

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

STATE OF DELAWARE,)	
)	
v.)	ID No. 0902019499
)	
EDUARDO PIERCE,)	
Defendant.)	

ORDER

AND NOW, TO WIT, this **25th** day of **September, 2009, IT IS**

HEREBY ORDERED as follows:

Findings of Fact

In the early morning of February 24, 2009, Officers Popp and Graham of the Delaware State Police initiated a traffic stop of Aisha Torres,¹ a level I probationer. She had a passenger in her car that was also on probation. During the stop, the officers discovered marijuana in the car but they were unable to determine who the marijuana belonged to. The officers permitted Ms. Torres to leave the scene in her car but they took the other probationer to his residence to conduct an administrative search. The officers did not find any contraband at his house. The officers next checked the last known

¹ Also identified as Lesha Torres in the transcript.

address for Ms. Torres which they learned to be 34 Egret Court in Newark. The officers called their supervisor and, after discussing the earlier vehicle stop where marijuana was found, the officers obtained approval to conduct an administrative search on Ms. Torres' residence.

Approximately one hour after Ms. Torres had been pulled over, Officers Popp and Graham and other members of the Delaware State Governor's Task Force arrived at 34 Egret Court to conduct an administrative search. Upon arriving at the residence, the police smelled burning marijuana emanating from the open kitchen window. The officers looked inside the window and saw the defendant wearing an oversized black jacket with his left hand in his pocket. The officers knocked on the window and the defendant walked over. Once the defendant realized that police officers were outside, he quickly stepped away from the window. The defendant never removed his left hand from his pocket.

The officers knocked on the front door of the residence and Jessica Vega answered. Ms. Vega informed the officers that Ms. Torres no longer lived at the residence but she permitted the officers to enter. Upon entering the residence, the officers detected a strong odor of marijuana coming from a back room. The officers saw the defendant in the back room with several other individuals. He was lying in bed pretending to be asleep. The black

jacket he was wearing minutes earlier was on the ground in the corner of the room. The officers asked the individuals in the room for identification.

Officer Graham went out to the police car to begin checking the names of the individuals for active capiases.

Officer Popp picked up the black coat and asked the defendant if it belonged to him. The defendant admitted that it was his coat. Officer Popp then conducted a pat-down search of the coat for weapons. He felt two small objects in the coat which he testified he immediately recognized as vials commonly used to carry drugs. He concluded that the objects were contraband and he removed them from the defendant's coat. The vials contained marijuana. As Officer Popp was removing the vials from the coat, Officer Graham returned from the car and informed the officers that the defendant had two active capiases.

The defendant was placed under arrest and searched incident to arrest. Along with the vials of marijuana, several bags of cocaine were found in the defendant's coat pocket. Ms. Vega gave the officers permission to search the living room. There, the officers found more vials and bags of marijuana. The packaging of the marijuana matched the packaging found in defendant's jacket. The defendant was charged with Trafficking in Cocaine, PWID

Cocaine, Maintaining a Dwelling, Possession of MJ, and Possession of Paraphernalia.

Parties' Contention

In his motion, the defendant contends that the search of 34 Egret Circle and his coat were illegal. Specifically, he claims that the search of 34 Egret Circle was illegal because the officers did not follow proper procedure in obtaining approval for the search. The defendant further claims that even if the search was properly obtained, the evidence found in his coat should still be suppressed because the search of his coat exceeded the scope of an administrative search. In response, the State argues that the defendant lacks standing to challenge the legality of the administrative search. In the event that the defendant does have standing, the State argues that the officers followed proper procedure in obtaining approval to conduct the administrative search. Finally, the State argues that the search of the defendant's coat was lawful.

Discussion

The Administrative Search

At the suppression hearing, the officers testified that they complied with proper procedures for conducting an administrative search. Their supervisor, Patrick Cronin, later testified about the details of the telephone conversation

that took place to obtain permission for the administrative search. The testimony indicates that Officer Lewis spoke to Officer Cronin about the vehicle stop. Officer Lewis communicated to Officer Cronin that both occupants of the vehicle were on probation, marijuana was found under a seat in the car, and there was an odor of marijuana emanating from the car. Based on the phone conversation, Officer Cronin authorized the administrative search. Defendant argues, despite this testimony, that the State has failed to establish that the administrative search was lawfully conducted.

The burden is on the defendant to show he has standing to avail himself of the protections of the Fourth Amendment. “The proponent of a motion to suppress has the burden of establishing that his own Fourth Amendment rights were violated by the challenged search and seizure.”² Standing “depends not upon a property right in the invaded place but upon whether the person ... has a legitimate expectation of privacy in the invaded place.”³

Defendants who are merely present when a residence is searched lack standing to object to the search because they do not have a reasonable expectation of privacy in the residence.⁴ An overnight guest, however, does have a reasonable expectation of privacy in the residence where they are

² *Rakas v. Illinois*, 439 U.S. 128, 131 (1978).

³ *Id.* at 143.

⁴ *Thomas v. State*, 467 A.2d 954, 957 (Del. 1983).

staying and thus have standing to object to an unlawful search of that residence.⁵

In this case, the State presented evidence that the defendant lives in Elkton, Maryland, not at 34 Egret Circle, but that he was an overnight guest at the residence. As an overnight guest, the defendant has standing to contest the legality of the administrative search.

The record reflects that the officers complied with procedural requirements of Probation and Parole Procedure 7.19 and received proper authorization to search Ms. Torres' known address. Probationers do not enjoy the same liberty rights as ordinary citizens.⁶ Therefore, "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."⁷ Officer Cronin based his decision to grant the administrative search on the information conveyed by Officer Lewis that marijuana was found under a seat in the car Ms. Torres was driving, the vehicle smelled of marijuana, and personal knowledge of Ms. Torres' past criminal history involving drugs. The facts and circumstances recited above provide a sufficient basis to find reasonable grounds existed to

⁵ *Hanna v. State*, 591 A.2d 158 (Del. 1991).

⁶ *McAllister v. State*, 807 A.2d 1119, 1124 (Del. 2002).

⁷ *Donald v. State*, 903 A.2d 315, 318 (Del. 2006).

suspect that Ms. Torres was in violation of probation and, therefore, that the search of the residence was valid.

Even if the administrative search was not properly authorized, the search of 34 Egret Court was still valid because it was conducted pursuant to voluntary consent. Generally, searches and seizures require authorization by a warrant supported by probable cause.⁸ A recognized exception to this rule is a search conducted pursuant to a valid consent.⁹ Consent is valid when it is given voluntarily by someone with the authority to give the consent.¹⁰ The record reflects that the consent to search the residence was given by Ms. Vega. Ms. Vega currently lived at 34 Egret Court when she gave consent to search the residence. Because there is no indication that the consent was coerced or was otherwise involuntary, the search of 34 Egret Court was valid, regardless of the authorization for the administrative search.

The Seizure of Contraband

The next issue for the Court is whether Officer Popp was justified in conducting a pat-down search of the defendant's coat. The defendant has standing to challenge the pat-down search because he has a reasonable expectation of privacy in his personal belongings.

⁸ *Hanna*, 591 A.2d at 162.

⁹ *Scott v. State*, 672 A.2d 550, 552 (Del. 1996).

¹⁰ *Id.*

Pursuant to 11 *Del. C.* § 1903, an officer may conduct a search for concealed weapons if he has reasonable ground to believe that his safety is in jeopardy.¹¹ Officer Popp testified that he was concerned about officer safety based on the fact that the defendant had been wearing the coat only minutes earlier and he had his hands in his pockets. He found it suspicious that the defendant did not remove his hands at any point while in the kitchen and then he pretended to be asleep when they entered the back room. Based on these facts, Officer Popp had a reasonable belief that the defendant may have been concealing a weapon in his coat.

Having found that the pat down search of the defendant's coat was lawful, the Court must determine whether the seizure of contraband from within the coat was constitutional. The "plain touch doctrine" provides that "a police officer may seize non-threatening contraband detected during a pat down search if the identity of that contraband is immediately apparent from plain sight or plain touch."¹² The doctrine is based upon the premise that if a police officer lawfully pats down a suspect's outer clothing and feels an object whose contour and mass makes its identity immediately apparent, there has been no invasion of the suspect's privacy beyond that already authorized by

¹¹ See also *Terry v. Ohio*, 392 U.S. 1 (1968).

¹² *Mosley v. State*, 748 A.2d 407 (Del. 2000).

the officer's search for weapons.¹³ Officer Popp testified that as he was patting down the defendant's coat, he felt two small objects that he immediately knew to be vials which, based on his experience, he knows are commonly used to carry drugs. Pursuant to the plain-touch doctrine, it was lawful for Officer Popp to seize the items as evidence.¹⁴

For the above mentioned reasons, the defendant's Motion to Suppress is **DENIED.**

IT IS SO ORDERED.

Judge Calvin L. Scott, Jr.

¹³ *Minnesota v. Dickerson*, 508 U.S. 366, 376-77 (1993).

¹⁴ *State v. Matos*, 2001 WL 1398585 (Del. Super., Oct. 02, 2001) (citing *Hunter v. State*, 783 A.2d 558 (Del. 2001)).