

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

STATE OF DELAWARE,)	
)	
v.)	ID. No. 1109017578
)	
KEVIN WATSON.)	
)	

ORDER

AND NOW, TO WIT, this 16th day of April, 2012, **IT IS HEREBY**

ORDERED as follows:

Findings of Fact

On September 22, 2011, at approximately 10:29 p.m., Officer Ronald Davis (“Officer Davis”) of the Middletown Police Department observed a four-door gold Cadillac Deville driving in the parking lot of Greenlawn Apartments (“Greenlawn”). The car was driven by the Defendant, Kevin Watson (“Defendant” or “Watson”). Officer Davis was in the process of getting into his patrol car when he noticed the Cadillac passing on his right, with the headlights off. As Watson turned onto Janvier Drive from the parking lot, the headlights were activated.

Officer Davis then followed the car to Greenlawn Boulevard. As standard practice, for safety reasons, Officer Davis ran a registration check on the Criminal Justice Information System (“CJIS”). The check revealed that a Corey Watson

could be “possibly wanted.” Officer Davis activated his emergency equipment and pulled the Defendant over just South of Cedar Lane, which was .6 miles away from Greenlawn. The Defendant promptly and appropriately pulled over. Before getting out of his vehicle, Officer Davis learned through a subsequent screen on CJIS that Cory Watson was “not wanted.”

Officer Davis then called Recom to advise that he was conducting a traffic stop. Officer Davis approached the Defendant’s car at 10:31 p.m. and asked for the Defendant’s license, insurance and registration. Once the Defendant provided this information, Officer Davis told the Defendant that he was pulled over because of the headlight violation, in addition to the possible wanted match for Corey Watson.¹ The Defendant then told Officer Davis that his name was Kevin and not Corey Watson.

When Officer Davis initially approached Officer Davis observed that the front passenger and the front backseat passenger had open containers of alcohol in the car. Also, Officer Davis observed a box of sandwich bags on the floor directly behind the passenger’s front seat. Additionally, there was a strong odor of alcohol coming from the vehicle.

¹ Officer Davis testified at the hearing that his initial purpose for stopping the vehicle was because the headlights were initially off when the Defendant passed the officer. T. at 37. Additionally, because Officer Davis found out from a subsequent CJIS screen that Corey Watson was actually “not wanted” before he exited his patrol vehicle, he maintains that the only reason for his stop was because of the headlight violation.

Officers Bauer and Schneider arrived without being called to the scene of the traffic stop. In addition to Officers Davis, Bauer and Schneider, Officer Miller “happened” to arrive at the scene with his K9 partner, Officer K9 Nitro (“Nitro”).

The vehicle was occupied by the Defendant and three other male passengers. The other men in the car were James Harding, Darnell Wright and Aaron Watts. Mr. Harding was seated in the passenger’s seat. Mr. Wright was seated in the backseat behind the driver and Mr. Watts was seated in the backseat behind the passenger’s seat.

At approximately 10:38 p.m., Officers Bauer and Schneider asked the passengers for identification, which revealed that James Harding had a capias for failure to pay and Aaron Watts had a capias for failure to appear. Officer Davis informed the passengers of their outstanding capias’ but instead of taking them to the station, he instructed them to handle the capiases as soon as possible. The Defendant was not cited for his headlight violation, nor did Officer Davis or any other officer take note of the headlight setting at the time of the stop.

Officer Davis then asked Watson if there was anything in the car that he should be aware of, and the Defendant replied “no.” Officer Davis then asked the Defendant if he could search the car.² According to Officer Davis, Watson

² Officer Davis testified that when the Defendant gave him consent to search, he was relaxed, and gave the officer no indication that he was being deceptive.

consented to the search. Officer Miller testified that the Defendant gave consent for Nitro to conduct a sniff of the exterior of the car.

After Officer Davis obtained consent, at approximately 10:47 p.m., he ordered the Defendant and the passengers out of the vehicle; the Defendant and his passengers were not handcuffed. Corporal Miller then removed Nitro from his patrol car and made his approach towards the Cadillac. When Nitro approached the right passenger rear side of the car, his breathing and body changed, which indicated the presence of drugs. Nitro then jumped in the vehicle through the passenger side front window. Nitro alerted positively to the presence of narcotics in the center armrest between the front driver and passenger seats. In addition to alerting officers to the arm rest, Nitro alerted positively on the floor of the front passenger side, the glove compartment and the rear passenger side seat seam. Corporal Miller returned Nitro to the patrol car and assisted Officer Davis in a hand search of the vehicle.

Corporal Miller and Officer Davis located the following during their search: (1) \$98.00 and three Adderall pills in the center console/armrest; (2) a clear plastic sandwich bag containing 0.2 grams of Cocaine located inside a baby wipe container; (3) 21 grams of cocaine; and (4) 51 Oxycodone pills located behind the passenger side back seat. The Defendant was placed in handcuffs when the

officers located the 0.2 grams of Cocaine which occurred at approximately 10:57 p.m.

Watson now seeks to suppress the evidence found during the traffic stop conducted on September 22, 2011.

Discussion

The State Bears the Burden of Proof.

On a Motion to Suppress evidence, Delaware the State bears the burden of proving that the search and seizure comported with federal and state constitutional rights and state statutory law.³ The burden of proof is “considerably less than proof by a preponderance of the evidence, and even less demanding than probable cause.”⁴

The Defendant Has Standing to Challenge the Search.

In order to challenge a search or seizure the Defendant must have standing.⁵ To demonstrate standing to challenge the search of the vehicle, the Defendant must show he had a reasonable expectation of privacy in the property that was searched.⁶ A two-prong test is used to determine whether a defendant enjoys a reasonable expectation of privacy in the area to be searched. First, the Court must determine whether a defendant enjoys a legitimate expectation of privacy in the

³ *Hunter v. State*, 783 A.2d 558, 560 (Del. 2001); *State v. Porter*, 2004 WL 2419166, at *2 (Del. Super. Sept. 29, 2004).

⁴ *Id.* (citing *Quarles v. State*, 783 A.2d 558, 560-61 (Del. 1997)).

⁵ *Righter v. State*, 704 A.2d 262, 265 (Del. 1997).

⁶ *State v. Mobley*, 2001 WL 392459, at *2 (Del. Super. Apr. 5, 2001).

area searched.⁷ Second, the court must determine whether the defendant's subjective expectation of privacy is one that society is prepared to recognize as reasonable.⁸

Whether the driver of a car has a reasonable expectation of privacy necessary to show Fourth Amendment standing is a fact-bound question dependent on the strength of his interest in the car and the nature of his control over it; ownership is not necessary.⁹ There must be clear evidence of continuing possession and control over the vehicle and no evidence that the driver obtained the car illegitimately.¹⁰

Here, the Defendant has standing to challenge the search that was conducted on September 22, 2011. The car was registered to the Defendant, and thus has a reasonable expectation of privacy in his own vehicle. Therefore, the Defendant is permitted to challenge this search.

The Stop Was Not Justified in this Case.

An individual's right to be free from unreasonable searches and seizures is secured by the Fourth Amendment to the United States Constitution and Article I, § 6 of the Delaware Constitution.¹¹ A person is "seized" within the meaning of the Fourth Amendment when there is restraint through physical force or in the absence

⁷ *State v. Parker*, 1997 WL 716905, at *2 (Del. Super. Aug. 22, 1997).

⁸ *Id.*

⁹ *Mobley*, 2001 WL 392459, at *3 (citing *United v. Baker*, 221 F.3d 438, 442 (3rd Cir. 2000)).

¹⁰ *Id.*

¹¹ *Jones v. State*, 745 A.2d 856, 860 (Del. 1999).

of physical force, the individual “submits to the officer’s assertion of authority.”¹²

The Delaware Supreme Court has held that a person is seized within the meaning of Article I, § 6 of the Delaware Constitution “when a reasonable person would have believed he or she was not free to ignore the police presence.”¹³ “The authority and limits of the Fourth Amendment apply to investigative traffic stops of vehicles.”¹⁴ A temporary detention of the driver and/or passengers, even if for a brief period, is considered a seizure of persons within the meaning of the Fourth Amendment.¹⁵

Although a traffic stop must satisfy the Fourth Amendment requirement that it be reasonable under the circumstances, when a police officer has probable cause to believe that a traffic violation has occurred, the Fourth Amendment reasonableness requirement is satisfied.¹⁶ In *McAllister v. State*, the Delaware Supreme Court discussed the probable cause requirement and held that:

[t]he 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.¹⁷

¹² *Harris v. State*, 806 A.2d 119, 124 (Del. 2002).

¹³ *Id.* (quoting *Jones*, 745 A.2d at 869).

¹⁴ *State v. Huntley*, 777 A.2d 249, 254 (Del. Super. May 23, 2000).

¹⁵ *Whren v. United States*, 517 U.S. 806, 809-10 (1996); *Delaware v. Prouse*, 440 U.S. 648, 653 (1979).

¹⁶ *McDonald v. State*, 947 A.2d 1073, 1077 (Del. 2008).

¹⁷ *McAllister v. State*, 807 A.2d 1119, 1124 (Del. 2002).

In addition, the scope of the stop and the further investigatory activity must be reasonably related to the initial stop.¹⁸ If the stop is extended, by duration or because of additional investigatory activities, then a separate seizure occurs unless the officers can identify specific, articulable facts providing independent justification for the additional intrusion.¹⁹ Therefore, once the officer has issued a citation or warning and has run routine computer checks, the vehicle must be released unless the driver voluntarily consents to further questioning.²⁰

The relevant portion of 21 *Del. C.* § 4331(a) states that, “[e]very vehicle upon a highway within this State at any time from sunset to sunrise . . . shall display lighted lamps and illuminating devices, exclusive of parking lamps, as hereinafter respectively required for different classes of vehicles, subject to exceptions with respect to parked vehicles.”²¹ On observing a motor vehicle violation, police officers may stop the car and order both driver and passenger out of the vehicle.²² Pursuant to 21 *Del. C.* § 701, after observing a traffic code violation, an officer can make an arrest instead of issuing a citation.²³

However, if a defendant’s headlights are off on a private road, there is no violation of the vehicle code. According to 21 *Del. C.* § 101(22), a “highway”

¹⁸ *Caldwell v. State*, 780 A.2d 1037, 147 (Del. 2001).

¹⁹ *State v. Church*, 2008 WL 4947653, at *3 (Del. Super. Nov. 18, 2008).

²⁰ *Caldwell*, 780 A.2d at 1047.

²¹ 21 *Del. C.* § 4331.

²² *Ingram v. State*, 860 A.2d 810 (Del. 2004) (TABLE).

²³ 21 *Del. C.* § 701.

does not include a road or driveway upon grounds owned by private persons, colleges, universities or other institutions.”²⁴ Therefore, if the violation occurred on a private road or in a private parking lot, there is no violation of the vehicle code and an officer may not stop a car based on that violation alone.²⁵

The Court finds that the stop was unconstitutional because the Defendant did not commit a traffic offense. Based on the evidence presented at the hearing, the the Defendant’s lights were on when he turned onto Janvier Drive. This Court is permitted to determine the credibility of witnesses and further, credibility determinations are entitled to substantial deference from the Delaware Supreme Court on review.²⁶ Therefore, the State has not met its burden of proving that Officer Davis had probable cause to stop the vehicle based on a traffic violation.

The Evidence Obtained is Suppressed, as the Stop Was Unconstitutional.

The evidence derived from the search of the Defendant’s car must be suppressed because Officer Davis did not have probable cause to stop the vehicle for a traffic violation.²⁷ “It has long been established that any evidence recovered or derived in violation of the Fourth Amendment may not be introduced at trial for the purpose of proving the defendant’s guilt.”²⁸ Here, because the basis for the

²⁴ 21 Del. C. § 101(22).

²⁵ See *McDonald v. State*, 947 A.2d 1073, 1079 (Del. 2008).

²⁶ *McAllister v. State*, 807 A.2d 1119, 1126 (Del. 2002).

²⁷ See *McDonald*, 947 A.2d at 1079.

²⁸ *Id.*

stop was not valid and thus, the Defendant's Fourth Amendment rights were violated. Thus, the evidence obtained as a result of the stop is suppressed.

Conclusion

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

IT IS SO ORDERED.

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