

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

STATE OF DELAWARE,)

v.)

RAYMOND BLAKE,)

Defendant.)

ID. No. 1101013572

ORDER

AND NOW, TO WIT, this 4th day of January, 2012, **IT IS HEREBY**

ORDERED as follows:

Before the Court is Defendant's, Raymond Blake ("Blake" or "Defendant") Motion to Suppress. Officers had probable cause to arrest Blake, the search of Blake was incident to a lawful arrest and Blake consented to the search of his house. Therefore, the Motion to Suppress is **DENIED**.

Background

On November 8, 2010, officers of the WPD were conducting a drug investigation. On that date, officers had a confidential informant call Defendant for the purpose of purchasing narcotics. Blake agreed to sell the confidential informant narcotics in a certain location. Officers set up surveillance in that location. Blake approached the location approximately 20-30 minutes after the call

and pulled over to the left side of the road. Officers arrested Blake and Miranda warnings were administered.

After the Miranda warnings, Blake agreed to speak with officers. Blake signed an authorization and release to search his residence on November 8, 2012. Based on this consent, officers executed a search of his house; narcotics and drug paraphernalia were recovered.

Blake was processed for these charges and additional charges on January 19, 2011. At trial in this Court, the jury found Blake: (1) not guilty of Possession with Intent to Deliver Heroin and Cocaine; (2) guilty of Possession of Heroin and Cocaine; and (3) not guilty of Maintaining a Vehicle for Keeping Controlled Substances. The jury was hung on Trafficking in Cocaine. This Court informed the State that it would have 10 days to make a decision about retrying Blake on the Trafficking in Cocaine charge. On October 24, 2011, the State obtained a reindictment on both the Trafficking in Heroin (Count I) and Trafficking in Cocaine (Count II) charges.

Blake expressed an interest in representing himself at his retrial. On the eve before trial, the Court held a colloquy and determined Blake is permitted to represent himself. Blake filed a Motion to Suppress and or Dismiss Evidence/Motion to Challenge the Veracity of the Affidavit on June 23, 2011.

Parties' Contentions

Blake alleges the following in his motion: (1) he was never issued a driving citation and the stop was pretextual; (2) the search of Blake's person was improper and should be suppressed; and (3) the search warrant was obtained based on false information presented to the Magistrate.

Discussion

The Police Officers Had Probable Cause to Arrest Blake.

Blake's first and second arguments are meritless because officers had probable cause to arrest Blake. A person's right to be free from unreasonable searches and seizures is protected by the Fourth Amendment to the United States Constitution and Article I, § 6 of the Delaware Constitution. In *Terry v. Ohio*,¹ the United States Supreme Court held that a police officer may only detain a person for investigatory purposes if such detention is supported by a reasonable and articulable suspicion of criminal activity. Delaware has codified this standard under 11 *Del. C.* § 1902. The underlying purpose of this section is to legalize the questioning and detention of individuals without probable cause.² However, because officers had probable cause to arrest Blake, the reasonable articulable suspicion analysis is inapplicable.

¹ 392 U.S. 1 (1968).

² *Hicks v. State*, 631 A.2d 6, 9 (Del. 1993).

“Probable cause is determined by the totality of the circumstances, as viewed by a reasonable police officer in the light of his or her training and experience. To establish probable cause, the police are only required to present facts which suggest that there is a fair probability that the defendant has committed a crime.”³ Here, Detective Wilkers and Officer Joe Leary had probable cause to arrest Defendant. During the investigation conducted, Detective Wilkers and Officer Leary obtained Blake’s cell phone number from a citizen who informed them that he was selling crack cocaine. Detective Wilkers had a past proven and reliable informant call Blake to purchase crack cocaine. Blake agreed to sell the informant drugs and arranged to meet the informant at the corner of West 5th Street and North Lincoln Street. Officers conducted surveillance and arrested Blake when he arrived at the location. Blake was taken into custody upon arrival. Given the totality of the circumstances present in this case, there is fair probability that Blake committed a crime. Therefore, officers had probable cause to arrest Blake.

Additionally, Blake’s argument that the stop was pretextual is inapplicable to this case. A pretextual stop exists when “an officer has probable cause or reasonable suspicion to believe that a motorist has violated a traffic law, but which the officer would not have made absent a desire, not supported by probable cause

³ *Thomas v. State*, 8 A.2d 1195, 1197 (Del. 2010).

or reasonable suspicion, to investigate a more serious offense.”⁴ This did not occur here because there was not a stop based on a violation of a traffic law. Rather, officers arrested Blake immediately when he arrived at the location to sell drugs to the confidential informant.

The Search of Blake Was a Search Incident to a Valid Arrest.

The search of Blake was a search incident to a valid arrest. Once the arrest had occurred, the officers could lawfully search Blake incident to that arrest.⁵ Therefore, the narcotics recovered from the officer’s search, after the arrest, are admissible.

There Was Not a Search Warrant In This Case.

Blake alleges that the police misrepresented facts in Affidavit of Probable Cause. This argument is meritless because there was no search warrant in this case. The search warrant Blake refers to is for a different case unrelated to this matter.

Blake signed a standard consent form authorizing the WPD to search his residence. Searches that are conducted pursuant to a valid consent are an exception to the warrant requirement.⁶ To be valid, a consent to search must be

⁴ *State v. Heath*, 929 A.2d 390, 397 (Del. Super. Nov. 28, 2006)(citing *Brian J. O'Donnell, Note, Whren v. United States: An Abrupt End to the Debate Over Pretextual Stops*, 49 Me. L.Rev. 207, 208, n. 3 (1997))(internal quotations omitted).

⁵ *See Williams v. State*, 962 A.2d 210, 222 (Del. 2008).

⁶ *Scott v. State*, 672 A.2d 550, 552 (Del. 1996).

voluntarily given by a person with the authority to consent.⁷ Here, Blake voluntarily signed the standard search form to search his residence. Thus, Blake's consent to search his residence was valid.

Conclusion

Based on the forgoing, Defendant's Motion to Suppress is **DENIED**.

IT IS SO ORDERED.

/S/CALVIN L. SCOTT
Judge Calvin L. Scott, Jr.

⁷ *Id.*