

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

STATE OF DELAWARE,)	
)	
v.)	ID No. 00903020716
)	
MARCELLOUS JONES,)	
Defendant.)	

ORDER

AND NOW, TO WIT, this 11th day of September, 2009, **IT IS HEREBY ORDERED** as follows:

Background

On March 13, 2009, Defendant Marcellous Jones (“Jones”) was working as a security guard for a private party at the Local 74 Plumbers and Pipefitter Banquet Facility. Cpl. Popp of the Delaware State Police and other members of the Governor’s Task Force responded to the Banquet Facility. According to Cpl. Popp, the sole purpose the officers presence at the party that night was to confirm that the security guards were licensed to provide security pursuant to 24 *Del. C.* § 1314.¹ Two officers entered the party and asked the security guards to come outside.

¹ This section of the Delaware Code is entitled “Security guard license requirements.” It requires noncommissioned security guards to be at least 18 years of age and have no felony or drug convictions.

When the guards came outside, they were greeted by approximately 10 to 12 uniformed police officers. The officers asked the guards to produce their identification. When one of the officers asked Jones for his identification, Jones told him that he had already shown his identification to another security guard and he turned and walked behind the other security guards towards the side of the entrance. Probation Officer Lewis was standing on the sidewalk and he saw Jones drop something on the ground. Officer Lewis walked over to where Jones had been standing and found a plastic bag containing 22 smaller bags of cocaine on the ground. Jones was subsequently arrested.

Jones was searched incident to arrest. The police found a plastic bag containing 40 oxycodone pills and \$2951 in cash on his person. Jones told the officers that he purchased the oxycodone pills for his personal use. Jones was charged with Trafficking in Cocaine, Possession With Intent to Deliver Cocaine and two counts of Possession of a Controlled Substance.

On March 24, 2009, Cpl. Popp applied for a warrant to search Jones' residence at 1003 Liberty Road. The affidavit for the warrant set forth the facts summarized above. The affidavit also included an extensive history of drug activity taking place at 1003 Liberty Road. The warrant was approved and on March 24, 2009, the police executed a search of 1003 Liberty Road.

The search produced a total of \$5,600, two handguns with obliterated serial numbers, and 114.5 grams of cocaine.

Discussion

The “Seizure”

The first issue before the Court is whether Jones was illegally seized. The standard for determining whether a seizure has occurred is whether a reasonable person would have believed he or she is free to leave and ignore the police presence. *Jones v. State*, 745 A.2d 856, 869 (Del. 1999).

The encounter between the officers and Jones did not constitute a seizure within the protection of the Fourth Amendment. Jones claims that the large police presence at the banquet hall constituted a seizure because a reasonable person would not feel free to leave under those circumstances.

The Court agrees that in some instances, such a large police presence could be construed as a show of authority sufficient to constitute a seizure.

However, in this case, even if the police presence amounted to a show of authority, it is clear that Jones refused to submit to that authority. When one of the officers asked Jones for his identification, Jones refused and walked away from the officer. There was no evidence presented that the officer attempted to prevent Jones from walking away. It can hardly be said that Jones was seized when he was able to walk freely about the crowd and ignore the officer’s request to show identification. It was not until Officer

Lewis saw Jones drop a bag of cocaine on the ground that he was seized and arrested. There was clearly probable cause to support Jones' arrest at that time. Accordingly, the Court finds that Jones was not illegally detained.

The Search

The next question before the Court is whether the four corners of the affidavit provided sufficient probable cause to search Jones' residence. Jones argues that that the affidavit in support of the search warrant was based upon stale criminal history and therefore failed to provide a substantial basis for the magistrate to have issued the search warrant. The Court does not agree.

When Jones was detained, he was found to be in possession of 22 bags of cocaine and \$2,951. These facts suggest that Jones was selling drugs. Jones was also carrying 40 oxycodone pills which he admitted were for his personal use. Cpl. Popp testified that based on his training and experience, it is likely that a suspect who is selling and using drugs typically stores drugs at his house. Although this alone may not be sufficient to establish probable cause, the history of criminal activity taking place at 1003 Liberty Road provides the missing link.

This case involves more than an isolated incident of criminal activity. Rather, the affidavit reveals a rather extensive history of criminal conduct

occurring at 1003 Liberty Place. For example, the search warrant provides that in September 2007, more than 20 grams of crack, 3.5 grams of marijuana and \$220 were seized at 1003 Liberty Place. The search warrant also provides that in May 2003, two separate searches of 1003 Liberty Road revealed that guns and controlled substances were being kept in the house. At all relevant times, Jones lived at the residence.

The information in the affidavit establishes that Jones lives in a house notorious for harboring illegal drugs and firearms and that he was recently arrested for possession of large quantities of drugs and money. Under the totality of these circumstances, it was reasonable to believe that evidence of criminal activity would be found at his residence. Accordingly, the Court finds sufficient probable cause to support the search of 1003 Liberty Road.

For the reasons discussed above, Jones' Motion to Suppress is **DENIED.**

IT IS SO ORDERED.

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