October 20, 2004

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Re: ***State of Delaware v. Jackie J. Boyd, Jr.***
Case No. 0405017093

LETTER OPINION

Date Submitted: October 13, 2004
Date Decided: October 20, 2004

Dear Counsel.:

Trial in the above captioned matter took place on Wednesday, October 13, 2004. Following the receipt of evidence and testimony the Court reserved decision. This is the Court's Final Decision and Order.

THE FACTS

New Castle County Police Officer Christopher Sarnecky ("Sarnecky") presented testimony at trial as follows. Sarnecky is a New Castle County Police Officer for the past 6 ½ years in the Patrol Unit. On May 20, 2004 the date charged on the Information, Sarnecky, along with several other law enforcement officers were monitoring drug activity in Rosegate, City of New Castle, New Castle County. Sarnecky was on the patrol shift from 6:00 p.m. – 2:00 a.m. At 11:30 p.m. he accompanied fellow officers to a

park in Rosegate and observed a group of approximately eight individuals in the park. He ordered all the individuals "to get on the ground" upon entry into the park. According to Sarnecky the Defendant refused to obey his orders "to get on the ground" and Defendant also allegedly used profanity when ordered to do so. The Defendant was subsequently forced to the ground and hand-cuffed. During the force of his person to the ground, the Defendant allegedly stated "What the F- - -?"

On cross-examination, Sarnecky indicated the parkland closed from "dust to dawn" pursuant to New Castle County regulations. Sarnecky conceded that he found no drug activity in the area or drugs on the Defendant's person. He arrested the Defendant; took him back to the Troop; and allegedly seized his car keys and did not return them. On cross-examination, Sarnecky testified that the Defendant told him that "I do not have to get to the ground" and struggled while being hand-cuffed with two different sets of hand-cuffs. All law enforcement officers were in full uniform when they ordered the individuals in the park to lay face down on the ground.

The Defendant, Jackie J. Boyd, Jr. ("Boyd") presented testimony. Boyd has relatives in Rosegate, including a grandmother, an aunt and two of his own children. Boyd visits the family in the area on a regular basis. On the date charged in the Information Boyd was "out mingling" in the Rosegate park area. Boyd was "standing around and talking to girls" during the summer hours. Boyd was not involved in drug activity. When the police came he was near the edge of the park near his motor vehicle and did not understand why he was forcibly taken to the ground in "high weeds". Boyd

THE FACTS (cont'd)

testified that he previously experienced a sore shoulder. Boyd also testified that some of the individuals present at the parkland did not have to comply and "get to the ground". Boyd was also worried about the mosquitoes and tall grass while he was being forced to the ground. Boyd provided testimony that the police officers allegedly "slammed him on the ground" and disturbed a pre-existing shoulder injury. Boyd had no weapons or drugs on his persons and had to pay $70.00 for a new set of keys when he returned to the area the next day after being booked at the police station. Boyd believes no one in the Rosegate area was offended by his language when he used profanity as he was being forced to the ground. Boyd also believed that neighbors were more curious with the number of police cars and fully uniformed law enforcement officers proceeded into the park and ordered the individuals to the ground.

Boyd denied during cross-examination that he was the only citizen who did not lay on the ground voluntarily. Boyd conceded he used profanity because his shoulder was previously injured and he was "being slammed" on the ground. Boyd also testified that he was worried about broken glass and high weeds in the area when he was allegedly forced physically to the ground. He testified he asked the officer, "What am I doing wrong?"

THE LAW

The State has the burden of proving each and every element beyond a reasonable doubt. 11 *Del. C.* §301. The Defendant is charged with two (2) counts; a violation of 11 *Del. C.* §1301 and 11 *Del. C.* §1257. *State v. Matushefske,* Del. Supr., 215 A.2d 443

(1965). The State also must proved beyond a reasonable doubt jurisdiction and venue. 11 *Del. C.* §232, *James v. State,* Del. Supr. 377 A.2d 15 (1977); *Thornton v. State,* Del. Supr., 405 A.2d 126 (1979).

DISCUSSION

Eleven *Del. C.* §1257 provides a person is guilty for resisting arrest "when a person intentionally prevents or attempts to prevent a police officer from effecting an arrest or detention of a person, or another person, or intentionally flees from a police officer who is effecting an arrest". An arrest is "the physical act of arrest" and prohibits the resistance thereto regardless of whether the arrest is later determined to be unlawful. *See e.g., Ellison v. State*, Del. Supr., 410 A.2d 519 (1979) *aff'd Del. Supr*., 437 A.2d 1127 (1981), *cert. denied*, 455 U.S. 1026 (1982). It is a common law offense. *Clair v. State*, Del. Supr., 294 A.2d 836 (1972). When the evidence in the trial record shows a police officer had a "manifest purpose of taking a person into custody and the defendant resisted, he or she may be found guilty of arrest." *Winborn v. State*, Del. Supr. 455 A.2d 357 (1982).

A person may be found guilty of disorderly conduct under 11 *Del. C.* §1301 when he or she "creates a risk of public annoyance to another person by making unreasonable noise and/or addressing abusive language in a public area". 11 *Del. C.* §301

OPINION AND ORDER

The State was unable to articulate at trial with specificity the factual or legal authority of the police officers to order the individuals to be taken to the ground inside the park. *See e.g.,* 11 *Del. C.* §1902. Clearly the purpose of speaking to the citizens

involved was not a "Terry" stop. *See* 11 *Del. C.* §1902. Nor did the State articulate any underlying criminal misdemeanors or violations allegedly being committed in their presence for which the Defendant was being charged or investigated with prior to allegedly placing the Defendant under arrest and/or forcing him to the ground.

Coupled with the Defendant's shoulder injury, it does not appear the record supports the conclusion that Defendant intentionally resisted.

Nor did the police officers provide testimony at trial that there was a reasonable articulable suspicion that a crime was about to be committed by the Defendant or that the Defendant had drugs on his person. "A police officer may detain an individual for investigatory purposes for a limited scope, but only if the detention is supported by reasonable and articulable suspicion of criminal activity." *Jones v. State*, 745 A.3d 856 (Del. 1999), citing *Terry v. Ohio*, 392 U.S. 1, 20 L.Ed. 889, 88 S. Ct. 1868 (1968). "A determination of reasonable and articulable suspicion must be evaluated by the totality of circumstances as viewed through the eyes of a reasonable, trained police officer under the same or similar circumstances…" *Id.* When the police arrived it does not appear the Defendant was involved in any criminal activity.

Certainly if the police officers had determined on the date charged in the Information that pursuant to 11 *Del. C.* §1902(a) they had reasonable grounds to suspect Boyd "was committing, has committed or is about to commit a crime" they could have demanded Boyd's "name, address, business abroad and destination."*Id.* Boyd was not charged by Information with a violation of any New Castle "dusk-to-dawn park" regulation or any other Title 11 offense prior to being forced to the ground. From the

testimony presented at trial it appears that the disorderly conduct charge was lodged after Boyd allegedly resisted while Defendant was being handcuffed and forced to the ground and used profanity.

Given the lack of requisite legal authority presented by the State for the arrest, it does not appear in this trial record that the State proved either charge beyond a reasonable doubt. 11 *Del. C.* §301. Likewise, considering the evidence actually presented at trial, the State also did not meet the requisite evidentiary burden. 11 *Del. C.* §301. The Court must therefore as a matter of law enter a finding of **NOT GUILTY** on both charges.

IT IS SO ORDERED this 20th day of October, 2004.

Honorable John K. Welch
Associate Judge

/jb
cc: Theresa Sama, Scheduling Supervisor
Criminal Division, CCP