

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

STATE OF DELAWARE,	)	
	)	
v.	)	ID No. 0812012979
	)	
WAYNE B. KING,	)	
Defendant.	)	

**ORDER**

AND NOW, TO WIT, this 15<sup>th</sup> day of July, 2009, **IT IS HEREBY**

**ORDERED** as follows:

**Background**

On December 17, 2008, the Wilmington Police received a report from Tandra Chambers (“Chambers”), an ex-girlfriend of the defendant Wayne B. King (“King”), that she had been taken against her will from Wilmington by several of King’s associates to his apartment in Newark, Delaware. She told the police that King’s associates assaulted her at the apartment in King’s presence. She reported that one of King’s associates, Jasmine Coleman (“Coleman”), burned her face with a lit cigarette. The burns on her face were visible to the police. She also reported that King handed a black handgun to another associate, Vincent Hicks (“Hicks”), who then shoved the barrel of the gun into her mouth.

Chambers was able to identify King and his associates. The police confirmed that King was a Level 3 probationer. He had been convicted of Aggravated Act of Intimidation in 2007 and Possession of Ammunition by a Person Prohibited in 2008. The police contacted King's probation officer, Richard Cerminaro and told him about the allegations made by Chambers. Probation Officer Cerminaro verified that King was on probation and that his address matched the address given by Chambers. Based on this information, he sought and received verbal permission from his supervisor to conduct an administrative search of King's apartment. No request was made or approved to search King's vehicle.

Probation Officer Cerminaro along with several other probation and police officers effectuated a search of King's apartment on December 18, 2008 at approximately 1:45am. When the officers entered King's apartment, King was present along with his associates Coleman and Hicks. Probation Officer DuPont discovered that Coleman was sitting on a black semi-automatic handgun magazine that was loaded with 13 rounds of .380 ammunition. The officers also found 2 rounds of 12 gauge shotgun ammunition on top of the television.

While continuing their search, the officers found a set of keys in King's bedroom. King admitted that the keys belonged to him but he refused to tell the officers where the car was located. King told the officers that the keys were to a Honda. He did not disclose that the Honda was registered to his mother. The

police located the Honda in the parking lot, approximately 10 to 12 feet away from King's apartment. Inside King's apartment, the officers noticed several decals and business cards with the logo "Immoral Records" inscribed on them. The same logo appeared in the back window of the Honda parked near King's apartment. The officers placed the key into the Honda and it unlocked. The officers searched the vehicle and found a 12 gauge double-barreled shotgun on the floor of the backseat. Subsequent to the search, the police discovered that the Honda belonged to King's mother.

King was arrested and charged with one count of Possession of a Firearm by a Person Prohibited and two counts of Possession of Ammunition by a Person Prohibited.

### **The Law**

It is well established under Delaware law that probationers do not have the same liberties as ordinary citizens.<sup>1</sup> For that reason, "administrative searches of probationer homes require only reasonable grounds, even if the probation officers do not satisfy each technical requirement of the search and seizure regulations of the Department of Correction."<sup>2</sup> A search is based on reasonable grounds where

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<sup>1</sup> *Donald v. State*, 903 A.2d 315 (Del. 2006), citing *Griffin v. Wisconsin*, 483 U.S. 868 (1987); *McAllister v. State*, 807 A.2d 1119 (Del. 2002).

<sup>2</sup> *Everett v. State*, 930 A.2d 928 (Del. 2007); citing *Donald v. State*, 903 A.2d at 319.

the “totality of the circumstances” indicates that the officer had a “particularized and objective basis” for suspecting legal wrongdoing.<sup>3</sup>

### **Discussion**

King concedes in his suppression motion that Probation Officer Cerminaro was authorized to search his apartment because he had personal “knowledge or sufficient reason to believe” that he was involved in criminal activity. However, during his oral presentation, he challenged the administrative search on the grounds that Probation Officer Cerminaro did not make an independent assessment of reliability of the information provided to him by the Wilmington Police. The Court does not agree.

Probation Officer Cerminaro received reliable information from the police who spoke directly to the victim. The victim was personally acquainted with King and she was able to provide specific facts relating to incident. For example, she was able to: (1) identify King’s associates and give a description of the blue minivan that they drove; (2) identify King and the address of his apartment; (3) give a detailed account of the assault which was corroborated by the burns on her face and bruises on her body; and (4) describe the firearms in King’s apartment. Probation Officer Cerminaro was aware of King’s recent conviction for a crime of violence and an unlawful possession of ammunition charge. He followed

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<sup>3</sup> *Sierra v. State*, 958 A.2d 825 (Del. 2008); citing *United States v. Arvizu*, 534 U.S. 266, 273 (2002), *see, e.g., Fuller v. State*, 844 A.2d 290, 291-93 (Del. 2004).

administrative procedures by reviewing with, and gaining approval from, his supervisor. Under these facts, the Court finds that Probation Officer Cerminaro had a particularized and objective basis to believe that King was involved in illegal activity. Therefore, the administrative search of the apartment was proper.

King's reliance on *Culver v. State*<sup>4</sup> is misplaced. That case dealt with the proper procedure for a probation officer to follow when he receives an anonymous tip from the police. The Court found that anonymous tips received by police and relayed to probation officers do not provide reasonable suspicion for probation officers to conduct an administrative search of a probationer's home. In cases where the police receive an anonymous tip, probation officers are required to independently determine whether the tip provides reasonable suspicion for an administrative search. Those are not the facts of this case. Here, Probation Officer Cerminaro was not faced with assessing the credibility and reliability of an anonymous tip. Rather, he received direct evidence from the police who received their information directly from the known victim.

The remaining issue is whether the search of the Honda was lawful. King argues that the search of the Honda was outside the scope of the administrative search because the vehicle did not belong to him, it belonged to his mother.

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<sup>4</sup> 956 A.2d 5 (Del. 2008).

Although the probation officers did not receive prior authorization to search the Honda, they had reasonable grounds to do so.

This Court has held that it is reasonable for probation officers to search areas that they reasonably believe are possessed or controlled by the probationer. For example, in *State v. Redden*<sup>5</sup> this Court was faced with the issue of whether a probation officer can search the bedroom of a non-probationer during the administrative search of a probationer's residence. In making that determination, the Court focused on whether the administrative search was reasonable based on the information known to the officers at the time of the search. At the time of the search, the probationer told the officers that the rear bedroom belonged to him. The officers entered the bedroom and found drug paraphernalia in plain view. The officers later discovered that the rear bedroom belonged to the probationer's roommate who was not on probation. The defendant/non-probationer was charged with several offenses relating to the contraband found in his bedroom. He moved to suppress all the evidence seized in the search of his bedroom. The Court held that the search was permissible because the probationer explicitly told the officers twice that it was his bedroom and he demonstrated control of the bedroom by leading the officers to it, opening the door, and allowing them to enter.

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<sup>5</sup> 2003 WL 22853419 (Del. Super., Oct. 22, 2003).

Under this standard, the probation officers had reasonable grounds to search the Honda because King demonstrated that he had control over it. The officers found the keys to the Honda in King's bedroom, King told the officers that the keys belonged to him, the car was parked in the apartment parking lot in close proximity to King's apartment and the Honda had an "Immoral Records" decal on the back windshield that matched the logo found in King's apartment. Under these facts, the probation officers acted reasonably in searching the Honda based on King's apparent control over it.<sup>6</sup> Accordingly, the search of the Honda was proper.

**IT IS SO ORDERED.**

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Judge Calvin L. Scott, Jr.

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<sup>6</sup> The State concedes that King has standing to challenge the search of the car based on his possessory interest in the vehicle and the nature of his control over it.