

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE, :
 :
 v. : ID No. 1504000557
 : In and for Kent County
 :
 EZEKIEL BENSON :
 :
 Defendant. :
 :

ORDER

Pending before the Court is Ezekiel Benson’s “(Defendant”) Motion to Suppress filed on December 18, 2015. The State filed a response on February 1, 2016. A hearing took place on February 15, 2016. At the end of the hearing, the parties requested to supplement the record with written submissions. This Order addresses that motion.

The invasion of a home without a warrant is serious business. As William Pitt said to Parliament, referencing our Fourth Amendment: In the poorest of homes, the wind may enter, the rain may enter, but the King of England may not enter – all his force does not cross the threshold of the tenement. It is in that context that the validity of a warrantless search of a home must be examined.

To begin, the question is not whether the police had probable cause, based upon a past-proven confidential informant’s tip, to stop and search Defendant for a weapon or illegal substances. From a review of the totality of the circumstances, it would appear that they did. That, however, is not the issue. Here, we have not a search conducted on the street, but a home entry. That is not a *Terry* search subject. It is an entirely different matter. So, whether the police could have confronted Defendant on Division Street, with the knowledge that they had, or whether they could have obtained a search warrant to enter the home – which they observed for

about a half an hour – is not determinative.

Accordingly, the State’s references to *Miller v. State*,¹ which concerns a stop (first attempted in an automobile) of a fleeing suspect out-of-doors in Wilmington; and *State v. Rankin*,² involving the search of trash bags on the street; and *Purnell v. State*,³ concerning searches following a *Terry* stop on the streets of Wilmington; and *Williams v. State*,⁴ which dealt with an encounter out in the community; and *State v. Doleman*,⁵ occurring on South New Street in Dover; are of very little assistance. Even *Woody v. State*,⁶ where the arrest, by way of a tackle, took place at a home’s threshold, did not involve the officers’ crossing that threshold, and further was in the course of an actual chase, literally constituting “hot pursuit.”

In this case, of course, the material sought to be confiscated was a hand gun, which is not easily disposed of in the sense of drugs, for instance. As to the Defendant himself, he was described by Officer Hurd as “walking towards the residence,” “eventually” going into it.⁷ Then, officers followed him in. That does not describe “hot pursuit.” Accordingly, exigent circumstances (by virtue of facile evidence destruction or a fleeing felon) do not exist. Moreover, the description of

¹ 25 A.3d 768 (Del. 2011).

² 25 A.3d 845 (Del. Super. 2010).

³ 832 A.2d 714 (Del. 2003).

⁴ 962 A.2d 210 (Del 2008).

⁵ 1995 WL 339184 (Del. Super. Apr. 21, 1995).

⁶ 765 A.2d 1257 (Del. 2001).

⁷ *State v. Benson*, Del. Super., ID No. 1504000557 (Feb. 15, 2016), Tr. at 17, lines 12-19.

Officer Hurd's of the surveillance, including multiple telephone contacts with the confidential informant, reflect ample opportunity to obtain a search warrant.

The warrantless crossing of the threshold of 309 East Division Street, Dover, Delaware, by police vis-à-vis Defendant is not justified.

That is not the entire picture, however. While Defendant cannot be said to have been providing exigent circumstances, there is more to the picture. It is evidently the case that Defendant was the primary subject of the Confidential Informant based information, leading to a determination that a person prohibited from possessing a firearm, in fact was in possession, a felony. Nevertheless, the entry itself into 309 East Division Street followed in what might be considered "hot pursuit" – the effort to detain another individual, a Mr. Henry Fordham ("Fordham").

The evidence produced at the motion hearing is that, when the officers' action became obvious, Fordham yelled something like: "Yo, yo, yo," and began running towards the 309 East Division Street house. A question could arise as to whether chasing Fordham into the house was sufficient justification for the warrantless breach; and, if so, whether searches occurring inside and, later, at the police station (arguably based upon indicia of probable cause found at those later moments) followed appropriately.

The difficulty there, though, is that – at the time of the warrantless entry into the home – there was no illegal activity of any kind known to or even suspected by the police relative to Fordham. Hence, any "chase" of him was not in the pursuit of a fleeing felon. Indeed, as Officer Baumgarner testified,⁸ no illegal activity of any

⁸ *State v. Benson*, Del. Super., ID No. 1504000557 (Feb. 15, 2016), Tr. at. 32, lines 11-13.

kind had been (or ever was through the police entry into the home) observed by police. As of that point, the only basis for police interest was the Confidential Informant's "tip" that Defendant – who, again, did not afford exigent circumstances – was a "person prohibited," in possession of a hand gun.

Therefore, the threshold breach must be determined to have been unreasonable in the absence of a warrant, which could have been supported and obtained (but was not). The evidence accumulated following that breach, including that later discovered upon the detention of Defendant at the station house, must be suppressed, as having come or flowed from the unjustifiably warrantless search.

Accordingly, Defendant's Motion to Suppress all evidence seized on April 1, 2015 is **GRANTED**.

SO ORDERED this 23rd day of March 2016.

/s/ Robert B. Young

J.

RBV/dsc

oc: Prothonotary

cc: Zachary A. George, Esquire
John R. Garey, Esquire