

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

**STATE OF DELAWARE** )  
 )  
 v. )  
 )  
**WILLIAM BURTON** ) ID. No. 1301022871  
 and )  
**BERNARD J. GUY,** ) ID. No. 1301022875  
 )  
 Defendants. )

*Submitted: May 17 and June 3, 2013*

*Decided: September 9, 2013*

*Upon Consideration of Defendants’  
Motions to Suppress Evidence, **DENIED.***

**ORDER**

Sarita R. Wright, Esquire, Deputy Attorney General, Department of Justice,  
Wilmington, Delaware, Attorney for State

Kevin J. O’Connell, Esquire, Public Defender’s Office, Wilmington, Delaware,  
Attorney for William Burton

Albert J. Roop, Esquire, Collins & Roop, Wilmington, Delaware, Attorney for  
Bernard J. Guy

**RAPPOSELLI, J.**

Upon consideration of the Defendants' Motions to Suppress Evidence, the State's opposition, and the record of the case, it appears that:

1. Defendant William D. Burton ("Burton") was indicted for Drug Dealing Cocaine, Aggravated Possession of Cocaine, Illegal Possession of Marijuana, and Possession of Drug Paraphernalia. Defendant, Bernard J. Guy ("Guy") was indicted for Illegal Possession of Heroin. An evidentiary hearing was heard on August 16 and 23, 2013.

2. The State presented evidence through witnesses Detective Joseph Leary, Probation Officer Vettori, and Supervisor Craig Watson that on January 31, 2013, as part of Operation Safe Streets, Detective Leary of the Wilmington Safe Streets Unit received a tip from a past proven reliable informant ("PPR Informant") that a black male known as "David" who lived at 1232 N. Thatcher Street in Wilmington was selling crack cocaine from this residence. The PPR Informant stated further that "David" lived on the second floor and that he was on probation and was a sex offender.

3. Detective Leary testified that he had previously worked with the PPR Informant in acquiring information that has led to successful arrests. Probation and Parole Officer Daniel Collins corroborated some of the information by checking probation records, which confirmed that Burton (middle name "David"), a Level 2 sex-offender, resided at that address. Detective Leary then sent a photograph to the PPR Informant who identified the person as the same "David." Officer Collins requested authorization from Supervisor Craig Watson to conduct an administrative search, which was granted by Supervisor Watson following a conference.

4. At approximately 8 p.m. on January 31, 2013, both members of the Wilmington Safe Streets Unit and Probation and Parole responded to the residence. While conducting a brief surveillance from about 1 block away, they observed Burton entering the residence with another black male. Officers Collins and Vettori proceeded to knock on the door, which was answered by Guy. When the officers told Guy that they were there to see Burton, Guy told them to wait outside while he went back inside the residence. After several minutes passed, the officers knocked again and when Guy answered, he told the officers that Burton was not there. However, after instructing Guy to open the door so that they could confirm for themselves, the officers entered the residence, and immediately saw Burton at the top of the stairs. So too, upon entering the residence, Guy's behavior became aggressive and dangerous. In particular, Guy threatened to have his dog, described as a large black dog, attack the officers. Both officers testified that they had great concern for their safety given Guy's size (at least one foot taller than the officers), and his aggressive and hostile behavior. Guy displayed such aggression toward them that the officers decided backup needed to be called. When the officers were unable to deescalate Guy's behavior, they placed handcuffs on him and conducted a pat-down of his person which yielded 17 bags of heroin.

5. During this time, the officers secured Burton with handcuffs and informed him they would conduct an administrative search of his room. Upon entering the room, they observed baggies, a white plate with an off-white substance, a razor blade with white residue, a black digital scale, clear zip-lock bags containing marijuana, a grinder, smoking papers, etc. The white and green substances tested positive for cocaine (preliminary weight of 29 grams) and marijuana (preliminary weight of 1 gram), respectively. Both defendants move

this Court for an order to suppress evidence seized following the administrative search of Defendant Burton's residence on January 31, 2013.

6. "As a general rule, the burden of proof is on the defendant who seeks to suppress evidence."<sup>1</sup> However, once the defendant has established a basis for his motion, the burden shifts to the government to show that the search or seizure was reasonable.<sup>2</sup> "The burden of proof on a motion to suppress is proof by a preponderance of the evidence."<sup>3</sup>

### **I. Defendant Burton**

7. Burton claims that Probation and Parole's administrative search of his residence violated his rights under the Fourth Amendment of the United States Constitution, Article I, Section 6 of the Delaware Constitution, Title 11, Section 4321 of the Delaware Code, and Probation and Parole Procedure 7.19. The crux of Burton's argument is that the officers failed to make an independent determination of the reliability of the informant that provided information as the basis of the administrative warrant and further failed to corroborate the information provided by the informant. In support of this argument, Burton relies on the cases of *Culver*

---

<sup>1</sup> *State v. Caldwell*, 2007 WL 1748663, at \*2 (Del. Super. May 17, 2007) (quoting *United States v. Johnson*, 63 F.3d 242, 245 (3d Cir. 1995)).

<sup>2</sup> *Caldwell*, 2007 WL 1748663, at \*2 (citing *Johnson*, 63 F.3d at 245)

<sup>3</sup> *State v. Abel*, 2011 WL 5221276, at \*2 (Del. Super. Oct. 31, 2011) (quoting *State v. Iverson*, 2011 WL 1205242, at \*3 (Del. Super. March 31, 2011)).

*v. State*<sup>4</sup> and *Sierra v. State*.<sup>5</sup> This Court distinguishes the facts of this case from both *Culver* and *Sierra*.

8. In *Culver*, the “police received the tip from an ‘unknown caller with no past proven reliability.’ The caller did not have personal knowledge of criminal activity, but rather stated that ‘it was obvious that [Culver] was involved in drug activity based on the volume of vehicles that would come to his residence, stay there for a few minutes and leave.’”<sup>6</sup> The police then relayed that tip to a parole officer, who used it as the basis for executing an administrative warrant. In finding that the warrant was improperly executed, the *Culver* Court affirmed that Probation and Parole Procedure “7.19 requires probation officers to assess any ‘tip’ relayed to them and independently determine if a reasonable suspicion exists that would, in the ordinary course of their duties, prompt a search of a probationer's dwelling.”<sup>7</sup>

9. The Delaware Supreme Court has held that probation officers may conduct a warrantless search of a probationer’s residence as long as that search is supported by reasonable suspicion.<sup>8</sup> The validity of a warrant does not require satisfying all of the technical requirements, but rather is determined by assessing overall reliability.<sup>9</sup>

---

<sup>4</sup> *Culver v. State*, 956 A.2d 5, 8 (Del. 2008).

<sup>5</sup> *Sierra v. State*, 958 A.2d 825, 827 (Del. 2008).

<sup>6</sup> *Culver*, 956 A.2d, at 8.

<sup>7</sup> *Id.* at 7.

<sup>8</sup> *Id.* at 11; *Sierra*, 958 A.2d, at 828; *Donald v. State*, 903 A.2d 315, 318 (Del. 2006).

<sup>9</sup> *Pendleton v. State*, 990 A.2d 417, 420 (Del. 2010) (“substantial compliance with departmental guidelines alone-not absolute compliance-sufficiently withstands review of an administrative search.”).

10. In this case, the PPR Informant had information that went beyond an inference or belief of criminal activity. The PPR Informant identified Burton as “David”, confirmed this via photograph, knew the exact location of the alleged drug activity, not only by address but also by floor on the house, knew the exact drug and that Burton was both on probation and was a sex offender. This information indicates that the informant had some personal knowledge not readily available to the public. Thus, the reasonableness of the search in this case can be distinguished from *Culver* in regards to both the quality of information, and source of the information. The informant in this case expressly identified criminality distinct from speculative hunch of the informant in *Culver*. So too, the informant in this case was past proven reliable, unlike in *Culver* where there was no evidence regarding the informant’s past reliability.

11. This Court also distinguishes the facts of this case from *Sierra*. In *Sierra* the officer did not know the identity of the Confidential Informant (“CI”), nor whether the CI “was ‘past proven reliable.’”<sup>10</sup> These are clearly distinct from the facts of this case where the information came from a PPR Informant known to Detective Leary and who had been past proven reliable.

12. In summary, as to Burton, the Court finds that the officers had reasonable grounds to search Burton’s residence, and all evidence seized pursuant to that search was lawful and met statutory and constitutional requirements.

## **II. Defendant Guy**

13. Guy argues that he was subjected to an unlawful search and seizure in violation of both federal and state constitutions and 11 Del. Section 1902. In

---

<sup>10</sup> *Sierra*, 958 A.2d at 827.

support of this argument, Guy rests on *Holden v. State*,<sup>11</sup> claiming that the record does not support an objective showing of the required suspicion. The Court disagrees.

14. An officer may “forcibly stop and detain a person” if he has a reasonable articulable suspicion that a crime has just been, was being, or was about to be committed.<sup>12</sup> This is an objective test, in which the necessary level of suspicion “is considerably less than proof of wrongdoing by a preponderance of the evidence” and “is obviously less demanding than that for probable cause.”<sup>13</sup>

15. A frisk of an individual is justified when “a reasonably prudent man in the circumstances could be warranted in the belief that his safety or that of others was in danger.”<sup>14</sup> When such a safety concern is present, the use of handcuffs may be justified if reasonable under the totality of the circumstances.<sup>15</sup> The “officer need not be absolutely certain that the individual is armed; the issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger.”<sup>16</sup> “[D]ue weight must be given . . . to the specific reasonable inferences which he is entitled to draw from the facts in

---

<sup>11</sup> *Holden v. State*, 23 A.3d 843, 850 (Del. 2011).

<sup>12</sup> *Coleman v. State*, 562 A.2d 1171, 1174 (Del. 1989); *Holden*, 23 A.3d. at 847 (citing 11 Del. C. § 1902).

<sup>13</sup> *United States v. Sokolow*, 490 U.S. 1, 7 (1989).

<sup>14</sup> *Holden*, 23 A.3d at 850; *State v. Abel*, 68 A.3d 1228, 1238 (Del. 2012), *as amended* (Jan. 22, 2013).

<sup>15</sup> *State v. Biddle*, 9506006939, 1996 WL 453306 (Del. Super. June 25, 1996) *on reargument*, 9506006939, 1996 WL 527323 (Del. Super. Aug. 9, 1996) *aff'd*, 712 A.2d 475 (Del. 1998).

<sup>16</sup> *Terry v. Ohio*, 392 U.S. 1, at 27 (1968).

light of his experience.”<sup>17</sup> This Court must examine the totality of the circumstances “as viewed through the eyes of a reasonable, trained police officer in the same or similar circumstances, combining objective facts with such an officer’s subjective interpretation of those facts.”<sup>18</sup>

16. In this case, Guy’s uncooperativeness began at the outset of the interaction, when he lied to the officers regarding Burton’s presence in the home. When the officers attempted to go into the residence, Guy threatened to unleash an attack dog on them. The dog was described as a large black dog that was both seen and heard by the officers. Guy, approximately one foot taller than the officers, continued to shout and exhibit extremely hostile behavior. Despite continued efforts on the part of the officers to calm Guy down, his hostility continued to the point where both officers testified that they feared for their personal safety, and called for immediate back up. Thus, unlike the *Holden* decision, wherein the motorcyclist defendant was neither violent, aggressive nor demonstratively hostile, there is no question in this case that the explicit threats and continued hostility of Guy amounted to a reasonable concern for officer safety justifying the protective search.

17. In summary, the Court finds that the officers had reasonable suspicion to detain Guy and conduct the pat-down that led to the seizure of evidence. Therefore, the evidence seized pursuant to the pat-down was lawful and met statutory and constitutional requirements.

---

<sup>17</sup> *Id.*

<sup>18</sup> *Jones v. State*, 745 A.2d 856, 861 (Del. 1999) (citing *United States v. Cortez*, 449 U.S. 411, 417-18 (1981)).



*State v. Burton/Guy*  
ID. No. 1301022871  
ID. No. 1301022875  
September 9, 2013

18. For these reasons, Defendants' Motions to Suppress are **DENIED**.

**IT IS SO ORDERED.**

/s/ Vivian L. Rapposelli  
Judge Vivian L. Rapposelli

cc: Prothonotary