to a search - amounted to a prior "order to stop" that the defendants obeyed.

The court found that these initial requests did not amount to an "order to stop" implicating the Fourth Amendment. An officer's "order to stop constitutes a seizure 'if a reasonable person would have believed that he was not free to leave, and the person complies with the officer's order. Officers need not expressly demand that the individual "Halt!" for their conduct to constitute an order to stop - for instance, "loud" and "commanding" demands that an

individual stop using a cell phone can suffice. The key question "is whether a reasonable person would feel free to decline the officers' requests or otherwise terminate the encounter." If so, the conduct did not amount to a seizure.

The court found that there was nothing to indicate that a reasonable person would not have "felt free to decline" the officers' requests and "terminate the encounter" when the officers approached the defendants at the front gate. Officer Lopez testified that the officers interacted with the defendants for all of 15 seconds before they blocked the defendants from leaving. During those 15 seconds, Officer Bonczyk asked the defendants to remove their hands from their sweatshirt pockets, which they obliged, and for consent to search, which they did not oblige. These requests were more indicative of "initial contact between . . . officers and individuals" that is "the sort of consensual encounter that implicates no Fourth Amendment interest" than of an order to stop that amounts to a seizure. The requests were not repeated, "loud, commanding," or made in a "coercive" manner. The defendants clearly felt free to decline at least one of the requests, because both refused - Diaz "somewhat colorfully" - to consent to a search. Likewise, both felt free to terminate the encounter, which they attempted to do before the officers blocked them.

Issue #2: Once Diaz and Hawkins were detained by the officers by blocking them from leaving the front vestibule, was there reasonable suspicion to detain them?

Holding and Analysis: Yes. By the time the officers blocked the defendants from leaving the front vestibule, Officers Bonczyk and Lopez had an objectively reasonable and particularized basis to suspect them of shooting a gun off the roof of the 936 Building.

The court said the following about the detention: To begin, the ShotSpotter reports, coupled with the officers' familiarity with and observations of the area, provided "reasonable suspicion that criminal activity may have been afoot" in the 936 Building. Before Officers Bonczyk and Lopez arrived on scene, two ShotSpotter reports detected gunfire at roof-level near the 940 Building, which appeared to have no roof access. The officers' testimony established that, in their experience, the address in a ShotSpotter report is approximate: it merely "gets you to about the right block." Knowing this, it was reasonable for them to shift their focus to the 936 Building, which they knew from experience shared a wall with the 940 Building, had a history of crime, and had an accessible roof. This finding is bolstered by the fact that the officers who responded to the initial ShotSpotter report, Sergeant Perez and Officer Hernandez, did the very same thing. Finally, the timing of the defendants' departure from the 936 Building, their body movements while they departed, and Diaz's concealment of a bulge in his groin area provided an objective and individualized basis for stopping the defendants.

The defendants argue that a ShotSpotter report, "standing on its own," cannot be the basis of "individualized suspicion." However, the court found that the ShotSpotter reports are only two

pieces of the calculus. Officer Lopez testified that the timing of Diaz's and Hawkins's departure from the 936 Building linked them to the suspected crime: if a gunshot had been fired at roof level, she thought, it would have taken the shooter about a few minutes to walk down six flights of stairs and exit the building. That is the approximate amount of time that it took Officers Bonczyk and Lopez to drive to the area and see the defendants exiting. Moreover, both officers testified that they observed the defendants engage in "nervous, evasive" behavior as they exited: the officers saw Diaz turn his body slightly and Hawkins pivot and hurry as their police car passed. Subsequently, Officer Bonczyk observed Diaz, whom Officer Lopez recognized from a prior arrest for assaulting an officer, creating tension with his sweatshirt that revealed a bulge that Officer Bonczyk thought was a gun. These observations provided the officers with reasonable suspicion that, of all the people coming and going from the area that night, Diaz and Hawkins were particularly suspect.

Issue # 3: Did the officers possess reasonable suspicion Diaz and Hawkins were armed and dangerous, thus justifying a pat-down?

Holding and Analysis: Yes. The facts described above provided the officers with reasonable suspicion to believe the defendants were "armed and dangerous," justifying the officers in "proceeding from a stop to, a frisk." Moreover, by the time of Diaz's frisk - about ten to twenty minutes after the officers arrived — the officers had gathered additional incriminating information. The officers conducting the frisk were aware that a shell casing had been found on the roof of the 936 Building. This discovery corroborated the second ShotSpotter report and confirmed officers' suspicions that a gunshot had been fired from of the 936 Building, from which the defendants had exited, rather than, the 940 Building. The officers' suspicions were heightened when the defendants provided inconsistent answers about what they had been doing in the building. Finally the dog walking witness, who said he heard gunshots and saw the defendants coming down from the roof, provided additional individualized suspicion that connected the defendants to the suspected crime.