

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE,)
)
 v.) ID. NO. 010302919
)
 DAQUON D. ANDERSON,)
)
 Defendant.)

Submitted: August 31, 2001
Decided: November 29, 2001

MEMORANDUM OPINION

*Upon Consideration of
Defendant's Motion to Suppress.*
GRANTED.

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SLIGHTS, J.

I. INTRODUCTION

This matter is presently before the Court on defendant's Motion to Suppress Evidence. At issue is whether the police have probable cause to search an automobile based upon the following facts: police officers lawfully pulled over an automobile and issued a citation for violating 21 *Del.C* §2126(c)¹; a passenger in the front seat of the automobile exited the automobile and while fleeing threw an object on the ground towards the front of the vehicle; while two officers pursued the fleeing passenger, another officer determined that the object thrown to the ground was likely an illegal controlled substance; three police officers removed the driver and the other two passengers from the vehicle, handcuffed them and performed a pat-down search which did not reveal weapons or contraband; the police officers placed the driver and two other passengers in the police vehicle and subsequently searched the automobile. For the following reasons, the Court finds that the police did not possess probable cause to search the automobile. Accordingly, Defendant's Motion to Suppress is **GRANTED**.

¹21 *Del.C.* §2126(c) states: No number plate, or any portion thereof, shall be covered with any tinted material, nor shall any other material be placed on or around a number plate which would conceal and/or obscure any information contained thereon, including the registration expiration sticker. Plate frames that do not conceal and/or obscure any information contained on the plate, including the registration sticker, are not prohibited by this section.

II. FACTS

On the evening of March 27, 2001, Detective Baylor and Probation Officer Michael Vinzinski, working in the vice squad unit of Operation Safe Streets, were conducting routine patrol in an unmarked Ford Taurus when they noticed the automobile of the defendant, Daquon D. Anderson (“Mr. Anderson”), quickly pull away from the corner of an intersection. The officers suspected that the vehicle’s rapid departure was prompted by the driver’s realization that police officers were approaching. Detective Baylor could not identify the state of origin on the license plate because it was obscured by a license plate cover. He called for a marked police cruiser to stop the vehicle. He then followed the vehicle until a marked police cruiser was able to effectuate the stop.

Detective Baylor testified that while he and Probation Officer Vinsinski followed the vehicle, it accelerated and reached “some unsafe speeds going through [a] particular residential area” but otherwise obeyed all traffic signals and “even used [its] blinkers.”² Detective Baylor and Probation Officer Vinsinski followed the vehicle for several blocks. They were joined by a second unmarked police vehicle and a marked police cruiser. The marked police vehicle engaged its overhead lights. The suspect vehicle turned into a dead-end alleyway followed by the marked police cruiser

²Suppression Hr’g Tr. at 9-10, 25 (Aug. 31, 2001).

occupied by Officer Groark and another uniformed officer, the unmarked police vehicle occupied by Officers Baylor and Vinsinski, and the second unmarked police vehicle occupied by Officer Witte and Probation Officer Lenhardt.

As the suspect vehicle came to a stop, a passenger exited the front passenger side of the vehicle, ran from the car, threw a package towards the front of the vehicle, climbed a fence, and continued to flee. Detective Baylor and a uniformed officer gave chase. They located the passenger under a car approximately one and a half blocks away from where the vehicle stop had been effected. Detective Baylor placed the passenger into custody. The driver of the vehicle, later identified to be Mr. Anderson, and the other two passengers remained in the vehicle.

Meanwhile, Officer Witte retrieved the discarded object and concluded, based upon his training and experience, that the bag contained an illegal substance. Officers Witte, Groark, and Probation Officer Lenhardt removed Mr. Anderson and the remaining two passengers (both female) from the vehicle, handcuffed them, patted them down, placed them in the police cruiser, and searched the vehicle. By the time Detective Baylor returned to the scene, Mr. Anderson and the other two passengers were in custody and the search of the vehicle had been completed. No weapons or

contraband were found on Mr. Anderson or the two female passengers. The search of the vehicle revealed marijuana, crack cocaine, and a loaded .9 millimeter handgun.

III. DISCUSSION

On a Motion to Suppress, the State bears the burden of establishing that the challenged search or seizure comported with the rights guaranteed Mr. Anderson by the United States Constitution, the Delaware Constitution, or Delaware statutory law.³

The burden of proof on a motion to suppress is proof by a preponderance of the evidence.⁴

A. Prior Findings

³*Hunter v. State*, Del. Supr., No. 279, 2000, Steele, J. (Aug. 22, 2001)(Mem. Op. at 5-6).

⁴*State v. Bien-Aime*, Del. Super., Cr. A. No. 1K92-08-326, Toliver, J. (March 17, 1993)(Mem. Op.)(citations omitted).

The Court held a suppression hearing in this matter on August 31, 2001. After considering the testimony and evidence, the Court found that the police lawfully stopped Mr. Anderson's vehicle and properly issued a citation for violating 21 *Del.C.* §2126(c). The issue remaining before the Court is the validity of the search of the vehicle. The State proffered four justifications for the search: (1) search incident to an arrest; (2) probable cause; (3) plain view; and (4) the automatic companion rule. At the conclusion of the suppression hearing, the Court ruled that the only basis to search Mr. Anderson's vehicle lawfully would be a finding of probable cause.⁵ While the Court already has ruled that the search incident to arrest exception to the warrant

⁵The Court found that the State could not rely upon the plain view exception because the testimony established that the officers conducting the search of the automobile saw marijuana within the automobile and within "plain view" only after the search commenced. A search cannot be justified by what is observed after entry. *State v. Reader*, Del. Super., 328 A.2d 146, 148 (1974)(citing *Johnson v. United States*, 333 U.S. 10 (1948)). In addition, the Court found that the automatic companion rule does not extend to the search of Mr. Anderson's vehicle. The automatic companion rule provides that "[a]ll companions of the arrestee within the immediate vicinity, capable or accomplishing a harmful assault on the officer, are constitutionally subjected to the cursory 'pat-down' reasonably necessary to give assurance that they are unarmed." *Hunter*, at 7-8(citing *United States v. Berryhill*, 9th Cir., 445 f.2d 1189, 1193 (1971)). A search of a motor vehicle is not encompassed by the rule.

requirement is inapplicable to the facts of this case, the issue merits further discussion. Otherwise, the oral rulings remain unchanged and the Court incorporates them in this Opinion.

B. Search of Mr. Anderson’s Vehicle Incident to Arrest

In *New York v. Belton*, the United States Supreme Court held that an officer who makes a custodial arrest of a recent occupant of a vehicle may search the interior of the vehicle as well as any packages within the interior even after the occupant has been removed from the vehicle and its immediate vicinity.⁶ The purpose of *Belton*’s “bright line” rule was “to remove uncertainty on the part of officers in the field by imposing only two conditions to a lawful search of a vehicle incident to arrest: (1) a lawful arrest of (2) a recent occupant of the vehicle to be searched.”⁷ The “bright-line” rule adopted by *Belton* has been sanctioned by the Delaware Supreme Court.⁸

The State argues that the arrest of the fleeing passenger provides the basis for the search of Mr. Anderson’s vehicle. Although it cannot be disputed that the fleeing passenger was indeed an occupant of Mr. Anderson’s vehicle, the Court cannot determine if he was a *recent* occupant of the vehicle from the record *sub judice*

⁶*New York v. Belton*, 453 U.S. 460 (1981).

⁷*State v. Matos*, Del. Super., No. 0012006520, Slights, J. (Oct. 2, 2001)(Mem. Op. at 15).

⁸*See Thomas v. State*, Del. Supr., No. 143, 1992, Walsh, J. (Nov. 30, 1992)(ORDER); *Traylor v. State*, Del. Supr., 458 A.2d 1170, 1174 (1983).

because the timing of the passenger's arrest in relation to the search of Mr. Anderson's vehicle is not clear.

The testimony indicates that Detective Baylor and a uniformed police officer gave chase to the fleeing passenger and upon finding him, arrested him. Detective Baylor could not recall if he returned the passenger to the scene or if the passenger went to the police station directly.⁹ Detective Baylor testified that by the time he returned to Mr. Anderson's vehicle, it had been searched by the officers who remained there.¹⁰ There is no evidence that the officers who remained at Mr. Anderson's vehicle had any indication that the passenger had been arrested, if in fact he had been arrested, prior to their search of Mr. Anderson's vehicle. This is not a case where a passenger was arrested and the vehicle was searched immediately thereafter.¹¹

The State has the burden of proof on a motion to suppress evidence.¹² With regards to the search incident to arrest doctrine, the State must establish that the search

⁹Suppression Hr'g Tr. at 13 (Aug. 31, 2001).

¹⁰*Id.*

¹¹*Cf. Malloy v. State*, Del. Supr., 462 A.2d 1088 (1983)(holding that a search of a vehicle was constitutional under *Belton* when a police officer lawfully stopped a vehicle and then observed the rear seat passenger open the door, discard a package, and close the door; the officer retrieved the discarded item which was a block of hashish and promptly arrested the individual who discarded it and searched the vehicle). *See also Parson v. State*, Del. Supr., 525 A.2d 582 (1987)(holding that police had probable cause to arrest the driver and passenger of the vehicle and to search the vehicle incident to the arrest after police observed them discarding drugs and drug paraphernalia).

¹²*Hunter v. State*, Del. Supr., –A.2d–, No. 279, 2000, Steele, J. (Aug. 22, 2001)(Mem. Op. at

of Mr. Anderson's vehicle occurred "as a *contemporaneous* incident" of that arrest.¹³

The State has not established that the search of Mr. Anderson's vehicle was incident to an arrest at all, much less a contemporaneous incident to the arrest of the fleeing passenger.

5-6).

¹³*Matos, supra*, at 16(citing *Traylor*, 458 A.2d at 1174(citing *Belton*, 453 U.S. at 460)).

In the alternative, the State argues that the arrest of Mr. Anderson for the motor vehicle violation provides the basis for the search of his vehicle. This argument must fail as well for the simple reason that the officers did not effectuate a custodial arrest of Mr. Anderson for the motor vehicle violation.¹⁴ Mr. Anderson was issued only a citation for violating 21 *Del.C.* §2126(c).

C. The Standard to Search an Automobile—Probable Cause

Having concluded that Mr. Anderson’s vehicle was not searched incident to an arrest, the Court must determine whether probable cause existed to search the vehicle. Police may lawfully search an automobile without a warrant if they have probable cause to believe that an automobile is carrying contraband or evidence of a crime.¹⁵ Probable cause is measured “not by precise standards, but by the totality of the circumstances through a case by case review of the ‘factual and practical

¹⁴*See Knowles v. Iowa*, 525 U.S. 113 (1998)(holding that the rationale for the search incident to arrest exception to the warrant requirement does not apply when an officer issues a citation for a traffic violation but does not make a custodial arrest).

¹⁵*Parson v. State*, Del. Supr., No. 192, 1986, Horsey, J. (April 24, 1987)(ORDER at 2)(citing *Tatman v. State*, Del. Supr., 494 A.2d 1249, 1251 (1985)).

considerations of everyday life on which reasonable and prudent men, not legal technicians, act.”¹⁶

¹⁶*State v. Rooney*, Del. Super., C.R.A. No. N95-03-2080AC, Goldstein, J. (Oct. 31, 1995)(ORDER at 7)(citing *State v. Maxwell*, Del. Supr., 624 A.2d 926, 928 (1993)).

At the time the officers searched Mr. Anderson's vehicle, they were aware of the following facts: (1) Mr. Anderson was the driver of a vehicle with an obstructed license plate in violation of 21 *Del.C.* §2126(c); (2) Mr. Anderson drove somewhat erratically while being followed by the police; (3) Mr. Anderson stopped immediately upon entering a dead-end alleyway after a marked police vehicle engaged its overhead lights; (4) the front seat passenger in Mr. Anderson's vehicle ran from the vehicle when Mr. Anderson stopped the vehicle, and the vehicle's fleeing passenger discarded a bag containing what appeared to be an illegal substance; (5) the pat down of Mr. Anderson did not produce any contraband or weapons. There was no evidence that Mr. Anderson was uncooperative or evasive. The police officers did not observe Mr. Anderson acting suspiciously or making furtive movements within the vehicle. In arguing that probable cause to search the vehicle existed, the State relies on *Nelson v. State*.¹⁷ In *Nelson*, the police summoned a K-9 unit to the scene after developing reasonable suspicion that the vehicle may contain contraband. The Supreme Court found that "[o]nce the dog alerted to the trunk of the vehicle..." the police had probable cause to conduct a warrantless search of the vehicle.¹⁸ In the instant case, the police did not summon a drug dog to the vehicle although they easily could have

¹⁷*Nelson v. State*, Del. Supr., No. 402, 1997, Walsh, J. (March 30, 1998)(ORDER).

¹⁸*Id.*

done so. And no additional circumstances existed to give rise to probable cause to search the vehicle.

Based upon the totality of the information known to the officers, the Court finds that they did not possess probable cause to believe that Mr. Anderson's vehicle contained contraband or evidence of a crime. Simply put, "there was no indication that any contraband was located in the vehicle itself apart from that on the person of one of its occupants."¹⁹ Accordingly, Mr. Anderson's Motion to Suppress is

¹⁹*Jackson v. State*, Del. Supr., 643 A.2d 1360, 1365 (1994)(discussing *United States v. DiRe*, 332 U.S. 581 (1948)). In *Jackson*, the police observed drugs in plain view in a vehicle in which defendant was a passenger. The vehicle was occupied by the defendant and two others. The Court held that "[i]n view of the nature of illegal drugs and the fact that they are frequently used by individuals in groups, there was a reasonable likelihood that the marijuana was jointly possessed by all three occupants. Under the totality of the circumstances, there was a fair probability that each occupant of the vehicle, including Jackson, had committed a crime and therefore probable cause to arrest existed, even if the evidence was insufficient to sustain convictions on the charge." *Jackson*, 643 A.2d at 1365. *Jackson*, relying on *Di Re*, argued that his presence in the vehicle alone was insufficient to establish probable cause. In *Di Re*, the United States Supreme Court found that the police did not have probable cause to arrest Di Re simply because another passenger in the vehicle was observed holding counterfeit gasoline ration coupons when the passenger implicated the driver of the vehicle and did not implicate Di Re. The Delaware Supreme Court distinguished *Jackson* from *Di Re* stating that "[f]inding contraband in an automobile occupied by several people is different from finding contraband on the person of one of several occupants of an automobile." *Jackson*, 643 A.2d at 1366.

GRANTED.

IV. CONCLUSION

The Court finds that the only basis to support a search of Mr. Anderson's vehicle is a showing of probable cause. Because the facts of this case simply are insufficient to warrant a man of reasonable caution to believe that the vehicle contained contraband or evidence of a crime²⁰, Mr. Anderson's Motion to Suppress must be **GRANTED**.

IT IS SO ORDERED.

Judge Joseph R. Slights, III

Original to Prothonotary

²⁰*See Brinegar v. United States*, 338 U.S. 160, 176 (1949).