IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

STATE OF DELAWARE,	:	
	:	Case No. 0702019045
vs.	:	Cr.A. No. 07-02-1552
	:	
Terry L. Brooks	:	
	:	
Defendant.	:	

Upon Defendant's Motion to Suppress

Submitted: April 12, 2007

Decided: April 18, 2007

Defendant's motion is granted.

Daniel Simmons, Esquire, Department of Justice, 102 West Water Street, Dover, Delaware 19904, attorney for the State

Sean Motoyoshi, Esquire, 45 The Green, Dover, Delaware, 19901, attorney for the Defendant.

Trader, J

The defendant, Terry L. Brooks, is charged with possession of drug paraphernalia in violation of 16 *Del. C.* Sec. 4771(a). The defendant has moved to suppress the evidence obtained on the following grounds: (1) the traffic stop was pretextual under Article I, Sec. 6 of the Delaware Constitution; (2) the further detention and questioning of the defendant violated the Fourth Amendment; (3) the defendant's statements were obtained in violation of his *Miranda* rights; and (4) the police officer failed to follow standard inventory search procedures. Although I reject the defendant's first three contentions, I conclude that the police officer did not testify as to his knowledge of standard inventory search procedures. Therefore, the evidence obtained as a result of the inventory search must be suppressed.

The relevant facts are as follows: Cpl. Andrew Pietlock and Probation Officer McClure were part of a unit investigating robberies, assaults, drug activity, and wanted subjects. On January 18, 2007, at approximately 1:30 P.M. Cpl. Pietlock was assisting another police office with a traffic stop on Governors Avenue, Dover, Delaware. At this time, a red Cadillac passed him and he noticed that there was no vehicle registration on the vehicle. He proceeded to follow the vehicle and stopped the vehicle on President Drive. Cpl. Pietlock determined either from the computer or conversation with the defendant that the defendant's driver's license was suspended. The driver's license of the passenger in the car was also suspended. Cpl. Pietlock requested that the defendant exit the vehicle and he asked the defendant what he was doing in Capitol Park. The defendant responded that he came to see his mother, but Cpl. Pietlock had observed that the defendant had not stopped his vehicle at any house. After further questioning by Cpl. Pietlock, the defendant stated that he came to Capitol Park to buy drugs. Cpl. Pietlock ordered the vehicle to be towed and as a part of the inventory search, he found a paper

bag in the back seat of the vehicle that contained a brillo pad. Cpl. Pietlock testified at trial that a brillo pad is used as a filter for a pipe to smoke cocaine.

Prior to trial, defense counsel requested permission to raise suppression issues during the trial. Since the defense counsel had just been appointed to represent the defendant, I permitted defense counsel to raise suppression issues within the context of the trial.

The defendant first contends that the stop was pretextual and in violation of Article I, Sec. 6 of the Delaware Constitution. I disagree.

In *United States v Whren*, 517 U.S. 806, 819 (1996), the United States Supreme Court held that an officer's possession of probable cause satisfied the Fourth Amendment regardless of his underlying motivation. The test was whether a reasonable police officer would have made the stop in the absence of the invalid purpose. *Id.* at 813. The Fourth Amendment's concern with reasonableness allows certain actions to be taken in certain circumstances, whatever the subjective intent. *Id.* at 814.

In *State v. Heath,* the Delaware Superior Court concluded that pretextual traffic stops are prohibited by Article I, Sec. 6 of the Delaware Constitution. *See State v. Vernon Heath*, 2006 WL 3843144 (Del. Super. Nov. 28, 2006). Article I, Sec. 6 provides as follows: "The peoples shall be secure in their persons, houses, papers, and possessions, from unreasonable searches and seizures; and no warrant to search any place, or to seize any person or thing, shall issue without describing them as particularly as may be; nor then, unless there be probable cause supported by oath or affirmation."

In *Heath* the defendant was charged with violating 21 *Del. C*. Sec. 4155(b) by giving a signal of his intention to turn left 30 feet before turning instead of giving a signal 300 feet before turning. The officer testified at the suppression hearing that he stopped

the defendant because he wanted to question him about being in a high crime area. Therefore, the police officer essentially testified at the suppression hearing that the stop was pretextual. Under those circumstances, the Court held that the stop was pretextual and the evidence was suppressed.

In *Heath,* the Superior Court set forth the following framework for the analysis of pretextual stops. The first step is to determine if at the time of the stop, the police office reasonably believed the defendant was committing a traffic offense and whether the law authorizes a stop for that offense. *See Heath*, 2006 WL 3842144, at *8. The burden is placed initially on the State to demonstrate that there was reasonable suspicion that a traffic violation occurred and that a reasonable officer would have stopped the vehicle. *Id.* If the State meets this burden, then the burden is shifted to the defendant. *Id*.

Under *Heath*, the defendant meets this burden by showing that "(1) he was stopped only for a traffic violation; (2) he was later arrested for and charged with a crime unrelated to the stop; (3) the crime or evidence of the crime was discovered as a result of this stop; (4) the traffic stop was merely a pretextual purpose, alleging that the officer had a hunch about, or suspected the defendant of a non-traffic related offense unsupported by reasonable suspicion; and (5) the pretext can be inferred, at least, when the suppression hearing evidence is presented." *Id.* In considering whether the defendant can meet this burden, the Court can consider the following factors which are not exhaustive: "(1) evidence of the arresting officer's non-compliance with written police regulations; (2) evidence of the abnormal nature of the traffic stop; (3) testimony of the arresting officer that his reason for the stop was pretextual; (4) evidence that the officer's typical employment duties do not include traffic stops; (5) evidence that the officer was driving an unmarked vehicle and was not in uniform; and (6) evidence that the stop was

unnecessary for the protection of traffic safety." *Id.* If the defendant fails to meet his burden, the stop would be constitutional. *Id.*

In the case before me, it is true that the defendant was stopped for a traffic violation and later charged with a crime unrelated to the stop and evidence of the crime was discovered as a result of the stop. However, it cannot be established by the defendant that the traffic stop was merely a pretextual purpose, nor can the pretext be inferred from the evidence from the suppression hearing. All the police officer knew when he stopped the defendant was that the defendant was driving a car without valid registration. Additionally, the majority of the factors set forth in *Heath* do not support the defendant's position. There is no evidence that Cpl. Pietlock failed to comply with written police regulations or that the traffic stop was abnormal. Cpl. Pietlock did not give any testimony that the stop was pretextual and there is no evidence that the police officer was not in uniform or driving an unmarked police car. Although Cpl. Pietlock's typical employment does not include traffic stops, he testified that he performed traffic stops as a part of his duties. In fact, Cpl. Pietlock was assisting another police officer in a traffic stop when the defendant drove by in his unregistered motor vehicle. Based on this analysis of the evidence, the defendant did not maintain his burden of proof that the stop was pretextual.

The defendant next contends that even if he was lawfully stopped for a traffic violation, the further detention of the defendant in order to investigate other possible crimes was unreasonable and violated the Fourth Amendment to the United States Constitution. The defendant further contends that he was arrested rather than detained. I disagree.

Under 21 *Del. C*. Sec. 701(a)(1) police officers are permitted to make a warrantless arrest for violations of that title committed in their presence. An arrest is defined in 11 *Del. C.* Sec. 1901(1) as the taking of a person into custody in order that the person may be forthcoming to answer for the commission of a crime.

In the case before me, the defendant was not handcuffed and he was not taken before the magistrate to answer for the commission of a crime. Instead he was given a summons and was released. Accordingly, the defendant was detained for further questioning, but there must be an independent justification for continued detention of the defendant.

Delaware has as two-hour detention law and it provides in pertinent part as follows:

> (a) A peace officer may stop any person abroad, or in public place, who the officer has reasonable ground to suspect is committing, has committed or is about to commit a crime, and may demand the person's name, address, business abroad and destination.
> (b) Any person so questioned who fails to give identification or explain the person's actions to the satisfaction of the officer may be detained and further questioned and investigated.
> (c) The total period of detention provided for by this section shall not exceed two hours . . . . At the end of the detention the person so detained shall be released or be arrested and charged with a crime.

See 11 *Del. C.* Sec. 1902.

It has been held that when a person is lawfully stopped for a traffic violation, the officer may detain the individual only as long as necessary to effectuate the purpose of the stop. *Florida v. Royer*, 460 U.S. 491 (1983); *State v. Huntley*, 777 A. 2d 249, 257 (Del. Super. 2000). In order to detain the defendant to investigate other possible crimes, the officer must have a reasonable articulable suspicion that the defendant committed a crime. *Terry v. Ohio*, 392 U.S. 1 (1968). The officer must have a objective basis for

suspecting the defendant of criminal activity. *United States v. Cortez*, 449 U.S. 411 (1999). The officer must point to "specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant" the investigative stop. *Terry*, 392 U.S. at 21. In making this assessment, the Court must judge the facts under an objective standard. *Id.* at 21.

In an investigative detention, the United States Supreme Court stated, "the officer may ask the detainee a moderate number of questions to determine his identity and to try to obtain information confirming or dispelling the officer's suspicion. But the detainee is not obliged to respond, unless the detainee's answers provide the officer with probable cause to arrest, he must then be released." *Berkemer v. McCarty,* 468 U.S. 420, 439-440 (1984).

Nervous behavior and inconsistent answers to the police would not justify the additional intrusion. *Caldwell v. State*, 780 A.2d 1037, 1050 (Del. 2001). Additional factors such as driving with a suspended license and failure to provide proof of insurance in conjunction with previous factors may support a finding of reasonable suspicion of criminal activity. *State v. Huntley*, 777 A.2d 249, 256 (Del. 2000).

In *United States v. Martinez*, 168 F.3d 1043 (8th Cir. 1999) the Court held that nervousness, inconsistent answers, incomplete bill of sale presented instead of a registration, and a license check showing criminal history constitute reasonable articulable suspicion to further detain the defendant. In *United States v. Hunnicutt*, 135 F.3d 1345 (10th Cir. 1998), it was held that a suspended license, no insurance, no proof of authority to use car, nervous behavior, and inconsistent responses constituted factors that justified continued detention. In *Fields v. State*, 932 S.W.2d 97 (Tex. App. 1996), the Court held that inconsistent stories, extreme nervousness, a suspended license, and

the passenger's denial of history of drug offenses provided a reasonable articulable suspicion of additional criminal activity. *State v. Hernandez*, 875 F. Supp. 1288 (Del. 1994) held that an air freshener, nervousness, and inability to answer routine questions about line-of-business and car owner supported a finding of reasonable suspicion.

In the case before me, there were objective factors in addition to the evasive answers of the defendant that support a finding by this Court that Cpl. Pietlock had reasonable articulable suspicion of criminal activity. The objective factors were the fact that the defendant had a suspended license and no proof of insurance and he admitted he was in Capitol Park to buy drugs. Thus, there is an independent justification for the continued detention of the defendant and the duration of the detention was relatively brief. The defendant's motion on that ground is without merit and is denied.

The defendant contends that his statements during the traffic stop were elicited in violation of his *Miranda* rights. The defendant's contention is incorrect.

A suspect's *Miranda* rights do not attach unless the suspect is in custody and subject to interrogation. *See McAllister v. State,* 807 A. 2d 1119, 1126 (Del. 2000). During a traffic stop and a *Terry* stop, the initial on-the-street questioning is not custodial and no *Miranda* warnings are required. *See State v. Coyle,* 567 A. 2d 870, 874 (Del. 1989)*; State v. Bonner*, 1995 WL 562162, at *2 (Del. Super. Aug. 30, 1995). In *Berkemer*, the Supreme Court stated that the "noncoercive aspect of ordinary traffic stops prompts us to hold that persons temporarily detained pursuant to such stops are not 'in custody' for the purposes of *Miranda*." *Berkemer,* 468 U.S. at 440. In reaching this conclusion, the Supreme Court considered three characteristics of an ordinary traffic stop which justified such a holding. First, the Court found the detention is usually "temporary and brief." *Id.* at 437. Second, the stop is performed in a public place. *Id.* Third, "the

detained motorist typically is confronted by only one or at most two" officers, thus making the stop less "police dominated." *Id.* at 438-39. Finally, the Court likened the traffic stop detention to that of a "Terry stop." *See Terry v. Ohio,* 392 U.S. 1 (1968). The Court reasoned that these characteristics led the detention to be "comparatively non-threatening"; and thus not "subject to the dictates of *Miranda*." *Berkemer,* 468 U.S. at 440.

In *Bonner*, the Superior Court denied the defendant's motion to suppress because the defendant was not required to be Mirandized prior to the statements, that were given by him. *Bonner*, 1995 WL 562162, at *4. The defendant argued that the officer's questioning of the defendant during a traffic stop rendered him "in custody"; thus triggering the requirements of *Miranda*. *Id.* at *2. In *Bonner*, a police officer observed the defendant speeding and defendant's failure to utilize a turn signal as he was making a left hand turn. Approximately a week previously, while responding to a loud party complaint, the officer had observed the same vehicle unoccupied at the party location and had smelled the odor of marijuana and observed marijuana in the vehicle's ash tray. The police officer subsequently stopped the defendant's vehicle and advised the defendant that he had failed to properly use his turn signal. While the police officer was preparing the traffic summons, he questioned the defendant, who was seated in the rear of the patrol car, regarding the marijuana the police officer had seen in the defendant's vehicle a week previously. The defendant stated that the marijuana from the prior week had not been his, but that any marijuana found in the ashtray at this time was his. The police officer then searched the defendant's vehicle and seized 7.92 grams of marijuana.

The *Bonner* Court found that the "circumstances surrounding the traffic stop and subsequent questioning of the defendant were not prolonged or coercive; were performed

in a public place by only one officer; and if it weren't for the voluntary statements made by the defendant, he would have been free to leave after the summons preparation process had concluded." *Id.* at *3. The *Bonner* Court denied the defendant's motion to suppress because the defendant had not been "in custody," nor had his freedom of action been curtailed beyond that reasonably necessary for the traffic summons process. *Id.* at *4.

In the case before me, Cpl. Pietlock stopped the defendant's vehicle for a legitimate traffic violation and he did not restrain the defendant or subject him to excessive questioning over a prolonged period of time. Similar to *Bonner*, the circumstances surrounding the traffic stop and Cpl. Pietlock's questioning of the defendant was not prolonged or coercive and was performed in a public place. In addition, police officers are statutorily authorized to question individuals during a traffic stop regarding the individual's name, address, business abroad and destination. *See* 10 *Del. C*. Sec. 1902(a). Cpl. Pietlock merely questioned the defendant regarding his destination and reason for being abroad. Therefore, the defendant's Motion to Suppress the statements obtained by Pietlock should be denied because the circumstances surrounding the traffic stop and questioning of Brooks demonstrate that the defendant's freedom of action was not curtailed beyond that which is reasonably necessary for the traffic summons process, and the officer was not required to Mirandize the defendant.

The defendant next contends that the warrant for inventory search violated the Fourth Amendment. The United States Supreme Court has held that routine automobile inventory searches made pursuant to standard police procedures are reasonable under the Fourth Amendment. *South Dakota v. Opperman*, 428 U.S. 364 (1976). The Delaware

Supreme Court approved the automobile inventory rule as exception to the search warrant requirement in *State v. Guinn*, 301 A.2d 291 (Del. 1972).

In the case before me, the State asserts that the brillo pad was seized pursuant to an inventory search. The brillo pad was in the back seat of the vehicle in a paper bag. Therefore, the brillo pad was hidden from ordinary observation. The police officer testified that the search was an inventory search, but he gave no testimony concerning the standard operating police procedures concerning an inventory search. There was no testimony as to his knowledge of those procedures. In fact, there was no written inventory of property seized from the vehicle that was submitted to the Court. Under these circumstances, the search of the defendant's vehicle violated the Fourth Amendment. Although the vehicle was towed because neither the defendant nor his passenger had a driver's license, I conclude that the State failed to present a sufficient record regarding the inventory search. Therefore, the seizure does not comport with State and Federal Constitutional requirements. *See State v. Brownell,* 2005 WL 268043 (Del. Super. 2005). I therefore, conclude that the evidence obtained as a result of the illegal search must be suppressed.

Absent the suppressed evidence, the State cannot prove the guilt of the defendant beyond a reasonable doubt. Accordingly, I return a verdict of not guilty.

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Merrill C. Trader
Judge