

IN THE SUPREME COURT OF THE STATE OF DELAWARE

RYEKI STEWART,	§	
	§	No. 357, 2007
Defendant Below,	§	
Appellant,	§	Court Below: Superior Court
	§	of the State of Delaware in and
	§	for New Castle County
v.	§	
	§	
STATE OF DELAWARE	§	ID # 0612022950
	§	
Plaintiff Below,	§	
Appellee.	§	
	§	

Submitted: December 21, 2007
Decided: February 22, 2008
Revised: March 7, 2008

Before **BERGER, JACOBS**, and **RIDGELY**, Justices.

ORDER

This 7th day of March 2008, it appears to the Court that:

(1) Defendant-Appellant Ryeki Stewart appeals his convictions, following a Superior Court bench trial, of Trafficking in Cocaine in Excess of 100 grams, Possession of Cocaine With Intent to Deliver, Maintaining a Vehicle for Keeping Controlled Substances, and Resisting Arrest. Stewart argues that the Superior Court erred in when it denied his motion to suppress evidence because there was no probable cause for his seizure. He also argues that the Superior Court's finding of probable cause for his seizure was based upon hearsay evidence,

and thus a denial of his right to confrontation and his due process rights. We find no merit to his arguments and affirm.

(2) On December 29, 2006, Detective Michael Rentz of the Wilmington Police Department spoke with a first time informant, who was facing drug charges. The informant told Detective Rentz that he could arrange delivery of a half kilogram of cocaine. At approximately 7:05 p.m., the informant made a phone call while in the detective's presence and arranged to meet the person who answered the call at the Wal-Mart parking lot in New Castle, Delaware. Detective Rentz was able to overhear parts of that conversation, which was with a male willing to sell a half kilogram of cocaine for \$11,500.

(3) Detective Rentz, along with another Wilmington Police detective, Detective Pfaff, accompanied the informant to the designated parking lot, arriving twenty-five minutes after the phone call. Members from the Wilmington Police Drug Unit and New Castle County's drug unit also responded to the location. While sitting with Detectives Rentz and Pfaff in the parking lot, the informant again called the seller to determine his location. The informant then told the detective, "There he is in that blue Chrysler." Detective Rentz said that he could see one person in the car from their vantage point. After being reassured by the informant that the driver of a blue Chrysler was the seller, Detective Pfaff relayed the location of the car to the responding units. Detectives Rentz and Pfaff

remained in the vehicle with the informant as other officers approached the seller's car and blocked in his vehicle. After they did, they could hear the car was still running and heard the doors lock. The officers instructed the driver to come out of the car. When he failed to do so, they broke the window because they were afraid the driver would shift the car into gear and try to escape. Stewart was removed from the car and arrested. On the front passenger's seat was a white and red plastic bag. When the officers opened the bag, they found it contained 495 grams of cocaine.

(4) Before trial, Stewart filed a Motion to Suppress Evidence, claiming that he was seized in violation of his rights under the United States Constitution and Article I, § 6 of the Delaware Constitution. After an evidentiary hearing, the Superior Court denied the Motion to Suppress. The trial court found that the combination of the initial information provided by the informant, the confirmation of that information, the relatively short period of time it took to arrange the deal, and the informant's identification of the seller's vehicle provided the officers with probable cause for the arrest. After the motion was denied, the parties agreed to a stipulated trial, specifically preserving the search and seizure issue. The Superior Court found Stewart guilty on all charges and immediately sentenced him. This appeal followed.

(5) We review the Superior Court’s denial of a motion to suppress, after an evidentiary hearing, for abuse of discretion.¹ Our review is *de novo*, however, “[w]here it is claimed that the Superior Court erred in formulating and applying the law to undisputed facts.”²

(6) Stewart argues that the police violated his rights under the United States and Delaware Constitutions because the information from the informant did not provide probable cause to seize him. Probable cause is an elusive concept which avoids precise definition, lying somewhere between suspicion and sufficient evidence to convict.³ The existence of probable cause is to be measured by the totality of the circumstances; factual and practical considerations of life on which reasonable men, not legal technicians, act.⁴ Probable cause exists when police officers possess information which would warrant a reasonable man into believing that a crime is being or has been committed.⁵ We have held that:

¹ *Donald v. State*, 903 A.2d 315, 318 (Del. 2006); *Norcross v. State*, 816 A.2d 757, 762 (Del. 2003); *Viridin v. State*, 780 A.2d 1024, 1030 (Del. 2001).

² *Donald*, 903 A.2d at 318; *accord Hunter v. State*, 783 A.2d 558, 561 (Del. 2001); *Jones v. State*, 745 A.2d 856, 860 (Del. 1999).

³ *Thompson v. State*, 539 A.2d 1052, 1055 (Del. 1988).

⁴ *Illinois v. Gates*, 462 U.S. 213, 231 (1983); *McAllister v. State*, 807 A.2d 1119, 1124 (Del. 2002) (citations omitted) (“The probable cause standard is a practical, nontechnical concept that must be measured by the totality of the circumstances. This requires a case by case review of the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.”); *accord State v. Maxwell*, 624 A.2d 926, 928-29 (Del. 1993).

⁵ *Garner v. State*, 314 A.2d 908, 910 (Del. 1973). *See also Carter v. State*, 814 A.2d 443, 445 (Del. 2002) (“For an arresting officer to have probable cause, the officer’s knowledge must be

An informant's tip may provide probable cause for a warrantless arrest where the totality of the circumstances, if corroborated, indicates that the information is reliable. In making that determination, a court must consider the reliability of the informant, the details contained in the informant's tip, and the degree to which the tip is corroborated by independent police surveillance and information.⁶

(7) In this case, the totality of the circumstances, including the corroboration by the police overhearing the informant's call, provided sufficient probable cause to seize Stewart, which occurred when the officers blocked in his vehicle. In less than one hour, the informant called a seller, and arranged delivery for a half of kilogram of cocaine in the presence of the police. Detective Rentz remained with the informant throughout the planning of the deal and heard the seller repeat the quantity of cocaine for sale and the price of \$11,500. By listening to the conversation, Rentz was able to corroborate illegal activity, specifically an agreement to sell a half kilogram of cocaine. The informant then identified the seller in his vehicle, and only after being reassured by the informant of the seller's location did the officers approach Stewart's vehicle and move to make the arrest. The information from the informant was sufficiently corroborated by the police

sufficient for a prudent person to believe that an individual had committed or was committing an offense.”).

⁶ *Brown v. State*, 897 A.2d 748, 751 (Del. 2006) (quoting *Tatman v. State*, 494 A.2d 1249, 1251 (Del. 1985)).

overhearing the conversation arranging the drug transaction and finding the seller at the delivery point. Stewart's first argument lacks merit.

(8) Stewart also argues that the Superior Court's finding of probable cause for his seizure was based upon hearsay evidence, and thus denied him of his right to confrontation and due process under the United States Constitution. Since Stewart failed to raise this issue in the court below, our standard of review is for plain error.⁷ "[T]his Court may only take notice of plain errors which are 'so clearly prejudicial to substantial rights as to jeopardize the fairness and integrity of the trial process.'"⁸

(9) We have permitted the use of hearsay information from informants to establish probable cause provided that the information is sufficiently corroborated by other facts within the officer's knowledge.⁹ Here, the Superior Court correctly determined that probable cause existed for the arrest based upon the corroborated details of the informant's information. We find no error by the Superior Court in denying Stewart's motion to suppress.

⁷ *Fleming v. State*, 1992 WL 135159, *4 (Del. Supr.); *Wainwright v. State*, 504 A.2d 1096, 1100 (Del. 1986); *Goddard v. State*, 382 A.2d 238, 242 (1977).

⁸ *Fleming*, 1992 WL 135159, at *4 (quoting *Tucker v. State*, 564 A.2d 1110, 1118 (Del. 1989)).

⁹ *O'Neil v. State*, 691 A.2d 50, 54 (Del. 1997) ("[P]robable cause can be established from either direct observation or hearsay. The latter, consisting generally of incriminatory reports to the police by informants or witnesses, is acceptable, provided that it is sufficiently corroborated by other facts within the officer's knowledge.") (quoting *Garner v. State*, 314 A.2d 908, 911 (Del. 1973)).

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

BY THE COURT:

/s/Henry duPont Ridgely
Justice