

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

STATE OF DELAWARE,)

v.)

TERQUAN WATSON,)

Defendant.)

ID. No. 1409007613

ORDER

On this 8th day of May, 2015, **IT IS ORDERED** as follows:

Defendant's Motion to Suppress is **DENIED IN PART** and

GRANTED IN PART.

Julie A. Finocchiaro, Esq., Deputy Attorney General, Delaware Department of Justice, Wilmington, Delaware. Attorney for State of Delaware.

Kenneth L. Wan, Esq., 203 North Maryland Avenue, Wilmington, Delaware, 19804. Attorney for Defendant.

Scott, J.

Introduction

Before the Court is Defendant Terquan Watson's ("Defendant") Motion to Suppress. Defendant challenges the validity of both the warrantless vehicle search and the administrative search. Defendant argues that the warrantless search of his vehicle violated his Fourth Amendment right against unreasonable searches because there was not probable cause for a warrantless vehicle search. Defendant argues that the administrative search violated his Fourth Amendment right against unreasonable searches because the probation officer did not substantially comply with Department of Corrections Procedure 7.19. The Court has reviewed the parties' submissions and held a suppression hearing. For the following reasons, the Defendant's Motion to Suppress is **DENIED IN PART** and **GRANTED IN PART**.

Findings of Fact

On September 10, 2014, at approximately 11:30 pm, Governor's Task Force ("GTF") members were conducting proactive patrols in the area of the Omega Shopping Center. Detective Dudzinski testified that Officer Gliem of the GTF was parked in front of the Wawa in the Omega Shopping Center parking lot, while he and the other GTF members were out of view and parked on nearby streets.

Officer Gliem observed Defendant approach the passenger of a Volkswagen Passat that was parked in the Omega Shopping Center parking lot, and engage in what appeared to him to be a hand-to-hand drug transaction. Immediately after

this interaction with the passenger of the Volkswagen, Officer Gliem watched Defendant walk over and enter the front passenger seat of a Buick Regal, which was occupied by Sonia Dixon. Defendant remained in the Buick for approximately 30 seconds before exiting the vehicle. While Defendant was inside the vehicle, Officer Gliem saw what appeared to be a hand-to-hand drug transaction between Defendant and Dixon. After that brief interaction, Defendant then walked over to and entered the driver's seat of a Ford Focus. All three vehicles then drove away. Det. Dudzinski testified that Officer Gliem observed that neither Defendant, nor the occupants of the Volkswagen or Buick, patronized any of the stores in the Omega Shopping Center while parked in that lot. He also testified that, in Officer Gliem's training and experience, this behavior, together with the hand-to-hand interactions Officer Gliem observed, was indicative of criminal activity.

After the vehicles departed the Omega Shopping Center lot, GTF officers stopped and searched the Volkswagen and Buick. Det. Dudzinski was given Defendant's vehicle information, and proceeded to follow Defendant. The search of the Volkswagen did not yield any contraband. In searching the Buick, officers found a small amount of marijuana and money. Upon questioning the occupants of both vehicles, each initially denied having contact with Defendant in the Omega Shopping Center parking lot, but then said that they had brief contact with Defendant when asking him for a cigarette. Officer Tuohey of the GTF radioed

Det. Dudzinski the results of the search of the Buick. Det. Dudzinski then stopped Defendant in a nearby 7-11 parking lot.

Det. Dudzinski was the only officer in his patrol vehicle and conducting the stop of Defendant. For officer safety, Det. Dudzinski immediately removed Defendant from the vehicle, placed him in handcuffs and in the back of his patrol vehicle. Defendant was cooperative and compliant at all times during the stop. Det. Dudzinski then searched Defendant's vehicle, where he found 38 bags of heroin in a zippered pouch in the glove compartment. Det. Dudzinski arrested Defendant, and a search of Defendant's person incident to arrest yielded keys and \$350 cash in four bundles of small denominations. Det. Dudzinski testified that, in his training and experience, the bundles of money were packaged and in amounts that were indicative of the sale of heroin.

Upon learning that Defendant was on probation, Probation Officer Kelly of the GTF responded to the 7-11 parking lot, where Det. Dudzinski informed him that heroin was found in Defendant's vehicle. PO Kelly testified that he called Supervisor Willoughby, who verbally authorized an administrative search of Defendant's address of record, based on PO Kelly relaying to him that Defendant was on probation and that heroin was found in Defendant's vehicle.¹

¹ Supervisor Willoughby did not testify at the suppression hearing. Additionally, no Pre-Search Checklist or Arrest/Incident Report was submitted by the State. The only evidence regarding the authorization of the administrative search was this testimony by PO Kelly.

Defendant informed the officers that the Ford Focus he was driving belonged to his girlfriend, Kayla Brister, and asked that they bring him to her house to drop off her car keys before taking him to his residence to conduct the administrative search. Det. Dudzinski testified that, because Brister's house was nearby, they agreed to take Defendant there first. Upon arriving at Brister's residence, PO Kelly observed Defendant's vehicle, a Ford Crown Victoria, parked in front of the house. Based on this observation, PO Kelly then suspected that Defendant in fact resided at Brister's residence instead of his address of record. PO Kelly knocked on the door of Brister's residence and spoke with Brister's step-father, who told him that Defendant stayed there most nights.

Without contacting Supervisor Willoughby for separate approval, PO Kelly conducted the administrative search of Brister's residence, instead of Defendant's address of record. A search of Brister's bedroom yielded 7 grams of marijuana on the nightstand, and a handgun in a box under the bed with two magazines for the gun, one of which was loaded with ammunition.

Defendant was transported to the police station where he was read his *Miranda* rights and then interviewed by Det. Dudzinski. Defendant initially waived his *Miranda* rights and answered Det. Dudzinski's questions, but invoked *Miranda* when questioned about the heroin found in the vehicle. Det. Dudzinski asked one clarifying question as to whether Defendant wanted to talk about

anything else besides the heroin, to which Defendant responded and engaged in a short conversation.

Defendant filed this motion to suppress on March 6, 2015.

Discussion

I. Vehicle Search

An individual's right to be free from unreasonable governmental searches and seizures is secured by the Fourth Amendment of the United States Constitution.² The Fourth Amendment guarantees “the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures....”³ However, law enforcement officers may stop or detain an individual for investigatory purposes, but only if the officer has reasonable articulable suspicion to believe the individual to be detained is committing, has committed, or is about to commit a crime.⁴ A stop or detention constitutes a seizure of the person, but, in terms of duration and scope, it is a much more limited intrusion than an arrest.⁵

² See *Terry v. Ohio*, 392 U.S. 1, 8 (1968); *Quarles v. State*, 696 A.2d 1334, 1336 (Del. 1997).

³ U.S. Const. Amend. IV.

⁴ See *Terry*, 392 U.S. at 30; *Jones v. State*, 745 A.2d 856, 861 (Del. 1999); 11 *Del. C.* § 1902 ((a) A peace officer may stop any person abroad, or in a public place, who he has reasonable ground to suspect is committing, has committed or is about to commit a crime, and may demand of him his name, address, business abroad and destination [where he is going].).

⁵ See *Terry*, 392 U.S. at 30.

In determining whether there was reasonable suspicion to justify a detention, the Court defers to the experience and training of law enforcement officers.⁶ “[T]he police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant the intrusion.”⁷ An officer's subjective impressions or hunches are insufficient.⁸ There must be an objective justification for making the stop, but “reasonable suspicion is a less demanding standard than probable cause and requires a showing considerably less than preponderance of the evidence....”⁹ This determination is made by examining the totality of the circumstances surrounding the situation.¹⁰

There is also an automobile exception to the warrant requirement under the Fourth Amendment.¹¹ When the police have probable cause to believe that an automobile is carrying contraband or evidence, they may search the vehicle without obtaining a search warrant.¹² Probable cause exists “where the known facts and circumstances are sufficient to warrant a man of reasonable prudence in the belief that contraband or evidence of a crime will be found.”¹³ The probable

⁶ *Woody v. State*, 765 A.2d 1257, 1263 (Del. 2001); see *Jones*, 745 A.2d at 861.

⁷ *Jones*, 745 A.2d at 861 (quoting *Terry*, 392 U.S. at 21).

⁸ *Woody*, 765 A.2d at 1263.

⁹ *Illinois v. Wardlow*, 528 U.S. 119, 123 (2000).

¹⁰ *Jones*, 745 A.2d at 861.

¹¹ See *Harris v. State*, 806 A.2d 119, 130 (Del. 2002) (citing *Carroll v. United States*, 267 U.S. 132, 149, 45 S.Ct. 280, 69 L.Ed. 543 (1925); *Brinegar v. United States*, 338 U.S. 160, 164, 69 S.Ct. 1302, 93 L.Ed. 1879 (1949); *Maryland v. Dyson*, 527 U.S. 465, 466, 119 S.Ct. 2013, 144 L.Ed.2d 442 (1999)).

¹² *Tatman v. State*, 494 A.2d 1249 (Del. 1985) (citing *Carroll v. United States*, 267 U.S. 132, 153-54 (1925)); *United States v. Ross*, 456 U.S. 798 (1982).

¹³ *Harris*, 806 A.2d at 130 (citations omitted).

cause standard is a practical, nontechnical concept that must be measured by the totality of the circumstances.¹⁴ “[I]n gauging whether suspicious conduct rises to the level of probable cause, the assessment of probabilities that flows from the evidence ‘must be seen and weighed not in terms of library analysis by scholars, but as understood by those versed in the field of law enforcement.’”¹⁵

If probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle and its contents that may conceal the objects of the search.¹⁶ The justification to conduct a warrantless search does not vanish once the car has been immobilized.¹⁷ There is no requirement that the warrantless search of a vehicle occur contemporaneously with a lawful seizure. Delaware law has adopted this same probable cause standard and automobile exception to the warrant requirement.¹⁸

In this case, Det. Dudzinski had sufficient reasonable articulable suspicion to stop and detain Defendant based on the two hand-to-hand drug transactions Officer Gliem witnessed between Defendant and occupants of two other vehicles in the Wawa parking lot. Moreover, the rest of Defendant’s behavior, and that of the occupants of the Volkswagen and Buick, in the Wawa parking lot provided Officer

¹⁴ *Thompson v. State*, 539 A.2d 1052, 1055 (Del. 1988); *Illinois v. Gates*, 462 U.S. 213, 243-244, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983).

¹⁵ *Rosa v. State*, 602 A.2d 1081 (Del. 1991) (TABLE) (quoting *Gardner v. State*, 567 A.2d 404, 409 (Del. 1989)).

¹⁶ *State v. Manley*, 706 A.2d 535, 539 (Del. Super. 1996) (citations omitted).

¹⁷ *Id.*; *Michigan v. Thomas*, 458 U.S. 259, 261 (1982).

¹⁸ *See Manley*, 706 A.2d at 539; *Tatman*, 494 A.2d at 1251–52.

Gliem reasonable suspicion to believe Defendant and the occupants of the Volkswagen and Buick were engaged in criminal activity. Neither Defendant, nor the occupants of the other vehicles patronized any of the stores in the shopping center. Additionally, the duration of Defendant's interaction with the occupants of both vehicles was limited to the brief hand-to-hand transactions, after which Defendant and the two other vehicles immediately departed the parking lot. Det. Dudzinski testified that this behavior, in Officer Gliem's training and experience, was indicative of criminal activity. Similarly, in *Hall v. State*,¹⁹ the officers observed what, in their training and experience, appeared to be two hand-to-hand drug transactions between the defendant and two individuals. The *Hall* court held that these observations gave the officers reasonable suspicion to stop the defendant's vehicle for limited investigation under *Terry*.²⁰ As in *Hall*, these facts provided Det. Dudzinski reasonable articulable suspicion to believe that Defendant had engaged or was engaging in criminal activity.

Furthermore, under the totality of the circumstances, Det. Dudzinski had probable cause to conduct a warrantless search of Defendant's vehicle. The following factors demonstrate the sufficiency of probable cause in this case: (1) the two hand-to-hand drug transactions Officer Gliem observed between Defendant and the occupants of Volkswagen and Buick in the Omega Shopping Center

¹⁹ 981 A.2d 1106 (Del. 2009).

²⁰ *Id.* at 1108-09, 1111-13.

parking lot; (2) the rest of the occupants of the other two vehicles and Defendant's behavior in the Omega Shopping Center parking lot, which in Officer Gliem's training and experience, was indicative of criminal activity; and (3) contraband and money found as a result of the search of the Buick. The first two factors, as discussed above, provided Det. Dudzinski sufficient reasonable articulable suspicion to stop Defendant. However, prior to stopping Defendant, Officer Tuohey radioed to Det. Dudzinski the search results from the Buick and its occupant, Sonia Dixon. Officer Tuohey informed Det. Dudzinski that the officers had found marijuana and U.S. currency in Dixon's vehicle. All of this information was relayed to Det. Dudzinski prior to him stopping Defendant.

The Court, again, finds *Hall* analogous to the facts in this case. In *Hall*, the court held that the clear and strong odor of PCP emanating from the vehicle once the defendant was pulled over, together with the reasonable suspicion the officer already had, provided the officer with sufficient probable cause to conduct a warrantless vehicle search.²¹ Similarly, in this case, the hand-to-hand drug transactions Officer Gliem observed in the Omega Shopping Center parking lot, plus the contraband and money found as a result of the search of the Buick, provided Det. Dudzinski sufficient probable cause to conduct a warrantless search of the vehicle Defendant was driving. Moreover, this additional information regarding the Buick search results was relayed to Det. Dudzinski prior to him

²¹ *Id.* at 1113-14.

stopping Defendant. Therefore, under the totality of the circumstances, there was sufficient probable cause to believe contraband or evidence of criminal activity would be found in Defendant's vehicle to justify Det. Dudzinski warrantless search of the vehicle. Accordingly, Defendant's motion to suppress evidence found as a result of the vehicle search is **DENIED**.

II. Administrative Search

Probationers do not enjoy the same liberties as ordinary citizens.²² However, they do not surrender all of their privacy rights, and searches can only be conducted by probation officers when they have a reasonable basis to do so.²³ Restrictions on warrantless searches are relaxed due to the State's special interest and the supervisory nature of probation.²⁴ Delaware case law provides that warrantless searches of a probationer's residence are valid when the search is prompted by the probation officer's reasonable suspicion and is conducted in accordance with Department of Corrections ("DOC") procedure.²⁵

Probation and Parole Procedure Section 7.19²⁶ of the DOC regulations provides the procedure and considerations for an officer to follow for a warrantless

²² *Sierra v. State*, 958 A.2d 825, 827 (Del. 2008).

²³ *Id.* at 832.

²⁴ *Griffin v. Wisconsin*, 483 U.S. 868, 874 (1987).

²⁵ *State v. Reese*, 2010 WL 3707793, at *2 (Del. Super. Sep. 13, 2010); *State v. Watson*, 2009 WL 1228569, at *4 (Del. Super. May 1, 2009).

²⁶ The legislative authority behind the Department's regulations is 11 Del. C. 4321(d), which states, in part:

Probation and parole officers shall exercise the same powers as constables under the laws of this State and may conduct searches of individuals under probation

search of a probationer. Absent exigent circumstances, the officer and his supervisor must hold a case conference using an Arrest/Pre-Search Checklist as a guideline. Section 7.19 provides the factors to be considered when deciding whether to search:

- (1) Knowledge or sufficient reason to believe the offender possesses contraband.
- (2) Knowledge or sufficient reason to believe the offender is in violation of probation or parole.
- (3) Information from a reliable informant, indicating offender possesses contraband or is violating the law.
- (4) Information from the informant is corroborated.
- (5) Approval for the search had been obtained from a Supervisor.

Knowledge and reason to believe must be personal to the officer.²⁷ The probation officer must sign and date the Pre-Search Checklist form and the supervisor must approve the search by signing, dating and entering the time of his approval on the form.²⁸ The operating procedure for conducting the search is void if the search is not done within 24 hours of the supervisor's approval.²⁹ No later than one day following the search, the probation officer must complete an Arrest/Incident Report and attach the Arrest/Pre-Search Checklist to it.³⁰ DOC procedure requires the exigent circumstances to be listed in the Arrest/Incident Report if the

and parole supervision in accordance with Department procedures while in the performance of the lawful duties of their employment

²⁷ *Id.*

²⁸ *State v. Harris*, ID No. 0603019220, *2 (Del. Super. Feb. 27, 2007) (Bradley, J.) (Letter Op.).

²⁹ *Id.*

³⁰ *Id.*

supervisor's approval was not obtained or an Arrest/Pre-Search Checklist was not completed prior to the search.³¹

The Delaware Supreme Court has held that officers are not required to follow each of the technical requirements under the Department regulations.³² A warrantless administrative search of a probationer's residence is justified if the search "comported with the state regulation requiring that probationers be searched only for reasonable grounds."³³ Therefore, the officers must have "reasonable suspicion" or "reasonable grounds" for the search.³⁴ "Reasonable suspicion exists where the totality of the circumstances indicates that the officer had a particularized and objective basis for suspecting legal wrongdoing."³⁵ In *Pendleton v. State*,³⁶ the Delaware Supreme Court reiterated that Delaware precedent only requires substantial compliance with the department regulations and upheld a search when the Officer phoned his supervisor and they orally analyzed the information gathered, despite the checklist not physically being filled out. In other words, so long as the probation officers substantially comply with DOC regulations and have reasonable suspicion to search a probationer's residence, the

³¹ *Id.*

³² *Fuller v. State*, 844 A.2d 290, 292 (Del. 2004).

³³ *Id.* Similarly, the United States Supreme Court has held that "a warrantless administrative search of probationer's residence requires the probation officer to have "reasonable suspicion" or "reasonable grounds for the search." *Sierra*, 958 A.2d at 827 (citing *Griffin v. Wisconsin*, 483 U.S. 868, 872-73 (1987)). *See also, Donald v. State*, 903 A.2d 315, 318-19 (Del. 2006).

³⁴ *Sierra*, 958 A.2d at 827.

³⁵ *Id.*

³⁶ 990 A.2d 417 (Del. 2010).

search will be valid.³⁷ However, the probation officers' failure to at least substantially comply with Procedure 7.19 violates the "reasonableness" requirement within the meaning of the Fourth Amendment.³⁸ The State bears the burden of proving that its search was reasonable.³⁹

In this case, the State has failed to meet its burden of showing that the administrative search was reasonable under the Department guidelines and Procedure 7.19. The only evidence that the State offered to support the validity of the search was the testimony of PO Kelly. PO Kelly testified that he responded to the 7-11 parking lot where Det. Dudzinski had stopped Defendant after he learned that Defendant was on probation. Det. Dudzinski then informed PO Kelly that he found heroin as a result of a search of Defendant's vehicle. PO Kelly testified that he contacted his supervisor, Officer Willoughby, for approval of an administrative search of Defendant's residence. The extent of PO Kelly's verbal request for approval from Supervisor Willoughby consisted of PO Kelly informing Supervisor Willoughby that Defendant was on probation and that heroin was found in Defendant's vehicle. Supervisor Willoughby did not testify at the suppression hearing.

The procedure for obtaining approval to conduct an administrative search is not difficult to follow, nor is the required documentation difficult to prepare.

³⁷ *Sierra*, 958 A.2d at 828; *Pendleton*, 990 A.2d at 420.

³⁸ *Harris*, ID No. 0603019220, at *2.

³⁹ *McAllister v. State*, 807 A.2d 1119, 1123 (Del. 2002).

Furthermore, so long as probation officers at least substantially comply with DOC procedures, courts will uphold an administrative search as reasonable. For example, in *Pendleton* the court held that the probation officer has substantially complied with DOC procedures, and that granting the defendant's motion to suppress on the basis of the probation officer's failure to strictly comply would be to elevate form over substance.⁴⁰ Importantly though, the *Pendleton* court also stressed as support for its decision the analysis of the search checklist factors conducted by the probation officer and supervisor during their telephonic pre-search conference.⁴¹

However, this Court cannot find that the administrative search in this case even substantially complied with Procedure 7.19, based on almost an entire absence of evidence submitted by the State. Though physical completion of a Pre-Search Checklist prior to the search is not required for substantial compliance with Procedure 7.19, the State failed to offer either a Pre-Search Checklist or an Arrest/Incident Report. Moreover, completion of an Arrest/Incident Report is not only required under DOC procedures *following* an administrative search, but is of greater importance when a Pre-Search Checklist was not completed prior to the search. There is no documentary evidence to support the reasonableness of the search. Furthermore, there was very limited testimony as to PO Kelly and

⁴⁰ *Pendleton*, 2010 WL 625826, at *2.

⁴¹ *Id.*

Supervisor Willoughby's analysis of the checklist factors prior to the search for the Court to infer substantial compliance with the DOC procedures. As such, the Court finds that the State failed to meet its burden of showing that the administrative search substantially complied with Procedure 7.19, and therefore cannot find it reasonable within DOC procedures. Accordingly, Defendant's motion to suppress evidence found as a result of the administrative search is **GRANTED**.

Conclusion

For the foregoing reasons, Defendant's Motion to Suppress is **DENIED IN PART and GRANTED IN PART**.

IT IS SO ORDERED.

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