

manifest on the face of Atamian's opening brief that the appeal is without merit. We agree and affirm.

(2) The record reflects that Atamian filed a complaint that alleged, essentially, claims against the defendants for assault and battery, illegal search and seizure, and violations of his constitutional and civil rights. The undisputed material facts reflect that Trooper Hawk responded to the Christiana Hospital in the early morning hours of December 12, 2001, following a 911 call placed by a DART bus driver reporting a suspicious man, who later was identified as Atamian. The bus driver indicated that he had dropped the man off at the hospital following a confrontation between the man and the other bus passengers during which the man made statements about the machinery of the government being against him. The bus driver's report also reflected that the man was carrying two bags, had just come from New York City and that the bus passengers feared the man might be a terrorist.

(3) Upon arriving at the hospital, Hawk met with security personnel who indicated that the man had left the lobby of one of the buildings and was waiting at a bus kiosk outside. The man apparently did not have a medical appointment at the hospital and was not at the hospital to visit anyone. Hawk approached the man, followed by hospital security, and

asked him to place his hands on his head while he patted the man down for weapons. The man produced identification, which Hawk checked. The hospital's security guard told Hawk that he intended to search the man's bags. Hawk responded with a forward hand motion but did not speak or give permission in response to the guard's statement. Atamian denies giving the guard consent to search the bags. While Hawk stepped away to check the identification, the security guard searched Atamian's bags. Hawk returned with the identification and informed Atamian that he was free to go.

(4) Pursuant to Superior Court Civil Rule 56(c), the defendants, as the moving parties, were required to demonstrate that there was no genuine issue of material fact and that they were entitled to judgment as a matter of law.¹ The Superior Court, in viewing the facts in the light most favorable to Atamian, concluded that the defendants were entitled to judgment as a matter of law. The Superior Court concluded that Hawk had reasonable suspicion to stop and frisk Atamian. Therefore, Hawk's contact with Atamian was privileged as valid search.² Moreover, the Superior Court concluded that Hawk's hand gesture, in response to the security guard's expression of intent to search Atamian's bag, did not render the search a

¹ *Burkhart v. Davies*, 602 A.2d 56, 59 (Del. 1991).

² 11 Del. C. § 1903.

matter of government action.³ Finally, the Superior Court concluded that Atamian had failed to assert a claim for assault against the hospital or its employee because there was no allegation of physical contact by the hospital or its agent.

(5) Having carefully considered the parties' respective positions and the record below, we find it manifest that the judgment of the Superior Court should be affirmed on the basis of the Superior Court's well-reasoned opinion dated September 30, 2003. The Superior Court did not err in concluding that the defendants were entitled to judgment as a matter of law.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Randy J. Holland
Justice

³ See *United States v. Lamar*, 545 F.2d 488 (5th Cir. 1977).