

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE

v.

WILFREDO M. PINKSTON

Defendant

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CRIMINAL ACTION NUMBER

IN-11-10-1380 thru IN-11-10-1386

ID No. 1107002466

Submitted: November 8, 2011

Decided: December 29, 2011

MEMORANDUM OPINION

*Upon Defendant's Motion to Suppress Evidence - **DENIED***

Appearances:

Andrew J. Vella, Esquire, Deputy Attorney General, Department of Justice, Wilmington, Delaware, Attorney for the State of Delaware.

Joseph A. Hurley, Esquire, Wilmington, Delaware, Attorney for Defendant.

HERLIHY, Judge

Wilfredo Pinkston is charged with numerous drug and weapons offenses following a traffic stop of his motor vehicle on Jackson Street in Wilmington.¹ Pinkston now moves to suppress the evidence obtained during the stop contending the search of his vehicle was unlawful because the police lacked probable cause. The State responds by arguing that the police had probable cause to justify the search and seizure of items in Pinkston's vehicle. Because the police had probable cause after observing drug paraphernalia in plain view during the traffic stop, Pinkston's motion to suppress is denied.

Factual Background

Wilmington Police Officers Ricardo Flores and Matthew Cavanaugh were patrolling in a marked police vehicle as members of the community policing unit on the evening of July 2, 2011. Shortly before 8:00 p.m. the officers were driving southbound in the 800 block of North Jackson Street in the city of Wilmington. Officer Cavanaugh was driving and Officer Flores was riding as a passenger. While on North Jackson Street, the officers noticed a Honda Accord (the "Honda") with its rear brake lights out. The brake light in the center of the rear window was apparently the only brake light functioning properly. The officers followed the Honda as it proceeded to the intersection of 7th and Jackson Streets. At that intersection, the brake lights or the tail lights again failed to function properly while the operator of the Honda was applying the brakes.

¹ Pinkston is charged with the following offenses: trafficking in heroin, 2.5 – 10 grams; possession of a firearm during the commission of a felony; possession of a firearm by a person prohibited (2 counts); possession of ammunition by a person prohibited; possession of drug paraphernalia; and failure to have proper tail lamps illuminated.

After observing the equipment violation², the officers conducted a motor vehicle stop of the Honda at the intersection of 6th and Jackson Streets. Officer Flores had completed specialized training on proper methods for conducting a motor vehicle stop the week prior to the date of this stop. During that training he learned to approach a vehicle using the “contact and cover approach.” That approach requires two officers -- one officer to make contact with the operator and the other officer to provide cover and observe the interior of the vehicle looking for weapons or contraband. The officers used that approach during their stop of the Honda. Officer Cavanaugh made contact with the driver while Officer Flores provided cover from the passenger side of the vehicle.

Wilfredo Pinkston was the Honda’s sole occupant and operator. Officer Cavanaugh requested Pinkston’s license, registration and proof of insurance and informed him of the reason for the stop. To comply with Officer Cavanaugh’s demands, Pinkston grabbed a stack of papers from the Honda’s glove compartment and placed them on his lap. While Officer Cavanaugh was speaking to Pinkston, Officer Flores observed Pinkston’s fingers shaking and his carotid artery pulsating rapidly. Officer Flores recognized these observations as signs that Pinkston was nervous. Officer Flores conducted a cursory scan of the contents of the Honda from his outside vantage point on the passenger side. In the rear passenger seat of the Honda, he observed what he immediately identified as a digital scale inside a very thin black plastic bag. He knew

² 21 *Del. C.* § 4334(a).

from his training and experience that digital scales are commonly used to weigh drugs and that they are considered drug paraphernalia.

Officer Flores then requested that Officer Cavanaugh have Pinkston exit the Honda after observing the scale. Pinkston complied and was moved to the rear of the Honda. In response to questioning, Pinkston asserted that he was not in possession of any weapons and there was nothing illegal in the Honda. Officer Flores frisked Pinkston and requested permission to search inside the Honda. He declined to consent to the search saying there was no reason to search the vehicle. Officer Flores did not find any contraband during the frisk and subsequently had Pinkston sit on the curb behind the Honda, in front of the patrol vehicle.

Officer Cavanaugh stood by Pinkston while Officer Flores retrieved the two bags from the rear passenger seat -- one containing the scale and a bag directly next to the bag containing the scale. The bags were so close together that Officer Flores didn't realize there were two individual bags until he moved the first bag. The bag containing the scale was tied shut. Officer Flores ripped the bag open and retrieved the scale. Also in that bag, below the scale, were two small cardboard boxes. Officer Flores opened the boxes and found numerous empty baggies, a spoon covered with a residue, a bag containing a tan powdery substance and rubber bands. Officer Flores knew that the items found in the bag were drug paraphernalia and suspected the powdery substance was heroin. The baggies and rubber bands are commonly used for packaging and distributing illegal drugs. Prior to searching the second bag, Officer Flores turned to Officer Cavanaugh and asked him to place Pinkston in custody. Pinkston was handcuffed and placed in the patrol vehicle.

Officer Flores opened the second bag and found a loaded black semi-automatic handgun magazine.

Officer Flores continued his search of the Honda because of the items he found in the bags. Officer Flores opened the center console and observed a silver revolver. Once he saw the silver revolver, Officer Flores discontinued the search and decided to seek a search warrant before continuing. The officers applied for and were granted a search warrant. After obtaining the warrant, Officer Flores continued his search of the vehicle and discovered the following items: (1) a loaded silver .357 caliber revolver with a laser sight in the center console; (2) a loaded Glock .40 caliber handgun also in the center console; and (3) \$1,175.00 in United States Currency located in the visor above the driver's seat.

At the hearing on the motion to suppress, Officer Cavanaugh testified that the location of the Honda during the stop was not a legal place to park. The Honda would have been towed and inventoried regardless of whether the search was conducted because Pinkston would have of been charged with possession drug paraphernalia.

Parties' Contentions

Pinkston argues the police did not have reasonable articulable suspicion to believe that the defendant was engaged in criminal activity and therefore, the initial stop was not justified. After the hearing on the motion to suppress, Pinkston withdrew his reasonable suspicion argument and conceded that the police conducted a lawful stop because of an equipment violation. Pinkston's second argument remains that the police lacked probable cause to justify the search leading to discovery of the drugs and weapons.

The State, of course, disagrees with his probable cause argument. It contends that the stop, search and seizure were all justified by the required legal standards. The State contends that the officers were permitted to remove Pinkston from the vehicle and detain him for investigatory purposes after observing visible signs of nervousness and drug paraphernalia in plain view. Further, Officer Flores was justified in seizing the scale and searching the adjoining boxes and bag because of the plain view doctrine. After the officers had knowledge of the contents located next to the scale -- the spoon with residue, small baggies, tan powdery substance and the handgun magazine -- they had probable cause to search the rest of the vehicle. Even if the search of Pinkston's vehicle did not comply with constitutional standards, the State asserts that the fruits of the search should not be suppressed because the evidence would have been inevitably discovered through a routine vehicle inventory search following Pinkston's arrest for possession of drug paraphernalia.

Standard of Review

On a motion to suppress evidence obtained during a warrantless search, the State bears the burden of proving its action complied with the constitutional protection against unreasonable searches and seizures.³ The State must prove the propriety of the search by a preponderance of the evidence.⁴ In this case, evidence was obtained during both a warrantless search and pursuant to a search warrant. Because the evidence obtained

³ *Hunter v. State*, 783 A.2d 558, 560 (Del. 2001).

⁴ *State v. Cardona*, 2008 WL 5206771, at *2 (Del. Super. Dec. 3, 2008).

during the warrantless search was used by the police to obtain the warrant, this Court's decision will be based on the propriety of the warrantless search.

Discussion

A traffic stop is a seizure of a vehicle and its occupants by the State.⁵ The stop must be supported by reasonable suspicion that a motor vehicle violation occurred.⁶ Further detention, other than that necessary to conduct an ordinary traffic stop, for investigatory purposes must be supported by the officer's reasonable articulable suspicion that the individual detained is committing, has committed or is about to commit a crime.⁷ Pinkston concedes the traffic stop was justified because of the equipment violation and further detention was reasonable for the purpose of obtaining appropriate documentation. He argues, however, the police exceeded their constitutional authority and violated his rights when they seized and searched the two bags located in the back seat.

Search of Pinkston's Vehicle and Seizure of Evidence

The Fourth Amendment to the United States Constitution prohibits unreasonable searches and seizures by state agents. Searches are presumptively unreasonable unless they are supported by a valid warrant obtained on a showing of probable cause.⁸ The automobile exception, however, permits the police to search a vehicle without a warrant

⁵ *Caldwell v. State*, 780 A.2d 1037, 1045 (Del. 2001).

⁶ *State v. Rickards*, 2 A.3d 147, 150 (Del. Super. 2010).

⁷ *Woody v. State*, 765 A.2d 1257, 1262 (Del. Super. 2001).

⁸ *See Williams v. State*, 962 A.2d 210, 216 (Del. 2008).

if probable cause exists to believe the vehicle contains contraband.⁹ If probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle where contraband may be concealed.¹⁰

Police are also justified in seizing evidence without a warrant in situations where the evidence is found in plain view. The plain view exception, negating the need for a search warrant, allows a law enforcement officer to seize evidence if: (1) the officer is lawfully in a position to observe the contraband; (2) the incriminating nature of the contraband is immediately apparent to the officer; and (3) the officer has a lawful right of access to the contraband.¹¹ Pinkston does not argue that Officer Flores was not lawfully in a position to observe the scale. He contends that the incriminating nature of a digital scale is not immediately apparent without some other link to drug activity.

The State submits that observation of a digital scale in plain view, which the arresting officer testified is commonly used to weigh and package illegal drugs, coupled with visible signs of nervousness are sufficient to establish probable cause to justify the search and seizure of guns and drugs from Pinkston's vehicle. Pinkston disagrees and provides the Court with various legal uses of digital scales in support of his argument that nervousness and possession of a digital scale do not amount to probable cause.

Possession of drug paraphernalia is prohibited by 16 *Del. C.* § 4771. Drug paraphernalia is defined by 16 *Del. C.* § 4701(17). Officer Flores testified that he knows,

⁹ *Tatman v. State*, 494 A.2d 1249, 1251 (Del. 1985).

¹⁰ *Id.* at 1252.

¹¹ *Hardin v. State*, 844 A.2d 982, 985 (Del. 2004).

from his training and experience, that digital scales are commonly used to weigh and package illegal drugs. Digital scales are, therefore, considered drug paraphernalia according to Officer Flores. The relevant portion of the statute prohibits possessing: “[s]cales and balances used, intended for use or designed for use in weighing or measuring controlled substances, the use, manufacture, delivery or possession of which is in violation of this chapter.”¹²

Although not cited by either party, the Court finds *State v. Watson*¹³ to be the most informative case in resolving the issue of whether the incriminating nature of a digital scale is immediately apparent. In *Watson*, a police officer was justified in seizing a digital scale, in plain view in the defendant’s vehicle, because the investigating officer testified that digital scales are considered drug paraphernalia, as they are commonly used to weigh illegal drugs. In that case, the Delaware Supreme Court held that the plain view doctrine justified the seizure of a digital scale in plain view of the investigating officer.

The facts of this case are similar to those in *Watson*. Officer Flores observed a digital scale in plain view and he knew that digital scales are used to weigh and package illegal drugs. The digital scale was inside a dark, very thin but barely opaque plastic bag. The Court examined it during the hearing. It is about the size of a cell phone but unlike a cell phone, half of the scale is covered in a shiny surface readily observable through the plastic bag (and obviously where the material to be weighed is placed). In addition,

¹² 16 *Del. C.* § 4701(17)(e).

¹³ 892 A.2d 366 (Del. 2005).

Pinkston was so nervous that his carotid artery was visibly pulsating and his hands were shaking.¹⁴ The Court finds the incriminating nature of the scale was immediately apparent to Officer Flores and he was permitted to seize the scale.

Additional search was supported by probable cause

The scale was located in a bag with two small cardboard boxes. Officer Flores had to open the bag to gain access to the scale. After seizing the scale, Officer Flores continued his search into the contents of other containers that were located in the vehicle. Because this search exceeds the intrusion required to seize the digital scale, it must be supported by probable cause that contraband would be found in the area searched.¹⁵

In order to determine whether probable cause existed, the Court must look to the “totality of the circumstances.”¹⁶ Probable cause is defined as less evidence than would be required to support a conviction but more than a mere suspicion.¹⁷ “[P]robable cause is now measured, not by precise standards, but by the totality of the circumstances through a case-by-case review of ‘the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.’”¹⁸

¹⁴ This Court recognizes that an encounter with the police may cause even a law abiding citizen to experience feelings of nervousness. However, his extra nervousness is one factor that may still be considered in the totality of the circumstances.

¹⁵ *Tatman*, 494 A.2d at 1251.

¹⁶ *Legrande v. State*, 947 A.2d 1103, 1107-08 (Del. 2008).

¹⁷ *State v. Maxwell*, 624 A.2d 926, 928-29 (Del. 1993).

¹⁸ *Id.* (quoting *Illinois v. Gates*, 462 U.S. 213, 103 S.Ct. 2317, 2328 (1983)).

Officer Flores possessed the following information at the time he made the decision to continue the search: (1) Pinkston exhibited visible signs of extreme nervousness; (2) Pinkston denied having anything illegal in the vehicle; and (3) contrary to Pinkston's denial, drug paraphernalia, of which it is a crime to possess, was found in the vehicle. Knowledge of these facts, considered in the totality of the circumstances, is sufficient to form the probable cause required to justify a search of Pinkston's vehicle and its contents. The seizure of weapons and drugs from the vehicle complied with constitutional protections against unreasonable searches and seizures.

This Court does not need to address the State's inevitable discovery argument because the evidence was obtained lawfully. Had the incriminating nature of the digital scale not been immediately apparent, the Officers would not have been justified in making the plain view seizure. The inevitable discovery exception would not apply if the seizure of the scale was not justified because the Officers would not have had probable cause to arrest Pinkston.

The Officers were justified in seizing the digital scale because of the plain view exception to the warrant requirement. The additional search of Pinkston's vehicle, which revealed guns and drugs, was permissible because the Officers had probable cause and because of the lawfulness of the scale's seizure, Officer Flores had a reasonable basis to continue the search as he did. It did not exceed the scope allowed.

Conclusion

For the above-listed reasons, defendant Wilfredo Pinkston's motion to suppress is
DENIED.

IT IS SO ORDERED.

J.