

I. INTRODUCTION

Before the Court is Defendant Charles L. Riley's ("Riley") Motion to Suppress all evidence seized and all statements made during an administrative search of his residence. As a result of the administrative search, Riley was charged with Drug Dealing,¹ Aggravated Possession,² Possession of a Firearm During Commission of a Felony,³ Possession of a Firearm by a Person Prohibited,⁴ Possession of Ammunition by a Person Prohibited,⁵ Receiving a Stolen Firearm,⁶ Resisting Arrest,⁷ and Possession of Drug Paraphernalia.⁸ For the reasons explained below, the Motion to Suppress is **DENIED**.

II. BACKGROUND

In early March 2017, Riley was on Level II probation for Drug Dealing out of his 1000 Bennett St., Wilmington residence when Probation Officer Daniel Collins ("Collins") received a tip from a past proven reliable informant that Riley was selling drugs and possessed a handgun at that same address.⁹ Riley's residence is in an area known to Collins as a high crime area.¹⁰ Collins, who was

¹ 16 *Del. C.* § 4752.

² 16 *Del. C.* § 4752 (3).

³ 11 *Del. C.* § 1447 A.

⁴ 11 *Del. C.* § 1448.

⁵ 11 *Del. C.* § 1448 A (1).

⁶ 11 *Del. C.* § 1450.

⁷ 11 *Del. C.* § 1257.

⁸ 16 *Del. C.* § 4771.

⁹ D.I. 25 at 45.

¹⁰ *Id.* at 73.

familiar with Riley and Riley's residence due to Riley's prior Drug Dealing case, did not believe this tip was enough to justify an administrative search.¹¹

On the evening of March 8, 2017, Collins and Wilmington Police Detective Matthew Rosaio ("Rosaio"), were on patrol as a part of Operation Safe Streets in the eastern part of Wilmington. They wore vests with large bold letters reading "PROBATION" and "POLICE." According to Collins, it is common for Operation Safe Streets to travel through high crime areas together in groups. At around 7:10 p.m., Collins saw Riley standing in front of his residence. Through earlier research, Collins knew that Riley had not had a home visit by a probation officer in almost six months, and that this was out of the ordinary for a registered sex offender.¹² Collins relayed to Safe Streets that he wanted to conduct a home visit pursuant to Condition Three of Riley's probation.¹³ Collins then circled around the block while waiting for assisting officers to arrive. When Riley saw Collins drive by, he quickly ran into his residence.¹⁴ Within minutes of seeing Riley run inside, Collins and Rosaio walked up to Riley's front door. Collins knocked on the door, announced himself as "Probation," and told Riley to come to the door. Collins was familiar with the layout of the residence because he had

¹¹ *Id.*

¹² *Id.* at 47. Riley is a registered sex offender. (D.I. 25 at 47).

¹³ Condition Three states that probationer "must permit the probation/parole officer to enter your home and/or visit places of employment."

¹⁴ D.I. 25 at 48-49.

arrested Riley there on the earlier Drug Dealing charge. Through a front window to the side of the front door, Collins was able to see inside the residence. Collins heard someone running up and down the basement stairs and then saw Riley pop his head from behind a wall located near the basement stairs. Collins made eye contact with Riley and demanded that he answer the door, but Riley ignored Collins' demands and disappeared from sight. By refusing to allow Collins entry into his residence, Riley was in violation of Condition Three of his probation.¹⁵

After approximately five minutes of knocking and announcing himself as probation, Collins made the decision to force entry through the front door with his shoulder.¹⁶ The decision was based on Riley's violation of Probation Condition Three, officer safety concerns, and Collins' belief that Riley might be destroying and or concealing illegal contraband.¹⁷ After Collins and Rosaio entered the residence, Riley emerged from behind the wall near the basement stairs. Upon Collins' request, Rosaio arrested Riley for violating Probation Condition Three. Rosaio searched Riley and found a bag of cocaine tucked in Riley's waistband.¹⁸ After Collins and Rosaio "cleared" the house to ensure no one else but Riley was inside, Collins contacted his supervisor, Robert Willoughby, completed the

¹⁵ D.I. 25 at 72.

¹⁶ *Id.* at 53.

¹⁷ *Id.* at 55.

¹⁸ D.I. 2 at 8.

“Search Checklist”¹⁹ and received permission from his supervisor to conduct an administrative search of Riley’s residence.²⁰ The administrative search revealed drugs, ammunition, and a firearm.²¹

III. PARTIES’ CONTENTIONS

Riley argues that the entry into his residence was not sanctioned by Department of Correction (“DOC”) Procedures and the administrative search was therefore in violation of 11 *Del. C.* § 4321, as well as the Fourth Amendment to the U.S. Constitution and Article 1, Section 6 of the Delaware Constitution.²² Riley maintains that there were no exigent circumstances justifying a warrantless search, and that Collins should have contacted a supervisor by telephone and reviewed and completed the Search Checklist under DOC Procedure 7.19 *before* entering Riley’s residence.²³

In opposition, the State argues that by disregarding Collins’ instructions to open the door to his residence, Riley was in violation of probation²⁴ and Riley’s actions created exigent circumstances that justified Collins’ forced entry into the residence without prior supervisory review.²⁵

¹⁹ D.I. 19 at 10.

²⁰ D.I. 25 at 66.

²¹ D.I. 19 at 5-6.

²² D.I. 10 at 6.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

IV. STANDARD OF REVIEW

While “[p]robationers do not have the same liberties as ordinary citizens,”²⁶ and “the unique nature of probationary supervision ‘justifies a departure from the usual warrant and probable cause requirements for searches,’”²⁷ “Delaware case law and administrative law do not permit suspicionless probationer searches.”²⁸ A probation officer must have reasonable suspicion or reasonable grounds to justify an administrative search of a residence.²⁹

Probation officers are authorized to conduct warrantless administrative searches of probationers pursuant to 11 *Del. C.* § 4321(d), which states:

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 and parole supervision in accordance with Department procedures while in the performance of the lawful duties of their employment and shall execute lawful orders, warrants and other process as directed to the officer by any court, judge or Board of Parole of this State

The DOC has enacted procedures that govern how probation officers initiate administrative searches of probationers’ residences.³⁰ “Reasonable suspicion’

²⁶ *Sierra v. State*, 958 A.2d 825, 828 (Del. 2008) (citing *McAllister v. State*, 807 A.2d 1119, 1124 (Del. 2002)).

²⁷ *Jacklin v. State*, 16 A.3d 938, 2011 WL 809684, at *2 (Del. 2011) (TABLE) (quoting *Sierra*, 958 A.2d at 828).

²⁸ *Murray v. State*, 45 A.3d 670, 678 (Del. 2012), *as corrected* (July 10, 2012).

²⁹ *Id.*

³⁰ *Sierra*, at 829 (citing Delaware Department of Correction Bureau of Community Corrections Probation and Parole Procedure No. 7.19 (amended effective June 5, 2001)).

exists where the ‘totality of the circumstances’ indicates that the officer had ‘a particularized and objective basis’ for suspecting legal wrongdoing.”³¹ In addition to considering the Procedure 7.19 factors, the probation officer and their supervisor must hold a case conference using the “Search Checklist” as a guideline unless “exigent circumstances exist.”³² Substantial compliance with DOC’s guidelines is sufficient for an administrative search and absolute compliance is not required.³³

DOC Procedure 7.19 defines exigent circumstances as:

An unexpected or urgent event which did not allow an opportunity for prior planning, and which requires immediate action to achieve a successful resolution. Exigent circumstances that lead to arrests or searches without prior supervisory review must be clearly stated and documented in the incident report.³⁴

A probation officer’s reasonable belief that a probationer might destroy drugs is an established example of a valid exigent circumstance because destruction of evidence is a timely issue.³⁵ The Delaware Supreme Court has noted that a probationer’s knowledge that police are in pursuit is a factor in considering

³¹ *Jacklin*, 2011 WL 809684, at *2 (quoting *Sierra*, 958 A.2d at 828).

³² *Sierra*, 958 A.2d at 829.

³³ *Pendleton v. State*, 990 A.2d 417, 418, 420 (Del. 2010).

³⁴ D.I. 10 Defense Ex. 2.

³⁵ *See King v. State*, 984 A.2d 1205, 1210 (Del. 2009).

whether the destruction of evidence may be imminent.³⁶ The burden is on the State to establish the existence of exigent circumstances.³⁷

V. DISCUSSION

Riley conclusorily states that “there were no circumstances in this case creating an emergency or exigent circumstance, and no reason that the probation officer did not...contact a supervisor by telephone and review and complete the checklist.”³⁸ But Riley overlooks his own conduct.

At the time Officer Collins forced entry into Riley’s residence, Riley was in violation of Condition Three of his probation and therefore subject to arrest.³⁹ When Collins knocked on his door and announced “Probation,” Riley engaged in evasive, suspicious conduct evidencing an attempt to avoid a home visit by Probation. Riley knew Probation was at the door, but rather than answer the door, he ran up and down the stairs leading to the basement.⁴⁰ A past proven reliable informant had told Probation that Riley was dealing drugs out of his residence and was in possession of a firearm. Given the totality of the circumstances, Collins had good reason to fear that Riley was attempting to destroy evidence. Probation and the Police did not create the exigent circumstances, Riley did. Had Riley simply

³⁶ *Seward v. State*, 723 A.2d 290, 292 (Del. 2004) (citing *Richards v. Wisconsin*, 520 U.S. 385 (1997)).

³⁷ *Mason v. State*, 534 A.2d 242, 249 (Del. 1987).

³⁸ D.I. 10 at 5-6.

³⁹ D.I. 25 at 72.

⁴⁰ D.I. 19 at 13.

answered the door when Probation knocked, the outcome may have been very different. However, knowing Probation wanted him to open the door, Riley chose to ignore repeated demands to do so before and after he made eye contact with Collins, and ran up and down the stairs out of sight. Collins' belief that Riley was attempting to destroy evidence was objectively reasonable under the circumstances.⁴¹ Once Riley was detained, Collins called his supervisor, completed the Search Checklist, and obtained approval for the administrative search. Probation Officers properly complied with DOC Procedure 7.19. Under the totality of the circumstances, Riley's actions gave Collins reasonable suspicion that Riley was engaging in criminal activity and Riley's conduct created a valid exigent circumstance under DOC Procedure 7.19.

⁴¹ See e.g. *King v. State*, 984 A.2d 1205, 1210 (Del. 2009).

V. CONCLUSION

Under the circumstances here, the warrantless administrative search of Riley's residence was not violative of 11 *Del. C.* § 4321, the Fourth Amendment to the U.S. Constitution, or Article 1, Section 6 of the Delaware Constitution. Defendant's Motion to Suppress is therefore **DENIED**.

IT IS SO ORDERED.



Jan R. Jurden, President Judge